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An Effectiveness Evaluation of the Electronic Monitoring System

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Abstract

Since the mid-2000s, new criminal sanctions against sex offenders have been introduced in line with the trend of the Korean criminal justice system towards punitiveness, including the registration and disclosure of personal information and pharmacologic treatment of sexual impulses. In particular, the number of offenders under electronic monitoring and the intensity of surveillance have increased since the electronic monitoring system was adopted in 2007. However, there are few empirical studies on the effectiveness of such punitive criminal sanctions. This study evaluates the policy execution process of the Electronic Monitoring System and its deterrent effects on sex offenders.

Introduction

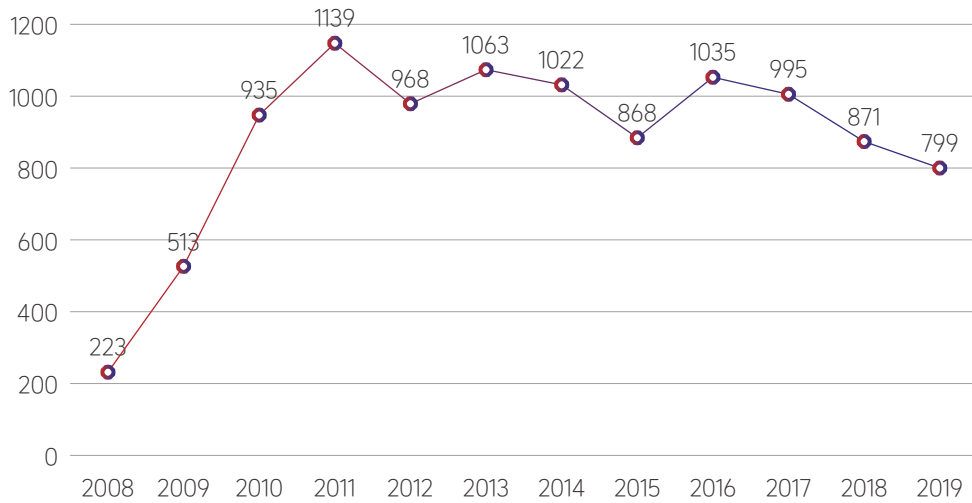
Since the mid-2000s, the criminal justice policies of Korea have shifted towards punitiveness, which was most prominent in the introduction of new criminal sanctions against sexual crimes, such as the registration and disclosure of personal information, restrictions on employment, electronic monitoring, and pharmacologic treatment of sexual impulses. In particular, the registration and disclosure of sex offenders' personal information and the implementation of electronic monitoring continue to expand in scope and grow in their intensity. While there are a number of studies that examine the constitutionality of the newly implemented criminal sanctions, few empirical studies have been conducted on their effectiveness.

The legal provisions for the Electronic Monitoring System were established on April 27, 2007 by the enactment of the Act on the Electronic Monitoring of Specific Sex Offenders, which became effective on September 1, 2008. Since then, the Electronic Monitoring System has gone through a series of legal amendments, which have increased the intensity of electronic monitoring by expanding the scope of applicable offenses, extending the length of electronic monitoring, adding new categories of special terms and conditions to be observed, and enhancing criminal sanctions for violations of those special terms and conditions. However, these changes were not supported by thorough validation of their deterrent effects on sex offenders or empirical evaluation of the enforcement process. This study evaluated the effectiveness of the current operations of the Electronic Monitoring System by analyzing available data and employing the method of quasi-experimental design.

Enforcement of the Electronic Monitoring System

The number of court-ordered electronic monitoring of offenders who have completed their sentences or those under the suspension of the execution of imprisonment has been decreasing since 2013. The number of court-ordered electronic monitoring of end-of-sentence offenders, which made up most of the court orders for electronic monitoring, had drastically increased to 600 – 700 from 2010 to 2014, driven by multiple factors, such as the retroactive application for released sex offenders and the increased use of electronic monitoring for broader types of offenses triggered by a strong public demand for more stringent sanctions against offenders following a series of sexual violence crimes. However, the number of such court orders has witnessed a distinctive decrease since 2015 and currently remains at slightly above 300 cases as shown in Figure 1.

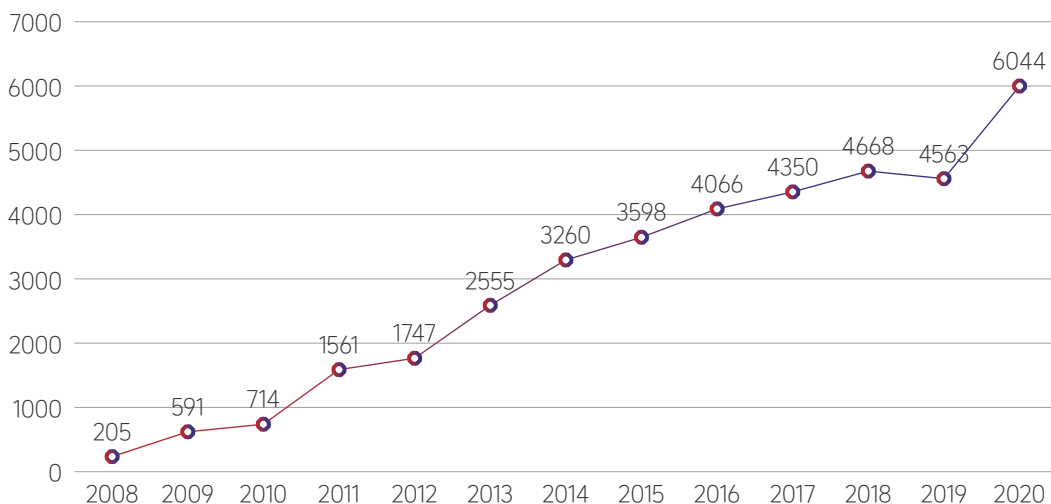
Figure 1. Trend of Court Orders for Electronic Monitoring



The number of offenders under electronic monitoring has continued to fluctuate in large volumes, with spikes between 2013 and 2014 mainly driven by increases in the retroactive application of end-of-sentence electronic monitoring cases, while those between 2016 and 2018 were due to increases in the number of parolees under electronic monitoring. In 2020, the scope of offenses for electronic monitoring cases at parole was expanded from specific crimes such as sexual crimes, abduction of minors, homicide, and robbery to include general crimes. As a result, the number of those under electronic monitoring increased 3.6 times compared to the previous year.

The increasing number of electronic monitoring cases affected the workload of the probation officers in charge of electronic monitoring, which increased by more than 17-fold from 347 cases in 2009 to 6,044 in 2020 due to extensions of the length of electronic monitoring as shown in Figure 2.

Figure 2. Cumulative Annual Probation Office Electronic Monitoring Cases



As the scope of electronic monitoring for parolees was expanded to all types of crimes in 2020, the average length of monitoring was reduced. Those under electronic monitoring for 'less than three months' made up 47.7% of the total in 2020, clearly contrasting with the 5.1% of 2019. Yet, when examining the monitoring period for end-of-sentence sex offenders, the average length had been extended from 55 months in 2009 to about 10 years after 2011, as lower and upper caps were introduced for the length of electronic monitoring in connection to court orders while the revision in relevant law allowed for a maximum attachment period of up to 30 years in 2010.

Until 2019, before the scope of crimes for electronic monitoring of parolees was expanded to all types of crimes, sex offenders made up the biggest share of 44.3%. As of the end of December 2020, end-of-sentence electronic monitoring for sexual offenses still made up the highest proportion of 54.5%. This is because the average attachment period has been extended from less than five years to about 10 years for end-of-sentence electronic monitoring subjects through two rounds of attachment period extensions. It is expected that the end-of-sentence electronic monitoring for sexual offenders will maintain a high percentage even in the future.

An average of 95% among those under electronic monitoring between 2018 and 2020 were males. However, as the scope of electronic monitoring for parolees was expanded in 2020, the number of female subjects increased from 40 in 2018 to 163 in 2020. While the biggest group of subjects are in their 40s, the percentage of subjects in their 50s or above shows a growing trend in recent years. The ratio of subjects in their 60s and above has also increased from about 5% prior to 2016 to 13.5% in 2020. 37.5% of all subjects were unemployed, while another 30.6% had low job security as they engaged in low-wage labor. In addition, it was challenging to attach the home monitoring devices for about 21.2% of the subjects as they had no secure housing.

| Effectiveness of the Electronic Monitoring System

Suppressive Effects on Recidivism

Since the introduction of the Electronic Monitoring System, the recidivism rates of sexual crimes, homicide, and robbery among those under electronic monitoring have decreased significantly as shown in Table 1. For sex offenders, the recidivism rates of those under electronic monitoring were shown to be significantly lower than those of sex offenders who were not subject to electronic monitoring. More specifically, the attachment of electronic devices has been shown to reduce the risk of recidivism of sexual offenders by about 8%. Among the electronic monitoring subjects, the risks of recidivism were higher in subjects who had no fixed residences, those subjected to the disclosure of their personal information, subjects convicted of forced molestation rather than rape, and those who have committed sexual crimes against unknown victims.

Table 1. Rate of Recidivism since the Introduction of the Electronic Monitoring System

| Type of Crime | Prior to Introduction | Electronic monitoring subjects | Reductions in Recidivism |
|---------------|-----------------------|--------------------------------|--------------------------|
| Sexual crime | 14.1% (2003 – 2007) | 2.1% (2016 – 2020) | 1/7 |
| Homicide | 4.9% (2005 – 2009) | 0.1% (2016 – 2020) | 1/49 |
| Robbery | 14.9% (2009 – 2013) | 0.2% (2016 – 2020) | 1/75 |

Other factors that were shown to affect recidivism include: age, history of mental illness, number of committed crimes, crime types (sexual crimes), sanction types (subjects of end-of-sentence electronic monitoring), records of damage to electronic devices, history of violations of special terms and conditions, and the provision of economic support. On the other hand, the provision of psychotherapy and the supervision-related factors did not show clear correlations with recidivism.

Effects on the Subjects of the Electronic Monitoring System

The probation officers in charge of electronic monitoring acknowledged that electronic monitoring has negative impacts on the relationships between the subjects and their spouses, employment, interpersonal relationships, and securing housing. However, compared with the results of a 2013 survey, the rates of responses from the probation officers claiming negative impacts have decreased. While negative impacts on the subjects continue to exist, their severity seems to have been partially reduced when compared to the past.

Effects on Probation Activities

Most probation officers in charge of electronic monitoring responded that the biggest expected benefit of electronic monitoring is ‘to suppress the criminal motive in advance by imposing increased psychological pressure on subjects’ (67.0%). They also assessed that electronic monitoring offers the advantage of practical and close monitoring of the subjects compared to regular probation. At the same time, the probation officers also pointed out the disadvantages of electronic monitoring in terms of offender supervision, including reduced direct interaction with the subjects due to increased workload such as the management of the electronic devices and the difficulty in managing the subjects due to frequent conflicts. These perceptions were aggravated at statistically significant levels when compared to 2013. Most probation officers in charge of electronic monitoring responded that they agreed with the close monitoring and supervision benefits of electronic monitoring while faced with the challenges in managing the electronic devices. Nonetheless, these disadvantages are mostly related to technical issues of electronic devices, which will naturally be resolved with improvements in the quality and functions of electronic

devices. Therefore, the expected benefit of the Electronic Monitoring System, which is to 'suppress recidivism through electronic monitoring,' is expected to further improve once the issue of the technological foundation is resolved.

Probation officers in charge of electronic monitoring perceived that it added additional workload to typical probation activities, and were shown to experience significant psychological stress from the addition of new activities related to electronic monitoring. Yet, it is positive to note that the workload and stress levels experienced by probation officers have been reduced when compared to the 2013 survey. The probation officers in charge of electronic monitoring perceived their accountability for incidents as the most demanding aspect of their roles, followed by the difficulty in controlling the subjects (including frequent drinkers), the irregular work pattern (such as emergency mobilizations), and late night and holiday shift work.

67.5% of the electronic monitoring probation officers experienced profanity, threats, or abusive behavior by the subjects or their related persons. 14.5% experienced physical violence, 15.0% continued harassment, and 22.5% having complaints filed against them with the National Human Rights Commission or the Ministry of Justice. There were four probation officers (2.0%) who even experienced indictments and litigations. More than half (57.7%) of the probation officers who have experienced physical abuse took action, such as requesting warnings, investigations, or criminal charges, while only 39.1% and 39.0% took action against continued harassment or profanity, intimidation, and abusive behavior, respectively. 21.7% of the officers subjected to harassment and 19.1% to profanity, intimidation, and abusive behavior replied that they either endure or ignore such actions of the subjects. It was shown that while proactive responses were taken against more tangible threats, such as physical violence, there were fewer proactive responses to emotional and psychological threats (harassment, profanity, and others). When compared to the 2013 survey, the levels of emotional and psychological exhaustion and cynicism of the probation officers were higher while a lower sense of job efficacy was shown. This presents an urgent need to establish measures to reduce burnout among probation officers in charge of electronic monitoring.

| Policy Recommendations

Reassess Recidivism Risks When Attaching Electronic Devices

At the present, court orders of end-of-sentence electronic monitoring are issued based on recidivism risk assessments at the time of the rulings. However, it should be noted that the offenders' risks of recidivism may increase or decrease depending on the degree of their progress in rehabilitation during the period of imprisonment. Thus, it is necessary to introduce a process to re-evaluate the recidivism risks of the offenders prior to the completion of their prison sentences.

Specifically, the Probation Review Committee should re-evaluate the recidivism risks of the offenders subjected to electronic monitoring 6 months prior to their release, submit applications to prosecutors to request necessary revocations or changes in the attachment periods after the re-evaluation of the electronic monitoring court orders, where the prosecutors shall raise such applications with the court. Revocations should be allowed before the execution of the court orders for subjects of electronic monitoring if their recidivism risks have been drastically reduced during their imprisonment.

Establish Criteria for Determining the Attachment Period

The attachment period for the subjects of end-of-sentence electronic monitoring court orders has a relatively wide range of upper and lower limits depending on court sentence (from 10 years up to 30 years for life sentence, from 3 up to 20 years for imprisonment not less than 3 years, from 1 to 10 years for imprisonment below 3 years). Moreover, the imposed length of electronic monitoring can vary across courts, trial levels, and judges, which would undermine the consistency and clarity of the governing law.

Similar to the sentencing guidelines, the Supreme Court should provide the guidelines for the imposition of electronic monitoring orders to ensure consistency in terms of the length of monitoring.

Meanwhile, it is possible to impose multiple criminal sanctions against sex offenders under current laws and as a result, the subjects of electronic monitoring are placed under multiple sanctions. However, the imposition of multiple criminal sanctions goes against the principle of proportionality under the rule of law while its effectiveness has not been proved. Thus, adjustments should be made to avoid duplicative sanctions by considering the characteristics and liability of the subjects.

Enhance Communication Between Courts and Electronic Monitoring Institutions

According to the results of in-depth interviews with judges, it has been found that judges are not fully aware of how electronic monitoring orders and their special terms and conditions are executed, or what kind of difficulties the subjects or probation officers encounter in the execution process. This has resulted in the imposition of special terms and conditions on many subjects that were impossible to carry out or monitor by the probation officers.

Collaborative approaches need to be implemented to facilitate discussions between courts that impose electronic monitoring orders and probation officers who monitor the executions thereof to mutually exchange opinions and make consequent adjustments by understanding which special terms and conditions make it hard for subjects with certain characteristics to return to society, which special terms and conditions are practically impossible for the subjects to comply with, and on how to specify the special terms and conditions to allow the monitoring of their execution.

Gradual Increase of Sanctions on Violators of Terms and Conditions

The Ministry of Justice has recently announced plans to reinforce criminal punishments for violations of special terms and conditions, together with plans to enhance the management of such violators by improving the division of duties, where a staff member in charge is to focus on the monitoring and supervision, while the emergency investigation team mainly focuses on management and investigations of the special terms and conditions violators. However, in practice, the electronic monitoring system raises the possibility of detecting violations of special terms and conditions, thereby increasing the rates of such violations. Therefore, if the management of and sanctions on violators of special terms and conditions are reinforced without considering the fields of practice, prisons and probation offices may become places that only function as revolving doors.

Thus, it is more reasonable to abolish or reduce criminal punishments for violations of special terms and conditions. Instead, when subjects violate the special terms and conditions, more stringent special terms and conditions should be imposed or the length of electronic monitoring should be extended in a gradual manner.

System Operations Focused on High-Risk Offenders

It is not appropriate to put low-risk offenders under electronic monitoring without any changes to the current system where governing laws and the electronic monitoring system are designed and operated with a focus on high-risk offenders. The overall system requires improvements, either by enforcing electronic monitoring for parolees only for specific types of crime as in the past, or by introducing electronic monitoring technology that is appropriate for low-risk parolees in order to expand the scope of electronic monitoring to cover all types of crimes.

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