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TO: Assignment Judges
Trial Court Administrators **DIRECTIVE # 06-18**

FROM: Glenn A. Grant, J.A.D. 

SUBJ: Criminal Justice Reform – (1) Criteria for Ordering Electronic Monitoring, and
(2) Electronic Monitoring Screening Criteria Form

Date: June 7, 2018

This directive promulgates the attached (1) Criteria for Ordering Electronic Monitoring and (2) Electronic Monitoring Screening Criteria Form. The criteria and form were approved by the Judicial Council on May 31, 2018 and are effective immediately.

The Criminal Justice Reform Act and the concomitant Rules of Court expressly direct the courts to set the least restrictive conditions of pretrial release that will reasonably ensure that the defendant will appear for all scheduled court events, that the safety of victims and the public is protected, and that the defendant will not attempt to obstruct the criminal justice process.

Electronic monitoring (EM), as an authorized release condition, is recommended for use only with those defendants who pose a risk on pretrial release, but whose risk profile falls just short of the risk that would result in a recommendation not to release. Further, EM should be ordered only in conjunction with home detention.

It is important that EM as a condition of release be used only on defendants who meet the criteria, regardless of whether ordering electronic monitoring is consistent with the Pretrial Services Program (PSP) recommendation of release.

I. Criteria for Ordering EM

Nearly a year and a half of data and experience has revealed that conditioning release on EM is only practicable or useful in certain scenarios. The Criteria for Ordering EM document outlines the appropriate scenarios for ordering EM. The document is broken out into three sections, and provides guidance for (A) the types of cases that are appropriate for EM, (B) the residency parameters for EM, and (C) the limited circumstances where it is appropriate for the defendant to leave the residence while on EM.

A. Types of Cases Appropriate for EM

Generally, EM should only be ordered in cases in which doing so will assist in protecting a victim. However, it should be noted that EM can provide a false sense of security in that regard, which should be taken into account when EM is used. The victim should be a living person with an identifiable address so that the victim's address can be entered into the electronic monitoring system and monitoring staff thereafter will receive the "Exclusion Zone Alert."¹ The section also specifies that a minimum distance between a defendant's address and victim's address is 2,500 feet. The section also permits ordering EM in "extraordinary circumstances," which must be explained on the EM Screening Criteria Form.

B. Residence Parameters for EM

Electronic monitoring is not effective if the defendant does not have a stable residence, or reliable means of powering the EM device. It is also not effective if the defendant is permitted to leave the residence. Thus, EM should not be ordered if the defendant does not have a stable residence, or does not have an available power supply within his or her residence. Further, EM should be ordered only in conjunction with home detention. The court must confirm the type of home or living arrangement prior to ordering an EM condition. Additionally, the defendant's address must be written in the Pretrial Release Order.

Any modifications to allow the defendant to leave the home or for relaxation of EM restrictions must be made by formal application to the court. Further, the defendant may not leave an Inclusion Zone² without receiving advance permission from a judge. PSP staff are not authorized to make this decision.

C. Limited Circumstances Where Defendant on EM May Leave the Residence

In most circumstances, EM monitoring is only appropriate, as discussed above, where: (1) the matter involves a victim that requires protection, (2) the defendant lives at a stable residence with access to a power supply, and (3) the defendant is ordered to home detention.

Certain limited circumstances may compel a court to permit a defendant to leave the home for very specific purposes. In general, those circumstances are for:

1. Court appearances and pretrial monitoring and/or probation appointments. Defendants must always be permitted to go to court and to their monitoring appointments as required. Therefore, courts must specifically articulate in the order setting an EM condition that the defendant be permitted to leave the home for scheduled court appearances and pretrial monitoring and/or probation appointments.
2. Employment. In limited circumstances, the court may be compelled to order EM and make certain allowances for the defendant to continue working. The purpose of EM, however, is to effectively monitor potentially dangerous defendants. Thus, this allowance is subject to certain restrictions:
 - i. The defendant must already be employed.
 - ii. The defendant's work location must be known and stable.

¹ The "Exclusion Zone Alert" is an automated email and text message that is sent automatically to the monitoring officer(s) on duty when the defendant enters a prohibited zone. If after a short period of time, the monitoring officer fails to acknowledge the alert using the link provided in the automated email, then the monitoring officer will receive an escalation telephone call from a live vendor representative.

² If the defendant leaves an Inclusion Zone, then an "Inclusion Zone Alert" text message and email is sent automatically to the monitoring officer(s) on duty. If after a short period of time, the monitoring officer fails to acknowledge the alert using the link provided in the automated email, then the monitoring officer will receive an escalation telephone call from a live vendor representative.

- iii. The defendant's work schedule must be stable.
 - iv. The defendant must have reliable means of transportation to and from work.
 - v. The defendant must provide the name of his or her supervisor, and their number and work address. This information will be used for emergency purposes only.
 - vi. The nature of the defendant's work-release must be appropriate (e.g., home detention with work release is not an appropriate condition/allowance for a defendant who works with children and who is also charged with an offense under N.J.S.A. 2C:24-4).
3. Medical Appointments. Defendants with regularly scheduled medical appointments should be permitted to continue those appointments. This should be explicitly articulated in the Pretrial Release Order, including the times and days of the week that the defendant is permitted to make those appointments. Permission to leave the home for irregular or sporadic appointments must be requested by application of the defendant and approved by a judge.

If the parties intend to request that the court set an EM condition, they must fill out and sign the EM Screening Criteria Form prior to the centralized first appearance/central judicial processing event (CFA/CJP).

II. EM Screening Criteria Form

The EM Screening Criteria Form provides the court with the essential information that is required when considering whether EM is appropriate for a particular defendant, and what parameters must be set in conjunction with the condition. The EM Screening Criteria Form requires that the parties fill out relevant information prior to making the request to the court or when EM is ordered as a condition of release.

In Part 1, the prosecutor must provide the reasons why EM is necessary. This includes victim information and whether the victim lives within a short distance of the defendant. It also requests specific information where the prosecutor is requesting that the defendant be ordered to EM based on extraordinary circumstances.

In Part 2, the defendant or defense attorney must provide information related to the defendant's residence and whether he or she will have access to an electrical power outlet to charge the EM device. It also reaffirms that the defendants understand that if ordered to EM with home detention, he or she is not permitted to leave the residence except for express purposes specifically articulated in the Pretrial Release Order, or on formal application to the court and approval by a judge. In addition, the defendant must provide employment information and, if applicable, medical information related to the defendant's need to go to appointments, as well as the need to attend appointments with his or her defense attorney. Finally, there is a space to request permission to leave the home for other, specific purposes.

III. Conclusion

Please distribute this directive and appended EM Screening Criteria and EM Screening Criteria Form to your staff. Please also take steps to ensure that the EM Screening Criteria form is available for attorneys in the appropriate courtrooms. EM shall not be ordered without completion of the EM Screening Criteria Form. Additionally, courts must consider the specific circumstances of a defendant's suitability on

EM as required by the Criminal Justice Reform Act and the Rules of Court, as well as the relevant information contained in the Criteria for Ordering EM document.

The form is available on the New Jersey Courts webpage at https://www.njcourts.gov/forms/12220_em_screen_crit.pdf. Any questions or comments regarding this directive may be directed to Assistant Director Sue Callaghan, Criminal Practice Division, at sue.callaghan@njcourts.gov or by phone at (609) 815-2900 x55300.

G.A.G.

Attachments: (1) Criteria for Ordering Electronic Monitoring
(2) Electronic Monitoring Screening Criteria Form

cc: Chief Justice Stuart Rabner
Criminal Division Judges
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CRITERIA FOR ORDERING ELECTRONIC MONITORING (EM) AS A CONDITION OF PRETRIAL RELEASE

The Judicial Council has approved the following criteria for ordering electronic monitoring (EM) as a condition of pretrial release that are intended to increase the efficacy of electronic monitoring (EM) and to help ensure that it is used properly.

A. Types of cases appropriate for EM

Generally, EM should only be ordered in cases in which there is a victim.

1. Cases in which there is a victim:
 - a. The victim must be a person. EM is not appropriate where the victim is a business, town, agency, etc.
 - b. The victim must have a known address. Pretrial Services must be able to enter an identifiable exclusion zone. Thus, a proper address is necessary.
 - c. The distance between the defendant's address and victim's address must be no less than 2,500 feet. This accounts for the recommended 1,500 ft. exclusion zone and 500 foot inclusion zone recommended by BI, along with an additional 500 feet in between the zones.
2. Other extraordinary circumstance:
 - a. The defendant's release recommendation is either "Release with condition – Weekly reporting + HD/EM" or "No Release Recommended."
 - b. The extraordinary circumstance must be explained on the form.

B. Residence Parameters for EM

1. EM should only be ordered where the defendant has a stable residence/address and cannot be "homeless" or reside in a shelter (by definition a shelter is not a stable residence).
2. EM must only be ordered alongside home detention, which is defined as "staying in the home at all times unless otherwise indicated by the pretrial release order."
3. Requests for any temporary adjustment to the Pretrial Release order requiring home detention with EM must be made by formal application to the court. The

defendant may not leave the inclusion zone without advance permission of a judge.

4. Defendant must confirm that he or she has access to an electrical outlet throughout the day, evening, and overnight hours to charge the EM equipment.
5. Defendant must confirm the type of his or her dwelling (in order to determine the parameters of the EM beacon), the defendant's address, and that the defendant may remain at that address in home detention for the duration of the matter.
6. The defendant's address, at which the defendant must remain on home detention with EM, must be placed on the pretrial release order.

C. Limited Circumstances where defendant on EM may leave the residence.

As noted above, defendants on home detention with EM should not be permitted to leave the home for any circumstance unless otherwise permitted by the court order. These exceptions should be limited to court appearances, pretrial monitoring and/or probation appointments, employment, and medical appointments, where the defendant satisfies the below criteria. Requests to leave the home for any other reason, including to meet with counsel outside of the defendant's home, must be sought by motion before the court.

1. **Court Appearances and Pretrial Monitoring and/or Probation Appointments:** All defendants must be permitted to leave the home for scheduled court appearances and pretrial monitoring and/or probation appointments. All court orders should indicate such.
2. **Employment:** The court must inquire regarding a defendant's employment before considering whether the defendant is an appropriate candidate for EM. PSP must have the ability to effectively monitor a defendant who leaves the home to address the safety of the victim and the public, while also ensuring that the defendant is not subject to violations of EM that could have been prevented by providing relevant information to PSP at the outset. Thus, a defendant who is permitted to leave the home for work may be an appropriate candidate for EM only if he or she satisfies the following criteria:
 - a. **The defendant is currently employed.** A defendant should not be permitted to leave the home while on EM to conduct a job search.

- b. **The defendant's job location is stable.** Defendants on EM should not be permitted to roam the state. Pursuant to the CJR Law, defendants on EM should only be the highest risk defendants that have not been detained pending trial.
- c. **The defendant's work schedule is stable.** Pretrial Services cannot effectively monitor a defendant with an unstable schedule. Therefore, a defendant with a schedule that changes daily or has mandatory overtime without notice would not be a good candidate for EM.
- d. **Defendant has control over their commute to and from work.** A defendant must be able to demonstrate reliable transportation. Otherwise, a defendant may not be a good candidate for EM.
- e. **Defendant can provide the name, address and phone number of the employer.** Pretrial Services must be able to verify the employer's name and address to enter the work location as an inclusion zone in BI. The employer's phone number should also be provided so that the employer can be contacted in the case of an emergency. This is not for the purpose of verifying employment, but for use in an emergency situation for a high-risk defendant.
- f. **Determination of whether EM is appropriate with relation to the nature of the defendant's work.** For example, a defendant charged with sex offenses against a minor whose employment brings the defendant into contact with minors, is not a good candidate for EM. In addition, some physical labor jobs may not be conducive to using EM equipment such as being submerged in water or manual labor where there is a likelihood of breaking the EM bracelet.

Should an application be made for the defendant to be able to work while on EM, proof of employment must be provided to the court and the work hours are to be placed on the record and on the order, e.g., "can work from XX:XX a.m./p.m. to YY:YY a.m./p.m. (include commute time) on the following days." Any change of the conditions must be in the form of an order of the court.

- 3. **Medical Appointments:** A defendant with regularly scheduled medical appointments should be permitted to leave the home for such appointments. These appointments should be explicitly delineated in the pretrial release order. A

defendant with sporadic appointments may not be a good candidate for EM. Defendants who wish to leave the home for medical appointments not delineated in the court order must make application to the court.

Each party should be required to notify PSP in advance of the CFA/CJP session or detention hearing if they intend to request EM. The attorneys should then fill out and sign a criteria form (see attached) based on the criteria described above. PSP should review this form and raise any concerns with the judge prior to the court session.



New Jersey Judiciary
Electronic Monitoring Screening Criteria
(for Electronic Monitoring as a Condition of Pretrial Release)

Defendant: _____ SBI Number: _____

Complaint Number: _____

Part 1 – Must be completed by the Prosecutor

Reasons for requesting electronic monitoring:

1. Victim/Witness

- a. Is the victim/witness a person, not a place of business? ☐ Yes ☐ No
- b. If Yes, will you be able to provide the victim's address to the Pretrial Service staff? ☐ Yes ☐ No
- c. Does the defendant reside within 2500 feet (about half a mile) of the victim/witness residence? ☐ Yes ☐ No

2. Other extraordinary circumstance:

- a. Was the defendant's release recommendation either "Release with condition – Weekly reporting + HD/EM" or "No Release Recommended"? ☐ Yes ☐ No
- b. Explain the extraordinary circumstance:

Prosecutor's Name: _____

Prosecutor's Signature: _____

Date: _____

Electronic Monitoring Screening Criteria (for Electronic Monitoring as a Condition of Pretrial Release)

Defendant: _____ SBI Number: _____

Part 2 – Must be completed by the Defense Attorney after consultation with defendant**Residence Parameters:**

1. Does the defendant have a stable residence/address where he/she will remain for the duration of the case? ☐ Yes ☐ No

Address: _____

Phone #: _____

2. Does the defendant reside in a shelter? ☐ Yes ☐ No

3. In what type of dwelling does the defendant reside? (i.e., apartment complex, single family home, etc.)

4. Will the defendant have access to an electrical outlet to charge the unit? ☐ Yes ☐ No

5. Does the defendant understand that home detention is defined as staying in the home at all times, with limited exceptions detailed in the Release Order, and that requests for any temporary adjustment must be made by formal application to the Court? ☐ Yes ☐ No

6. Any other relevant information regarding defendant's residence:

Employment Information:

1. Is the defendant currently employed? If so, provide employer information. Please list additional employment on a separate sheet. ☐ Yes ☐ No

Business Name: _____

Business Address: _____

Business Phone: _____

Current Work Schedule: _____

2. Does the defendant rely on public transportation to travel to work? ☐ Yes ☐ No

3. Does the defendant rely on others to commute to and from work, so that a curfew may not be met? ☐ Yes ☐ No

4. Does the defendant's work location change frequently? ☐ Yes ☐ No

5. Does the defendant have stable work hours? ☐ Yes ☐ No

If No, does the defendant know of changes to his/her work schedule ahead of time, so he/she may notify Pretrial Staff at least 5 business days prior to the change and during regular business hours (M-F from 8am to 5pm)? ☐ Yes ☐ No

6. Any other relevant information regarding employment:

Electronic Monitoring Screening Criteria (for Electronic Monitoring as a Condition of Pretrial Release)

Defendant: _____ SBI Number: _____

Medical Information:

(Please do not provide specific medical information. Information must be limited to frequency/date of appointment only. The nature and type of appointment should not be included.)

1. Will the defendant need to leave the residence for regularly scheduled medical appointments/treatment? ☐ Yes ☐ No
If Yes, what is the current schedule? _____

2. Will the defendant need to leave the residence for frequent medical appointments? ☐ Yes ☐ No
If Yes, what is the frequency? _____

3. Does the defendant have a medical condition that may require frequent visits the hospital emergency room? ☐ Yes ☐ No
4. Does the defendant understand requests to leave the home to attend any medical appointments, not specified in the release order, must be made by formal application to the Court at least 5 business days prior to change, and may require documentation of proof of attendance? ☐ Yes ☐ No

Attorney Visits:

1. Does the defendant currently have any scheduled appointments to meet with his/her attorney? ☐ Yes ☐ No
If Yes, please specify: _____

2. Does the defendant understand requests to leave the home to meet with his/her attorney, not specified in the release order, must be made by formal application to the Court at least 5 business days prior to change and may require documentation or proof of attendance? ☐ Yes ☐ No

Other requests to allow defendant to leave the home:

1. Purpose of leave: _____
Frequency: _____
Length: _____
Comment: _____
2. Purpose of leave: _____
Frequency: _____
Length: _____
Comment: _____
3. Purpose of leave: _____
Frequency: _____
Length: _____
Comment: _____
4. Purpose of leave: _____
Frequency: _____
Length: _____
Comment: _____

Defense Attorney's Name: _____

Defense Attorney's Signature: _____

Date: _____