

## Is E-Carceration a Problem? Confronting the Shortcomings of Technological Criminal Justice Reforms

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Chaz Arnett, *From Decarceration to E-Carceration*, 41 **Cardozo L. Rev.** \_\_\_\_ (forthcoming, 2019), available at [SSRN](#).

Almost six months ago, best-selling author and legal scholar Michelle Alexander wrote for the [New York Times](#) in reference to electronic monitoring devices used in the criminal process: *If the goal is to end mass incarceration and mass criminalization, digital prisons are not the answer*. But why not? States are increasingly considering alternatives to incarceration, including electronic monitoring, as a means to reduce the economic and social pressures of the phenomenon of mass incarceration. The notable and bipartisan [First Step Act](#) passed by Congress in December 2018 encourages further use of electronic monitoring devices in the federal system. Why not embrace this ever-improving technology to reduce the deleterious effects of this phenomenon? Indeed, [many Americans](#) believe electronic monitoring can and should be a part of the solution.

Chaz Arnett's powerful article, *From Decarceration to E-Carceration*, forthcoming in the *Cardozo Law Review*, argues to the contrary. He asserts that the expansion of electronic monitoring devices in community corrections threatens to entrench the most deleterious effects of mass incarceration – its operation as a mechanism of social stratification and racialized marginalization—without reducing the expanding footprint of the carceral state. Because his novel contribution reframes how we engage with the introduction of technologies as criminal justice reform, this is a must-read piece for those interested in resolving the problems of mass incarceration in the United States.

Electronic monitoring is emerging as a staple intervention at various points in criminal justice administration, including juvenile justice, adult pretrial detention, and adult post-conviction punishment. Electronic monitoring is not new; states have used radio frequency monitoring for decades as a part of community corrections. However, recent advances in technological infrastructure in society along with growing momentum for criminal justice reform more broadly make the devices appealing for state and local criminal justice administrators to use as an alternative to incarceration. After decades of increasing reliance on incarceration, these devices appear a key component of “decarceration” efforts meant to decrease reliance on prisons and local jails.

Arnett's article lays out the shortcomings of current debates about electronic monitoring in correctional systems across the United States. From a legal perspective, electronic monitoring currently evades critical constitutional and legal frameworks that limit the state's ability to control its constituents. Arnett highlights how courts struggle to respond to issues raised by use of electronic monitoring devices through the Fourth Amendment, juvenile law and policy, and adult corrections laws. Though not the first to identify such issues, his broad overview is unique in its emphasis on states' jurisprudence. It highlights that electronic monitoring devices do not easily fit within existing legal frameworks.

From a policy perspective, Arnett suggests that ongoing debates fail to fully grasp the implications of electronic monitoring as well. Three key justifications bolster device expansion: the promise of successful reentry, the promise of cost savings, and the promise of increased public safety. Arnett complicates each of these benefits. While there are studies suggesting that electronic monitoring is more effective in reducing recidivism and increasing public safety, numerous studies suggest no impact as well. Moreover, claims of cost savings overlook how embracing these devices passes burdensome costs to the most marginalized and economically strapped defendants and their families. Finally, electronic monitoring may prevent an individual's ability to reintegrate into society in the long term. Though defendants are released into the community, use of an electronic monitoring device is often accompanied by onerous conditions that may promote a cycle of surveillance and incarceration. As example, he notes common geographic restrictions that

prevent those on electronic monitoring from gaining access to employment or connecting with family or other support networks. In short, the policy benefits of electronic monitoring as correctional reform are far more ambivalent than current debates acknowledge.

Arnett's article truly sings when he explains how this technological reform may deepen social stratification endemic to the phenomenon of mass incarceration. He illuminates how electronic monitoring is a form of surveillance and *surveillance* operates as a mechanism of *social stratification*. It encourages those who are most marginalized from society to persistently avoid public resources like school, health services, and transportation. Unfortunately, lack of access to such resources operates as a barrier to reintegration and long-term disentanglement from the criminal justice system. That surveillance's harm is most concentrated on marginalized communities ensures that this technological reform will likely exacerbate the carceral state's racialized effect, too. From a perspective that places reintegration and rehabilitation as central to reform efforts, electronic monitoring may have an opposite effect that at best leaves mass incarceration untouched, and at worst expands its reach.

To be sure, electronic monitoring is not the only cog in this apparent shift toward "e-carceration." Technological interventions are popular components of many criminal justice reforms at the moment. But technological interventions can distract from deeper structural problems that have as much to do with the expansion of the carceral state as growth in prisons. Worse still, as I have explained elsewhere, it can [redefine](#) what we think is right or wrong about mass incarceration all together. To the extent that Arnett engages with electronic monitoring as a solution rather than a problem, his intervention does not go far enough. In particular, his call for more transparency in the adoption of electronic monitoring devices feels unnecessarily pragmatic. It is not clear that empowering people to cope with adoption of the devices democratically can resolve the ambivalent impact devices present sociologically. Arnett is on surer ground when he encourages investment in job training and reentry services in lieu of investment in electronic monitoring devices.

Still, Arnett's socio-legal critique is a much-needed addition to the literature on technologically-driven criminal justice reforms. By emphasizing how electronic monitoring debates can overlook a bigger picture in criminal justice, Arnett's article embraces a refreshing approach to this reform. Along the way, he invites any reader to think twice about adopting electronic monitoring as part of a solution to phenomenon of mass incarceration. While there is no "one way" to resolve the dilemmas of mass incarceration, the routes we choose will shape society more broadly. In this sense Arnett's article illuminates how e-carceration poses a separate question from reducing reliance on incarceration worthy of independent consideration and critique.

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