

Electronic monitoring in the youth justice system of Hungary

Eszter Párkányi (*University of Leeds*) and Anthea Hucklesby (*University of Birmingham*)

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We hope that our devoted work to use their insight in support of developing the criminal justice system will show in this report and it will contribute to discussion around the electronic monitoring of children. We also hope that it will contribute to developing a child-friendly approach in EM systems in the future.

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Contents

Acronyms	5
Introduction	6
1 Electronic monitoring in the youth justice system	8
1.1 Legal foundations of the youth justice system and EM measures	8
1.1.a Front-door measures: law enforcement supervision and restraining order	9
1.1.b Backdoor measure: reintegrative supervision	10
1.2 EM policy	11
2 The operation of the EM system	12
2.1 Front-door use of EM	12
2.1.a Actors and responsibilities	12
2.1.b Cooperation among stakeholders	14
2.2 Reintegrative supervision	16
3 Understanding the proportionality of EM for children	17
3.1 EM as an alternative to deprivation of liberty	17
3.2 The purpose of EM	19
3.3 The target group of EM	19
4 Front-door process	21
4.1 Assessment of risks and needs	21
4.1.a Legal assessment	21
4.1.b Feasibility	22
4.2 Addressing children's needs in the monitoring process	23
4.2.a Justice measure	24
4.2.b Flexibility	25
4.2.c Contact with the caregiver	26
4.2.d Length of the process	26
4.3 Violations and breach	26
5 Backdoor process	27
5.1 Assessment	28
5.2 Addressing children's needs	29
5.2.a Flexibility determined by the PPO	29
5.2.b Police attendance	29

6	(Re)integration on EM	29
6.1	Maintaining family ties	29
6.2	Stigmatisation on EM	30
7	Children’s views on EM	31
7.1	Children’s general perceptions of EM	32
7.2	Obstacles of and opportunities for integration into schools	32
8	Conclusion and recommendations	33
	References	35
	Annex 1 – Methodology	38

Acronyms

	EN	HU
CC	Criminal Code	Büntető Törvénykönyv
Old CCP	Old Code of Criminal Procedure	A régi büntetőeljárás törvény
CCP	Code of Criminal Procedure currently in force	A jelenleg hatályos büntetőeljárás törvény
CPH	County Police Headquarters	Megyei Rendőr-főkapitányság
EM	electronic monitoring	technikai eszközzel történő nyomon követés
GPS	Global Positioning System	műholdas helymeghatározó rendszer
PLPR	Prohibition of leaving the place of residence	Lakhelyelhagyási tilalom
PS	Prison Service	Büntetés-végrehajtás
PPO	Prison Probation Officer	bv pártfogó
TIK	Police monitoring centre	Tevékenység-irányítási Központ
UNCRC	United Nations Convention on the Rights of the Child	A Gyermekek Jogairól Szóló New York-i Egyezmény

Introduction

Electronic monitoring (EM) is a relatively new criminal justice tool in Hungary and therefore legal principles and professional practices of law and technology remain underdeveloped. While it has been used on a larger scale for less than seven years, interest in the use of similar technologies in criminal justice date back to the first Code of Criminal Procedure after the political transition. At the time, EM was envisaged to support the control of pre-trial location restrictions, but the implementation into practice was hindered by the limited financial means available for the first governments. Yet the idea to create a technological substitute for 'doorstep control' by the police has remained an important goal for policy, becoming a reality in the early 2010s due to the availability of technology coupled with international pressure to reduce the prison population. In addition a new measure, rehabilitative supervision, has been developed to support the release of detainees into the community, thereby importing the rehabilitative sentiment of EM and introducing a different approach of the role of technical control in the criminal justice system. Subjects of this measure are resettled to the community with the express purpose of reintegration, and while they are still 'prisoners' by law, their reintegrative needs weighing against the retributive regulatory label.

Although both modalities of EM are available for children, whether these establish 'youth EM' is a matter of debate as they were created and are used mainly for serious adult offenders. Their implementation consists of wide-ranging restrictions, strict surveillance arrangements, and a lack of individualised support. The law enforcement supervision and restraining order at the pre-trial stage, are reportedly rarely used in youth justice, because these serve as alternatives for the most severe cases where the deprivation of liberty is considered to be the most viable option. The use of reintegrative supervision is limited in youth justice because of the legal conditions of release and the length of the imprisonment. Instead of providing a reintegrative transition period between prison and the return to the community, the conditions suggest that the measure is intended to reduce the retributive impact of imprisonment for negligent and non-violent offences. In practice, the 'juvenile' status of children has only administrative relevance in these procedures, as it is quite rare for children to be deprived of their liberty after committing of negligent or non-violent crimes. In addition, if a child commits an offence serious enough to result in imprisonment, this will typically end after his 18th birthday which excludes the applicability of the youth regulation.

As a result of these features of law and practice, this research shows that the Hungarian justice system is unprepared to assess and address child-specific developmental and social needs when using EM. The use of EM for children is currently limited to pre-trial measures where it is implemented following the same procedures and protocols as adults' cases. This systemic design has negative implications for both children and the implementing authorities. As law enforcement supervision can impose unlimited restrictions on the freedom of movement, children on EM may be deprived access to services that would guarantee their rights to welfare, mental health or education along with a deprivation of their liberty and such rights may be considered a privilege rather than a fundamental requirement of the intervention. Furthermore, unlike reintegrative supervision, police carry out intensive control with little involvement from the social services which includes dealing with a target group who have distinct needs and potentially complex social and health problems. In this report, we will provide a comprehensive and detailed analysis of the current processes and advise how future policies could address the gaps in the policy and guarantee children's rights in EM measures.

This report provides an overview of findings of the research conducted in Hungary within the framework of the *Tracking Children in their Best Interest: electronic monitoring in three*

European juvenile justice systems (TCBI) project. The project examined EM measures that target children across three European jurisdictions: the Netherlands, England and Wales and Hungary. In Hungary, interviews were conducted with 22 stakeholders of EM from the police, the Prosecution Service and the courts, and focus group discussions conducted with 32 school children. Interview participants were invited from two Transdanubian counties, and the capital city, Budapest. Due to the general character of the criminal justice system, only one participant specialised in children's cases. Focus group participants were aged between 15 and 19 and were invited from two secondary schools (Párkányi and Hucklesby, 2020).

With regards to the international character of project, findings will be presented considering the applicable international requirements, standards and guidelines of children's rights. While the use of EM specifically for children has not been addressed by international bodies yet, instructions on implementing youth justice, non-custodial measures and crime prevention provide invaluable input concerning the applicable approach and the expected outcome of community-based measures assisted by EM. Beyond the requirements of the UN Convention on the Rights of the Child (UNCRC), a variety of UN guidelines will be considered, including the Beijing Rules,¹ the Tokyo Rules,² the Riyadh Guidelines,³ the recommendations of the Economic and Social Council (ECOSOC). Further due to the European scope of the research, regional regulatory instruments and recommendations of the Council of Europe (CoE) and the European Union (EU) will be referenced where applicable. First, the legal and policy foundations of EM and the role of the different actors in the system will be introduced, and followed by the analysis of how these fulfil key children's rights requirements concerning i) the proportionate use of justice measures as an alternative to the deprivation of liberty, and for given purposes and target groups, ii) procedural requirements of assessing children's needs, iii) addressing children's needs during the measure and iv) the broader perspective on the procedural and social implications of using the measure for children. Children's views about EM are contained in the final point, specifically concerning the possibility of integrating children on EM into school communities.

¹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985

² United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) Adopted by General Assembly resolution 45/110 of 14 December 1990

³ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990

1 Electronic monitoring in the youth justice system

1.1 Legal foundations of the youth justice system and EM measures

The use of EM with children in Hungary can only be understood in the context of youth justice overall, including its relation to adult justice and the specific provisions for children. The youth justice system is based on the 'exceptional' procedural and substantive requirements of the Criminal Code (CC) and the Code of Criminal Procedure (CCP). While both Acts emphasise distinct principles that should drive legislation and decision making in youth justice, the legal instructions addressing the sentencing and procedural features are limited to mitigating severity, by e.g. reduced maximum sentences and providing additional protection, such as responding to the limited legal capacity of the child. Children who break the law are dealt with by the same authorities and institutions as adults. This lack of institutional separation is paired with limited requirements for specialisation or training in children's distinct needs and developmental interests within these organisations. Accordingly, staff appointed to children's cases are often required to work on adults' cases alongside their special duties in the agencies of youth justice (courts, prosecutors and probation staff). Specialised knowledge or training on age-specific and developmental needs are not required. These characteristics qualify the system to be called a 'juvenile criminal justice system' (Lévay, 2016). Nevertheless, all institutions involved in working with young people within this framework, whether specialised or not, are expected to correspond with Rec 2003(20) of the Council of Europe that defines a youth justice system as "the formal component of a wider approach for tackling youth crime" (I, Rec 2003(20)). Youth courts are included in the definition, along with "official bodies or agencies such as the police, the prosecution service, the legal profession, the probation service and penal institutions". In this report, the responsibility to comply with international children's rights requirements, will be assumed for all institutions that are involved in the EM of children.

With regards to the emphasis on the penal character of the youth justice system, the minimum age of criminal responsibility (MACR) used to be 14 years until July 2013, when the latest CC came into force (Lévay, 2016). The new law has created an exception of the general MACR, by which 12 and 13-year-olds can be sentenced to deprivation of liberty if they have committed certain serious offences.⁴ A substantive legal safeguard to reflect the developmental particularity of these very young children in the system is the obligatory examination of their liability, i.e. whether they were able to foresee the consequences of their actions. If they are deemed liable, courts may only impose protective measures, including deprivation of liberty for up to 4 years in a reformatory institution.⁵

EM⁶ has never explicitly targeted children in the youth justice system. Similarly to other youth justice measures, the legal mandate has not extended to specifying children as a target group including their specific needs and interests while on EM. The history of EM in Hungary dates back to the introduction of the old CCP of 1998. Interest in using EM as a means to supervise and control the movements of adult offenders arose together with the first CCP after the political transition that introduced house arrest (*házi őrizet*) and the prohibition of leaving the place of

⁴ These offences are: homicide, manslaughter, aggravated bodily harm, an act of terrorist motive, robbery and plundering (s.16 CC).

⁵ The Hungarian Criminal Code divides criminal sanctions into two groups: punishments and preventive measures. Preventive measures focus on behavioural change as opposed to the punitive goals of punishments.

⁶ No specific expression translates to electronic monitoring in Hungarian. The current regulation refers to EM as tracking by using an electronic device (*technikai eszközzel történő nyomon követés*). The regulatory framework suggests that EM is a means for control, separate from the actual content of the measure.

residence (PLPR; *lakhelyelhagyási tilalom*). Appropriate conditions of house arrest were envisaged in a gradual scheme, depending on the alleged offence, the personal circumstances and the employment status of the given person. The level of control would range from regular visits, through regular phone calls to confirm the presence of the subject to police attendance twenty-four hours a day, seven days a week to make sure that the individual did not leave the home (Herke, 1998). Understandably, the latter requires a considerable amount of resources from the police, therefore this form of control has been and remains limited to exceptional cases (Herke, 1998; Nagy, 2014). While the intention was to expand the available range of the tools of monitoring with EM eventually, appropriate funding for introducing the technology was not available in post-transitional Hungary. Nevertheless, research began to consider ethical and technological questions around the ambition of using a technical device to control house arrest and other measures (Herke, 1998; Nagy, 2014, Mohácsi, 2015, Róth, 2010). Early concerns raised around the benefits of EM included its potentially discriminative and net-widening character and its dogmatic legal position, such as its ultima ratio use before detention would become the only option. Although these issues continue to shape contemporary debates, the use of EM as an alternative to remand custody is broadly supported by academics (Herke, 1998; Mohácsi, 2015: 233).

The current pre-trial and early release EM measures evolved gradually, having been rolled out fully in 2013 and 2015 respectively. While EM was introduced in the law for house arrest in 2003 (Nagy, 2016) and for PLPR in 2009 (Mohácsi, 2015: 232), participants of this research reported that the legal mandate resulted only in occasional EM cases at the early years. The catalyst to its broader use came from international criticism of prison-overcrowding. The Government has envisaged using EM to reduce the prison population by both increasing the capacity of the pre-trial stage ('front-door' EM) and by designing an early release modality for offenders who commit less serious crimes ('backdoor' EM) (Bogotyán, 2015; Mátyás, 2015; Nagy, 2016; Menyhért & Nagy, 2018; Répássy, 2015). The backdoor measure, *reintegrative supervision* (*reintegrációs őrizet*) was introduced in 2015. Finally, in 2017, EM was made available for restraining orders (s.277 of the CCP). Despite the relatively independent regulatory frameworks in the pre-trial and early release stages, there are similarities both in their design and implementation in practice. The differences between the two systems will be highlighted in this report where appropriate.

1.1.a Front-door measures: law enforcement supervision and restraining order

The uses of EM at the pre-trial stage are limited by the underlying legal regulation. At the pre-trial stage of the criminal process, EM may be used to support two community-based law enforcement measures; Law enforcement supervision and a restraining order. The legal purpose of these aligns with the purpose of remand custody, namely to restrict the right to liberty in order to ensure the attendance of the subject at the trial if there is a risk of (repeated) absconding, assure that the subject will not obstruct or block the investigation, or to prevent reoffending (s.129(2) and s.138(2) old CCP). The court cannot order EM for any other purpose. In addition, the law defines both measures as restrictions specifically on the subject's rights to free movement and free choice of residence (s.280-281 CCP). This has two main implications for the use of EM. First, the court may only determine inclusion zones, exclusion zones, additional mandatory reporting at police stations and prohibition of contact in its decision. As a result, law enforcement supervision includes two now historical modalities, house arrest and PLPR, as well as extends the court's power to combine and create additional zones. The two measures were merged in the new CCP of 2017, which did not elaborate on instructions to the practice. As a consequence, authorities have reportedly continued to use the old regulatory features and still refer to house arrest and PLPR. The same uncertainty applies to another new provision, which implies that further behavioural rules may be

imposed 'to support the goal of the measure'. As it is not defined in the law what these behavioural rules could be, participants reported that this provision is avoided by courts. Second, the police monitor exclusively whether the individual on EM complies with the inclusion or exclusion requirements, and whether there is a legitimate reason for non-compliance (s.9(1) of the Pre-trial Measures Order). The court may also approve certain activities to be *allowed* for legitimate purposes in its decision, such as shopping or visiting a doctor. However, the court does not have to consider allowing such activities that if they are not applied for.

The consent of the individual on EM has not been required since 1 January 2014 (Mohácsi, 2015: 231). The reason for removing the requirement of consent from the law is presumably that EM has an *ultima ratio* role among pre-trial alternatives; After the legal limit of remand custody has been reached in a criminal procedure, EM remains the only means to ensure continuous control. Children younger than 14 years may remain one year long in remand custody, while older children may remain there longer than two years, depending on the length of the procedure (s.688(1) CCP).⁷ Exceptional rules do not mention the use of EM as an alternative to the remand custody of children, which indicates that the same rule applies as to adults, and in longer procedures EM could be used for prolonging their control.

Whereas time spent on EM counts as remand custody, EM-assisted law enforcement supervision is considered to be no different in the rules from any other modalities of the same measure, where EM has not been used. As a result, one day spent under law enforcement supervision is not equivalent to one day in detention (s.92 (1)-(4), CC). Instead, the tariffs differ according to the type of the detention regime included in the sentence, where two days under law enforcement supervision amounts to one day of confinement and five days amount to one day in a high security prison. One day of law enforcement supervision equals one day of unpaid work or of a fine.

Despite a generally positive approach concerning EM as an alternative of remand, research shows that the introduction of EM did not have an immediate impact on remand custody decision-making (Fazekas et al. 2015: 67-69). According to researchers from the Hungarian Helsinki Committee, decisions about alternative measures were not considered automatically by the court, only if these were motioned by solicitors. In the year of its introduction, the proportion of cases when EM was motioned was only 2,6%⁸, and 4 out of 5 prosecutors claimed that this did not affect the practice.

1.1.b Backdoor measure: reintegrative supervision

Reintegrative supervision is a relatively new early release measure that was introduced by the Sanctions Act in 2014.⁹ Its primary aim, as articulated by the policy maker, is to contribute to reducing reoffending by supporting detainees in reintegration, but without the risk of evading "the deserved punishment" (Répássy, 2015). The dual aim is demonstrated in strict regulatory instructions on decision making but discretionary rights for the implementing authorities. The target group is strictly limited by law, excluding serious violent offenders.

Reintegrative supervision aims to achieve the purpose of imprisonment (s.187/A(1) Sanctions Act), and in this respect is similar to the way EM measures at the pre-trial stage are bound by the purposes of remand custody. According to the legislator's intention, the purpose of

⁷ As a comparison, remand of adult offenders caps at four years (s.298(1), CCP).

⁸ In this research, 116 case files of suspects in remand custody were reviewed from six counties and Budapest. Alternative measures were motioned in 84 cases. All cases were adult cases of robbery, closed in 2013.

⁹ The measure was piloted in 2013 (CPT, 2013: 20) and subsequently came into force on 1 April 2015 (Nagy, 2016). The eligibility criteria and rules on the maximum length of the measure were extended in 2017 to comply with the requirements of the European Court of Human Rights (Menyhért & Nagy, 2018; T/12179 Bill).

detention may only be achieved through reintegrative supervision where the underlying offence was negligent, or when sentences for a malicious offence for less than five years imprisonment were imposed, with the exception of violent offences against a person, including robbery, sexual abuse or homicide.¹⁰ Furthermore, both the prisoner on EM and the owner of the place of residence where monitoring is suggested to take place should consent in writing and the feasibility of the suggested accommodation should be established as this measure cannot be implemented without EM (s.187/B (4) Sanctions Act).

The maximum term of reintegrative supervision depends on the type of offence the individual was sentenced for. It is one year for those sentenced for a negligent offence and ten months for those who were sentenced for a malicious offence. This period is intended for seeking employment, pursuing education or training and strengthening family relationships (Bencze et al., 2015: 109). Reintegrative supervision precedes early release and is terminated following a decision of early release (s.187/A (6), Sanctions Act). During reintegrative supervision, individuals keep the status of prisoner. When deciding upon early release, the court takes into account the detainee's compliance with behavioural rules during the reintegrative supervision (s.61/B (2), Sanctions Act).

1.2 EM policy

There are a lack of comprehensive policy documents addressing the use of EM in Hungary, but available sources suggest that the stakeholders do not consider children a particular target group as specific instructions rarely concern them. EM policy manifests in two forms: the operational instructions of the secondary legislation and the reasoning (*indoklás*) published along with new Acts and their amendments. The first consist of instruments that only regulate EM-related tasks (see, e.g. *Prison EM Rules*; *Prison EM Order*) and other instruments which address EM as an operational element within the broad institutional operation (see, e.g. *Pre-trial Measures Order*; *Police Call Centre Rules*; *Prison Chain Of Command Rules*). The second contains the dogmatic interpretation.

The primary source for the dogmatic interpretation of the way EM has been imagined in the pre-trial phase is the reasoning for the CCP. The lawmaker suggests that the core regulation of EM as part of the law enforcement supervision and restraining order has remained the same as the previous CCP (r. for s.280-295). However, the approach of the reasoning suggests that the focus of the regulation has shifted from imposing reasonable restrictions on subjects' lives towards an increased control of their movements. This is supported by the now extended possibility of combining inclusion and exclusion restrictions, and the extensive array of objective criteria for breach, such as non-cooperation in facilitating the monitoring itself (e.g. not charging the device) and failing to attend court hearings.

In contrary to the pre-trial measures, the applicable reasoning (r. for s.140, T/1707 Bill) suggests that reintegrative supervision is not an independent measure but an executive modality of detention that ensures gradual release. Accordingly, restrictions are expected to remain strict throughout the process, allowing subjects to leave their house only with judicial approval. Furthermore, the reasoning suggests that the prisoner should 'pose a limited danger to society'. While the law formally acknowledges that children require exceptional regulatory attention, the reasoning fails to explain why special rules are in place and how these should affect the approach to child detainees released on reintegrative supervision.

¹⁰ The Hungarian CC differentiates between malicious (s.7 CC) and negligent (s.8 CC) acts, depending on the intention and the knowledge of wrongdoing. Some criminal offences can be committed either negligently or maliciously, which indicate different minimum and maximum sentences.

1.2.1 *Device and monitoring system*

As regulations have focused on specific location restrictions in the pre-trial stage of the criminal process, location monitoring was the only technological solution that could support the legal requirements. First the Police began to use these devices, and their model system was later replicated in the prison system. Access to the monitoring system is provided by the Police (s.6(1), Prison EM Order). As a result, both use the same system, which means that in rare occasions of system maintenance, the Police are able to support the clients of the Prison Service as well.

The Police use devices both with and without a home unit, depending on the condition and the living circumstances of the individual on EM. The single device is a GPS tag attached to the ankle that may be supplemented with a home unit that operates on radio frequency (RF). While the primary purpose of using a home unit is to prevent lost GPS signal alerts which indicate the need for immediate police attendance, it also helps to extend battery life. Instructions received by pre-trial EM subjects in Budapest state that devices must be charged for at least three hours a day, but in the cases where the inclusion zone covers a bigger area, this may be six hours.

2 The operation of the EM system

EM in Hungary is operated in two monitoring systems, one is run by the Police and the other is run by the Prison Service. Whilst the two systems are similar in their technological background, their processes are adjusted to the regulation and working methods of the responsible agencies. Differences between the two systems reflect the institutional purposes. The Police's task to ensure public safety and maintain order suggests the focus on the society rather than the individual. Accordingly, the involved agencies' task is merely to ensure compliance regardless of individual's behaviour on a longer term. The Prison Service's task is to punish and rehabilitate offenders. Accordingly, its EM scheme is meant to serve the transition from a strict regime of the closed facilities to the reintegration in the society. This work implies the necessity of providing support in compliance and long-term planning. Consequently, the responsibilities of the involved agencies are fundamentally different, which shows in the flexibility and discretionary rights provided to the actors. The similar element in both systems is the standardised implementation of EM for both children and adults, which indicates that no different treatment exists within youth justice. Actors of the system are not specialised to working with children and the modalities are not adjusted to age-specific needs. This section will explain the two approaches through introducing the main actors of the Hungarian EM systems and their responsibilities.

2.1 Front-door use of EM

2.1.a *Actors and responsibilities*

Courts In the pre-trial scheme, courts have a leading role in determining whether EM is suitable for the case and the person as well as in determining the conditions. Judges oversee the entire procedure, including any permanent or exceptional variation of the conditions. Their detailed tasks, the form and the required content of their decision and the applicable process are regulated in the Pre-trial Measures Order. According to Section 2 of the Order, the court decisions shall include the start date and the end date of the measure (or the EM period) and the details required for the monitoring, such as the location of the house, workplace(s) and forbidden areas. The house includes both the building and the garden unless there is a reason to further limit the movement. Similarly, if a person finds a new job, wishes to attend school or any after-school activity, these

should be requested from the court. Any decision must be addressed to the police office local to the place of residence of the person (s.5(2) of Pre-trial Measures Order).

The courts do not have the power to determine further requirements for the implementation of measures. Based on the Opinion No. 3/2013. (XI.4.) of the Penal Chamber of Budapest-Capital Regional Court, the court has no legal 'right or obligation' to determine how the police should control the implementation of the house arrest (I).¹¹ The Opinion indicates that the court may determine that the measure should be assisted with EM, but the police make the final decision about the method to monitor compliance with house arrest. This means, that monitoring 'alternatives of EM' depend on the capacities of the police. It further indicates that the technical specifications of the implementation of EM do not belong to the courts' authority either.

Prosecution Service Where EM is requested by the Prosecutor, they supervise the preparation of the feasibility study (s.1, Pre-trial Measures Order). In certain urgent circumstances, the prosecutor may allow the individual on EM to leave the inclusion zone for a legitimate purpose, such as to work outside of the area or to escort their family member to the hospital. Like the court, their tasks are regulated in the Pre-trial Measures Order.

Police The Police are responsible for the operation of monitoring, basic rules of which are regulated in the secondary legislative instruments of the Chief Commander of Police. While this suggests a standardised approach to the implementation across the country, there are significant differences in the implementation due to the County Police Headquarters' (CPHs) power to make local arrangements to respond to local operational needs. An example is the communication between police departments and other authorities, which is often unique to the given county. Three main police departments carry out the daily operation of EM: the IT Department, the monitoring centre and response officers of the local police. The monitoring and IT support is provided by the CPHs, while visits are carried out by officers of the local police offices.

Police IT The staff of the CPHs' IT Department are responsible for fitting and removing tags as well as setting up and adjusting inclusion and exclusion zones. It is the only police unit involved in EM to include members of staff who are not police officers, and who subsequently cannot act in official capacity. As a result, some staff members require a uniformed staff member to take them to the individual's home or supervise the fitting process while at the police station. Based on the experience of respondents, IT staff are always escorted by a local officer, regardless of their legal status or title. IT staff explain how the device works, provide leaflets and answer any questions from the monitored individual when the devices are fitted (s.6(7), Pre-trial Measures Order). Based on Section 6(6) of the Pre-trial Measures Order, IT staff are required to fit the tag in a way that it "is not possible for the outside world to see it" and that it will not "obstruct the person in performing everyday tasks". These are the only tasks of the police which consider the individual's needs. After the fitting, IT staff are only involved if there are technological problems and the monitored individuals cannot contact them directly.

TIK The tasks of TIK (*Tevékenység-irányítási Központ*) are regulated in substantive detail in the Police Call Centre Rules.¹² Subjects are monitored from the 20 monitoring centres across the country. The monitoring of EM is integrated in the work of the general police call and monitoring centres which receive calls and coordinate response (s.34, Police Call Centre Rules). Specific arrangements may be in place to respond to local needs, such

¹¹ The Opinion was published based on the old CCP.

¹² As an example, Section 52 of this directive requires that among other information, EM status reports are projected on the video wall of the monitoring centre at all times.

as how one can contact the TIK. For example, in Budapest, where EM is used most frequently, specialist officers deal with individuals on EM, whereas in other counties the monitored individuals may be instructed to call the emergency services and are then directed to the officer responsible for coordinating police within the specific area.

Local police offices Based on Sections 5-6 of the Pre-trial Measures Order, the individual's local police office is responsible for the implementation of the measure. Neighbourhood agents (*körzeti megbízott*) of local police offices are the 'case workers' in this system. Their role is to coordinate both the internal and the inter-agency cooperation around EM, but this does not extend to providing or seeking support for the individual. Monitoring tasks that include face-to-face contact such as attending homes upon violation alerts are fulfilled by response officers who have limited knowledge about the monitored person and the case. In emergency situations, response officers are permitted to cut off the tag (s.10(1), Pre-trial Measures Order). If they do so, they are obliged escort the person to the hospital or any other place and remain present until new court instructions are issued.

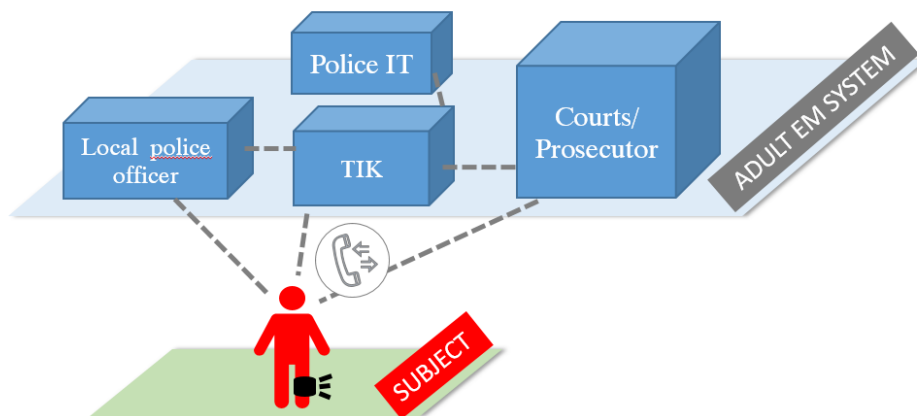


Figure 1. The pre-trial operational scheme of EM

2.1.b Cooperation among stakeholders

A key feature of the system is acting promptly either to prevent absconding or to ensure that procedural rights of individuals are guaranteed. Whilst allocating resources quickly and efficiently is an essential task of police, EM enhances the complexity of this task by requiring the cooperation of multiple policing areas. The strict protocol that governs the responses to violation alerts ensures that police officers attend the individual's home, and the well-organised administration of variations prevents unnecessary visits. The latter is particularly challenging, given that communication between the stakeholders is often paper-based. The local police office coordinates cooperation around the case and is at the centre of the process, the case worker being the main point of contact around EM. Case workers are responsible for:

- collecting and administering the information about EM cases, including violation alerts, and police reports;
- collecting information about subjects' households, such as previous police attendance for domestic abuse or violence;

- coordinating the fitting, changing, repairing and removing of equipment with the IT Department;
- forwarding Court decisions to the TIK and
- delivering the paper-based court decisions to the subject.

As some procedures have strict deadlines, such as fitting or removing a tag within a day after the decision, these arrangements require flexibility primarily from the local police. This includes completing tasks beyond primary police duties, such as delivering court orders in person to ensure that subjects receive the necessary information. Participants in this research found that the communication and cooperation led by the local police works well and the system can accurately respond to alerts and administrative issues. It was explained that police departments routinely inform one another about new court orders, and provide assistance to each other. For example, local officers tend to remove tags and deliver these to IT if the IT department is unable to do so due to time restrictions or staff shortages. If local police officers need further instructions to resolve potential situations they encountered, they may seek advice from the Coordinators of the National Police Headquarters.

Several respondents highlighted the importance of cooperation between police and Courts and Prosecutors in carrying out EM in a safe and orderly fashion. However, as it was explained, the current regulation does not necessarily require substantial cooperation and partnership from the participating organisations. The relationship may be described as unidirectional, in which the decision-makers' orders must be fulfilled by the police, who have an advisory role but lack any capacity to negotiate over the conditions. The lack of authority over EM cases is reflected in the comments of several local police officers and IT staff, who emphasised that they were "only carrying out the court's orders" in EM cases. Participants mentioned several errors as a result of this approach, including cases when law enforcement supervision was ordered for a person who did not want to be released on EM, when incorrect coordinates were provided and when addresses were given which did not exist or where electricity was unavailable. An interviewee found that these problems should be resolved by regulatory means:

"Well, the relationship between the police and the courts should be widely regulated here. It should not only be put on paper, but also kept to [as a principle], that law enforcement supervision should be the result of the joint decision of the two organisations. That they consider the views of one another. So that we do not have this power-relation where [the court can say that] this will happen, whether you like it or not." (National Coordinator)

Improving cooperation and efficiency appears to be imperative, considering the workload that EM means to the stakeholders. Several participants, primarily from the local police felt positively of the benefits of EM on their workload as it reduced the need for personal supervision visits. However, it was suggested that overall, fulfilling tasks relating to EM pre-trial schemes and in exceptional cases, supporting the reintegrative supervision, represents a great burden for the Police at the national level. Monitoring officers found that the new statutory assignment has created a substantive amount of administrative duties as well as the need for technological knowledge and support. EM was regarded as a specialist task that requires the allocation of staff to cover emergency situations such as attending alerts and specialised knowledge in order for police staff to address issues efficiently.

2.2 Reintegrative supervision

Prison Commander The commander of the prison where the monitored person is detained is responsible for the administration of the case. Commanders may initiate reintegrative supervision if the case is eligible and they consider it appropriate, or they forward a request for reintegrative supervision from the detainee or his legal representative to the court (s.61/A (2); s.187/A (2); s.61/A (1); s.61/C, Sanctions Act). The detainee is obliged to submit his request in writing or in the form of official minutes (s.7, Prison EM Rules). If reintegrative supervision has been approved by the court, the Prison Commander is required to inform the court of any violations, new (alleged) offences by the detainee, or any other reasons which affect the person's eligibility or the technical feasibility of the measure (s.187/E, Sanctions Act).

Court Judges appointed for prison cases ('executive judge') impose reintegrative supervision. The procedure is normally administrative, a hearing must be held only if the detainee has submitted the application (s.61/A (4), Sanctions Act). The initial hearing and any consecutive hearings are held in the prison, where the judge and the applicant discuss to what extent the application or the request for variation fulfils the legal conditions. By law, requests need to be dealt with within five days, although in exceptional cases they may be required to be dealt with as soon as possible.

Prison Probation Officer (PPO) The PPOs are involved both in the assessment and the implementation of reintegrative supervision. They prepare a report concerning the feasibility of EM and the suitability of the measure within 30 days after receiving the request (s.187/A (1), Sanctions Act). Information required for reports in children's cases may extend to their involvement in education and their behaviour in the institution (s.76 (1) s), Sanctions Act). The PPOs are further obliged to contact the local Child Welfare Service (*gyermekjóléti szolgálat*) and the Child Protection Authority (*gyámhivatal*) to enquire about any welfare-related history of the child (s.46, Prison EM Rules). The detainee needs to be heard during this process (s.31, Prison EM Rules). Where the measure is imposed, the PPOs have both a supportive and a controlling role which they are required to keep in balance (s.37-38, Prison EM Rules). Their supportive role is very similar to the supervision during regular early release, while their controlling role requires them to establish the reasons for violations and respond to them appropriately. Despite being prison staff, PPOs are required to wear 'civil' clothing rather than a uniform and use unmarked vehicles (s.32, Prison EM Rules).

Prison IT Devices are fitted and removed by the trained staff of the prison's IT department. They are further responsible for setting up and altering the exclusion or inclusion zones in the monitoring system (s.5(1) and (3), Prison EM Order and relevant rules in the Prison EM Rules). Detainees are not necessarily released from the same institution where they were serving their sentence. Child detainees in particular are transported to the establishment which is located closest to their home and released from there (s.14-15, Prison EM Rules).

Monitoring room Monitoring happens in prison establishments, which means that every prison has its own monitoring room. According to the protocol of the Prison Service, the security officers of the Prison are responsible for responding to alerts (s.8 and s.11, Prison Chain Of Command Rules). Upon alerts, the monitoring staff either contact the detainee and attempt to resolve the problem remotely (s.40, Prison EM Rules), follow the protocol of resolving the problem via the PPO or request the attendance of the police.

Local police office Local police offices must be made aware of a person under reintegrative supervision living in their area (s.5(1), Prison EM Order) and attend the house if incidents occur.

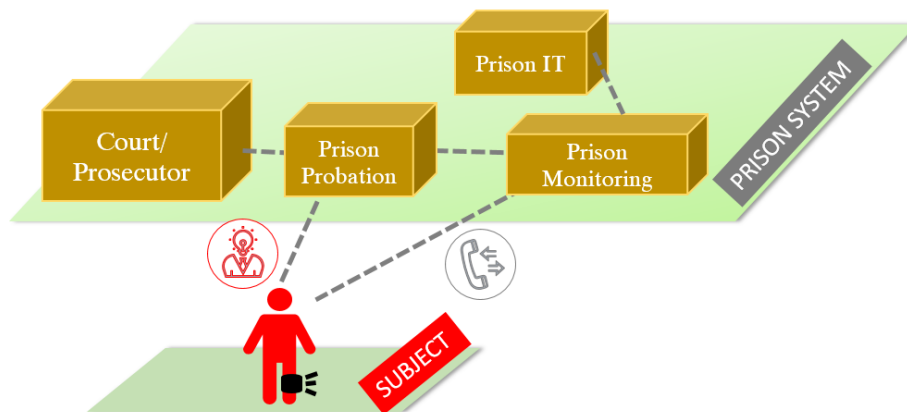


Figure 2. The operational scheme of reintegrative supervision

3 Understanding the proportionality of EM for children

3.1 EM as an alternative to deprivation of liberty

Using deprivation of liberty as a measure of last resort and for the shortest appropriate period of time is among the most fundamental requirements of children’s rights (Art. 37(b) UNCRC). In order to achieve this, State Parties are recommended to create viable alternatives at every stage of the criminal process including the post-sentencing stage (s.40(4) UNCRC; r. 17 Havana Rules; r. 17 Rec (2003)20; r. 6.2 and 9.1 Tokyo Rules), and EM is a frequently mentioned tool for such an alternative measure. This research has shown that the extent to which EM is an alternative to the deprivation of liberty based on the Hungarian regulation is determined by two main legal questions: the procedural reality and the restrictions and their implications. Regarding the former, the law on both EM modalities provides that EM should support non-custodial measures in fulfilling the same goals as remand custody and imprisonment and it should, therefore, only be considered in relation to deprivation of liberty. However, some participants from the Prosecution Service and the Police questioned whether EM is a viable alternative for children, particularly when used in the front-door modality. Prosecutors found that children who are remanded in the current system are typically at a stage in their criminal careers where EM is not a deterrent measure. In these cases, the interests of victims and the society were claimed to prevail. Yet, participants reported that courts did impose EM on children on rare occasions. It was always considered as a means for release from remand custody or prison, which may be due to the need for securing control while the assessment takes place. The eligibility criteria for reintegrative supervision appear to limit the potential child population significantly, as most young people in prison fall under the exclusion criteria. As it is generally unlikely that a child defendant of a negligent offence would be sentenced to unsuspended imprisonment, the backdoor modality of EM is usually not available for children. Those sentenced to unsuspended detention typically commit malicious offences, violent offences against people and particularly robbery, which means they are automatically excluded from the measure. Therefore, EM as an alternative to deprivation of liberty appears to be of limited relevance for children in conflict with the law.

While the measures are meant to provide an alternative to deprivation of liberty, the restrictions defined in the law limit the use of EM for this purpose. As discussed above, there are a lack of specific regulations on the use of EM for child subjects, therefore the same behavioural restrictions automatically apply for children as they do for adult offenders in both modalities. The court has been able to impose law enforcement supervision and restraining orders alongside each other in the front-door modality since 2018, which combines inclusion and exclusion zones as technical specifications (s.277 (3)). As there is no requirement to use a ‘house’ or the ‘place of residence’ as an area of confinement, the target zone may extend to a county or the entire country. It is also possible to apply further conditions so long as they support one of the goals defined in law (s.281(3)). Czine (2016) claims that these new rules have not brought about significant dogmatic changes. Their significance lies in the flexibility that allows the courts to apply these measures as an alternative to remand custody. While keeping in mind procedural interests, she argues that the courts are now able to individualise requirements while respecting a variety of needs, interests, and most importantly, the right to liberty. In her reading, the appropriateness of the restriction shall be subject to a legal test of necessity and proportionality. However, despite the flexibility allowed by the new legislation, this research suggests that the practice remains overly restrictive and rigid.

The practice suggests that courts see EM as a tool for confining individuals to their homes rather than for reinstating much of their liberties. The previous legal categories of house arrest and PLPR continue to define its practical application.¹³ Currently, EM is a tool primarily for supervising house arrests both in adults’ and children’s cases. This is a particularly strict form of supervision, which generally requires subjects to remain within the administrative borders of the property the entire day, seven days a week unless exceptions are allowed by the court. Exceptions may be requested in order to fulfil the ‘needs of everyday life’, work or for health reasons, in which cases subjects are required to follow strict schedules for leaving and returning home. The content of the provision concerning ‘further conditions’ that could support the goals of the law enforcement measure remain unclear. While specific rules for applicable restrictions are not defined in the law, courts are reported to take a similar approach in the backdoor modality as well. As EM subjects remain detainees while on reintegrative supervision, they are required to obey detention rules to a certain extent. For example, they are not allowed to consume alcohol or drugs and must remain at home at all times unless their need for leaving the premises has been approved by the court. As a participant emphasised:

“So the point is that they are spending an imprisonment sentence, only not behind the bars in an establishment but at home, [therefore] they should sit in the house and spend it there. They are restricted in their liberty. [...] So don’t be mistaken, they cannot just wander around.”

The participant added that in their practice, the only standard times when detainees can leave the house are the ‘shopping windows’ which were scheduled three times a week. Monitored individuals are expected to do their necessary shopping within these timeframes. Schedules and routes are registered, as they are for the front-door modality. Due to the strict regimes, EM measures in Hungary appear to create a community-based substitute rather than a real alternative to deprivation of liberty, by which liberty remains restricted as much as possible.

¹³ Accordingly, when these are referred to in this report, this should be understood as modalities of law enforcement supervision unless stated otherwise.

3.2 The purpose of EM

While the policy documents suggest that EM in Hungary was introduced as a response to critiques concerning the growing prison population, our research indicates that EM measures may have many different purposes. While more than half of the participants considered the purpose of EM was to support reducing prison overcrowding and to provide a cost-effective alternative to deprivation of liberty, EM was also regarded as a tool that promotes the (re)socialisation of children and procedural purposes.

Nearly half of the participants explained that the purpose of EM is to allow children the positive effects of remaining with their families and communities and continuing school. This way, EM was claimed to support the education and positive socialisation of those who committed offences at a young age, either by ensuring that social bonds are maintained or through the deterrent and disciplinary qualities of the measures. In line with the idea that EM is an alternative to deprivation of liberty, many found that EM prevents that children spend the pre-trial phase of the process in detention, which they described as a harmful environment for a young person. As a monitoring officer described, "...because it does obviously matter for children, whether they become part of a story of five-six [roommates], that is an even more closed community, even worse. I am not sure whether this would push them towards a good direction". One participant found that the main purpose of the backdoor modality should be to 'let the time go by in a more useful fashion' and allow people to reintegrate into their communities and society. As suggested, however, this was often hindered by the lack of social network available and material support provided for the monitored individuals.

The procedural goal of EM is to ensure that the subject is under control and will not abscond or commit another offence. A detective dealing primarily with children's cases explained the way EM can work for the benefit of the procedure:

"Well, from our perspective, there are plenty [of benefits]. Referees [police officer] tend to perceive their contact with the juvenile being secured; they know that he/she is going to be there. [...] Because these juveniles are not quite trustworthy. So they may promise that they will not run away, they will not abscond, they will come in for the interrogation without having a tag; I have not met a juvenile yet who would come in here [police station] knowing that they did something wrong, for instance."

Some participants were critical about the justifiability of this purpose in the case of children. They highlighted that a young person does not have the appropriate financial and social resources to abscond as they usually live with their families or in children's homes and do not have a social network that could hide or transport them. Seeing an unaccompanied child draws attention, even without a tag. A prosecutor suggested that supporting appropriate socialisation is a priority in youth justice, contrary to the restrictive practice of using EM primarily for monitoring house arrest: "and the tag is obviously inappropriate, because... what is the goal when he is already involved in a procedure? This 16-year-old child should go to school, and if I put a tag on him/her, he/she will not go to school".

3.3 The target group of EM

Neither the policy nor the practice provides reliable information about children who may be or are subject to EM. Policy documents and the legal regulation do not specify any target groups for EM, either among adults or among children. Subsequently, according to the youth justice procedure, children above the MACR may be subject to EM measures so long as they fulfil the eligibility criteria. While realistically, children could not be involved in the backdoor modality before their mid teenage

years,¹⁴ the front-door modality may theoretically be used from the age of 12. Identifying a specific target group based on the practice is equally challenging. Hungarian authorities and courts do not collect data on the use of EM with children systematically. Perhaps due to the lack of information, this research has found that limited attention is paid to using EM for this target group, which shows that participants associate EM with a means to control for adults. Accordingly, arguments presented in this report mirror the opinions of police and judicial staff, based on their experiences with adult offenders. Participants across the three counties reported a caseload of none, two and four children at the time of the fieldwork. The proportion of youth cases in the general workload is negligible, particularly in Budapest, where four out of approximately 200 were reported to be youth cases. We were also informed by the Prison Service that before 27 February 2019 no individual under the age of 18 had been involved in reintegrative supervision.

The method of administration of cases contributes to the complexity of the collection of data about the population under 18. In Hungary, cases tend to be registered in a way that indicates the procedural implications rather than the actual age of the child. A 'youth' label, therefore, refers to all cases where the (alleged) offence was committed by under 18s. The Court's internal research reveals that even if such data were required, data collection regarding the imposition and termination of the underlying measure and the assessment of advocates' and prosecutors' proposals would still remain problematic, especially in cases where multiple suspects are dealt with (Kúria, 2016).

From anecdotal evidence, two main factors characterise the target group; First, cases tend to belong to the 'highlighted' offences (see explained below) and second, measures are frequently imposed on children living in residential care. While these by no means represent a trend, they provide a valuable point of discussion. The term 'highlighted offences' is an often-used but rather elusive legal term that refers to serious yet common offences and typical offender profiles. Judicial practice determines what becomes 'highlighted'. Considered factors usually include a high minimum and maximum tariff of imprisonment (5 and 10/15 years, respectively), the means and circumstances of the offending, a history of persistent or serious offending, and the procedural history. Beyond these, criminal offences discussed by the participants in relation to the use of EM typically include violent offences, drug-related offences and property crimes. The accounts of multiple police staff members suggest that EM use is most predominant among 'highlighted offences'. One police officer explained:

"Well, this 'anklet' is not imposed very often in Hungary. I think it is really only used in 'highlighted offences'. I have only met this tool in robbery cases where multiple offences were committed or say, the violence was so serious, or they were not first offenders. So there must be quite a long record of offences behind the child for the court to order such a serious enforcement measure."

The research shows a lack of consensus around appropriate uses of EM in relation to the offending histories of the children. Many participants found that EM could be a useful tool for first time offenders. According to one prosecutor, however, this idea is inconsistent with the current practice:

"...so if someone is a 15-year-old first offender, and for example, he/she commits robbery; a typical example [...] that young people do not think through is when they [...] take the phone of another child. Obviously, everyone has a phone and it represents a very common act and means when they just take it by force. They threaten the younger person, the child, and they take their phone. And then they might think that they 'stole the phone', [...] but it

¹⁴ The minimum age of imprisonment in Hungary is 14 years, in addition to which the length of the youth justice procedure and spending at least a number of months from the imprisonment should be counted.

is a much more serious offence with a different sentencing instruction. [...] If this is done by a first offender, a 15-year-old for example, and they do this, then this will almost never be, as a general rule, followed by a law enforcement measure. If we see that this juvenile is 15 years old, but there are already three ongoing procedures against him because of committing similar offences in the past year, only then should law enforcement measures be considered for a juvenile.“

Participants from different parts of the country have mentioned that a substantial number of children were living in children's homes while being on EM. One monitoring officer estimated that the majority of the children he had dealt with were living in residential care, referring to four ongoing cases. While it was unclear how many of these children were placed in residential care as a result of the procedure and how many were living there when they committed the offence, the phenomenon must be addressed for a number of reasons. First, police officers and judges appeared to be particularly concerned about offending of children in care in general, not only where EM is imposed, which is an underreported phenomenon in Hungary. It was suggested that children in care become involved in deviant behaviour more often than those living with their families. Future research should investigate the care history of children on EM and address the risk factors of offending as well as children's crime preventive needs. Second, while a temporary placement in care may appear convenient for the procedural purposes (i.e. children are catered for and supervised by carers 24 hours a day), regular children's homes are not intended to address the specific needs and the risks posed by offending behaviour. As a judge explained, placing convicted offenders among young children would put the latter at risk of harm and at risk of developing a deviant lifestyle.

4 Front-door process

4.1 Assessment of risks and needs

The international documents instruct states to limit *restrictions on personal liberty* imposing them “only after careful consideration” (Rule 17.1b, Beijing Rules). Liberty should be restricted in a way that is “proportionate to the community sanction or measure, limited by its aims and shall be placed on juveniles only to the extent that they are necessary for its proper implementation” (Rule 41.1, Rec (2008)11). Decisions should be governed by the *principle of proportionality* (Art. 40(4), UNCRC), requiring the minimum necessary extent of intervention, which, in the Hungarian case refers to exclusively the location restrictions. Proportionality may be considered compared to i) its aims (Rule 74, Rec (92)16; Rule 41.1, Rec (2008)11); ii) the circumstances and the gravity of the offence (Art. 40(4), UNCRC; Rule 17.1.a), Beijing Rules; Rule 6), Rec (92)16; iii) the needs and personal circumstances of the child (Art. 40(4), UNCRC); Rule 17.1.a), Beijing Rules; Rule 6, Rec (92)16; and iv) the needs of the society (Rule 17.1.a), Beijing Rules). Standards, guidelines and recommendations of a variety of international bodies provide a broad range of factors which should be considered in youth justice procedures and how these needs should be assessed. While none of these address the use of EM specifically, their general validity indicates that they should be applied to the practice of assessment in EM cases was well.

4.1.a Legal assessment

The assessment of risks and needs in the front-door procedure is centred around legal principles and tests, but none of these specify how the process guarantees that children's interests will be

considered. The regulatory uncertainty leaves it on the Court to 'find' a legal purpose and use the measure accordingly. Children's interests only appear on the level of principles, when the legal regulation puts emphasis on expressing the distinct procedural goals for children. According to Section 677 of the CCP, the procedures aim to support the education and social integration of children and prevent their reoffending. Beyond this however, neither the law nor the policy provides instruction on how the goals should prevail in pre-trial measures or within the specific context of EM. The lack of instruction is particularly problematic as EM has been designed for serious adult offenders rather than children which complicates the application of legal tests.

The Court's assessment relies primarily on the analysis of the law. The research indicates that in this analysis concerns about using EM for children in particular outweigh the reasons for using it due to the law being created for serious adult offenders. Courts are generally bound to examine the suitability of pre-trial measures along with the eligibility criteria provided in the CCP. As suggested by the structure of the law, a judicial assessment should first establish whether imposing a law enforcement measure is necessary and whether a measure could support the procedural purposes (see 11.a). This is followed by a decision over which measure to impose, ensuring that the degree of restriction is kept to a minimum (s.271(2), CCP). When applying these criteria, some participants questioned whether EM for children is ever a proportionate response in light of the applicable procedural purposes (see in 1.1.a). As explained above, some participants argued that it was unlikely that a young person has the financial means and the social capital to abscond and hide. A prosecutor found, that in this respect of EM was more likely to be considered in the case of a 'rich businessman', accused of a serious crime. Opinions varied about the extent to which EM has the potential to prevent reoffending. Most interviewees found that there is a potential for EM to prevent reoffending during the lifetime of the measure primarily because of its deterrent quality. EM was, however, not seen as a preventive tool on its own and it was suggested that any deterrent effect depends on a variety of other factors, such as the personality of the subject and the length of the criminal process which indicates the length of EM. Finally, the prosecutor explained that EM cannot be considered if suspects try obstruct or block the investigation, as this is a reason for remand custody.

Further it was found that it is difficult to argue for release on EM when there is a risk of reoffending because of the high threshold for considering law enforcement measures in child cases. Cases that establish this need are generally too serious for EM. Other respondents found EM a disproportionately lenient response if the offence was rather severe, arguing that the offence itself should automatically determine whether remand custody is applicable either to deter the offender or prevent the 'undeserved' leniency.

4.1.b Feasibility

Where the legal necessity of EM is established, this does not automatically mean that it will be imposed, as the law requires a feasibility study for EM to determine whether the measure can be implemented. In the context of the feasibility study, the assessment of risks and needs should be understood as a test for suitability of the location restrictions in the given environment. The main purpose of the study is to assist the police in minimising unnecessary disturbances by adjusting the technological features of the monitoring arrangement to meet the individual circumstances. An often-considered example is using home units to eliminate false alerts and the need for police attendance. The study does not include an assessment of the mental capacity to deal with the technology or keeping to schedules. The lack of child-focused circumstances considered indicate that the court will decide about *child's ability* to deal with the relatively rigid consequences and responsibilities associated with EM rather than about how the *measure or its components* could be shaped to respond to the child's needs. A case where the court imposed EM to support the

academic advancement of a child demonstrates that this approach may result in disproportionate difficulties: despite the lack of electricity in the home, the court imposed PLPR. The child was only able to charge the device at school or at the police station, which was reported to require a great effort and discipline from both the child and his mother.¹⁵

As the law does not require a full risk and needs assessment to be completed before the pre-trial measure is imposed, participants suggested that courts examine mainly technological and social factors. Furthermore, as there are a lack of criteria for the circumstances that need to be assessed in the feasibility study, its content varies case by case. Police reports typically provide information on the technological specifications and the suitability of the measure in the given area or household. These include the size of the property, the legal ground of possession, whether there is a bathroom, a kitchen, and a private or shared bedroom, the view from the windows, the nationality of the subject, a certificate of attendance from the school and the description of the neighbourhood. As to the latter, an interviewee explained that reports should provide a description of the public order and crime rates in the area. As suggested, however, this assessment relies on the professional attitude and knowledge of the responsible neighbourhood agent. The role of neighbourhood agents was explained as follows:

“[They are] the policeman/women who we all know, an officer ‘*Tibi*’, that they [citizens] can turn to. And these assessments are best done by them, because they are important actors of the local communities in cities and villages. So they are the ones who are able to tell where we should put [EM] and where not; Which families have always been involved in crime, because this does exist as well; Which families are normal, but, say, a divorce or an accident has confused the boy or the juvenile and turned them to offending.” (National Coordinator)

All subjects, including children, take formal responsibility for the monitoring equipment under civil law. This implies that the subject must carefully plan activities to take into consideration the potential for these activities to damage the tag. Participants have not reported about any case where a child would damage the equipment, but should this occur, it will raise important legal questions with regard to children’s limited civil responsibility. If damage is reported, police are obliged to attend the home or the current location of the person and resolve the problems, while escorting the person for as long as necessary based on the court’s instructions.

4.2 Addressing children’s needs in the monitoring process

As children may have a variety of needs that should be addressed during the measure, international standards and guidelines recommend general responsivity. This may be achieved by adapting procedures to suit children’s circumstances by, such as providing help and guidance in integration (Rule 4.2.3, ECOSOC 2016/C 110/13), taking a dynamic approach on using different conditions (Rule, 12, Rec (2016) 7; Rules 10.4, 12.4, Tokyo Rules), reducing justice reaction (Rule 3.2.1, ECOSOC 2016/C 110/13), demonstrating flexibility and diversity in their conditions (Rule 3.3.1, ECOSOC 2016/C 110/13; Preamb. b), Rules 86-88, Rec (92)16), or cooperating with families (Rule 4.2.1, ECOSOC 2016/C 110/13; Rule 8, Rec (2003)20).

As discussed above, authorities involved in the implementation of EM in the Hungarian justice system were reported to approach children’s needs within the same framework as they approach adults’ needs. Perhaps due to a lack of attention to specific needs in the process, this results in uniform implementation with limited consideration of international requirements.

¹⁵ As reported, it was a robbery case of a first offender boy of approximately 17 years.

Assistance from specialist services, such as child protection, is not required unless the child is living in care or they seek voluntary support for themselves. The following section presents the key aspects of the monitoring process and the way this responds to children's needs.

4.2.a *Justice measure*

The monitoring process is embedded in the regular operational arrangements of the police which indicates that its implementation does not exceed general policing values and working methods. Subsequently front-door EM represents the justice model of monitoring, where welfare agencies and working methods are absent. The police are responsible for the implementation of EM, police staff fit, adjust and remove tags and respond to any alerts. Where the court decides to impose or revoke EM, tags can be fitted or removed by the local police within a couple of hours. IT staff, who are responsible for fitting the tag on the child, emphasised that they take a sympathetic approach to the subject's situation regardless of their age. As an IT worker explained:

“It is a general rule for us, at least for my colleagues and me that we are trying to stay polite. We try to set aside their [the subject's] problems, and we support them by making the device bearable. Because this is not really a comfortable thing to wear [...]. We tell the rules and how they should charge it. [It does not matter] whether we fit it on a juvenile or an adult, we do not need to behave differently, really.”

Beyond the sympathetic approach however, there do not seem to be any procedural guarantees to ensure the child's feeling of safety and security in the process. Parents, caregivers, or legal representatives are not required to be present at the fitting, which can take place at a police station or in prison, where children may feel vulnerable and anxious. Furthermore, there is no guidance on how to respond to situations where children get upset during the process. This is problematic because police officers and IT workers do not have information about the subject's specific needs and are not trained to recognise these. Furthermore, fitting a GPS tag is not always a straightforward procedure. One participant reported a case, where fitting the tag on a child at a police station took hours long because the device did not pick up the signal straight away. Such situations may cause significant distress to a young person, especially if they have never been involved in similar procedures before. The presence of a responsible adult would be beneficial for both the child and the police staff, as they could inform the police and promptly address problems.

Although informed consent is not formally required by law, one participant explained that they obtained consent by requesting parents and children to sign the official minutes and a statement to confirm they have understood their responsibilities concerning the equipment. If the individual refuses to sign the statement, they are arrested and escorted back to court. Police provide detailed the information about EM both verbally and in writing at the fitting. Subjects receive two leaflets, one contains instructions on the maintenance of the device, while the other provides information about the purpose of data collection and data management, including data requests, complaints procedures and contact details of the responsible authorities. While the first leaflet is handed out by officers of the IT Department, distribution of the second is the neighbourhood officer's responsibility (ORFK, 2018). The leaflets provide a detailed explanation of the technology and the procedures that must be followed, although the information leaflet about the data collection is written in legalese, which may be confusing to any lay person and particularly children. This use of legalese is not uncommon in the Hungarian criminal justice procedures as charities have recently highlighted the problem (see, e.g. the Hungarian Helsinki Committee's instructions to lawyers on providing accessible information in Bieber et al., 2019).

All monitored individuals have regular contact with uniformed staff of justice authorities. A lack of special guarantees in the process mean that these occasions may expose the child's

involvement with the justice system which affects their integration in the community. Once the tag has been fitted, the child is subject to active monitoring, which means that most alerts are responded to immediately, whether they show an equipment tamper or problems with the GPS signal. While some alerts only result in a reminder call (e.g. battery low), others require response officers to attend the house to ensure that the monitored person is at home (e.g. tampered strap alert). Monitoring officers explained that if the subject cooperates, some technological problems can be resolved via the phone, such as reinstating the GPS signal. However, police staff are often required to attend the monitored individual's place of residence to identify the problem. Local police officers who fulfil these tasks follow the same process as in general emergency situations and alerts must be responded to promptly at all times. Depending on the area, this typically means that police are able to arrive at the subject's home within 5-15 minutes. Their primary task is to confirm whether the subject is in the home or other place where they should be based on their day-plan. If they cannot find the subject, they receive further information about the last GPS signal from the monitoring officer and will issue an arrest warrant. If the person is in the property, and the cause of the problem appears to be malfunctioning equipment, officers must alert the IT Department and remain with the person until the problem is resolved. If the problem is caused by a lost GPS signal, they may assist the child, by 'taking them on a walk' ('sétálni'). Being escorted by police officers while walking around the house to re-establish the GPS signal was clearly a common practice as it was part of the jargon used by many participants. A participant explained the situation as follows:

"Imagine that two policemen were there, [she] put on her bathrobe and we went out to the street to walk!"

The necessity of this intervention stems from the strict protocol. However, this practice unfortunately fails to consider the potential for harm to children. The walks increase the risk of the stigmatisation of children and their families as they may be seen by neighbours while escorted by police. The effect of such events is even more detrimental if it appears to confirm widespread social prejudices, such as the general idea that children living in children's homes are 'deviant' and often involved in offending. Such consequences must be addressed in the process to ensure that law enforcement measures do not cause harm.

4.2.b Flexibility

The implementation of EM in Hungary is relatively rigid, despite the legal intention to provide some degree of flexibility and a dynamic assessment of the conditions. The primary reason for the procedural rigidity appears to be due to severe restrictions, which are not always suitable for the community context of implementation and a lack of authority of the police to approve variations. House arrest, the typical condition, assumes a high level of risk, which is responded in the active monitoring protocol. This limits the opportunity for following regular life patterns and remaining part of the community, which would normally be one of the main benefits of EM. As one participant explained, false alerts of the inclusion zone violations often appear to be caused by subjects' attempts to determine where the (virtual) boundaries lie, rather than attempts of absconding. In these cases, the individual on EM usually remains close enough to return home before the police arrive. If the individual is at home, the police confirm their presence and violations are not reported back to the court due to a lack of evidence. However, they determine the subjects' experience of being monitored.

The variations process is intended to ensure flexibility and consider any changes in individuals' circumstances. Due to the procedural arrangements in the justice system, however, the process is unable to respond to immediate needs. As explained above, variations are requested

from the court, while one-off requests for leave may be approved by the prosecutor as well (e.g. work or a one-off health treatment outside of the area). Although these processes require decisions to be made within short deadlines, a number of additional factors may affect when the variation comes into effect including the internal working arrangement of the Court and the chain of communication within the police. The variations only come into effect after the local police and the TIK have received the court order. Prior to that, the police cannot change the location settings in the monitoring system, which means that alerts and the duty to attend the subject's home remain in force. If someone leaves the premises before this has happened, the police are required to arrest them as soon as possible, and they will be brought in front of the court according to the regular procedures. Requests for variation should be submitted long before the underlying event to prevent police intervention. Consequently, age-specific needs, such as attending family or school events, or social gatherings are not possible to arrange last minute in this procedure.

4.2.c Contact with the caregiver

International documents recommend that parents and caregivers should be involved in the measures (Rule 4.2.1, ECOSOC 2016/C 110/13; Rule 8, Rec (2003)20). Several participants agreed that support from families was necessary for compliance with the conditions and successful completion of the measures. Despite this, neither the regulation nor the participants were clear about the way this responsibility should manifest. According to the CCP, legal representatives may support the procedure (s.72), and they must be informed about law enforcement measures (s.72 and 689). However, they have no further rights in the EM process. Our research suggests that involving parents, respecting their privacy or requiring their consent to enter the house is not part of the practice either.

4.2.d Length of the process

The law does not provide a maximum (or minimum) limit to law enforcement supervision measures, which indicates that they may continue until the sentence has been delivered. Participants of this study could not recall any typical pattern for the use of EM as a means of control. EM was reportedly used until the sentence was imposed, which meant that in relatively straightforward cases where a single offender admitted committing the offence, the period on EM could be limited to a month. In more difficult cases that required extensive investigation and lengthy court procedures, the period can last much longer.

4.3 Violations and breach

The international recommendations on dealing with violations and breach in community measures reflect, primarily, upon the requirement to use deprivation of liberty as an ultima ratio measure. The Council of Europe recommendations imply that deprivation of liberty should not be used as an automatic response to breach and other means to ensure the goal of the sanction or the measure should first be considered (Rule 30.1, Rec(2008)11). The recommendations include a number of procedural guarantees which are suggested as means to prevent automatic use of the deprivation of liberty. These include minor violations being dealt with by discretionary means and not necessarily by the decision-making authority (Rules 47.2.- 47.3), a detailed examination of the circumstances (Rule 48.1), the participation of children and their parents (Rule 48.3), the consideration of the extent to which the child has fulfilled the requirements (Rule 48.4) and judicial review (Rule 48.5). This section will discuss the extent to which these procedural features apply in the breach procedure of the Hungarian system.

Prompt and non-discretionary response to a breach is implicit in the control-oriented approach of the Hungarian EM system. Accordingly, system alerts trigger police intervention to

prevent offending and collect further information. Alerts do not constitute a violation or admissible evidence for a court procedure in the Hungarian system but rather assist in allocating intervention more effectively. A breach process may only follow, when the police can provide evidence to the violation using other means than the technology. In practice, violations must be confirmed either by the officer who attends the property and states that the subject was absent or by the IT department who confirms a tamper on the devices or identifies an integration zone violation after investigating location data. Information about all violation alerts, police attendance and technological support is retained in the administration of the police. Courts and prosecutors may request information about the process at any time, although one participant explained that this rarely happened.

The goal of the judicial breach procedure is not to establish the *de facto* non-compliance with the restrictions, but whether this was meant to affect the already mentioned procedural aims, i.e. whether the child's actions were intending to lead to absconding, obstructing the investigation or committing a new crime. The circumstances of the violation are indicative to the individual's intent and these determine the response as well. When the procedural aims are not affected by the violations, yet some kind of repercussion may be required, the Court will impose a fine as the default sanction of a breach (s.293(2), CCP). Other sanctions are imposed where breaches occur repeatedly or in serious cases where for example, a new, violent crime was committed. The law suggests that changes to the restrictions should be considered following breach in a gradual scheme: (1) a law enforcement supervision can be added to the restrictions of the person who had a restraining order, (2) a stricter restriction can be imposed, and as a last resort (3) remand custody can be ordered (s.293(3)).

Based on the responses of our interviewees, breaches of law enforcement supervision by children other than minor and occasional location violations are uncommon. Reflecting upon the judicial practice in violation cases, some participants discussed a common judicial approach which aims to keep EM subjects away from detention even after multiple violations. In line with this approach, several participants suggested that EM subjects are almost never sent back to remand custody, except for rare occasions when they abscond and go in hiding or commit a new offence. One such example was where a 17 year old boy cut off his tag and subsequently found and attacked his ex-girlfriend and her mother with a knife in Budapest in August 2019 (Police.hu, 2019; Bányai, 2019). However, such cases are so rare that most participants had only heard about them in the news. Several participants perceived the careful judicial approach as if violations had no consequences. One participant found that the main problem with the practice was that if there were no consequences for violations, subjects would continue to breach and would not learn to complying with the rules. This perspective raises an important conflict between the legal purpose and the practice: as long as behavioural change is not a procedural aim, avoiding minor violations can hardly be expected from the monitored person, as deprivation of liberty as a consequence needs to be substantiated based on legal requirements.

5 Backdoor process

The regulation of the conditions and the monitoring arrangements in reintegrative supervision are similar to the pre-trial use of EM and particularly those of house arrest. The eligibility criteria and the strict virtual regime indicate that reintegrative supervision intends to realise punitive goals by home detention for those who are not dangerous for the society. On the other hand, however, that procedural provisions addressing the discretionary capacity of the Prison Commander and the

PPO's role indicate moving away from the inflexible experience of house arrest and combine control with supporting the return to the society. This section will present the multi-faceted approach and its practical implementation.

5.1 Assessment

Similarly to the front-door process, the legal regulation drives the assessment process of reintegrative supervision. Criteria on the eligibility and the procedural regulation limit the target group and the scope of the assessed circumstances. The purpose of the assessment is to determine whether the individual can be considered to be released on EM and if they do, what movements are reasonable to allow on a regular basis. The Court cannot consider additional factors. Judges must reason about fulfilling the legal criteria in their assessment considering the CC's requirement of the youth punishments and preventive measures to support the child's positive development for them to become useful members of society. Subsequently, education and protection of children should prevail when choosing a sanction in accordance with these goals. Section 1 para. b) of the Sanctions Act further states that these sanctions should be implemented in line with the requirements of children's rights. Whilst the law provides an exhaustive list of eligibility criteria, the principles allow for some flexibility in the process. Participants also reported that there are considerable differences in the interpretation of the eligibility rules across the country (e.g. concerning the behaviour while in prison), which suggests that there is room for individualisation.

The assessment on the conditions aims to expand the individual's liberties rather than restricting them. The default assumption of the order, which is house arrest, explains the reversed logic in the process. The restrictive regime is the result of the practical interpretation of the law which requires the restriction a person's freedom of movement (s.187/A (3), Sanctions Act). Exceptions may be approved by the court for reasons defined in law, including for work or health reasons, attending education or to fulfil everyday needs. Although the list of approved reasons provided in the law is not exhaustive, the courts appear to use them as guidelines for restricting access to spaces and for limiting socialisation to the home environment (Kúria, 2017: 70). While the rules are recommended to be applied flexibly, taking the circumstances of the detainee into account, flexibility is understood as a means for individualisation within an intensive surveillance context rather than a means for responding to the needs and priorities of the person on EM. Participants in the study considered the detainee status of the subject to indicate that significant restrictions should be imposed to reflect the punitive goal of the sentence, and subjects should not be allowed certain aspects of liberty at this point of their detention. Perhaps due to this restrictive approach that limits external activities to the bare minimum, the judges reported having to deal with a large number of short-term and occasional variations which caused significant workload for the court. These requests may be approved upon demonstrated 'acknowledgeable needs' (Kúria, 2017: 77) which is a legal category interpreted on a case by case basis. As to the needs of children, it was suggested that requests to attend school or training should always be approved, while recreation, including attending a gym or weekly family visits are not necessarily perceived as acknowledgeable needs. The restrictive judicial interpretation of the conditions of EM raises concerns about the reintegrative vision for this age-group and calls for a broader discussion on the purposes this measure and a dedicated policy document to ensure that the same rules apply to all children across the country.

5.2 Addressing children's needs

5.2.a *Flexibility determined by the PPO*

While the expectations from subjects of reintegration supervision are very similar to those in the front-door modality of EM, the flexibility demonstrated by its actors suggests a very different approach to monitoring and control. Participants' experiences suggest that in this case, EM is very much perceived as a tool that supports a responsive intervention rather than one which prevents absconding or reoffending. In line with this idea, PPOs and the Prison Commander are reportedly able to use their discretion and adjust their methods to support the subject instead of reporting back to court (s.36, Prison EM Rules). As an example, they may decide to enhance support if this appears to be helpful to the subject during a difficult period rather than report non-compliance to the Court.

5.2.b *Police attendance*

In reintegrative supervision, similar protocols apply to contact with the monitoring centre in the back-door modality of EM as they do in the front-door modality. However, the main point of contact for violation alerts in the backdoor modality is the PPO, who is required to find out more about the incident before deciding about further intervention. As the policy suggests, immediate police attendance is considered to be the last resort if nothing else has been successful. The monitoring protocol requires that the police are only alerted immediately if it is suspected that the violation was caused deliberately by the detainee (s.6(3), Prison EM Order; s.41, Prison EM Rules). In other cases, the chain of command is followed before reporting (Schedule 2, s.52-53 and 60, Prison Chain of Command Rules). Some alerts, such as a lost GPS signal, are attempted to be resolved over the phone. PPOs are called in situations where the monitoring room is unable to resolve the problem. However, PPOs may only be alerted to attend the home of the detainee in office hours, which limits the speed of the response and thereby diverts cases to the police.

5.3 Violations

The Prison Commander initiates the breach action in reintegrative supervision. This also means that if the Prison Commander decides not to inform the court, the court is not able to breach the detainee. This procedural feature provides the PPOs and Commanders with significant discretion when deciding whether a violation is severe enough to be breached by the court. As participants suggest, prisons tend to interpret this discretion as an instruction to use breach as a measure of last resort. Judges reported that they rarely receive breach reports, and when they do, they usually find out about a long history of violations that preceded the referral. They found that violations often reflect upon the subject's attitude towards reintegration and the related behavioural conditions, such as alcohol consumption despite the prohibition, rather than the intent to breach the location restrictions.

6 (Re)integration on EM

6.1 Maintaining family ties

The research indicates that the most significant benefit of EM was the ability for children to remain within or return to their families maintaining their bonds to their families and communities, as often

phrased, 'sleep in their own bed'. Yet, neither in the front-door measures, nor in reintegrative supervision is support offered or available for those who struggle to cope with the restrictions. This appears to be the most important shortcoming of a system where restrictions often confine children to their homes for 23 hours a day every day and compliance is the means to limit the involvement of justice authorities and the risk of deprivation of liberty by arrest, remand or continued imprisonment.

As participants emphasized the importance of family members being present during EM. One participant found that being on EM was not particularly challenging compared to the conditions in the closed institutions, and any potential discomfort could be eased by the opportunity that individuals had to stay with family members. The absence of family ties and safety net, in contrary, was reported to hinder procedural aims, particularly in reintegrative supervision. As the research further suggests, however, maintaining family bonds should not grant unlimited excuse for leaving the house. As an example, participants mentioned dilemmas around variations for monitored individuals to be able to leave their homes for a family occasion. While birthday parties or family visits were considered as potentially beneficial for the reintegrative purpose, concerns were raised as to their legitimate frequency and nature.

Whilst family members are seen as an important source of emotional and material support for children on EM, statutory and policy documents do not reflect the need for encouraging and supporting children in staying with their families. While the owner of the property needs to consent to the person on EM residing in their home, this does not indicate more than agreeing with the equipment to be placed at their home (s.200/A b), Sanctions Act). In the pre-trial measures, parents are not required to be present at the installation or decommissioning of the equipment by the police (s.39(1)g), Police Act) and written communication and information about EM does not address parents or caregivers specifically. While monitoring officers of the police reported talking to parents and caregivers more often than children, the actual communication depends on the phone number provided in the system rather than a designated contact person. Caregivers are often contacted via landline, which means that other family members may also be in touch with the police occasionally. In reintegrative supervision, the PPO investigates the child's home environment, in which parents and caregivers are required to cooperate (s.45, Prison EM Rules) by providing information about payment details of electricity bills. The regulation suggests that parents also have a role in the procedure, but the only provision which suggests an active rather than passive support is the requirement for attending a family therapy session or a family consultation session before the child's release (s.200/A a), Sanctions Act).

The research concluded that the processes are inflexible and therefore require discipline from the subjects. If the discipline is to endure throughout the EM, this will necessarily take its toll on the relationship between the individual on EM and the family members who are expected to make sacrifices and agree to activities which would normally not happen, such as full responsibility for shopping food, allowing the police into their homes, receiving visitors, waking up at night. This is likely to be a significant change compared to their normal lifestyle which increases the risk of non-compliance. Consequently, children as well as their family members may be in need of specialised support to ensure that they feel in control of the situation rather than feeling vulnerable and isolated. The lack of attention to these needs and the absence of appropriate and specialised support remains one of the most important deficiencies of the EM system in Hungary.

6.2 Stigmatisation on EM

The most important limitation of EM is its potential to stigmatise individuals wearing a tag, as the association with the justice system may foster prejudices, strengthen stereotypes and hinder

rather than promote reintegration in the community. Tagging and the monitoring process in the current system are both potential sources of stigmatisation. Some participants found that wearing a tag necessarily exposes the child's involvement with the justice system thereby triggering shame and uncomfortable situations where they may have to explain the reasons for being tracked. Opinion about the effect of these situations varied. One participant found that a tag puts children at risk of exclusion and harm in peer communities because "well, we know that children bully each other", while another participant raised concerns about its adverse effect, as some children may wear them with pride, finding it 'cool' to be associated with criminality. Being monitored was further found to obstruct age-appropriate behavioural patterns (e.g. if a girl on EM wants to date boys). A response officer who did otherwise not support EM, found that this was not the purpose of tagging and should therefore be prevented. The phenomenon that evoked most concerns was the size of the equipment, and thus the visibility of the tracking device. Many participants argued that developing smaller devices would reduce stigmatisation and encourage their use in the future. As explained by a participant:

"I think that this can be done with modern technology. Should be possible. The size should shrink to where it can be mistaken with a bracelet or anklet or anything; [the message should not be] that 'you'll be wearing a prison bullet and you'll carry it around with you'."
(National Coordinator)

Concerning the stigmatising effect of the procedure, a participant explained that a more accurate monitoring technology should be able to decrease police attendance and prevent that the neighbours and the community associate children or their families with continuous involvement with the police.

7 Children's views on EM

It is widely accepted that social (re)integration plays a crucial role in the prevention of youth crime. In line with the UNCRC's fundamental requirements on children's treatment in the youth justice system (Art 40(1)), the Riyadh Guidelines elaborate on principles of prevention. According to these instructions, prevention should engage children in lawful, socially useful activities, encourage them to adopt a humanistic orientation towards society and outlook on life and to develop non-criminogenic attitudes (Rule 1). All preventative measures, whether implemented by welfare or justice systems, should emphasise the integration of children, "in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations" (Rule 10). This research shows that EM is most often used to support the measures imposed upon children in their late teenage years, when the primary places of integration are secondary schools and workplaces.

This section will address children's views concerning the integration of children on EM into schools. Comments reflect the participants' general moral perceptions and understanding of peer group dynamics rather than their personal experience with EM. Only one participant in the sample stated that they had seen an individual wearing a tag. Despite fears and worries about tagging and criminal justice in general, the discussions offered an insight into the need and limits of information-sharing to reduce the potential harm and children's willingness to cooperate in inclusive strategies.

7.1 Children's general perceptions of EM

Focus group discussions show that children's approaches to tracking depend primarily on the societal context in which the technology is used. Most participants generally associated tracking with GPS technology that assists daily life in a variety of societal contexts, such in communicating with family members and friend groups, in measuring sports performance or tracing parcels. Many participants were active users of mobile phone applications which enabled them to retrieve live information about the location of their friends and family members, such as Snapchat and Find My Friends. The focus group discussions indicate that allowing access to or retrieving location data represents a form of communication, primarily among younger children. In contrast to these everyday manifestations of GPS technology, the use of tracking in the criminal justice system (*'nyomkövetés'*, lit. 'following traces') was associated primarily with the risk of danger and the restriction of freedom. Discussions around the purpose of EM suggested that it was generally seen as an alternative to imprisonment, or it was intended to obtain information concerning an individual's whereabouts or to warn society to be alert around an individual wearing a tag. Several participants viewed EM as an opportunity to encourage children to stay out of trouble. Some highlighted its potential to prevent harm caused by being held in closed regimes or to support reintegration after imprisonment.

EM was not associated with the seriousness of offending, but rather the potential of the technology to enforce restrictions. Participants considered that EM could be used to respond to a variety of offences including drug offences, violent crimes as well as theft. Inclusion and exclusion areas were suggested to be appropriate to stop certain types of offending, such as drug offences, or theft. Zsombor (15) found that EM could be a useful tool to deter gang members from associating with the person on a tag and thereby to prevent crime: "Or, for instance if they would be [involved in] a gang or something like that, then well... I don't think that he/she would be welcome with such a device around his ankles."

7.2 Obstacles of and opportunities for integration into schools

As explained in Section 6, adult participants expressed their concerns about the stigmatisation of those who wear tags, and its potential negative effects in, for instance, age-appropriate behaviour. Child participants anticipated a similar impact in schools, where news about a peer on a tag was expected to spread quickly and remain a topic of discussion:

"Well, I think he/she would be stigmatised first. So everyone would look at him thinking of what he/she might have done, why do they need to wear this, and I don't know... But after some time, if they prove that they have changed or something, people would probably include them, although there will always be some who say "Look at the ankle cuff-guy!" or something similar. (Emma, 17)

Participants found that a person on tag is likely to be bullied and excluded both due to the restrictions they need to abide to and judgments and concerns of the peers. It was suggested, however, that a difference should be made between someone from their peer group who is tagged and someone coming from outside of the community. Participants thought that it would be easier to accept the mistake of someone they knew than accepting a stranger on a tag. This idea contradicts with one participant's presumption that a student who has committed or is alleged to have committed something that warrants a tag would be expelled in the interests of the school, in order to safeguard its reputation.

Beyond the potentially unwelcoming atmosphere in school, the mental impact of being tagged could also hinder the integration process. Many participants thought that dealing with the tag and its social implications would be a depressing experience, and subjects are likely to

experience anxiety, withdraw themselves from the community or develop mental health issues. This behaviour was expected to hinder interpersonal communication and the quality of one's relationship with peers.

“It would obviously be more difficult to get friends. Also to have a relationship. [...] And conversations would be obviously not so straight, because he/she [the individual wearing the tag] would be afraid, which prevent him/her from opening up.” (Attila, 18)

As to the appropriate reaction of receiving someone on a tag in the school community, participants suggested that sensitive communication could help to reduce assumptions over why an individual was on tag and encourage empathy for their circumstances mainly strategies built upon communication. Some found that in order to be able to make their personal judgement about the situation, it was important to talk to the individual. Considering the negative mental impact, the privacy of the other person, and the general feeling of 'discomfort' about rather personal issues however, many participants found that an open discussion about the reasons for being on EM would be inappropriate. Instead, many found that school communities or children in general should be informed about what EM was, as the lack of knowledge and discussion about the topic could lead to negative thoughts. It was suggested that a discussion during school events or dedicated lessons could help students to understand the implications of the measure and the consequences for the wearers.

8 Conclusion and recommendations

EM in the Hungarian youth justice system is understood and implemented the same way as in the adult justice. As such, it remains infrequently used for this age group. However, the intention to use it as an alternative to deprivation of liberty is suggested by legal regulations as well as the rather experimental attempts of courts to impose it at the pre-trial process. If EM is imposed on children, however limited this use might be, they need to be considered as a specific target group with distinct needs, as they are seen in other contexts of the criminal process. In order to ensure their safety and appropriate protection, law and policy should address their needs throughout both in the procedure and during the implementation of the measures.

The following recommendations should be considered to address areas of concern highlighted by the research:

1. EM, as used in the current system fails to recognise the difference between child and adult offenders, both concerning the risk they pose to the society and their needs and interests while being monitored. Legislation and policy should jointly address gaps to ensure the child-friendly implementation of EM measures in the front-door modality, including the lack of social support and child-sensitive monitoring protocols. The lawmaker should consider the following in particular; First, limit the target group of EM and make sure that technologies used in the system fit to these children; Second, make sure that appropriate support is available for children and their families throughout the EM process; Third, consider finding an alternative to police supervision in the case of child suspects, e.g. supervision by Child Welfare Services or specialised non-governmental organisations.
2. Both forms of EM, as used in the current front-door system, has the potential to restrict the liberty of children to the extent where the experience of control and the lack of external

programmes create a de facto deprivation of liberty. The risk of such an experience is increased if the child lives in a children's home, where they are catered for and where their access to services to fulfil their basic needs is provided for them. While placing children in such an environment might provide the impression of safety, if external activities are prohibited, children may still be at risk of social isolation and could develop mental health problems. Efforts should be made to place children on EM with family members. If this is not possible, placement in foster families should enjoy primacy over residential care. Children on EM should be given the opportunity to take responsibility for fulfilling their daily needs. The range of allowed daily activities should be extended to any useful and age-appropriate activity, including schooling and sport, as opposed to the current restriction to 'necessary' activities.

3. EM measures require active engagement from both child subjects and their families. While their responsibilities are clearly defined, there is a lack of appropriate support available for them during the period of restriction of liberty. In line with this, responsibility for the supervision of children on EM should be assigned to an organisation that has expertise in the target group and able to respond to children's needs. A compulsory supervision by the Child Welfare Services should be considered throughout the entire EM process. Child welfare officers and social workers should be appropriately trained to support children in dealing with mental and physical problems arising during this period.
4. Further research should address key questions around both modalities of 'youth' EM. Researching the target group, the restrictions and exceptions allowed by the court along with the breach procedures and their outcomes would provide a more nuanced picture of perceptions of proportionality of EM in youth cases. Beyond this, the lack of data on the use of EM in general, and child subjects in particular, remains problematic because it prevents a full understanding of a measure which severely restricts people's liberty. The method and extent of future research should be carefully considered in order to inform the Police, the Prison Services, the Courts and policy makers and support the improvement of practice.

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1998. évi XIX. törvény a büntetőeljárásról [19/1998 Act on the Code of Criminal Procedure]
2017. évi XC. törvény a büntetőeljárásról [90/2017 Act on the Code of Criminal Procedure]
2013. évi CCXL. törvény a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról [Act CCXL of 2013 on the implementation of punishments, preventive measures and some security measures in the criminal procedure, and the confinement for administrative offences (Sanctions Act)]
1994. évi XXXIV. Törvény a Rendőrségről [Act XXXIV of 1994 on the Police (Police Act)]
- 10/2015. (III. 30.) BM rendelet az elektronikus távfelügyeleti eszköz működését biztosító rendszer létesítésének és üzemeltetésének, az elektronikus távfelügyeleti eszköz alkalmazásának, továbbá a büntetés-végrehajtási szervezet, valamint a rendőri szerv ezzel kapcsolatos feladatának részletes szabályairól [10/2015 (III. 30) Order of Minister of Internal Affairs on the regulation of the establishment and operation of the system of electronic monitoring, the employment of the device and further task of the criminal sanctions services and the police related to these matters (Prison EM Order)]
- 15/2018. (VI. 15.) IM rendelet a bűnügyi felügyelet és a távollátás végrehajtásáról [15/2018 (VI.15) Order of the Minister of Justice on the implementation of control by law enforcement and restraining order (Pre-trial Measures Order)]
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implementation of the tasks of Prison Services related to the operation of the electronic monitoring system (Prison EM Rules)]

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57/2013. (XII. 21.) ORFK utasítás az általános rendőrségi feladatok ellátására létrehozott szerv tevékenység-irányítási központjai, egyes rendőri szervek ügyeletei, valamint a segélyhívásokat fogadó központok egységes működéséről [57/2013. (XII. 21.) Instructions of the Chief Commander of Police on the operation-management centres of the general police services, the duty shifts of some police services, and the call centres for emergency (Police Call Centre Rules)]

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T/1707. számú törvényjavaslat a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról szóló 2013. évi CCXL. törvény és ehhez kapcsolódóan más törvények módosításáról [Bill No. T/1707 concerning the amendment of Act CCXL of 2013 on the implementation of punishments, preventive measures and some security measures in the criminal procedure, and confinement in administrative offences and related Acts (T/1707 Bill)]

T/12179. számú törvényjavaslat a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról szóló 2013. évi CCXL. törvény és ehhez kapcsolódóan más törvények módosításáról [Bill No. T/12179 concerning the amendment of Act CCXL of 2013 on the implementation of punishments, preventive measures and some security measures in the criminal procedure, and confinement in administrative offences and related Acts (T/12179 Bill)]

Annex 1 – Methodology

1. Purpose of the research project

The project aimed to investigate the use of EM measures in the youth justice system and to understand the methods by which the special needs of children and young people are identified and addressed. The research aimed at:

- identifying and comparing the legal and policy frameworks in which EM operates in the youth justice systems;
- identifying the existing models of EM schemes targeting young people across jurisdictions and examine their integration in the youth justice system;
- identifying and explain gaps between the principles and operational realities of the use of EM with children and young people;
- investigating the views of stakeholders and children and young people about the use of EM in the context of youth justice; and
- making recommendations for the most appropriate use of EM for children and young people in the context of criminal justice based on the practice of the three models identified.

2. Data collection

The data collection took place in 2019 and 2020. The fieldwork consisted of two parts: (1) focus group interviews with school children and (2) interviews with policy makers and practitioners who work in EM. Interviews were conducted with 22 stakeholders representing the police, the prosecution and the courts. Table 1 shows the distribution of participants across the three organisations. Interviews were conducted with participants from Budapest, and in two Transdanubian counties. 18 participants were male and 4 were female. One person was specialised to children’s cases among the participants.

Table 1. Interview participants

ORGANISATION	NUMBER OF PARTICIPANTS
POLICE	18
PROSECUTION SERVICE	2
COURTS	2

Our research request submitted to the Hungarian Prison Service was rejected with regard to the lack of children involved in the reintegrative supervision scheme. We were informed that no child has been subject to this measure until 27 February 2019.

Aiming to hear children’s views about electronic monitoring, we have advertised the research for the students of two Hungarian secondary schools. The participants ranged in age between 15 to 19; The final number of participants was from 27 from School A and 5 from School B, among whom 18 participants were male and 16 were female. Transcripts of the focus group interviews were anonymised by the use of pseudonyms. Focus groups lasted around 45 minutes. First, children were asked about the association with ‘tracking’ and ‘monitoring’, followed by a short explanation of the working of RF and GPS monitoring in England and Wales, Hungary and the Netherlands. The

groups were asked to discuss about their perspectives on how those on EM could be supported in the School environment.

3. Data Analysis

Interviews and focus group interviews were transcribed verbatim. Where voice recording was not possible, interview notes were typed into Word documents. Data were analysed using NVivo. Throughout and following the data-driven coding process, codes were organised into groups and memos were used to pair codes and establish and explain the connection between them.