

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 14, 2011

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, tribal, local and territorial governments to use electronic monitoring and home detention at government expense for juvenile offenders who are legally eligible for secure detention but whose risk of flight or further offending does not require secure pre-trial detention or incarceration.

REPORT

I. Trend Toward Electronic Monitoring

Juvenile courts nationwide have sent an increasing number of juvenile offenders home on the condition that they comply with terms of electronic monitoring (“EM”) programs as an alternative to both pre-trial detention and post-adjudication residential facilities.¹ Currently, every state with the exception of Hawaii and New Hampshire has some form of electronic monitoring for juvenile offenders in place.² States appear to follow a broad trend by implementing EM programs in order to temper the growth of inmate costs, lessen overcrowding, and better facilitate rehabilitation by allowing the offender to continue to go to school and work.³

¹ Ark. Code Ann. § 9-27-330(a)(12) (2010) (stating that if the court finds juvenile to be a delinquent, it may place him or her on residential detention with electronic monitoring in the juvenile’s home or in another facility); *Juvenile Center Acts to Control Population*, COURIER-POST, Sept. 15, 2008, available at 2008 WLNR 26820702.

² See generally ALASKA STAT. § 12.55.015 (2010); ARIZ. REV. STAT. ANN. § 8-341 (LexisNexis 2010); ARK. CODE ANN. § 9-27-330 (2010); CAL WELF. & INST. CODE § 1960 (Deering 2009); [CONN. GEN. STAT. § 46b-141a \(2010\)](#); D.C. SCR-JUVENILE APPX., RULE D-1 (2010); FLA. STAT. ANN. § 985.255 (LexisNexis 2010); O.C.G.A. GA. CODE ANN. § 15-11-66 (2010); 201 IAC 38.2(692A,903B) (2010); 705 ILL. COMP. STAT. ANN. 405/5-715 (2010); Burns Ind. Code Ann. § 11-12-8-1 (LexisNexis 2010); KAN. STAT. ANN. § 38-2330 (2009); LA. REV. STAT. ANN. 46:2600 (2010); CMR 03-201-010 Me. Code R. § 2.12 (2010) (*See* Procedure D); MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-01 (LexisNexis 2010); MICH. COMP. LAWS SERV. § 780.798 (LexisNexis 2010); MINN. STAT. § 241.0221 (2009); 2010 MISS. H.B. 835; (West 2010); MONT. CODE ANN., § 41-5-1203 (2010); NEB. REV. STAT. ANN. § 43-245 (LexisNexis 2010); N.J. ADMIN. CODE § 10A:72-1.3 (2010); N.M. CODE R. § 8.14.2.7 (2010); N.Y. FAM. CT. ACT § 320.5 (Consol. 2010); N.C. GEN. STAT. § 7B-2510 (2010); N.D. CENT. CODE, § 12-67-01 (2010); OHIO REV. CODE ANN. 2151.34 (LexisNexis 2010); OKLA. STAT. TIT. 21, § 443 (West 2010); 37 PA. CODE § 200.3 (2010); 06-100-003 R.I. CODE R. 14.0 (Weil 2010); S.C. CODE ANN. § 23-3-540 (2009); TENN. COMP. R. & REGS. R. 1400-3.03(66) (2010); 6 VA. ADMIN. CODE § 35-150-10 (2010); WASH. REV. CODE ANN. § 13.40.210 (LexisNexis 2010); WIS. STAT. ANN. § 302.425(West 2010); WYO. STAT. ANN. § 14-6-309 (2010); *In re A.C.*, 2010 Tex. App. LEXIS 3242, 12 (2010); *A.D. v. State*, 778 So. 2d 244, 245 (Ala. 2000); *State ex rel. Williams*, 1995 Del. Fam. Ct. LEXIS 66 (1995); *Glover v. Commonwealth*, 2009 Ky. App. Unpub. LEXIS 465, 18 (2009); *Commonwealth v. Hector H.*, 69 Mass. App. Ct. 43, 44 (2007); *City and County of Denver Electronic Monitoring Program, Rules and Participation Agreement – Juvenile Program*, <http://www.denvergov.org/Portals/676/documents/Juvenile%20Rules.pdf> (last visited June 30, 2010); NCJJ State Juvenile Justice Profiles, Idaho <http://70.89.227.250:8080/stateprofiles/profiles/ID06.asp> (last visited June 30, 2010); Nevada Youth Parole Bureau, Division of Child and Family Services, <http://www.dcf.state.nv.us/Documents/YouthParole.pdf> (last visited June 30, 2010); Multnomah County Program # 50012A – Juvenile Community Detention/Electronic Monitoring, <http://www2.co.multnomah.or.us/aspnet/budgetwebFY11All/PDF/50012A-MINT.pdf> (last visited June 30, 2010); South Dakota Department of Corrections, Juvenile Services Reimbursement Program, doc.sd.gov/forms/documents/Reimbprogramdescwithbanner-July2007.doc (last visited June 30, 2010); Utah State Courts, Second District Juvenile Court – FAQ’s, <http://www.utcourts.gov/courts/juv/juvsites/2nd/faq.html> (last visited June 30, 2010); Agency of Human Services Department for Children and Families Department of Correction, Juvenile Justice Commission Report, Jan. 15, 2007, <http://humanservices.vermont.gov/publications/JJCreport07.pdf/view> (last visited June 30, 2010); West Virginia Rules of Juvenile Procedure, Apr. 20, 2010, http://www.njdc.info/pdf/WV_Juvenile_Procedure_Rules.pdf (last visited June 30, 2010).

³ Saul Spigel, *Current Trends in Juvenile Corrections*, June 24, 2004, <http://www.cga.ct.gov/2004/rpt/2004-R-0497.htm> (Last visited June 29, 2010); Spending Trends on Corrections in New Jersey, A New Jersey Policy Perspective Analysis Prepared for the New Jersey Institute For Social Justice, Oct. 2003, http://www.njpp.org/rpt_corrspending.html (Last visited June 29, 2010).

104D

II. What is Electronic Monitoring?

Electronic monitoring (“EM”) is a type of technology assigned by courts to track the location of juvenile offenders and restrict their movement.⁴ It is used in house-arrest programs, where courts permit juveniles to remain at home in lieu of being placed in a secured pre-trial detention while awaiting trial or a post-adjudication residential facility after being adjudicated a delinquent.⁵ Juveniles can also be assigned to the program while on probation.⁶

EM programs may include home monitoring devices, wrist bracelets, ankle bracelets, field monitoring devices (e.g., GPS), alcohol testing devices, and voice verification systems.⁷

Juvenile courts may also determine specific conditions for each offender placed into an EM program.⁸ For example, a Court may require one offender to remain in house-arrest all day, but permit a second offender leave to go to school during school hours. If the offender violates one of the court’s conditions, the company notifies his or her case officer of the violation, a situation which can often lead to an arrest and possible termination from the EM program.⁹

III. When Electronic Monitoring Should be Used/What is Net-Widening?

Law enforcement officials and judges perform a risk assessment to evaluate the juvenile’s level of risk for re-offending, identifying targets for intervention, developing a case management plan, and monitoring progress in reducing risk factors.¹⁰ To conduct this evaluation, officials and judges use a point system to rate factors including background, residential situation, telephone capabilities, the severity of the offense, the child’s previous criminal record, and mitigating circumstances.¹¹ Juveniles are sent home if they score 7 points or less, receive an alternative placement option such as electronic monitoring if they score 8 to 15 points, and are placed in residential facilities if they score 16 points or higher.¹² For examples of a risk assessment questionnaire, please see:

<http://www.nhtsa.gov/people/injury/alcohol/juvenile/rai.pdf> and
http://criminaljustice.state.ny.us/ofpa/jj/docs/nys_juvdet_risk_assmt_insts.pdf

⁴ IOWA ADMIN. CODE r. 201-38.2 (2010).

⁵ ALA. CODE § 12-15-127 (2010); FLA. STAT. § 985.27 (West 1010).

⁶ 705 ILL. COMP. STAT. ANN. 405/5-715 (West 2005).

⁷ National Law Enforcement and Corrections Technology Center Bulletin, *Keeping Track of Electronic Monitoring*, Oct. 1999, <http://www.justnet.org/Lists/JUSTNET%20Resources/Attachments/859/Elec-Monit.pdf> (last visited June 7, 2010).

⁸ *Supra* note 6.

⁹ *Id.*

¹⁰ *Supra* note 1; Spokane County Juvenile Court Services, The Washington State Risk Assessment, <http://www.spokanecounty.org/JuvenileCourt/content.aspx?c=1051> (last visited July 19, 2010).

¹¹ *Id.*

¹² *Id.*

Net widening is a “metaphorical net of social control” that “occurs when youths, who would otherwise not be subject to formal social control, are subjected to such control because they are placed in a new program. This increases the likelihood that these youths will be subjected to increasingly punitive control.”¹³ In other words, net widening “occurs when programs created to divert youths from the justice system actually involve them more deeply in the official process than they need to be.”¹⁴

Net widening applies to juvenile electronic monitoring when judges and law enforcement officials order juveniles to utilize an electronic monitoring program even though they score low enough on a risk assessment to go home to simply go home without electronic monitoring. As one study showed, “only three out of four of those given home confinement would actually have gone to prison. In the remaining quarter of cases the cost of electronic monitoring is probably added on to an existing probation or supervision order.”¹⁵ Thus, net-widening can be avoided as long as courts conduct a proper risk assessment and do not assign electronic monitoring to juveniles who score below the alternative level placement option and well below the detainment option.

IV. Benefits of Electronic Monitoring in Comparison to Pre-trial Detention and Post-adjudication Rehabilitation Facilities

EM programs offer a wide variety of benefits over pre-trial detention and residential facilities. For instance, EM programs reduce the number of juvenile offenders who are placed in residential facilities by allowing them to remain under surveillance at home and while they attend school, work, place of worship, or doctors’ appointments.¹⁶ As the Annie E. Casey Foundation notes, juvenile detention or placement in residential facilities disrupts “already tenuous connections in school, services and family” and negatively affects long-term educational and employment levels.¹⁷ Moreover, various reports announce that EM programs improve the chances of a successful rehabilitation for youths by allowing them to remain at home and continue attending school.¹⁸ One study yielded a 3% recidivism rate for electronically monitored home detention cases,¹⁹ and in Tarrant County, Texas, 242 juveniles utilized the EM program with an 85% success rate in 2002.²⁰ A 2004 report shows that 75% of juveniles who were released from the EM program were considered successful in North Carolina.²¹ These programs therefore have the advantage of restricting an offender’s activities while minimally disrupting

¹³ *Electronic Monitoring*, John Howard Society of Alberta, 2000, available at <http://www.johnhoward.ab.ca/pub/A3.htm#Net>; Preston Elrod, R. Scott Ryder *Juvenile Justice: A Social, Historical, and Legal Perspective*, p. 328 (Jones & Bartlett Learning) (2005).

¹⁴ Jennifer Tornabene, et. al, *Alternatives to Secure Detention for Juvenile Offenders*, available at www.shrivercenter.org/documents/.../alt%20to%20detention.doc.

¹⁵ *Electronic Monitoring of Criminals*, THE FUTURIST, Sept. 1, 1990 available at <http://www.allbusiness.com/professional-scientific/scientific-research/129280-1.html>.

¹⁶ *Supra* note 13.

¹⁷ *Supra* note 1.

¹⁸ *Supra* note 15.

¹⁹ OJJDP Model Programs Guide, Home Confinement/Electronic Monitoring, http://www.dsgonline.com/mpg_non_flash/electronic_monitoring.htm (last visited June 7, 2010).

²⁰ Tarrant County, Immediate Home Detention – Electronic Monitoring, www.tarrantcounty.com/ejuvenile/cwp/view.asp?A=737&Q=427717 (last visited June 7, 2010).

²¹ *See supra* note 10.

104D

productive social behavior.

Furthermore, studies have shown that stays at detention centers and residential facilities can be quite traumatic. For instance, one study conducted to determine the “prevalence estimates of exposure to trauma and 12-month rates of posttraumatic stress disorder (PTSD) among juvenile detainees by demographic subgroups (sex, race/ethnicity, and age) revealed that most participants (92.5%) had experienced one or more traumas” out of sample of 898 participants.²²

In comparison, a study conducted on the social and psychological impacts of electronic monitoring showed positive results.²³ This study showed that “juveniles can successfully complete a community placement while on EM.”²⁴ The electronic wristlet or ankle bracelet “provided psychological and visual support for the juvenile when he wanted to avoid invitation” from other problematic juveniles to spend time together.²⁵ It served as a “constant reminder to the program participant that he was being monitored constantly. Juveniles reported they would reflect on their choice of action, and thus avoid violating conditions of their community release.”²⁶

In addition, it is more cost effective for communities to fund electronic monitoring programs for at least some juvenile offenders rather than place them in detention or residential facilities. In this regard, EM programs typically cost anywhere from \$2.80 to \$25.00²⁷ per day to operate. By comparison, the cost of placing an offender in a secured detention or residential facilities cost anywhere from \$100 to \$160 per day.²⁸ After Camden County, New Jersey adopted an EM program, the number of juveniles in detention or residential facilities decreased from 94 per day to 45 per day—a 53% decrease.²⁹ Consequently, even adopting a limited EM program can make a profound financial impact for a local government and should ultimately pay for itself.

V. The Price of Electronic Monitoring

All EM programs require the juvenile to have a phone line in order to function; some require landlines while others require a cellular phone or wireless signal.³⁰ Yet, according to a

²² Karen M. Abram, et al., *Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention*, Arch Gen Psychiatry, 2004 Apr., 61(4), 403-410 available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2861915/>.

²³ Michael T. Charles, *Research Notes: Juveniles on Electronic Monitoring*, 5 JOURNAL OF CONTEMPORARY CRIMINAL JUSTICE ONLINE 165, 167 (1989).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *OJJDP Model Programs Guide, Home Confinement/Electronic Monitoring*, http://www.dsgonline.com/mpg_non_flash/electronic_monitoring.htm (last visited June 7, 2010); *Legislative Report On electronic Monitoring of Juveniles*, State of N.C. Dep’t of Juvenile Justice and Delinquency Prevention, (2005), available at http://www.ncdjjdp.org/resources/statistics_legislative/04-05/EHALegislative04.doc.

²⁸ Jeff Abell, *Juvenile Offenders Housing Costs Spike: Board Explores Pulling Juveniles from Lee County Center*, THE HAWK EYE, Mar. 5, 2010 available at 2010 WLNR 4744738; Rex Smith, *A Useful, Imperfect Tool Despite the Tragic Shooting of a 5-Year-Old, GPS Monitoring has a Proven Track Record*, BALTIMORE SUN, Oct. 23, 2009 at 21A, available at 2009 WLNR 21055672.

²⁹ *Supra* note 1.

³⁰ Peter Hall, *A New Way to Track Offenders*, BUCKS COUNTY COURIER TIMES, Apr. 26, 2010 at 1, available at 2010 WLNR 10087376.

recent report, one in four households does not have a landline.³¹ The report also noted a correlation between low income and the lack of a landline.³² Yet, in many instances, the family of the juvenile offender must pay the cost of phone installation if they do not already have a phone line set up.³³ Moreover, the landline cannot have features such as call waiting, three-way calling, caller ID, or voicemail,³⁴ which means that a family must install a second line if it wants to continue using these features.

EM programs can be more costly depending on what equipment is used. For instance, one county requires parents to pay \$7.00 per day for standard electronic monitoring using a landline and \$15.00 a day for GPS monitoring using digital equipment.³⁵

In addition to the cost of installing and maintaining a telephone landline, other costs can include general installation fees;³⁶ daily charges for equipment use, communication, service, maintenance, spare equipment for the agencies, interface software, call center support, supplies, spare batteries; the cost of random urinalyses, breath analyses; and costs for damaged³⁷ or unreturned equipment.³⁸ Court imposed restitution for unreturned equipment can cost close to \$600.³⁹ As noted above, EM programs typically cost anywhere from \$2.80 to \$25.00⁴⁰ per day to operate. The monthly cost for electronic installation and monitoring combined can cost parents about \$200 per month.⁴¹

VI. When Parents Must Pay

Currently, many states and counties already cover electronic monitoring costs. For instance, Florida requires both the state and the counties to fully fund the program.⁴² Other local governments currently cover the cost of EM programs where courts determine that an EM program is in the best interests of the child even though his or her family is indigent.⁴³

³¹ *1 in 4 Homes Have Cell Phone, No Landline: Growing Trend Started By Young and Poor as Fewer Households Have Use for Traditional Landlines*, CBS News Tech, May 12, 2010, <http://www.cbsnews.com/stories/2010/05/12/tech/main6476743.shtml>, (Last visited June 30, 2010).

³² *Id.*

³³ Julie D. Bowden et al., *Issues Pertaining to the Juvenile Defendant at Trial*, MA-CLE § 11.2.1 (2009).

³⁴ *Id.*

³⁵ Tippecanoe County Home Detention, <http://www.tippecanoe.in.gov/default/division.asp?fDD=44-307> (Last visited June 30, 2010).

³⁶ Electronic Home Monitoring Program, An [sic] Cost Effective Alternative to Juvenile Detention, Valencia County, http://www.co.valencia.nm.us/Juvenile_Justice/Brouchures/EHMBrouchure.pdf (Last visited June 8, 2010) (stating that the installation fee is \$40.00).

³⁷ Electronic Monitoring, Juvenile Court Services, Spokane County Washington, <http://www.spokanecounty.org/JuvenileCourt/content.aspx?c=1055> (last visited June 7, 2010).

³⁸ City and County of Denver Electronic Monitoring Program, Rules and Participation Agreement – Juvenile Program, <http://www.denvergov.org/Portals/676/documents/Juvenile%20Rules.pdf> (last visited June 7, 2010); *See* Bowden, *supra* note 33; *Id.*

³⁹ *B.L.B. v. State of Indiana*, 917 N.E.2d 732, (Ind. 2009).

⁴⁰ *Supra* note 27.

⁴¹ Alberta Lindsey, *Detention Program Expanded Parents Must Pay for Electronic Monitoring*, RICHMOND TIMES DISPATCH (VA), May 11, 1994 at L1 available at 1994 WLNR 1001268.

⁴² Juvenile Detention, Counties Role in Juvenile Justice, Florida Association of Counties, http://www.fl-counties.com/pages/Advocacy/Public_Safety/Juvenile_Detention.aspx (last visited on June 30, 2010).

⁴³ *Supra* note 27; *Also see* *In re Vincent Q*, 14 P.3d 203, 205 (Wy. 2000).

104D

However, not all communities cover electronic monitoring costs and fees. For instance, Arkansas courts may order the parent, both parents, or the guardian of any juvenile adjudicated delinquent and placed on electronic monitoring to be liable for the associated costs, taking into consideration such factors as the financial ability to pay, and past efforts or opportunity of the parent, both parents, or the guardian to correct the delinquent juvenile's conduct, and other relevant factors.⁴⁴

Electronic Monitoring programs can heavily burden indigent parents if they require the offender or his or her parents or guardians to pay for fees and costs associated with the program.⁴⁵ In many places, eligibility for an EM program is conditioned on an offender's family paying some or all of the costs of the program. To qualify for EM programs, the offender must also have a home, and as mentioned above, a fully operational telephone.⁴⁶ Thus, certain indigent offenders are not even considered for electronic monitoring due to their families' low economic status or inability to pay.⁴⁷ Some private companies even threaten to terminate electronic monitoring services (as well as impose financial penalties) if families fall behind on their payments.⁴⁸

As a result, indigent juvenile offenders are excluded from electronic monitoring programs even if they qualify based on their risk assessment evaluation whereas offenders who can afford the service will receive it. Moreover, when an indigent juvenile offender is dependant on his or her family to make payments, if he or she has a poor relationship with his or her guardian or family, that family can refuse to make payments, thus further excluding that child from the electronic monitoring program. Many counties require both the child and the parent or guardian to sign a contract legally binding them to make the specified payments,⁴⁹ and therefore, if the parent or guardian does not sign, the offenders cannot participate in the electronic monitoring program. Thus, instead of the court making the ultimate decision on whether the juvenile offender can utilize the electronic monitoring program, the offender's parents or guardians make that determination.

VII. Recommendations

Electronic monitoring can be a beneficial alternative to juvenile detention, and therefore, no child should be excluded from this option based solely on his or her families' economic status or inability to afford the proper equipment or service fees. If deemed appropriate by a court, every qualifying child should have equal access to it regardless of wealth or indigence. Therefore, United States and state, local and territorial governments should fund electronic

⁴⁴ Ark. Code Ann. § 9-27-330(a)(13) (2010).

⁴⁵ *Supra* note 14.

⁴⁶ Scott Vollum & Chris Hale, *Electronic Monitoring: A Research Review*, CORRECTIONS COMPENDIUM, Jul. 1, 2002, also available at <http://www.thefreelibrary.com/Electronic+monitoring:+a+research+review.-a090103399>.

⁴⁷ *Id.*

⁴⁸ City and County of Denver Electronic Monitoring Program, Rules, *supra* note 38; Hamilton County Community Corrections, Conditions of Juvenile Electronic Monitoring, http://www.hamiltoncounty.in.gov/library/corrections/docs/conditions_of_juvenile_electronic_monitoring.pdf (last visited June 30, 2010).

⁴⁹ *Supra* note 3; Ocean County Department of Juvenile Services, Detention/Electronic Monitoring Program, <http://www.co.ocean.nj.us/ocjs/EMonitoring.aspx> (Last visited June 30, 2010).

monitoring programs in their entirety including the cost of installation and other fees associated with landlines, if one is required for an EM program, and should not seek to defray the costs of these programs by requiring families to pay to participate in them. Many states and counties already cover electronic monitoring costs. For instance, Florida requires both the state and the counties to fully fund the program.⁵⁰ The rest should follow its example.

By reducing net widening effects by refraining from placing juveniles who do not need electronic monitoring based on their risk assessment on such programs, communities can save money. Likewise, by conducting these proper risk assessments, juveniles who might otherwise be placed in detention centers or secure residential facilities may instead qualify for electronic monitoring, thus further saving communities money. Therefore, by taking these extra steps, communities can find the funds necessary to fully cover electronic monitoring program costs.

Thus, the ABA urges United States and state, local and territorial governments to fully fund electronic monitoring programs and cover all costs of electronic monitoring so that the juvenile offender and his or her parents or guardians pay no costs or fees associated with the programs. Furthermore, the American Bar Association urges the United States and state, local and territorial governments to enact laws that allow all qualified juveniles to utilize electronic monitoring programs based on a proper risk-assessment in lieu of pre-trial detention and secure residential placement.

Respectfully submitted,

Bruce Green, Chair
ABA Criminal Justice Section

February 2011

⁵⁰ Juvenile Detention, Counties Role in Juvenile Justice, *supra* note 42.

GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section

Submitted By: Christopher Gowen

1. Summary of Recommendation(s).

Electronic monitoring can be a beneficial alternative to juvenile detention, and therefore, no child should be excluded from this option based solely on his or her families' economic status or inability to afford the proper equipment or service fees. If deemed appropriate by a court, every qualifying child should have equal access to it regardless of wealth or indigence. Therefore, United States and state, local and territorial governments should fund electronic monitoring programs in their entirety including the cost of installation and other fees associated with landlines, if one is required for an EM program, and should not seek to defray the costs of these programs by requiring families to pay to participate in them. Many states and counties already cover electronic monitoring costs. For instance, Florida requires both the state and the counties to fully fund the program. The rest should follow its example.

By reducing net widening effects by refraining from placing juveniles who do not need electronic monitoring based on their risk assessment on such programs, communities can save money. Likewise, by conducting these proper risk assessments, juveniles who might otherwise be placed in detention centers or secure residential facilities may instead qualify for electronic monitoring, thus further saving communities money. Therefore, by taking these extra steps, communities can find the funds necessary to fully cover electronic monitoring program costs.

Thus, the ABA urges United States and state, local and territorial governments to fully fund electronic monitoring programs and cover all costs of electronic monitoring so that the juvenile offender and his or her parents or guardians pay no costs or fees associated with the programs. Furthermore, the American Bar Association urges the United States and state, local and territorial governments to enact laws that allow all qualified juveniles to utilize electronic monitoring programs based on a proper risk-assessment in lieu of pre-trial detention and secure residential placement.

2. Approval by Submitting Entity.

The Criminal Justice Section Council on November 6, 2010.

3. Has this or a similar recommendation been submitted to the House or Board previously?

Standard 18-3.20 (Home detention) of the Criminal Justice Sentencing Standards, approved by the House of Delegates in February 1993 states:

...

(d) Use of electronic monitoring devices as a part of a sentence to home detention is appropriate, but the availability of such devices should not be a prerequisite for such sentences. The ability of an offender to pay the costs of such a device should not be considered by sentencing courts in determining whether to use the sanction of electronically monitored home detention

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The proposed resolution would not affect the Sentencing Standards.

5. What urgency exists which requires action at this meeting of the House?

The use of Electronic Monitoring across the country is growing rapidly. Electronic Monitoring allows a child to attend school, family events, doctor’s appointments and religious gatherings while their case is pending. Allowing a child to remain in school during this time period may prevent a child from failing the grade and being held back a year. Unfortunately as these programs are adopted many jurisdictions are placing the cost on the child and his or her family. When this happens the use of Electronic Monitoring is only available for people that have the money to afford the program, while the children whose families can not afford the costs must remain in secure detention and not attend school.

6. Status of Legislation. (If applicable.)

n/a

7. Cost to the Association. (Both direct and indirect costs.)

None

8. Disclosure of Interest. (If applicable.)

n/a

9. Referrals.

The Commission on Youth at Risk has agreed to co-sponsor this resolution. In addition the CJS will ask for support from the following entities: Individual Rights and Responsibilities, SCLAID, Science and Technology, The Center for Children and the Law and The Young Lawyers Division.

104D

At the request of Rules and Calendar, it will subsequently be sent to the chairs and staff directors of the following ABA entities and leaders of affiliated organizations: Section of Litigation, Judicial Division, Commission on Homelessness and Poverty, General Practice, Solo and Small Firm Division and the Section of State and Local Government Law.

10. Contact Person. (Prior to the meeting.)
Christopheher Gowen
gowenc@staff.abanet.org
202.662.1511

11. Contact Person. (Who will present the report to the House.)
Stephen A. Saltzburg
George Washington University Law School
2000 H Street NW
Washington DC 20053
PH: 202/994-7089; 202/489-7464 (cell)
E-mail: ssaltz@law.gwu.edu

William Shepherd
Office of Statewide Prosecution
1515 N Flagler Drive, Suite 900
West Palm Beach FL 33401
PH: 561/837-5000; 561/723-9669
E-mail: William.shepherd@myfloridalegal.com

EXECUTIVE SUMMARY

A. Summary of Recommendation.

Electronic monitoring can be a beneficial alternative to juvenile detention, and therefore, no child should be excluded from this option based solely on his or her families' economic status or inability to afford the proper equipment or service fees. If deemed appropriate by a court, every qualifying child should have equal access to it regardless of wealth or indigence. Therefore, United States and state, local and territorial governments should fund electronic monitoring programs in their entirety including the cost of installation and other fees associated with landlines, if one is required for an EM program, and should not seek to defray the costs of these programs by requiring families to pay to participate in them. Many states and counties already cover electronic monitoring costs. For instance, Florida requires both the state and the counties to fully fund the program.⁵¹ The rest should follow its example

The ABA urges United States and state, local and territorial governments to fully fund electronic monitoring programs and cover all costs of electronic monitoring so that the juvenile offender and his or her parents or guardians pay no costs or fees associated with the programs. Furthermore, the American Bar Association urges the United States and state, local and territorial governments to enact laws that allow all qualified juveniles to utilize electronic monitoring programs based on a proper risk-assessment in lieu of pre-trial detention and secure residential placement.

B. Issue Recommendation Addresses.

Indigent juvenile offenders are excluded from electronic monitoring programs even if they qualify based on their risk assessment evaluation whereas offenders who can afford the service will receive it. Moreover, when an indigent juvenile offender is dependant on his or her family to make payments, if he or she has a poor relationship with his or her guardian or family, that family can refuse to make payments, thus further excluding that child from the electronic monitoring program.

However, while it is important to promote EM programs when necessary, it is just as important to prevent net widening. Net widening applies to juvenile electronic monitoring when judges and law enforcement officials order juveniles to utilize an electronic monitoring program even though they score low enough on a risk assessment to go home to simply go home without electronic monitoring. As one study showed, "only three out of four of those given home confinement would actually have gone to prison. In the remaining quarter of cases the cost of electronic monitoring is probably added on to an existing probation or supervision order."⁵² Thus, net-widening can be avoided as long as courts conduct a proper risk assessment and do not assign electronic monitoring to juveniles who score below the alternative level placement option and well below the detainment option.

⁵¹ Juvenile Detention, Counties Role in Juvenile Justice, *supra* note 42.

⁵² *Electronic Monitoring of Criminals*, THE FUTURIST, Sept. 1, 1990 available at <http://www.allbusiness.com/professional-scientific/scientific-research/129280-1.html>.

104D

C. How Proposed Policy Will Address the Issue.

Electric monitoring programs offer a wide variety of benefits over pre-trial detention and residential facilities. For instance, EM programs reduce the number of juvenile offenders who are placed in residential facilities by allowing them to remain under surveillance at home and while they attend school, work, place of worship, or doctors' appointments.⁵³ Moreover, various reports announce that EM programs improve the chances of a successful rehabilitation for youths by allowing them to remain at home and continue attending school.⁵⁴ These programs therefore have the advantage of restricting an offender's activities while minimally disrupting productive social behavior.

In addition, it is more cost effective for communities to fund electronic monitoring programs for at least some juvenile offenders rather than place them in detention or residential facilities. By reducing net widening effects by refraining from placing juveniles who do not need electronic monitoring based on their risk assessment on such programs, communities can save money. Likewise, by conducting these proper risk assessments, juveniles who might otherwise be placed in detention centers or secure residential facilities may instead qualify for electronic monitoring, thus further saving communities money. Therefore, by taking these extra steps, communities can find the funds necessary to fully cover electronic monitoring program costs.

D. Minority Views or Opposition.

None that we are aware of.

⁵³ *Supra* note 13.

⁵⁴ *Supra* note 15.