

Electronic monitoring in the youth justice system of the Netherlands

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Contents

Acronyms	5
Introduction	6
1. Electronic monitoring in the youth justice system	8
1.1 EM measures and their legal basis in the youth justice system	8
1.1.1 Front-door measures	9
1.1.1.a Suspended remand	9
1.1.1.b Conditional punishment	10
1.1.1.c Measure for behavioural intervention (GBM)	10
1.1.1.d EM in the PIJ measure	11
1.1.2 Backdoor measures.....	11
1.1.2.a Prison leave and Schooling and Training Programme (STP)	12
1.1.2.b Leave in PIJ	12
1.2 EM in the judicial and social policy	12
1.2.a Purpose and target group of EM	13
1.2.b The type and extent of restrictions	14
1.2.c Devices	15
1.3 Previous research	15
2. The operation of the EM system - the “chain of cooperation”	16
2.1 Actors	17
2.2 Cooperation between the key chain partners	19
3. Understanding the proportionality in youth EM	20
3.1 Target group	20
3.2 The purpose of EM	22
3.3 Proportionality and alternatives to EM	22
4. Front-door process	23
4.1. Assessment process	23
4.1.1 Consent.....	24
4.1.2 Assessment of the child’s behaviour and home environment	25

4.2	Addressing children’s needs in the monitoring process	27
4.2.1	<i>Technological support and monitoring</i>	27
4.2.2	<i>Integration of EM into the supervision</i>	29
4.2.3	<i>EM-assisted behavioural change</i>	30
4.3	Violations and the breach process.....	31
4.4	(Re)integration on EM	34
4.4.1	Relationship with family members and peers	34
4.4.2	EM and children’s identity	35
4.4.3	Relationship with societal agencies.....	36
5.	Backdoor process.....	37
6.	Recommendations	38
	References.....	40
	Annex 1 - Methodology.....	43

Acronyms¹

	NL	EN
3RO	Drie Reclasseringsorganisaties (RN, LdH, VR)	Three probation organisations
ASR	Adolescentenstrafrecht	Adolescents' criminal law
CC	Wetboek van Strafrecht	Criminal Code
CCP	Wetboek van Strafvordering	Code of Criminal Procedure
CCCP	Raad voor de Kinderbescherming	Council for Child Care and Protection
DJI	Dienst Justitiële Inrichtingen	Prison Service
DPS	Reclassering Nederland	Dutch Probation Service
EC	elektronische controle	electronic control
ET	elektronisch toezicht	electronic supervision
EM	elektronisch monitoring	electronic monitoring
GI	Gecertificeerde Instelling (jeugdbescherming en jeugdreclassering)	Certified Organisations (child protection organisations)
GBM	Gedragbeïnvloedende maatregelen (strafrechtelijke maatregel)	Measure for Behavioural Change
GPS	Global Positioning System	Global Positioning System
HIC	High Impact Crime	High Impact Crime
HIC-fact	Misdrijf dat binnen het kader van de HIC-beleid wordt aangepakt	An offence that is dealt with within the HIC framework
HKA	Harde Kern Aanpak (methodologie voor aanpak jeugdcriminaliteit)	'Hard Core Programme' (methodology in dealing with hard core child delinquents)
ITB	Individuele Traject Begeleiding	Individual Trajectory Supervision (ITS)
ITB HKA	ITB gericht op Harde Kern-jongeren	ITS that is targeting hard core offenders
ITB CRIEM	ITB gericht op Criminaliteit in Relatie tot de Integratie van Etnische Minderheden	ITS that is focusing on integrating ethnic minority youth
LIJ	Landelijk Instrumentarium Jeugdstrafrechtketen	Standard Youth Justice Assessment Tool
NIFP	Nederlands Instituut voor Forensische Psychiatrie en Psychologie	Dutch Institute for Forensic Psychiatry and Psychology
PIJ	Plaatsing in een Inrichting voor Jeugdigen (strafrechtelijke maatregel)	Youth Psychiatric Treatment Measure
RF	Radiofrequency	Radiofrequency
RNR		Risk-Need-Responsivity
SAVRY		Structured Assessment of Violence Risk in Youth
STP	Scholing- en Trainingsprogramma	Schooling and Training Programme
TSS	Dienst Vervoer en Ondersteuning	Transport and Support Service
UNCRC	Internationaal Verdrag inzake de Rechten van het Kind	United Nations Convention on the Rights of the Child
ZSM	'Zorgvuldig, Snel en op Maat' Aanpak/Locatie	Settlement/Bureau for Diligent, Prompt and Tailored Approach

¹ In this report, only the names of main actors of the system will be translated. All other frequently used acronyms are equivalent to the Dutch expression. This table provides an overview of these acronyms. The translations are based on Boone et al. (2016), Van Deuren et al (2018) and the author's own translation.

Introduction

toezicht (*het; o*)

1 hoede, zorg, controle: *toezicht houden; onder toezicht staan*²

Electronic monitoring as a justice tool was introduced at approximately the same time as the holistic approach to children's rights, yet the paths of the two areas have rarely crossed in the intervening thirty years. While EM has been targeting children and young adults since the beginning, its use for under 18s remains limited compared to the adult population. Consequently, the child population continues to attract less attention from both policy makers and practitioners. This research project aimed to find out how 'youth EM' is, or should be, designed to respond to a child's developmental stage and particular needs, and how safeguards and provisions around EM are formed in law, policy and practice. The Dutch 'youth EM', which was established in 2012, is an example of a system where special instructions exist about the design of EM for this target group. While many of the special procedural arrangements were not introduced specifically for EM but mirror the general principles of the youth justice system, thereby broadly reflecting its values and practices, the undeniable novelty of this system remains the commitment to creating a transparent and uniform youth EM policy.

Youth EM arrangements in the Netherlands require the cooperation of organisations dedicated to both youth and adult justice. While such cooperation is not uncommon in Europe, it has required the involved adult justice organisations to adjust their approach and narratives. Interestingly, discussions around youth EM approach have influenced the views concerning the rehabilitative uses of the technology around adult EM as well. Yet, the terminology used for describing the role of the agencies and the contextual understanding of these concepts still demonstrate substantial differences. Subsequently, the implications of the different narratives have also remained an important consideration for analysis throughout this research. There are still two noticeable ruptures in the understanding of 'electronic monitoring' and 'supervision'. The English expression 'electronic monitoring' translates into at least three expressions in Dutch: *elektronisch toezicht* (electronic supervision) is used in the legal regulation, *elektronische controle* (electronic control) is used in the policy context in both adult and youth justice and *elektronische monitoring* (electronic monitoring) has been recently introduced to demonstrate a change in the approach to EM. While all expressions refer to the operation of the same system, they represent a typical (and literal) instance of agencies 'not speaking the same language'. There appears to be a divide between lawyers and academics with a legal background and practitioners who work with children, in terms of language use and, possibly, understanding. In addition, there seems to be a terminological divide between (adult) probation workers and the youth probation workers concerning the content of supervision (*toezicht*). As evidenced in this research, this results in disagreement about the supervisory role, demonstrated particularly in the views about the appropriate response to certain EM-related events and their consequences. Finally, youth probation workers typically understand their role and authority described as 'supervision and guidance' (*toezicht en begeleiding*) in the law in a variety of ways. These layers of understanding have a significant impact on the implementation of EM, and as such, they explain the inconsistencies among the views of the actors.

² Source: Van Dale, accessed at <https://www.vandale.nl/gratis-woordenboek/nederlands/betekenis/toezicht#.XMgi7DBKiUk> (17/06/2020).

This report provides an overview of findings of the research conducted in the Netherlands 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 imposed on children across three European jurisdictions: the Netherlands, England and Wales, and Hungary. In the Netherlands, interviews were conducted with 25 stakeholders of EM from the Dutch Probation Service, certified organisations implementing and coordinating youth probation, the Council for Child Care and Protection, the Prison Service, the Prosecution Service and other stakeholders. Interview participants were invited from across the country. The majority of participants specialised in children's cases, while all other participants were specialists in electronic monitoring (Párkányi and Hucklesby, 2020).

Findings are presented in the context of the applicable international requirements, standards and guidelines of children's rights. While the use of EM specifically for children has not yet been addressed by international bodies, instructions on implementing youth justice, non-custodial and crime prevention measures provide invaluable input concerning the appropriate 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 are considered, including the Beijing Rules,³ the Tokyo Rules,⁴ the Riyadh Guidelines,⁵ the recommendations of the Economic and Social Council (ECOSOC) and the General Comments of the Committee on the Rights of the Child (CRC). Furthermore, due to the European scope of the research, regional regulatory instruments and recommendations of the Council of Europe (CoE) and the European Union (EU) are referenced where applicable. First, the legal and policy foundations of EM and the role of the different actors in the system are introduced, followed by an 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 for 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, keeping in mind the child-specific goals of crime prevention, rehabilitation and integration.

³ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985

⁴ United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) Adopted by General Assembly resolution 45/110 of 14 December 1990

⁵ 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 EM measures and their legal basis in the youth justice system

The Dutch youth justice system belongs to the ‘modified justice model’ of youth justice (Winterdyk, 2017), which integrates the justice-oriented approach and welfare goals and practices. While the first is evident primarily in the due process safeguards and the statutory interconnectedness of the adult and youth regulation, welfare goals and practices are evident in the child-focused specialisation of the judiciary and field practitioners. The system demonstrates focus on specialisation in many ways. Youth cases are dealt with by appointed judges and prosecutors (i.e. *kinderrechter* and *jeugdofficier*), and although their caseload is often not restricted to youth cases, there is an effort to provide appropriate training for lawyers representing children as well (Uit Beijerse, 2019: 34-36). Youth detention centres specialise in dealing with children between the ages of 12 and 23, and youth probation is implemented by the local certified child protection organisations (GIs). The operation of the latter has recently altered due to a legislative change that commenced in 2015. This new regulation has decentralised child protection and blended the child protective and supervisory roles, resulting in the training of youth probation workers to take up occasional protective tasks beyond their role in justice enforcement (IJV, 2017: 5).

The minimum age of criminal responsibility is 12 years in the Netherlands (s77a, Criminal Code (CC)),⁶ but special rules apply to the upper limit. Those who are accused of serious offences may, historically, receive adult sanctions from the age of 16 if they show intellectual maturity, while those who do not fall under this restricted target group are protected by the youth justice regulation until their 18th birthday (s77b CC).⁷ The option to impose youth measures was extended in 2014 to include young adults between the ages of 21 and 23 under the ‘adolescent criminal law’ (ASR) (Uit Beijerse, 2019: 55-57). Allowing young adults to be adjudicated as children has created a two-way mobility across the ‘age-thresholds’. While it remains possible to impose adult sanctions upon serious youth offenders from the age of 16, a youth measure may also be imposed upon young adults who are up to 22 years. Research shows that in around the first year and a half after the roll-out of the new policy, 1 per cent of all children were adjudicated as adults, and 3-4 per cent of all cases of the respective young adult age group were dealt with in youth justice (Van der Laan et al., 2016: 94-97). Although the latter suggests a growing interest in the use of the new regulation, a careful judicial approach and the contradictory interpretation of the rules reportedly limit its implementation to its full potential (Liefwaard and Rap, 2018).

In the Netherlands, various pilot projects have addressed the potential of using EM both in the adult and the youth justice system. The first youth EM pilot was conducted between 2000 and 2002 in Rotterdam. Its purpose was to create a control-regime that resembled pre-trial detention while supporting children in maintaining and strengthening their social bonds (Terlouw and Kamphorst, 2002:13). The methodology, which also had a great impact on the pilots that followed later, was designed to reflect the distinct life circumstances in childhood, emphasising the need for building upon the existing social support mechanisms such as stable families and school. The first GPS pilots, which were carried out after the introduction of the technology in 2004, aimed to address gaps in the youth justice procedure by using EM. As an example, the Groningen division of the Dutch Probation Service (DPS) and the Public Prosecutor’s College limited the use of GPS

⁶ The general minimum age and upper limit is applicable to all measures.

⁷ The law requires a serious offence having been committed, taking into consideration of the personality and the circumstances of the offences.

devices for children to assisting intensive supervision methodologies applied in suspended remand.⁸ Despite the pilots and the Public Prosecutor's mandate for the involved organisations to create policies around youth EM from 2006 (Uit Beijerse, 2019: 159), EM was not a particularly popular means in youth justice until October 2011, when GPS monitoring was extended towards younger offenders (Heuts and Raaff, 2011). A national youth EM policy was subsequently introduced in 2012, and EM for children was rolled out on the national level along with ASR in 2014 (Uit Beijerse, 2019: 159). Due to the expected increase in the population of the Youth Detention Centres, an intensified use of EM was planned to ease the potential capacity issues, targeting primarily the remand population (DJI, 2013: 5). Beyond reducing the overcrowding of prisons, increasing attention is paid to the crime preventive quality of EM. This is demonstrated by the announcement of the Secretary of State for Security and Justice of a pilot in 2015, the aim of which was to investigate whether enhanced supervision (*verscherpt toezicht*) supported with EM can reduce reoffending rates among offenders of High Impact Crimes (HICs). The law currently allows EM to be used in a variety of procedural stages and types of measures in the youth justice system. This section will introduce both front-door and backdoor variants. This report predominantly focuses on the front-door system, followed by a summary of backdoor use of EM.

1.1.1 Front-door measures

EM supports measures with similar regulatory features at the front-door stage. It must be imposed alongside a condition of a suspended measure or punishment in all but one case. The requirement of substitution often means providing an alternative to deprivation of liberty. The law also requires that EM supports specific behavioural requirements, thereby limiting the scope of monitoring. Inclusion and exclusion zone requirements, which currently available technologies can monitor, are available in both the Code of Criminal Procedure (CCP) and the Criminal Code (CC). Whilst the provisions on the measure for behavioural intervention (GBM) give a broader statutory mandate for monitoring an individual's behaviour, there is a lack of evidence that this would affect the use of EM. Differences in the use of EM align with the purposes and the legal contexts of the underlying measures, for example, whether it is a punishment or a preventive measure.⁹

1.1.1.a Suspended remand

The pre-trial use of EM in the Netherlands interlocks with the use of remand custody, of which it is a direct statutory alternative. At this stage, EM is used to secure conditions of suspended remand and as a result restrictions on the target group and the legal test for necessity of remand custody also indirectly apply to EM cases. Regarding the target group, eligible offences are specifically defined in the law or must be punishable by more than four years of imprisonment (s67(1), CCP). The legal test requires 'reasonable suspicion' and sufficient legal ground for the deprivation of liberty (Uit Beijerse, 2019: 135-136). Reasonable suspicion may only be established if a detailed explanation is provided of the reasons for the suspicion as evidenced by facts and circumstances of the case, while the legal grounds are set out in the CCP (Uit Beijerse, 2019: 135-140). The statutory grounds required to be in place are as follows: (1) preventing the absconding of a suspect from trial; (2) preventing public disorder; (3) preventing interference with the procedure by a suspect; and (4) preventing further offences being committed (see in detail in s67a, CCP).

⁸ See in: Voorstel pilotproject ten behoeve van het College van Procureurs-Generaal: Elektronisch toezicht als bijzondere voorwaarde bij schorsing van de voorlopige hechtenis, 18 August 2004, Groningen.

⁹ The Dutch Criminal Code knows two types of youth sanctions: punishments and preventive measures. Preventive measures intend to influence the behaviour of the youth offender as opposed to the punitive goals of punishment (Uit Beijerse, 2019: 210).

EM is only one of the alternatives to remand custody, therefore the Youth Court is required to investigate whether this is the most appropriate measure for achieving the procedural goals (Uit Beijerse, 2019: 149). The Youth Court may make its decision at any time (s493(1) of the CCP), which provides flexibility for investigating the suitability of any measure. The *Decree on the implementation of the decisions of the criminal court* (Executive Decree) provides an exhaustive list of conditions that the court may impose, including supervision, intensive supervision, participation in an educational project, location restrictions (inclusion and exclusion), registration at a given place, prohibited contact with persons or institutions, the prohibition of drug and alcohol use and other behavioural conditions (s2:6(1) of the Executive Decree). A statutory limit of six months applies for intensive supervision and treatment requirements and the category of 'other behavioural conditions' (s2:6(3) of the Executive Decree). While the statutory limit does not apply to EM specifically, it impacts the use of the measures assisted with EM as well (see under 1.2 of this report). Section 2:6(3) of the Executive Decree states that EM cannot be imposed as a standalone requirement but must be attached to one or more condition. A GI or a probation organisation (3RO) monitors the compliance with the conditions of the suspension (s80(2) CCP).

Remand custody may be suspended where the young person has agreed to the special conditions, unless only the general conditions apply (s493(6) CCP). The consent is documented in writing, either by requiring the child to sign a document which refers to the applicable special conditions or by including verbal consent in the official procedural report (s2:6(4) Decree on the implementation of the decisions of the criminal court). While this does not necessarily require a guilty plea, it indicates the need to understand the circumstances and consequences of consenting to compliance (Uit Beijerse, 2019: 152-153).

1.1.1.b Conditional punishment

The youth judge may conditionally suspend a punishment entirely or in part (s77X(1) CC). As with the suspension of remand, EM is always attached to the special condition of suspension. This applies to any punishment, including youth detention, unpaid work or a fine. The law provides an exhaustive list of possible conditions, which include (1) compensation; (2) reparation; (3) a payment of a penal bond; (4) a payment for compensation funds; (5) prohibition of contact with persons or institutions; (6) exclusion zones; (7) inclusion zones; (8) compulsory registration; (9) prohibition of alcohol and drug consumption; (10) treatment; (11) living in supported accommodation; (12) behavioural intervention programme; (13) participation in education; (14) other condition concerning the behaviour of the person (s77z(2), CC).

The time-range of this probationary period is determined by the judge, as is the length of the conditions. Similar to the statutory provisions around suspended remand, the law does not provide further instructions on the role or length of EM in assisting the conditions. Rather, it only provides a general mandate for imposing it in relation to a special condition (s77z(4) CC).

1.1.1.c Measure for behavioural intervention (GBM)

GBM is a preventive measure that was introduced in 2008 as a response to the increasing youth offending rates, in order to provide a community-based intervention framework for children with serious behavioural problems (Kamerstuk, 2005). Its main feature is the flexibility in combining different intervention methods, such as ambulant therapy and supervision (Uit Beijerse, 2019: 210). EM was introduced as an optional condition within GBM together with the ASR (Van der Laan et al, 2016: 63; s77w(5) CC), with the purpose of 'keeping an eye' on the offender during the treatment programme and reducing the risk of reoffending (Van der Laan et al, 2016: 66). This is the only measure whereby EM must be imposed alongside a programme, rather than being assigned to a specific condition (s77w(5) CC). While theoretically, this legislative feature implies a

broader mandate to control than in other measures, there is a lack of evidence that in practice EM for assisting a programme is distinct from EM to monitor other conditions

Generally, GBM is a rarely used sanction (Plaisier and Mol, 2014: 3 and 18-25). Its limited use may be explained by its signature features: flexibility and the specific target group. Concerning the first, GBM is suggested to be an overwhelming number of restrictions which may increase the risk of reoffending (Uit Beijerse and Struijk, 2015). The programme may consist of a variety of elements, for example, compulsory school attendance, therapy, family supervision or training, which may be combined depending on identified needs. The measure may be imposed for a period of at least six months up to a maximum of twelve and can be extended once (Van der Laan, 2016: 62-65). Concerning the second, the law contains strict safeguards to ensure the target group is limited to children who experience a multiplicity of problems in different areas of life. Eligible cases are restricted to children involved in serious or multiple offences, or who are recidivists, or those whose best interest and developmental needs indicate benefits from intervention. Research shows that GBM comprise only 0.5% of all youth sanctions, the restricted target group being one of the reasons for its limited use (Plaisier and Mol, 2014: 3 and 18-25).

While GBM is not a direct alternative to the deprivation of liberty, non-compliance may still lead to the ultimate sanction. Failure to comply with the programme may result in the substitution of the intervention measure with detention by the court, and one month of detention may be imposed for each month of GBM (s77wc(2) CC). It is important to note that substitution does not alter the legal basis for the sanction which remains a community sanction.

1.1.1.d EM in the PIJ measure

EM may be imposed along with the 'PIJ measure'¹⁰, which is also a preventive measure intended to implement behavioural treatment within an institutional setting. The target group for this measure are children who have committed serious offences, who pose a security risk and whose developmental interests require treatment. PIJ is the most serious sanction available in the Dutch youth justice system. It is imposed for three years, which may be extended for up to two years up to a maximum total term of seven years (s77s(7) CC and s6:6:31(1)-(2) CCP).¹¹ Since 2014, the law has enabled courts to transform PIJ measures into adult hospital orders if the subject has reached 18 years and further treatment appears necessary (Uit Beijerse, 2019: 200).

In relation to the PIJ measure, EM may be imposed both in the front-door and the backdoor contexts. The two forms of EM differ in their purpose and implementation. In the front-door variant, the execution of the measure is suspended (s77x(2), 77z CC). The court may decide to impose conditions instead of depriving the child's liberty by PIJ. Similar to conditional punishments, this measure is intended to allow the option to impose the ultimate sanction, should the child not comply with the conditions. EM may only be imposed attached to another condition (s77z CC). The backdoor variant is explained below.

1.1.2 Backdoor measures

The regulation suggests that EM at the backdoor stage is a means of resocialisation implemented as part of a larger plan. Children may wear monitoring devices when they leave the establishment for a rehabilitative purpose, such as family visits or participating in education while they are staying in the custodial institution or when a PIJ measure is suspended. In PIJ, however, individuals on EM are typically aged older than 18 years by the time the court suspends their measure. EM is

¹⁰ PIJ stands for 'Plaatsing in een inrichting voor jeugdigen', a 'placement in an institution for young people'.

¹¹ As a comparison, the maximum term of youth detention is 1 year for children below 14 years, and 2 years for those older than 14 years (s77i CC).

subsequently a tool used for short-term monitoring of children who are spending their custodial sentence. Contrary to the front-door procedures, judicial control may only be required in PIJ measures. In the absence of judicial oversight, the broad and formalised cooperation between multiple actors of the system provides the only guarantee that youth justice principles are upheld in the process.

1.1.2.a *Prison leave and Schooling and Training Programme (STP)*

The Prison leave and STP regulation allows the use of EM to support planned leave and the participation in a Schooling and Training Programme (STP) (s9 and 17 of the Prison leave and STP regulation). Planned leave is implemented as part of a resocialisation plan and may include supervised or unsupervised leave for one or more days (s33 Regulation on Youth Detention Centres). An STP is an intervention programme lasting up to four months, which is intended to provide the child with the opportunity to learn new skills, participate in education, training, a specialised care programme or other meaningful activities or to prepare for the return to society (s2 and s4 Regulation on Youth Detention Centres). It includes at least 26 hours of supervised activities (s2 Regulation on Youth Detention Centres). STPs begin three, six or twelve months before the opportunity for early release arises, depending on the length of the underlying sentence (s4-5 Regulation on Youth Detention Centres). It is available both for those who are deprived of their liberty within the framework of regular youth imprisonment and through the PIJ measure.

While leave plans assisted by EM are approved by the director of the Youth Institution, implementing EM as part of an STP is part of a more difficult process, as the participation in an STP must be approved by the responsible minister (s25(1) and s8(1) Regulation on Youth Detention Centres). In their request for approval, directors of Youth Institutions must present the case to the minister. Before submitting the request, they are obliged to talk to the child, consult child protective and justice institutions, and involve families (s8(2)-(4) Regulation on Youth Detention Centres). Ministerial decisions must be made within four weeks, and an approval may be rejected both on the grounds of inconsistency with imprisonment and inappropriateness concerning the rehabilitative goals (s8(5)-(6) Regulation on Youth Detention Centres). This suggests that consistency with both the general aims of the youth justice system and the specific punishment should be reflected in the STP, and therefore in the use of EM.

1.1.2.b *Leave in PIJ*

The backdoor PIJ can be implemented either due to the partial suspension of the institutional treatment or to provide a means of supervision for early release (suspended ending) (s77t(7), s77ta CC and 6:6:23b CCP). Early release is compulsory in PIJ measures, which means that the individual must be released from the closed institution with the purpose of resocialisation one year before the end date of the measure (s6:6:31(1) CPC). The maximum term of the exit period is two years, during which time EM may be imposed to support other conditions (s77z CC). While children released from a youth institution normally fall under the supervision of youth probation, those released on EM from PIJ are often supervised by the adult probation service (DPS) due to their age.

1.2 EM in the judicial and social policy

The way youth EM is implemented in the Netherlands reflects the interplay between the judicial interpretation of the legal criteria and the professional values and methodologies that guide the participating organisations and the youth justice system. Three main policies which address legal and practical questions around youth EM are i) the *Instructions of the Public Prosecutor on the conditional sentences and suspended conditional remand* (hereinafter: Instructions), the most

recent one having been published in 2015;¹² ii) the governmental strategies for addressing the *High Impact Crimes* (HIC); and iii) the applicable *youth justice policies* and *methodologies*. This section provides an overview of the policies' vision of two key determinants of the system: the link between the purpose and target group of EM and the applicable restrictions. To provide a comprehensive picture of factors that determine the use of EM, the analysis will extend to a variety of policy documents, including youth justice policies which do not refer to EM directly.

1.2.a Purpose and target group of EM

The policy suggests that the main purpose of EM is to assist in addressing serious, violent offending. Children accused or convicted of HIC offences, which include burglary, robbery and street robbery, where street robbery is understood as the act of taking one's good(s) in a public road by force or by the threat of violence, or the attempt of these (Beijersbergen et al., 2018: 14) are consistently mentioned as the main target group in all policy areas. While the Instructions focus exclusively on these children, the joint youth justice guidance of the organisations involved in the system entitled '*Electronic Monitoring of young people: Directive on methodological foundations and guidelines for the implementation in the youth justice chain*'¹³ expands the target group to serious offenders and multiple offenders accused or convicted of less serious offences (Spoel, 2012: 4-9). The recently implemented enhanced surveillance pilot for young HIC offenders is linked to a wide range of response strategies to reduce the volume of HIC offences (see, for instance Taskforce Overfallen), including the increased use of EM in the adult justice system (Secretary of State for Security and Justice, 2015; Boone et al., 2016: 7). It reflects upon evidence of the disproportionate representation of children among registered HIC offenders; in 2013, more than half of those who were sentenced for street robbery were younger than 18 years old, while the proportion of children among those who committed burglary was 16% and among the offenders of a robbery was 19%. (Beijersbergen et al., 2018: 39-42).

Purposes of EM mentioned in the policies align with the risk factors associated with the specific target group but reflect the issuing authorities' professional roles. While the governmental policy emphasises the role of EM in reducing reoffending, the Instructions recognise its potential to restrict one's liberty and the need to link it to societal purposes, i.e. protecting communities and victims (points 2.4 and 2.9). The main difference between the use of EM in the youth and adult justice systems is that the former rejects its use as a means for surveillance or punishment (Spoel, 2012: 6). In line with the child-friendly understanding, both the Instructions and the youth justice policy highlight an interventionist approach and emphasise EM's role in creating a 'non-criminal' day-rhythm, such as attending school and staying home in the evenings. While the policy strives for achieving compliance that may lead to behavioural change in the long term, it also pays attention to managing expectations both towards children and the technology. It highlights that EM is an intrusive measure and therefore recommended to be restricted to cases when children would benefit from an intensive intervention regime (Spoel, 2012: 14-15).

¹² The purpose of these is to create a uniform judicial approach across the entire jurisdiction, however, it must be noted that these documents are merely guidelines and therefore cannot be perceived as procedural guarantees (Van Swaeningen and Uit Beijerse, 2013: 178).

¹³ See further the policy document '*Elektronische Controle bij minderjarigen: Aanzet methodische onderbouwing en richtlijnen uitvoering Jeugdstrafrechtketen*'.

Table 1. Overview of policy purposes and target groups of EM

	INSTRUCTIONS OF PP	HIGH IMPACT CRIME (HIC) POLICY	YOUTH JUSTICE POLICY
Target group by age	-	-	15/16 years and above
Target group by offence	violent property offences, including particularly burglary, street robbery and robberies	offenders of burglary, robbery and street robbery	high risk, serious offenders and multiple offenders
Purpose	<ul style="list-style-type: none"> to enforce the restriction of liberty for the purpose of protecting communities and victims to create 'non-criminal day rhythm' 	to reduce serious offending	to support rehabilitative methodologies

1.2.b The type and extent of restrictions

In line with the regulation, the Instructions restrict the use of EM to monitoring certain statutory conditions, which may include a ban from sports events, the prohibition of contact, or location restrictions (points 2.4 and 2.9). According to the youth justice policy, this may include two types of restrictions (conditions): inclusion zones and exclusion zones. Monitoring may only extend to the information of “beingthere/notbeingthere” (Spoel, 2012: 6), which excludes trail monitoring or using EM data to trace back the actual location of children unless legal exceptions apply to support police investigation.

As the law does not limit the number of monitored conditions imposed upon a child, policies are the only source of instruction on the extent of restrictions. Both the government’s strategy on HIC offenders and the youth policy suggest that EM is aimed at supporting enhanced supervision. In youth justice, this is implemented in the methodological framework of the Intensive Trajectory Supervision (ITB), an intervention programme intended to provide an alternative to detention (Bijl et al., 2005: 11-13; Minister of Justice, 2000). EM is used specifically in the ITB ‘Harde Kern’ (HKA) or ‘Plus’ framework, which is an up to 6sixmonth long programme designed to intervene in children’s lives who are regularly involved in serious offending.¹⁴ ITB HKA is targeting children and young adults between 12 and 25 years who struggle to cope with problems in multiple aspects of their lives, such as relationships, school, or work, but show a potential of behavioural change. Psychological problems, ADHD, depression, addiction and other behavioural disorders are contra-indicative for participation as these could negatively affect the child’s motivation to cooperate in the programme. The most important feature of HKA is the weekly schedule which is intended to frame the life of the child, providing day-programmes that include places to attend and the persons responsible for monitoring compliance in 24 hours a day (Bijl et al., 2005: 19). Research suggests that the high density of assigned activities could pose a disproportionate burden on children and result in a breach and an early termination of the intervention (Van den Brink, 2013; Bijl et al., 2005: 88). Non-compliance is imagined in a formalised system where the first event is responded upon with a warning (‘yellow card’), followed by a referral to the prosecutor at the next occasion (‘red card’) (Bijl et al., 2005: 21). This research provides evidence that the latter characteristics of HKA are reflected in the practice of EM as well.

¹⁴ ‘Harde kern’ (lit. *‘hard core’*) youngsters represent a distinct group of child delinquents, who are typically involved in repeated, serious offending (e.g. burglary or possessing weapons) (Muller et al., 2010: 158-160). This group is associated with a weak attachment to parents, disengagement with academic achievements and a strong relationship with peer groups.

1.2.c Devices

The available EM technology responds to the restrictions allowed by the law. Devices use radiofrequency (RF) or GPS in both the youth and the adult EM systems; Radiofrequency (RF) technology is used typically for curfew monitoring (i.e. if the location restrictions are limited to staying at home in the evening hours) while GPS technology is intended for use where the restrictions include exclusion zones.¹⁵ Devices usually come with a home unit (*basisstation*) that must be connected to an electricity supply at the house.

1.3 Previous research

Previous pilot projects in the Netherlands have addressed the possibility of using EM with children in a variety of procedural contexts. The projects were typically restricted to specific measures and within certain provinces or youth detention centres. Due to the limited scope, they examined relatively few cases (i.e. n=23 in Terlouw and Kamphorst, 2002; n=21 in Berends et al., 2008; no total number available in Van Deuren et al., 2018) and an even lower number of children were ready to feed back about their experiences (n=6 in Terlouw and Kamphorst, 2002; n=4 in Berends et al., 2008; n=2 in Van Deuren et al., 2018). Due to the limited scope, the contribution of these pilots to the development of different modalities of EM is limited to the operationalisation of methodologies and processes that use EM, rather than extending to measuring effectiveness. Nevertheless, their findings made an important impact on the development of the different uses of EM in youth justice. In this section, the three main research projects will be introduced: i) the first EM pilot in suspended remand custody, ii) the pilot for institutional leave with children spending PIJ measures, and iii) the HIC pilot.

A front-door-modality of EM as an alternative to remand custody of children was first piloted in an experimental project in Rotterdam between 2000 and 2002 (Terlouw and Kamphorst, 2002). The underlying idea was that while the monitored individuals legally remained detainees, they spent the remand period at home. In order for this goal to be fulfilled, a stable home environment and the self-discipline of the subject were required. The need for useful daily activities was a key methodological concern as confining children to their homes was regarded as bad practice. Consequently, an individualised weekly programme was set up to ensure that children attended school and participated in other useful activities during this period, including regular intensive supervision meetings with the youth probation worker. No restrictions applied for the age or the alleged offence. The average age of the participants was 15.5 years, and most of them were accused of violent property offences, such as robbery and burglary (Terlouw and Kamphorst, 2002: 28-30). While EM was received positively by both the participants and their parents, and the number of major violations was limited, it was perceived as a punishment. Further findings suggest that the prerequisites restricted the use of EM to a small 'elite' group by excluding those with less stable home environments created unequal conditions for compliance as some may live in big house with a garden while others live in small flats (Terlouw and Kamphorst, 2002: 95-99).

The purpose of the 'backdoor' pilot was to establish whether EM can be a useful element of treatment in both the adult (*terbeschikkingstelling*) and youth (PIJ) measures (Berends et al., 2008: 14). GPS tags were used to support the planned leave process. Conditions of EM included motivation and consent of the subject and the parents. 21 young men aged 17 to 23 were involved from four youth detention centres (Berends et al., 2008: 47). Most of them were sentenced to PIJ after committing violent offences, but many also committed property offences. As anticipated for

¹⁵ The devices have changed since the data collection. Two-piece devices were phased out by the end of 2020, but at the time of the research were still being used. In these cases, a tag attached to the ankle was supplemented with a hand-held receiver.

this target group, participants had further behavioural, psychological and addiction problems (drug use). It was found that EM can work as a useful addition to the treatment programme, for instance in encouraging compliance. However, shame was also reported as a negative experience associated with EM.

The HIC project of 2016/2018 focused on the operationalisation of EM integrated in the already existing intensive intervention methodologies. The pilot was originally announced for two regions, Rotterdam (South Holland) and Middle-Netherlands, with Amsterdam being added as a third region later. The target group comprised those involved in an intensive intervention programme including both suspended remand and sentencing cases. The research consisted of case file reviews and interviews (van Deuren et al., 2018: 26-27). The researchers reported having struggled to get access to relevant data and to recruit respondents within the target group, which they identified as being caused by unsuccessful supervision trajectories and a lack of motivation of the monitored individual to have yet another conversation in addition to the obligatory ones. EM was found to be used primarily as a condition of suspended remand for 16-17 year old boys (Van Deuren et al., 2018: 58). The proportion of subjects under 15 years was reported to be very low. With regard to the target behaviour, it was concluded that in practice not only HIC offences were included, but other serious offences, such as arson, sexual offences and manslaughter. In Rotterdam, where case administration was best organised, GPS devices were used in 27 cases, while RF devices were used in 15 cases (van Deuren et al., 2018, Table 4). In a further two cases, GPS devices were used after the initial decision for RF. Most children on EM were 16 (n=12) and 17 (n=18) year olds, while the youngest individual in the sample was 14 years old (n=1). The offences for which EM was imposed include robberies and burglaries.

2. The operation of the EM system - the “chain of cooperation”

In Dutch social policy, organisations involved in the implementation of justice measures are often referred to as ‘chain partners’ (*ketenpartners*) (see e.g. Bijl et al., 2005; Krechtig, 2009; Van der Laan et al., 2016; Spoel, 2012). Chain partners in youth justice include judges, prosecutors, police, the Council for Child Care and Protection (CCCP) and youth probation. In the chain partnership of EM, DPS acts as the organisation responsible for the operation of EM at the national level (Spoel, 2012). Further involved authorities and organisations include the equipment provider, TSS, and the monitoring company. Chain partners cooperate at multiple levels to fulfil EM. At the national level, organisations are responsible for creating policies that instruct and inform partners about the implementation of the processes. The operational feasibility and the suitability of these are continuously monitored by partners, who regularly share process reports and organise consultation meetings around issues reported internally or externally.¹⁶ Internal consultations feed into the roundtables of the national partner organisations which then provide instructions for the field. This ‘social control’ process of the chain motivates continuous review and development.¹⁷

There are two main legal-procedural frameworks for youth EM, which also determine the chain partners: the front-door system, and the backdoor system. The two frameworks are similar

¹⁶ Similar consultation-methods were introduced by participants from Youth Care and the DPS. Field meetings include the yearly ‘conferences’ for ITB workers that aim to discuss the implementation of EM, and consultations of the EM-specialists of DPS from across the country. Beyond this, GI’s and EM-specialists can initiate further consultation around particular issues, should it appear necessary.

¹⁷ External complaints concerning the processes or their inaccurate implementation may also be submitted to the independent commissions or functionaries (see e.g. Klachtencommissie Reclassering, 2012).

in their monitoring arrangements, which are based on specialised supervision assisted by general technological support provided by actors of the adult justice system. Generally, supervisory tasks are fulfilled by youth probation workers (Figure 1, a)), except for planned prison leave, which remains the responsibility of the Youth Detention Centres (Figure 1, b)). The main difference between the two frameworks lies in their decision-making processes; While the front-door EM measures require judicial control, the backdoor measures fall under the responsibility of the directors of the Youth Detention Centres and, in the case of the STP, the Minister of Justice and Security.

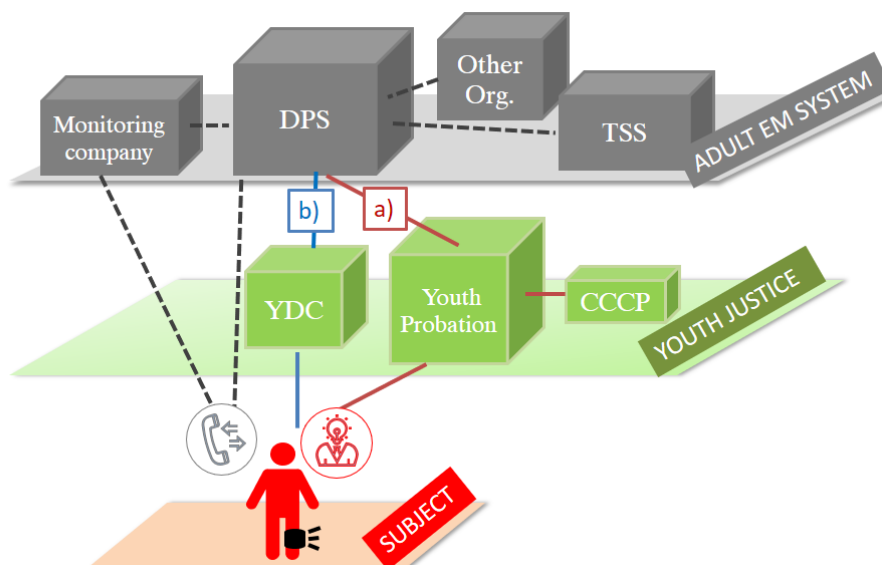


Figure 1. The operation of the Dutch EM system

2.1 Actors

Youth Probation The role of youth probation workers is framed by Section 1.1 of the Youth Act, which delegates the specific supervisory roles under youth justice regulations to the GIs.¹⁸ Children (and young adults) involved in EM are usually supervised in the ITB framework by specialised youth probation workers. ITB workers have a reduced caseload of a maximum of 8 cases compared to the 22 cases of a non-specialised worker (Bijl et al., 2005: 79), but they are considered to have a double role; they represent the justice system and guide the child throughout the intervention (Bijl et al., 2005: 80). ITB workers who work with EM are trained by EM specialists in the DPS, and they are invited to attend a follow-up conference every year to discuss any issues and good practice around EM. After the training, ITB workers are also invited to gain personal experience with wearing the device. These try-outs are told to support stakeholders in understanding the risks and needs related to EM (see e.g. van Deuren et al., 2018: 30; Jeugdbescherming West, 2018).

Staff of the GIs are required generalist knowledge and take up a generalist role, which means that youth probation workers may occasionally also be involved in child protection cases, as well as being responsible for taking up protective roles beyond their supervisory tasks (see for

¹⁸ Since 2015, GIs are non-profit private organisations which provide child protective and youth probation services for local authorities. Local authorities may choose to work with any GI which has been certified to provide the service needed.

example the role of a *family guardian* during family supervision under 4.4.1). However, despite the endeavour of government policy to blend youth justice and child protection roles, the need for specialisation continues to be recognised by the GIs, due to differences in professional ethos and work patterns required from the two groups.

DPS DPS is one of the three Dutch probation organisations (3RO) and the only organisation responsible for providing technological and professional support for EM. Due to its role as a hub for technological support, it is involved in the youth EM system as a ‘silent partner’. The responsibility of the DPS in youth EM cases is to coordinate the operational arrangements around monitoring. Dedicated and trained workers¹⁹ (EM specialists) perform joint duties with youth probation workers during the assessment and keep in regular contact with them during the implementation of the measure.

Coordination of the monitoring and related tasks are organised on a regional level within DPS.²⁰ Regional EM coordinators are responsible for supervising the implementation of the policies and reporting problems to the National EM Lead. Further, it is their task to collect feedback from the DPS staff regarding the EM process and to negotiate with chain partners within their region. DPS runs a 24-hour service in every DPS region in order to respond to violations promptly at any time. Their phone numbers are made available to all individuals in the relevant area including children and their families.

CCCP The CCCP is a child protective body organised under the Ministry of Justice. Its primary role is to fulfil child protective tasks and work together with GIs. Within the criminal process, it provides advice about the child development and the most appropriate intervention considering the best interests of children (Section 77w (2) Criminal Code). Their advisory role includes responsibility for assessing the suitability of EM. The CCCP cooperates with many organisations during the assessment process, including youth probation.

TSS The TSS is a national organisation operated by the Prison Service that is responsible for the transport of prisoners and security of the establishments. They are responsible for fitting, removing and maintaining monitoring equipment, the administration of the software and attending incidents (DJI, 2019). TSS is further responsible for managing the partnerships for technological services, such as the equipment provider, software, and the phone and GPS service. At the time of the research, TSS was developing an app for field workers to support the monitoring process.²¹

Youth Detention Centre Youth Detention Centres are managed by the Prison Service and are involved in the implementation of EM during planned leave and the STP programme. The director of the Youth Detention Centre is responsible for managing the planning, licensing and

¹⁹ EM specialists receive three-day training about the functioning of the technology and the system, the assessment, the applicable protocols and policy, in which trainees are offered a week-long trial of the device. Follow-up training about new technological features is held once or twice a year by the TSS.

²⁰ There are 5 DPS regions in the Netherlands: Region East (Arnhem, Enschede, Nijmegen, Zutphen, Zwolle Apeldoorn), Region Middle-North (Lelystad, Leeuwarden, Utrecht, Groningen), Region North-West (Haarlem, Zaandam, Amsterdam, Alkmaar) Region South (Breda, Roermond, Middleburg, 's Hertogenbosch, Maastricht, Eindhoven, Tilburg), Region South-West (Rotterdam, The Hague) (Reclassering Nederland, 2020). Important to note, that these regions are not the same as child protective regions.

²¹ Beyond its responsibilities in the criminal process, TSS is responsible for managing EM under the temporary public administrative regulation on combatting terrorism (*Tijdelijke wet bestuurlijke maatregelen terrorismebestrijding*). This is a relatively rarely used modality of EM that aims at supporting preventive intervention to combat jihadist threats (Van Gestel, 2020). Similarly to the penal framework, EM in the administrative law is also paired with supervision by the probation services. Currently, it is being imposed exclusively on adults.

implementation of planned leave and STP processes. In these processes, the treatment coordinators assess whether EM is suitable and determine the programme of leave or the STP. When doing so, they seek advice from the EM specialist of the DPS, the youth probation, the prosecutor and, if necessary, other organisations.

Monitoring Company The national monitoring centre is run by Johnson Controls, a private company. Monitoring staff respond to violation alerts twenty-four hours a day, seven days a week. Contact between monitoring staff and monitored children consists of confirming the location or reminding the individual that their tag is due to be charged. While different monitoring protocols are used with child subjects as compared to adults, these are not paired with any type of training on responding to monitored children. Monitoring staff are required to work with both child and adult subjects.

Prosecutor The public prosecutor's primary role is to consider the use of EM, apply legal tests and propose its use to the Court. Furthermore, prosecutors are involved in the process of granting STPs.

Other organisations Beyond the main actors of the system, several organisations have an occasional role in the relevant processes. The neighbourhood agents²² of the police are not directly involved in the implementation of EM but often provide information about the household and the neighbourhood where the child will be placed during the EM period. Youth probation workers inform them about monitored children residing in their area of responsibility. The Netherlands Institute for Forensic Psychiatry and Psychology (Nederlands Instituut voor Forensische Psychiatrie en Psychologie; NIFP) may take an advisory role in determining conditions for conditional sentences. The Victim Support Service (*Slachtofferloket*) may be invited to mediate between victims and professional services during the assessment process. Children's cases are further often discussed in interagency platforms, such as Safety Houses (*Veiligheidshuis*) and ZSM partners. Organisations which provide educational programmes and training for children are also important partners in the implementation of STP's.

2.2 Cooperation between the key chain partners

The Dutch system holds specialisation as key value: both the supervision of children and the monitoring are carried out by highly specialised and trained staff required to work closely on the implementation of measures rather than taking on responsibilities beyond their area of expertise. The specialisation requires intensive but flexible cooperation between the key actors of the monitoring process, youth probation workers and EM specialists of the DPS. This research provided evidence that although all staff members agree with the division of roles and the means of cooperation, many participants find that the complexity of the chain obstructs effective information sharing and delays the process. Stakeholders often experience information shortage, as mentioned, for instance, by DPS staff who expect reports concerning the arrest of the child or a plan of action as a response to violation alerts. Youth probation workers mentioned that gaining the necessary information or forwarding changes in the day-programme were often time-consuming.²³ These were reported to cause frustration on both sides, and sometimes prevented children from enjoying additional free time or family visits as the absence of administration would mean continuous alerts.

²² Police officers responsible for a given neighbourhood or area.

²³ Workers of both organisations were reported to work on 3-4 days a week which are not necessarily the same days at both sides.

Participants from both organisations emphasised that the key element of good communication was that the workers knew one another personally, due to being required to work together at different stages of the process, such as carrying out home visits and advising about the EM process, sharing and discussing weekly reports. Depending on the arrangements in the given region, staff members of the two organisations met regularly in person (urban areas) or kept contact via phone and email (rural areas). The disadvantage of the close working relationship and the personal agreements concerning the communication is, however, that changes in personnel have a recognisable impact on the process.

Participants agreed that there was room for improvement in the cooperation, primarily in the area of access to information. Some youth probation workers found that it would be beneficial for them to gain limited access to the monitoring system, which they could use to administer changes and access information. This was, however, explained as bringing about further problems, such as the need for trained staff and issues around scheduling shifts in a way that someone is always available to put through the changes.

3. Understanding the proportionality in youth EM

The target group and purpose of EM are closely linked in the law and policy of every jurisdiction. In the Netherlands, the predominant determinants of the dynamics of this relationship are the general goals and methods of the youth justice system. The policy suggests that EM is regarded as a tool that assists the reduction of reoffending by combatting primarily serious, violent property offences (see in 1.2). As such, it is part of an intensive supervision trajectory that translates the general purpose of control by the justice system into more nuanced, individualised goals. Individualised intervention goals reflect upon a variety of personal, methodological and professional factors identified for this target group, and the need for demonstrating proportionality in the process (UNCRC, Art. 40(4); para. 76, General Comment No. 24). Following this approach, this section will present the findings around the identification of the target group first and then move on to discuss the purposes of youth EM and the perception of proportionality in the respective processes.

3.1 Target group

The policy frames the selection of the target group for EM using the Risk-Need-Responsivity (RNR) model of offender rehabilitation.²⁴ As part of this model, EM is perceived as an intervention of high intensity that is advised to be used in cases where the risk of reoffending is at least 'medium' or 'high', or where the 'risk of harm' is considerable. This includes primarily children who fall under the HKA criteria, who have a high-risk profile or commit multiple offences of low risk (Spoel, 2012: 14-15). In terms of the considered criminogenic needs, the policy recommends using EM when the source of the problem is a lack of 'day and night rhythm', insufficient daytime activities or inefficient parental supervision. EM is further suggested to be useful in cases where children find following the agreed schedule difficult or when they disrespect parental authority. As safeguard for

²⁴ Based on the model that was developed in the 1990s, effective rehabilitation strategies should be based on three principles: i) the risk principle, ii) the need principle and iii) the responsivity principle. The principles are intended to support the choice of intervention by affecting the intensity, the area of intervention and the methods deployed. The intensity should match the risk level of the offender, and it should target the criminogenic needs while taking into account the offender's learning styles and skills (see e.g. Andrews, Bonta, Wormith, 2011). This aligns with the general risk assessment approach in the youth justice system of the Netherlands (Spanjaard et al., 2012).

responsivity, the policy requires staff to consider any benefits of EM for the individual including factors that support or hinder its effective implementation. Participants' comments on the target group reflected the Risk-Need-Responsivity (RNR) perspective and provided insight into the factors considered in practice.

The policy further suggests that the main determinant of risk and the primary indicator for EM is the underlying behaviour, i.e. the (alleged) offence and its specific features such as violence. Participants of this research confirmed that children on EM are typically serious offenders. The most common offences reported aligned with the HIC-offences and include burglary and aggravated forms of robbery, such as robbery using firearms. Most children are prolific offenders. A policy coordinator in youth justice associated this tendency with the principle of proportionality, claiming that using EM for less serious offences would be similar to 'shooting on a mouse with a cannonball', and it would leave no other detention alternatives open, should the child commit further offences.

The individual needs considered when proposing EM reflect upon children's home environment, their relationship with family members and the irregular day and night rhythm. Some participants found that EM should be used when parents are unable to enforce control upon their children and they need support in re-establishing a positive relationship and parental authority. It was argued that this use of EM limits the target group by age, as younger children are more likely to obey parental instructions than adolescents of 15-16 and above. Further arguments in support of the limited age group are its intrusiveness which indicate the need for a mental maturity and the ability of self-control. In line with these arguments and the policy recommendations (Spoel, 2012: 14), the EM caseload was reported to consist primarily of children older than 15 or 16 years, anecdotal evidence suggesting that EM was considered rarely for younger children.

Despite the broad availability of EM at all stages of the criminal process, this research found that it is used predominantly as an alternative to remand custody in the Netherlands. This tendency may be the result of legal limitations set for the use of remand custody (Van den Brink et al., 2017:11-13). The current regulation provides that a child may be held in arrest for 14 days, followed by 90 days of pre-trial custody. Further, child defendants may not be held in remand custody longer than their anticipated imprisonment sentence (s67a(3) CC). As a youth probation worker explained, this policy often triggers the need for alternative sources of control during the long criminal procedures. This argument was supported by probation workers, who found that in this framework, the role of EM is often to prolong control measures before or after the sentence. The pre-trial period was reported to be regularly utilised for intervention, primarily ITB HKA, in order to provide children the opportunity to prove their willingness to comply with non-custodial conditions and avoid custody. The sentiment concerning the extenuating effect of such intervention was shared by many participants. Beyond its pre-trial use, EM was mentioned to be rarely imposed. Some participants were particularly critical about its availability in the PIJ framework due to the perceived disparity between the goals of a protective treatment measure and ambulant intervention assisted by enhanced surveillance.

The research confirms the conclusions of previous studies concerning the limited use of EM within the youth justice system (Boone et al., 2016: 70). On the day of the interview with the responsible policy maker of the DPS, 113 children were monitored on EM, of whom 37 were wearing RF tags and 76 GPS tags. Youth probation workers suggested that the EM-caseload varied across regions and through time. A regional EM coordinator estimated that each DPS region had about 30 to 50 youth EM cases, while most youth probation workers had two to four cases at the time of the interviews. They highlighted that there were periods when they had no EM cases, the reason for which is unclear. Some suggested that the number of eligible cases has decreased over the past years and the numbers were inconsistent throughout the year as well. Cases peak around

the time when the school year begins, suggesting that courts are keen to support children's participation in education.

3.2 The purpose of EM

The purposes supported by EM are determined on an individual basis, focusing primarily on behavioural correction and the education of children. Participants explained that the purpose of EM always aligns with the individual needs, personal circumstances, legal rules and policy expectations, indicating that EM cannot serve one overarching purpose. The purposes identified may be clustered in three groups: i) addressing the need for behavioural change, ii) serving justice goals and iii) protecting victims and the society.

Participants' views suggest that the paramount goal of EM is to support some kind of behavioural change. Among these, the most important purpose mentioned was to assist the young person in creating a 'healthy' day structure by breaking the irregular and disrupted day and night rhythm which was associated with a deviant lifestyle. Many participants found that EM contributed to the success of the intervention by signalling non-compliance, as this provided an occasion for youth probation workers to discuss the reasons for not following the agreed day-plans. While the arguments follow the system's welfare rationale, the interventionist approach raises questions at the legal domain. Considering that EM is used predominantly as pre-trial means, the emphasis on behavioural intervention appears to be in conflict with the presumption of innocence. While imposing intervention as a condition of suspended remand is longstanding phenomenon in the Dutch youth justice system (Van den Brink, 2013), it remains problematic as the leading argument for EM in this procedural context.

Regarding the justice-related purposes, many participants emphasised that EM was intended to monitor court conditions. Other purposes mentioned include providing an alternative to deprivation of liberty, reducing recidivism, or serving as a physical reminder of the consequences of one's misbehaviour as well as being at immediate risk of youth detention²⁵. About the extent to which EM can safeguard the security of others, respondents had a critical view. Some found that EM offers only the illusion of safety (*schijnveiligheid*) as devices are fairly easy to remove.

3.3 Proportionality and alternatives to EM

The process for identifying the target group suggests that the main drivers of the policy-level proportionality test are the circumstances and the gravity of the offence and the needs and personal circumstances of the child. These criteria appear to correspond with the international requirements on justice measures (UNCRC, Art. 40(4); Beijing Rules, Rule 17.1.a); Rec (92)16, Rule 6; UNCRC, Art. 40(4); Beijing Rules, Rule 17.1.a); Rec (92)16, Rule 6). However, the process, in which EM is identified as a proportionate means, remains problematic. This research revealed dilemmas concerning proportionality to the socio-economic status and to the purpose of gaining structure. Weighing the effect of the socio-economic status was mentioned to be crucial as excluding those who lived among circumstances inappropriate for EM would be a manifestation of 'class justice' (*klassenjustitie*). Investigating the ways EM could support a child in developing a structured lifestyle was argued to require a two-step test; first, investigating its potential for creating structure for the individual, and second examining whether monitoring can be implemented using other forms of control.

²⁵ The expression often used by many participants (n=7) was 'stok achter de deur', which refers to the direct threat of, in this case, imprisonment, should the child fail to comply. As research has already pointed out, the possibility of imposing detention upon breach is regarded as a serious 'threat' during the suspended remand period that improved compliance (Bijl et al., 2005: 81; Van de Brink, 2013).

The two-step test limits the target group of youth EM by requiring the child's ability to change and the consideration of alternative measures. At the first step, the dilemma around creating structure requires balancing between children's abilities to cope with restrictions and to demonstrate improvements. If a child can keep to the schedules, EM was argued to be not necessary. If child was found to struggle with following structured programmes, or has been raised in a rather flexible fashion, a sudden expectation of full compliance with a strict regime of enhanced surveillance was argued to set them up to fail. Consequently, EM can only be used for those in the middle ground demonstrating both disorganised lifestyles and discipline. At the second step, the question whether the desired structure can be achieved by other, less intrusive means should be answered positively. EM-assisted measures represent only a small part of the range of alternatives available in the Dutch youth justice system. Other measures may be clustered based on their agency: they may build on the i) family relations of the child, ii) regular check-ups by justice authorities or iii) be implemented in closed facilities of the child or health care systems. If family members or foster parents can provide an appropriate level of social control around the child, EM is not always deemed necessary. While lesser control is a factor to consider, priority is given to the arrangement which allow the child to stay in the family, which indicates that EM assistance will always be advised if this helps the child to stay in the family. Check-ups by authorities may include personal or phone check-ups by the youth probation worker, daily visits by the neighbourhood agent of the police or night detention. Some participants argued that check-ups offer an insufficient intensity of control even if both the police and the youth probation workers are involved. In addition, one participant highlighted that these are often not particularly cost-effective, as they may require double staff to travel long distances in the evening hours. Night detention is a halfway alternative between custodial and non-custodial measures that allows children to continue their daily life outside of the prison but obliges them to return to the establishment every evening. A prosecutor argued that night detention is preferable to EM in the pre-trial stage, as this counts as remand custody, and would agree to this arrangement if the child was involved in a useful activity during the day, such as ambulant treatment, school or apprenticeship. The disadvantage of night detention, however, is that its use is limited to those areas where youth detention centres are located.

While only one participant mentioned explicitly that EM should provide an alternative to deprivation of liberty, the practice reported by others suggest that EM is only ever considered and imposed when the potential subject has already been arrested or imprisoned. Youth probation workers unanimously rejected custodial measures, arguing that they are inappropriate and harmful for children as they hinder advancement in personal development and may contribute to building an anti-social identity. Consequently, EM is regarded as means to prevent children from getting into a spiral of disadvantage.

4. Front-door process

4.1. Assessment process

The international documents instruct states to limit *restrictions on personal liberty* by imposing them "only after careful consideration and shall be limited to the possible minimum" (Rule 17.1b Beijing Rules), and 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). In the Dutch youth justice system, EM is always used as part of an intervention plan, whether that is imposed as a pre-trial measure or in a judicial

sanction. This indicates that an assessment of youth EM can only be understood in conjunction with the underlying procedural and methodological requirements and practices that pre-exist in the system. The assessment process is the same for imposing EM in the pre-trial and sentencing stage. This section will introduce both the procedural safeguards and the considered needs.

4.1.1 *Consent*

The first key safeguard of the decision making process is gaining the consent of children and their parents. Despite the lack of explicit instructions in the law to seek consent, acquiring confirmation of cooperation in the intervention programme is an important requirement in youth justice processes. This is particularly important when remand custody is suspended, as the absent statutory provision that would allow intervention related to the yet alleged offence must be substituted with some form of legal ground (Kamerstuk, 2005). Informed consent is perceived as a legitimate ground. Acquiring the consent is a complex process rather than a single act. It begins with a preliminary verbal agreement between the child and the youth probation worker and ends with signing the commitment to the intervention and taking responsibility for the equipment.

First, youth probation workers seek a preliminary informed consent from the child to determine whether further assessment should take place (Spoel, 2012: 26). In this process, the youth probation worker informs the child about the possibility and the condition of EM on a personal meeting, which allows them to discuss the details of the proposed programme. As children are most often in remand custody at this stage, the meeting usually takes place in a youth detention centre. A young person whose remand custody was suspended with the condition of ITB HKA with EM explained his own experience with this process as follows:

“Yeah, look, he [the youth probation worker] came to visit me in the prison and then we talked about it, and look, I could have said, ‘listen, I will simply not try this’ or something, this is not for me, but yeah... then what remains is the old method. You need to sit it out and all those things. So this is just a gateway in between [freedom and prison].”

He felt that choosing for EM was his own decision, but he found that its limits were determined by the judge: “when there is a chance that you can still get it, then it is your decision. After a couple of times this will stop and you cannot always get a tag.” If a child agrees, the EM specialist and the youth probation worker arrange a joint home visit within five days. The two practitioners inform parents about the working and the implications of EM, including personalised arrangements, such as the preference for children on EM to have their own rooms. If parents agree to participate, they must demonstrate active cooperation in the assessment, which may include providing evidence to the accurate payment of bills or making arrangements to settle debts.

Whilst requiring the informed consent of children ensures their participation in the process, concerns may be raised about it being sought under circumstances of great uncertainty about the potential sanction and other consequences. Some participants found that the discomfort caused by this situation often encourages children to make promises that they will not be able to keep, which sets them up to fail. In some cases, however, this initial stage of seeking informed consent provides children the opportunity to refuse EM. Some children may find EM an unnecessary inconvenience compared to spending their future sentence in the remand custody and consciously opt out of participating in the programme. An important factor in their decision is that the period spent on EM cannot be converted to detention.

As the final consent, children have to confirm in writing that they have understood the applicable conditions and the monitoring rules. With regards to the responsibility they take by agreeing to EM, it is crucial that the information and their consent are written in a language they understand. Probation workers indicated that children, similarly to adults, are required to sign the

summary of instructions when the device is installed (see under 1.3). The document used at the time of the research has been designed for adults, but documents addressing children were developed after the data collection. Beyond this formalised act, children may also be required to enter into a written agreement as part of the intervention, for example as part of the ITB HKA. This agreement needs to be signed by the child, the youth probation worker, the prosecutor and, if possible, the parents (Krechtig, 2007: 40).

4.1.2 *Assessment of the child's behaviour and home environment*

4.1.2.a *Risk assessment*

The assessment regarding the suitability of EM is integrated into the standard risk assessment processes of the youth justice system. In the pre-trial and sentencing stages, CCCP coordinates the data collection and creates a report. The CCCP adviser requests information from various organisations and authorities about the child and his environment based on the requirements of the Standard Youth Justice Assessment Tool (*Landelijk Instrumentarium Jeugdstrafrechtketen* (LIJ)). The youth probation and DPS assist these processes by feeding information into particular parts of the LIJ. The assessment tasks of youth probation and DPS reflect the division of roles in the monitoring process: while the youth probation workers report about the risk and protective factors regarding the child and the family in a holistic way and the appropriateness of EM in support of the intervention, probation workers provide information about technological matters. A CCCP adviser found that one of the guarantees for EM being used in the best interests of the child is careful preliminary research, which was supported with anecdote by another participant suggesting that insufficient evidence may lead to unnecessary restriction of rights. The CCCP adviser has six weeks to gather the information and make a recommendation, during which period the child typically remains in remand custody.

Once the child's eligibility has been determined based on the RNR model, the suitability of EM is investigated. This research identified a number of criteria, which add up to two broader categories: i) the child's needs and personal characteristics; and ii) the proposed 'added value' of EM. Several participants highlighted the importance of appropriate mental capacity to understand the measure and its consequences. For children of lower intelligence, a younger age, or a disorganised lifestyle, EM was deemed to be unsuitable due to the increased likelihood of failing. Other contra-indications mentioned included aggression, impulsivity, psychological problems and addiction. Two participants noted that being involved in sports was a protective factor that was taken into account in the assessment.

EM is proposed only if it delivers 'added value'. The often-mentioned expression translates into expected behavioural impact, which requires the intervention period to be filled with meaningful activities. Whether an activity is meaningful, depends on the individual case, including for instance attending school or a gym, or engagement in work or apprenticeship. The importance of this element had been established in previous pilots (Terlouw and Kamphorst, 2002), and is included in the current policy as well (Spoel, 2012: 16). The rationale behind the endeavour appears to be that the involvement in positive activities leads to long-term behavioural change.

The ITB team discusses and approves the assessment and the recommendations which thereby become the team's responsibility. Teams consist of ITB workers as well as specialist members of staff such as a behavioural expert, who review the assessment and contribute to the final advice. A youth probation worker explained the internal process as follows:

"What we need to know is, why is a tag being taken into consideration? What kind of added value could it have? The tag can never be the purpose in itself. It has to be a means to an end. So imagine that you need to include support, but [the case is in a] bridging period or

it has just began. These are things that we must consider and look, OK, why would EM be necessary here? And I put this on paper. This goes to a behavioural expert. Then we discuss it in a team whether the behavioural expert agrees with what I put on paper.”

4.1.2.b *Feasibility study*

The feasibility of EM is assessed by the chain partners using a self-assessment platform (*Loket Elektronische Controle*) followed by the field assessment by DPS staff. Beyond determining the technological requirements, this process also aims to prevent children being placed in a harmful or otherwise inappropriate environment. The online platform is available for chain partners of both the adult and the youth justice and its main feature is the built-in filter mechanism, which sees the requesting parties through a list of target group-specific indicators before the final form would be submitted. The submitted request will be assigned on EM specialists, who are expected to deliver their final advice within 7-14 days.

DPS advises about the appropriate equipment and the feasibility of the home (Spoel, 2012:16-17). Regarding the equipment, it is the EM specialists' task to choose between the available RF and GPS devices. EM specialists found that the tag should support the implementation of the suggested statutory condition and data collection should not exceed what is necessary. This indicates that if the restriction is an overnight curfew, RF tags are the appropriate choice, whereas GPS tags should only be advised when further inclusion and exclusion zones are imposed. However, this approach is not always shared by youth probation workers, who are keen to use GPS monitoring regardless of the condition to enhance *de facto* surveillance. EM specialists' concerns about this approach extend to both its practical implementation and methodological validity. A probation worker explained these concerns as follows:

“... But GPS is a heavier tool. I abide myself to correspond with the judge's decision. And if it says inclusion zone, then I want to have a simple [RF] tag. Definitely so in young people's cases. Because I know from experience: the [other] tag will not be charged appropriately, the young person will not be available, the parents will not be available, so it creates a lot of work for us. On the other hand, I understand the youth probation's request to be able to follow the child, [to see] what he does whole day long, I get that. But then I ask myself, is the tag meant to do that?”

Regarding the feasibility of the home, EM-specialists carry out the assessment during their home visit together with the youth probation worker. In this assessment, they investigate the suitability of the house, any debts that could become an obstacle during EM, indications for substance abuse or serious psychiatric problems in the family, and potential obstacles for the implementing the measure in the house or the area. While the policy highlights that insufficient housing is a contra-indication of EM (Spoel, 2012: 14), participants reported that it never happens that houses in their regions are insufficiently equipped for EM. Concerns about the payment of electricity and other bills are rare, but should individuals experience difficulties, these can be diverted to the social support system. An EM coordinator explained that due to the available favourable welfare arrangements, these concerns are exceptional in families with children.

4.1.2.c *Final decision*

The research suggests that the final advice of CCCP often follows the advice of the youth probation as they collect most of the evidence for the LIJ. The CCCP report presents the assessments and proposes the outcome that is deemed to serve the best interests of the child. These provide evidence to the Court's decision. Decisions are reported to vary in the details they offer concerning the conditions and demonstrate a lack of uniform understanding of the judicial role in determining

the use of EM. Some participants reported that the decisions tend to instruct them to implement ITB HKA with EM, mentioning the related condition. Decisions, however, rarely include specifics on the equipment and the technology to be used. While this aligns with the international practice, in the youth EM system of the Netherlands the lack of restriction on the equipment means a lack of judicial oversight over the information collected about the child's movements and the way it is used (see under 4.1.2.b and 4.3).

4.2 Addressing children's needs in the monitoring process

International documents recommend the implementation of a measures to be responsive, based on the understanding that children may have a variety of needs that should be addressed. Responsivity may materialise in adapting procedures to suit children's circumstances, for example, by providing help and guidance in the integration (Rule 4.2.3, ECOSOC 2016/C 110/13), understanding the conditions in a dynamic way (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; Rec (92)16, Preamb. b), 86-88), or cooperating with families (Rule 4.2.1, ECOSOC 2016/C 110/13; Rule 8, Rec (2003)20). The Riyadh Guidelines, which apply respectively to prevention of reoffending, provide further recommendations on the facilitating integration and the prevention of crime.

Monitoring using the technical system and supervising children using this information are divided among the implementing organisations. The agencies of the adult justice system (DPS and the Monitoring Company) operate the first and the youth probation carries out tasks related to the second. This section will address the key features of the front-door process from the perspective of children's needs and interests.

4.2.1 *Technological support and monitoring*

The installation of the equipment is a crucial part of the process considering that this is typically the first time children and parents are introduced to the devices and may seek further information about their use. Youth probation and DPS share information about their own responsibility areas, which indicates that staff members of both attend the installation visit together with the TSS technician who installs the equipment. This means that three or four representatives of the justice system attend the family home, which may be overwhelming for both children and their parents particularly if this is the first reunion of the family after the child's release from custody. Subsequent visits are not necessarily assisted by the youth probation or the EM specialist.

Understanding the way the equipment works and which restrictions apply is important in the process, particularly because by signing the documents children take the responsibility for the equipment. This includes the duty for charging their tags and going about their daily activities in a way that this will not cause any damage in the equipment. The practice of providing the standard adult information for children, as explained at the section about informed consent, was therefore inappropriate to address children's needs despite using a straightforward language. Children received i) a *short standardised information sheet* (two pages) designed for monitored adults, explaining the purposes of the adult system (to bring structure in the person's life and manage risk), the monitoring process, the behaviour expected from the monitored individual and the consequences of potential violations for adults; and ii) a *summary of instructions* (one page) about the rules concerning the use of the devices and the maintenance of the tag, and the required behaviour during the monitoring process and in the event of any problems.²⁶ The latter impose

²⁶ This document was the attachment of the *Standard behavioural rules supervision* contract that is used in the adult system (Boone et al., 2016: 32).

restrictions on the daily activities beyond the Court's conditions, because individuals have to charge the GPS tags at least three hours during the daytime or in the evening hours. Overnight charging is prohibited as this may damage the charger.²⁷ The research shows that this is often a problematic expectation, as it requires patience from children who are bound to stay in the same room for three hours a day. Multiple participants found that the relatively short battery life of GPS devices was an important disadvantage that needed to be addressed. Individuals are further prohibited from participating in 'contact sports', such as football or kickboxing, where direct contact with another person's body may damage the tag or cause harm to the wearer or the other person.

Once the technician has installed the tag and the home unit, they register the tag with the Monitoring Centre. After this moment, violation alerts appear in the monitoring system. The policy distinguishes two types of protocols for reporting about the violation alerts of children: the retrospective and the 'hybrid' protocols. Children's cases are monitored retrospectively, unless a known victim is at risk and therefore the conditions include an exclusion zone. The latter cases are hybrid, because these may require immediate action, which includes alerting the police and the youth probation worker.²⁸ While the process is described in the protocol, it has not been implemented yet due to the lack of availability of youth probation outside of office hours.

Retrospective monitoring indicates that youth probation workers do not receive information about system alerts at the time when these occur. The DPS will inform them in a weekly report that presents all violations and their explanation. The moment for weekly reporting is agreed by the EM specialist and the youth probation worker. As certain activities are not included in the system in order to reduce unnecessary alerts (such as the school schedule), reporting requires EM specialists to cross-check the data manually against the programme of the young person. They report about three levels of violations: 1) serious (such as tampering), 2) light violations (such as indication for leaving the home for a longer period in curfew hours), 3) and violations that belong to the discretion of the youth probation (such as an indication for leaving the home for a shorter period during curfew hours). In certain cases, violation alerts require action from the monitoring centre, for instance reminder calls of the battery is running low, which is reportedly the most common alert in children's cases. Consequently, one of the main rules during monitoring is that children and their parents must be available for all agencies involved. The monitoring centre contacts the child via the phone number registered in their system. During the contact, the monitoring workers must confirm with the child that he understood the instructions. If they cannot reach the child, they share this information with the EM specialist who will then forward it to the responsible youth worker. Phone calls by DPS and the monitoring centre must not be initiated between 10pm and 8am to allow children to sleep at night, but in case of any question or problem, children and their parents may contact DPS or the monitoring centre the entire day, seven days a week. Serious violations, such as tamper cases are not exceptions from this rule, but they are reported to be likely to be picked up by workers as soon as possible, usually on the next working day.

EM ends either in pursuance of the underlying decision or due to breach. The former process is similar to the installation; the youth probation worker, the EM specialist and the TSS technician attend the child's home, remove the tag and confirm the removal with the monitoring centre. If EM ends early due to any other reason, the CCCP should be consulted and the prosecutor should be informed about the process. One participant found that the weak element in this process is the administration around the end date of EM, which would require more attention, primarily

²⁷ The charger joins the tag with a magnetic clip and has a 5 meter long wire that needs to be plugged into the socket.

²⁸ In office hours usually the supervising youth probation worker will be alerted, while at night the 24-hour support service of the GI.

from the youth probation workers. He explained that due to the misinterpretation of decisions ends dates were occasionally ‘forgotten’, and EM periods were unlawfully prolonged.

4.2.2 Integration of EM into the supervision

The policy on youth EM suggests that EM can be deployed as part of two methodological frameworks related to the youth probation: the general youth probation supervision and the intensive supervision schemes (ITB HKA). EM without supervision is regarded as an ineffective tool in preventing further offences and it is suggested to increase the risk of reoffending (Vogelvang, 2005: 177). In the regular supervision framework, children have three-weekly supervision meetings and work towards behavioural goals with the support of the youth probation worker. The HKA instructs ITB workers to keep to a six-months-long intervention plan that begins with a strict surveillance regime and progressively increases the freedom of the child. As EM was reported to be used primarily to support HKA trajectories, this section will further focus on this supervision framework.

HKA consists of two phases. In the first phase, (the first two months) the programme is focusing on monitoring whether the child keeps the agreement and follows the schedule. In this period, supervisors strictly monitor children and allow limited free time, but reward compliance (Krechtig, 2017: 32-33). The free time allowed in the first two months is between 0 and 3 hours a day. The young person interviewed in this research found this difficult to deal with, primarily because, as he explained, he was only allowed to do what was necessary and not what he wanted. In the second phase (the next four months), ITB workers are instructed to gradually demonstrate more flexibility and allow more freedom for the child. At this stage of the intervention, supervision transitions to become similar to the regular youth probation supervision and begins to focus on treatment and training addressing the behavioural problems. The youth probation worker shares the programme with the parents and the EM specialist to maintain both social and formal control arrangements.

The core element of the HKA is the week-programme that pre-schedules daily activities and the periods of ‘free time’. This is important not only because it frames the behavioural expectation, but also because it provides a point of discussion in case of non-compliance which is thought to deliver in-depth understanding of the obstacles and leads towards conscious decision-making. Due to the flexibility of courts in describing the monitored conditions, these often extend to the entire programme of HK, which translates into a multitude of inclusion and exclusion zones. These zones are determined in the week-programme, which is not part of the judicial decision, and which youth probation workers explained they design together with the child week by week. Each day-schedule consists of three types of periods: curfew hours, day activities and evening activities (Figure 2). In the curfew hours children are required to stay at home, while day activities and evening activities may differ depending on the needs and the obligations of the child. All activities in the week programme are obligatory to complete.

Figure 2. An example for a day-schedule

TIME	ACTIVITY
0.00 - 7.00	Curfew (home)
7.00 - 19.00	School/work
19.00 - 22.00	Gym/Work
22.00 - 24.00	Curfew (home)

Week-programmes vary person by person and may include work, treatment, time slots allocated for travelling or charging moments. Information about the travelling arrangements, routes, and the

time-aspect of other activities are collected by the youth probation worker. The strict ringfencing and monitoring in HKA shows significant difference from the classical understanding of conditions in community measures.

Within the HKA framework, children are subject to constant communication to ensure that they are conscious about being monitored at all times (Krechtig, 2007: 45). Besides personal meetings, phone contact and messaging via mobile apps were mentioned. One youth probation worker reported to require that children send a *WhatsApp* message every time when they begin a new activity, for instance when they leave home for school, when they arrive, when they leave school and when they arrive home again. Some participants, both from youth probation and DPS mentioned that *WhatsApp* was a frequently used communication channel with the monitored individuals and their relatives. One probation worker found that using mobile application helped in communicating more clearly, and due to the perception of a message being more accessible, it also enhanced children's willingness to respond.

Children are required to take active part in their own monitoring and communicate about obstacles and mistakes. Youth probation workers found that children should inform them if they are unable to keep to the schedule for any reason, preferably beforehand. ITB workers are told to be regularly available outside of office hours to address issues straight away, and GIs operate a support line twenty-four hours a day, seven days a week, however, the latter cannot provide specialist advice on EM. The reasons for the violation are further addressed on supervision meetings. If a serious violation occurs, youth probation workers contact children as soon as possible. Youth probation workers agreed that violations should be discussed with the child and the parents before formal steps are taken, in order to learn their view and experience. The approach that extends to both regular probation and HKA cases aims at prioritising the understanding of the motivation of the behaviour as opposed to enforcing the intervention. A youth probation worker explained that serious or numerous violations may indicate that EM is simply not suitable for the child's level of intelligence.

4.2.3 *EM-assisted behavioural change*

The system aims to achieve behavioural change by means which support the cognitive, intellectual and physical development of the child. This is reflected in three main procedural-methodological features: i) the length of the intervention, ii) the design and flexibility in dealing with schedules and iii) the consequences of the violations. Breach arrangements will be further addressed in the next Section, while this part will discuss the behavioural approach of designing and monitoring week schedules.

The average length of an EM measure is three to six months in accordance with the applicable legal and methodological restrictions. The minimum period of three months was reported to be necessary to for creating a habit of the structured lifestyle. Some participants claimed that a minimum period was necessary to confirm that behavioural change was a realistic perspective, as achieving compliance with the day-programme or the planned leave conditions was a process itself. As a probation worker explained:

“Because everyone can change their behaviour for two weeks and for four weeks as well. But it becomes difficult to keep your new habits after this if you don't want to do it seriously and then you need to make real efforts. We can see that the second month is difficult, often we also experience more violations. And we can conclude whether someone has proved that they are prepared to change only when they [children] are in the third month. Therefore I think three months are appropriate.”

The policy requirements on the maximum term of EM were debated and diversion was reported from the practice. Many participants reported about cases where EM was used longer, between six to twelve months. One youth probation worker argued that sometimes a longer period appears necessary due to the seriousness of the case, as the more serious the offence, the more important to ensure desistance from offending. Another participant found using EM for a longer period was justified if victims were at risk.

The practice of scheduling the activities reflect the behavioural goals. Week-programmes are created in agreement with the child and youth probation workers demonstrate a flexible approach about compliance with these schedules. Justifiable alterations are told to be allowed on a case-by-case basis and some participants found creative ways to use violations as an incentive by rewarding good behaviour. One youth probation worker mentioned issuing warnings ('yellow cards') that were valid for a month only, to encourage compliance but minimise the need for a formal breach process. This approach of youth probation workers indicates the potential value in a more sophisticated punishment and reward system that builds upon EM data.

The flexibility offered by the retrospective design of the system was not received with the same level of enthusiasm across the system. Primarily, it was the stakeholders of the adult justice system who were critical about the delay in responding to violations, but some youth probation workers agreed that it hindered, rather than supported the process. One youth probation worker explained that receiving information immediately at the time of the violation would provide the opportunity to manage the problem directly instead of days later, once things have moved on. Reflecting the same idea, an EM specialist found that reiterating that the rules are created to be followed would enhance compliance:

“So when they violate their scheme [...], that they hear immediately that they are late. Whether they are called, or they get a text message [,does not matter], but they should have the impression that the tag does something.”

The other critical aspect appeared to be the flexibility demonstrated in responding to the violation reports. While the belief in meticulous research before initiating breach is similar in both adult and youth probation, the level of tolerance in EM cases is different. All EM specialists from DPS and other participants from the Prison Service found that the approach of youth probation was overly lenient. This was claimed to affect the workload of DPS due to the continuous alarms, as well as the impact of the measure. The management of DPS was aware of this cross-sectoral inconsistency. However, it was perceived as a call for raising awareness and promoting understanding across the organisation rather than an input that motivates institutional changes. As a manager explained:

“[...] A yes is a yes and a no is a no, an appointment is an appointment, that's it. This is what we've been educated to do. This is the rule in the adult probation. [...] If I have an appointment with you at 10 o'clock, than you must be there at 10. To take it strictly. With young people, they come easily three times quarter past 10. And then you could be angry with them, saying that you will not see them. But this is how it is meant to be with youth, you know? And there is a difference in how you deal with young people and adults. This is why we have different policies, and this is why it is done by the youth workers, because it is a pretty little group that you must have experience with.”

4.3 Violations and the breach process

The UNCRC's requirement to use deprivation of liberty as an ultima ratio measure applies to breach procedures the same as to initial decision making. In line with this requirement, the Council of

Europe recommends that breach procedures consider other means to ensure the goal of the sanction or the measure, and do not use deprivation of liberty as a routine response (Rec(2008)11, 30.1). Procedural guarantees to prevent deprivation of liberty to be used routinely are suggested to include minor transgressions 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 Dutch youth EM system.

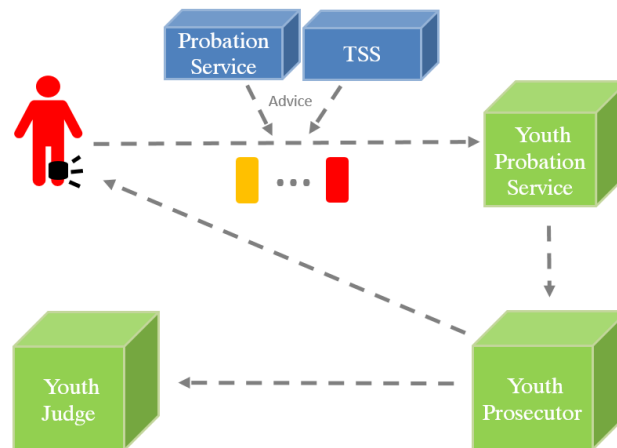


Figure 3. The breach process

In the Dutch youth EM system, violation alerts are considered in a thorough process before a breach process takes place. If the weekly report of DPS signals an event or multiple events of non-compliance, or an alert is received about a case that requires an immediate response, the youth probation worker will investigate the reasons and circumstances of the violation. In this process, crime preventive goals, as well as protection and developmental support, are reported to prevail (IJV, 2017: 7-8). Participants' answers suggest that dealing with non-compliance in EM measures is a communication-led process. All violations are reported to be followed-up in a conversation with a young person and, if appropriate, with the family to find out about the underlying causes and motivations before any formal action would take place. In case of doubt, the youth probation workers can approach EM specialists with questions around technology or the data. This form of cooperation was reported to be well received by the youth probation workers, as it often allows them to look into the trail maps. Accessing this information enables them to establish not only whether a violation has happened, but also where children have been while they were in breach. This practice is in conflict with the policy instructions which restrict the use of technology to monitoring whether the child has or has not been at a certain place following a pre-determined schedule (Spoel, 2012: 6). The practice results in access being provided to personal information that was not intended to be shared and therefore is not safeguarded by the law, and for a purpose that is not justified by either policy or law. Despite these events being occasional, the phenomenon raises concerns with regards to the conflict between the child's right to privacy and the institutional interest in enhancing surveillance. A policy maker confirmed these concerns by explaining that the well-articulated need from the youth probation to gain broader access to the information was contradicting the intended vision of the policy.

Previous research shows that youth probation workers translate the aims of the supervision process into broad flexibility in deciding whether or not a breach process should be initiated (IJV, 2017: 8-9). This practice has been confirmed to extend to EM measures. Rather than

mentioning objective criteria to the level or the quality of violations necessary to report a case to the Prosecution Service, participants suggested that 'a lot needs to happen'. Arriving late by 5-10 minutes and taking cigarette breaks in the garden are considered 'light violations', which will not lead to further action after being addressed on a supervision meeting. Staying away hours long, tampering or removing the tag, and not charging the equipment and thereby obstructing the monitoring for hours were mentioned as serious violations, which would lead to considering an official breach process. A youth probation worker found that the procedural stage in which breach occurs also has an impact on reporting, suggesting that violating sentencing conditions will lead to breach earlier than violating suspended remand conditions. However, the point where the decision is made by the youth probation worker was reported to depend on the practitioners' impression of the child's motivation rather than the seriousness or the prevalence of violations. While EM specialists found that this approach was overly flexible, one youth probation worker explained that violation events and subsequent supervisory guidance were often inevitable steps towards behavioural change. As such, each violation should be measured against the goals already achieved and the potential value in continuing the process. This view was confirmed by other youth probation workers who claimed that a discussion with the child was essential to find out the reasons for the violation and to ensure that the child understands the consequences. One participant mentioned that the turning point was when this discussion led to the conclusion that the violations were intentional. At this point, the youth probation worker should issue a yellow card.

Initiating a breach was reported to be a difficult decision not only concerning its effects on the individual and the treatment trajectory but also because of its impact on the GIs' relationship with the parents. A probation worker explained that in case of conflicting testimonies, the benefit of doubt always favours the child over the technology. If violation reports keep occurring despite the family members' reports about the child being home, technological adjustments will be made to ensure the appropriate installation and set-up of the equipment. The reason for careful consideration is not necessarily the distrust in technology, but rather its potential effect on the prospect of further intervention with the child and the family. By initiating a breach, a youth probation worker could lose his role as a trusted partner in the education of the child. As the policy coordinator explained:

"And [the youth probation workers] have to try to keep the family together. If they say, well, I am going to report back about the non-compliance of the child, they lose their position in the family. Because, if a young person will be placed in a detention centre against his will again, then you can imagine that they [youth probation officers] will not be welcome in the family anymore so to say."

The research suggests that children's breach processes rarely result in enforcing custodial measures or sentences. Once a child has been granted the opportunity to stay out of prison, a significant effort will be put in place to keep them outside unless they get involved in new offences. In case of continued non-compliance, a 'red card' will be issued. Before the youth probation worker would file a formal report, however, they discuss the case with the prosecutor. This process often ends with an informal conversation between the youth probation worker, the prosecutor and the child, where the prosecutor explains the consequences of continued non-compliance. If a breach case is brought to the court, the breach report is presented to the youth judge who may decide about the discontinuation of suspended sentences or impose custodial or non-custodial measures.

4.4 (Re)integration on EM

International children's rights suggest that the most important tool for preventing crime is social integration of children (see e.g. Art 40(1) UNCRC; Rule 10, Riyadh Guidelines; Rules 1.5 and 12.2 Tokyo Rules; para. 76, General Comment No. 24.). Directive 2016/800 acknowledges the goal of *reintegration* in the case of child suspects and accused persons (Preamb. 9). The main spaces of social integration are the family, the community, peer groups, schools, vocational training and the labour market (Rule 2.3, ECOSOC 2016/C 110/13). Stakeholders of these entities are suggested to have a crucial role in the social integration of the child as they serve can encourage desistance on a personal level, by, for instance, teaching basic values or fostering meaningful relationships. It is recommended that children are helped and guided in their integration process, but this has to be a responsive and not a controlling relationship between the provider and the receiver of help (Rule 4.2.3, ECOSOC 2016/C 110/13).

The Dutch youth EM system is engaged in assisting reintegration as part of the behavioural intervention. The policy emphasises that EM ensures community-based intervention thereby preventing prisonisation and allowing children to work on their positive social bonds (Spoel, 2012: 17-21). As the previous sections demonstrate, the reintegration is considered a priority in the assessment and monitoring processes providing a wide range of safeguards and incentives which aligns with the international requirements. Despite these guarantees, EM is advised to be restricted to the most serious offenders, due to its often claimed 'intrusive nature'. Intrusive features and consequences of the technological and monitoring arrangements are not only practical implications, the youth EM policy also identified a number of 'disadvantages' associated with EM, indicating that these may hinder achieving the reintegrative goals. This section will address the reintegrative quality of EM and its obstacles, focusing on three age-appropriate behavioural patterns of children, among which particularly i) their association with family members and peers, ii) the development of their identity and iii) their relationship with societal agencies.

4.4.1 Relationship with family members and peers

The Dutch youth justice policy considers its reformatory mission to rely on the broader environment of the child, including primarily caregivers. In line with this idea, policy expectations for EM measures extend to the children's parents. Both the policy and the participants of this research emphasised that the role of EM is to help children to create a healthy structure in their lives and to normalise their positive relationships. In this respect, EM is regarded as a tool for enforcing those situations where an impact can be made. As an example, being obliged to stay at home with family members is hoped to encourage people to have conversations that they would not have otherwise. The normalisation of family relationships was further argued to be easier with EM, as the external monitoring allows parents to break away from their control role and focus on other parenting skills. Positive effects, such as the ability to keep schedules, are hoped to continue after the device has been removed.

The current policy refers to parents as beneficiaries of the EM process, implying that EM helps them to regain control over their children and improve their parenting skills with the help of youth probation. In practice, however, the process enforces involuntary parenting 'training' by leaving no choice for parents but to cooperate with the youth probation if they would like to keep their child out of custody. In order to achieve the behavioural goal, they are expected to actively participate in the process and to a certain extent, become subjects to it. Their engagement, parenting skills and their relationship with the child are also supervised by the youth probation officer. Associated tasks include reminding the child of their obligations, such as charging the device or staying inside as well as making sacrifices and arrangements of their own to provide a

good example. A lack of parental engagement, the parental inability to support children and the potential for conflict as a result of being 'locked up together' were all discussed as factors which could hinder behavioural change of the child. In families where parental support exists but is deemed insufficient and could put the child's development 'at serious danger', the youth judge may order family supervision (*ondertoezichstelling*; s255 of the Civil Code). Family supervision is a measure that entitles youth probation workers to act as a (third) parent, and make necessary arrangements concerning, for example, the child's education or training. Whilst this measure aims to impose enhanced support, it creates a conflict between the supervisory and protective roles of youth probation workers and discredits parents' authority.

EM is further regarded as a useful tool in preventing reoffending if the underlying offence was related to the negative influence of peers. Similarly to the way EM measures are expected to contribute to improving relationships with family members, a decreasing engagement in deviant behaviour is expected from limiting the occasions to associate with peers. Two participants mentioned that being monitored provided 'a good excuse' for children motivated to desist. Participants reported, however, that children on EM may receive increased attention from the police which may lead to a continued and disproportionate contact with the justice system. One youth probation worker explained that children on EM were more likely to receive repercussion for 'loitering' than those not on EM. In a specific case, a boy was fined because he was standing at a porch of a building with his friends outside of his neighbourhood.

4.4.2 EM and children's identity

The most frequently mentioned disadvantage of EM is its stigmatising potential. Stigmatisation and primarily the fear of being labelled as an offender has been established as affecting the monitored person's quality of life, as well as family relationships, throughout the monitoring process (Terlauw and Kamphorst, 2002: 42-43; Post et al., 2005: 84; Berends et al, 2008: 59; Gestel, 2005), and it was acknowledged as a disadvantage of EM in the official policy (Spoel, 2012: 19). In line with this opinion, about half of the practitioners and policy makers suggested that stigmatisation was a real problem with EM that needed to be addressed. They unanimously found that this had a negative impact primarily on children's mental health, either due to the shame they were facing or because tags were seen as tokens of a criminal lifestyle in the community. The shame by being tagged was mentioned as a normal experience of young people, which children were advised to mitigate by changing the clothing style in order to hide the device and improve self-confidence (Benschop, 2018). The young person we interviewed generally found that the fact that he was monitored should not concern anyone else, but the fact that the device is visible triggered judgements. He explained that once someone on the street recognised his (GPS) tag, 'they saw him immediately as someone else'. He found that the reason for the negative reaction was the limited knowledge about EM due to which it was often associated with very serious violent offences. In order to prevent judgmental encounters, many participants argued that devices should be smaller and easier to hide.

About half of the participants found that the tag may bestow children with a high status within a gang or among deviant peers. One participant explained his personal experience with this phenomenon as follows:

"I know that this boy, who got a tag after his sentence, he began in a new school [...]. Then he was still in the youth detention centre but he was allowed on leave for a couple of hours, at least with a chaperon, to go to the intake. I was there as well. Then he was wearing a tag already. And what I then found almost shocking is that in this school, yeah, he was recognised [...]. Many young people go there [to this school] who did not perform very well in school. So he walked in as a sort of hero. And this was quite shocking for me to see."

Enhancing the status of children within a deviant community was not compatible with purpose of EM according to the unanimous opinion of participants. If this occurred, it had to be addressed in the process. Some found that this could be perceived as contra-indication of using EM.

4.4.3 Relationship with societal agencies

In modern societies, children's lifestyles are framed largely by the institutional arrangements around fulfilling their needs and ensuring their integration into the society. The most important scenes for social integration reflect upon various international rights concerning primarily the child's right to education, (Art. 28, UNCRC) right to the best possible health (Art. 24, UNCRC) or the right to leisure and recreational activities (Art 31, UNCRC). While attending related activities is deemed as crucial for a healthy development of a child, for children who wear tags this appears to be often problematic due to the already mentioned labelling effect. This section will discuss the impact of EM on the most typical agencies of children's rights and social integration.

Attending school is perhaps the most important place of both education and socialisation. In order to fulfil its role, it is compulsory for children up to a certain age (16 years in the Netherlands). Youth probation workers had mixed experiences with schools and confirmed the previously evidenced research finding (Terlauw and Kamphorst, 2002: 68; Berends et al, 2008: 59) that enrolling children on EM in public education was not always a self-evident process due to concerns about EM and subsequent rejections. As a youth probation worker suggests, EM often represented only 'the peak of the iceberg' as most children already have a history of issues:

"I was already involved with [the case of] this child, so I've had contact with the school. They were worried about this boy. He was just picked up by the police again. And then we announced that he will be suspended and we would like to have a tag as well. And the school found this shocking. Because, yeah, he already had a kind of status in the school. This enhances their status."

Nevertheless, youth probation workers reported that they would eventually find the way to enrol children in public education, but this often depends on their relationship with the school. Once being accepted by a school, children often must cope with the attention on their tags. While participants agreed that sharing the fact that they are tagged is the child's decision to make, opinions varied about whether they should do so. Some participants found that fostering 'shaming and blaming' was not the purpose of EM and therefore sharing was unnecessary. Contrary to this opinion, one youth probation worker explained that an act of sharing may be beneficial if the child can communicate his limits:

"What helps when you come to school, is to shortly discuss it, in a classical way, in your own group. And you should indicate what you would like to share, because you don't have to tell everything of course. And indicate that the fact that you are allowed to ask questions does not mean that I will have an answer to all of them, but after this it is done and I will not want to talk about it anymore."

Having a choice about sharing this information is, however, not always a realistic expectation. A youth probation worker had the experience that the lack of financial resources of those on EM posed and obstacle to hiding the device:

"So I have a boy now and he wants to work very much, really very much. And yeah he said that he was going to apply for jobs and he was going to tell about the tag. [...] He cannot buy too many clothes. You can see it [poverty], and he does not have the money to buy new

pants. So he said, I will have to tell it and I won't lie about it to the employer. And he was subsequently rejected."

Beyond attending school, EM was mentioned to have an important impact on the engagement in sports and physical activities. Whilst exercise is encouraged while on EM, the fragile equipment and the risk of causing harm to the individual on EM and others pose an important obstacle to engaging in the sport of the child's choice. This restriction is particularly problematic if the child's engagement in a team or combat sport is assessed as a protective factor, as this conflicts the EM policy. Even though the tags introduced since the data collection for this research are less fragile and allow children to play football, the risk of causing harm remains a concern. Nevertheless, due to the developmental value associated with physical activity and team sports, the system responds in a permissive way.

5. Backdoor process

The actors and the operational arrangements around backdoor measures of youth EM show significant overlap with the front-door measures. While in most cases staff members take up supervisory roles and DPS coordinates the technical support, youth probation has a role in assessment and provides support in the activities which take place outside of the prison. Backdoor monitoring arrangements are shaped to suit the needs of the leave and STP programmes, but the technology and issues around it resemble the findings concerning other measures. Differences identified in this research reflect upon the legal status and the stringent perception of risk in detainees' cases. This section provides a summary of these legal and operational differences.

Backdoor measures are reported to be used infrequently for children, despite a generally positive approach to EM implementation in the leave and STP processes. This may be related to the detention-specific proportionality dilemma, which requires that EM is imposed during a suspended PIJ or STP only if it has already been used during the leave trajectory to demonstrate continuity in the way risk is approached. Trust was argued to be a key factor in this process, which could be gained through an EM trajectory. If EM was not deemed to be necessary at the beginning of the process, its use would be difficult to justify later on. Defeating the argument around gaining trust by demonstrating compliance on EM, a prosecutor suggested that in most cases a sufficient level of trust is key for beginning the rehabilitation trajectory, which excludes the use of EM. Consequently, the assessment at youth detention centres focuses on security and risk of recidivism rather than the behavioural impact as explained regarding the front-door process.

Although the implementation of STP and prison leave differ, decision-making about EM appears to require similar assessments and procedural guarantees. Both processes are coordinated by the director of the Youth Institution. Assessments are part of the 'perspective planning' process, based on which planned leave is imagined to provide a gateway towards participation in STP. Assessment for planned leave is carried out by the youth detention centres using the Structured Assessment of Violence Risk in Youth (SAVRY) tool to evaluate the risk of recidivism and absconding. Behavioural patterns, such as the underlying offence or 'loitering' on the street in groups are considered as risk factors. The youth probation and DPS provide expert advice about the feasibility of EM and its modalities. STP cases require the involvement of the CCCP and the prosecutor, and if the leave allows overnight lodging at the family home, parents are also involved in the process. A leave or STP plan should consider information about the purpose, the supervision arrangements during leave and the length of the EM period, which should be included in the approval (s9(2)-(3) and s17(2)-(3) Prison leave and STP regulation).

Supervisory and monitoring arrangements at the backdoor stage of the criminal procedure are less straightforward than in the front-door procedure, as the policy does not contain clear instructions about the division of roles. This indicates the need for regional and individualised arrangements that reflect the child's trajectory. Children often remain in detention for the entire period of prison leave or STP both physically and by the law, which delegates the supervisory role to the prison, but complicates monitoring. In these cases, the home unit is installed in the prison cell and the tag remains on the ankle of the child for up to six months until the end of the process. A participant explained that during prison leave and STP inclusion and exclusion zones are set up to be monitored, rather than curfew requirements, as children return to the youth detention centre after the educational or vocational activity or family visit. Occasionally, exclusion zones are already defined in the imprisonment sentence. Despite the lack of clear policy, this indicates that backdoor processes use exclusively GPS devices, which leads to further practical problems for both the children and the establishment. As an example, ensuring security as well as the child's mobility was reported to be difficult due to clashes with the metal detectors which signal at every entry into the institutions. Furthermore, EM restricts children's involvement in the internal social programmes, as they are not allowed to participate in football and need to retire to the cells to charge the device.

Contrary to the regular reporting in the front-door process, prison staff are only contacted by the EM specialist in the event of a violation alert. It was suggested that non-compliance does not lead to the suspension of the programme automatically. A treatment coordinator found that once leave was granted on EM, the device was 'not so easily' removed. Reasons for 'breach' include regular alerts due to entering into exclusion zones.

6. Recommendations

This report presented a summary of the legal-theoretical foundations and the operational features of the Dutch youth EM system. This system incorporates EM as a tool for supporting behavioural correction in measures designed to work with prolific or violent offenders. Due to the integration of EM into the general framework of youth justice, many procedural features and assessment criteria used for EM are shared with youth justice tools and methodologies created as a response to specific behaviour, such as serious offending. As a result, the youth EM assumes purposes distinct from the adult system, displays attention to the child's needs and interests and demonstrates understanding of the developmental stage by allowing a high level of flexibility. This research has identified the following good practices:

1. **The vision of youth EM is presented in a clear and comprehensive framework.** The joint policy demonstrates the cooperation of all participating organisations and authorities and implies a uniform vision across the system concerning the goals of EM and the way this should be achieved. The main benefit of this approach is the high level of awareness about the advantages and disadvantages of EM among both policy makers and practitioners, and the discussion it triggered concerning the use of EM for children.
2. **EM is always imposed along with specialised support.** The intrusiveness of EM measures is appreciated by both the policy makers and practitioners. This indicates the need for intensive supervision to be paired with intensive support. Youth probation workers are dedicated not only to monitor compliance, but also to support children in experiencing the

least amount of stress because of the monitoring arrangements. By this, they can set boundaries but make exceptions for the benefit of the child.

3. **Children's developmental needs are considered in the monitoring arrangements.** Manifestations of this approach include their limited contact with non-specialised staff and the prohibition of contacting children during the night to ensure that they can sleep undisturbed.

The research has also shown problematic elements in youth EM system, which we recommend addressing as follows:

1. **Set legal guarantees for the limited use of EM and special safeguards to address issues around intensive forms of supervision and data sharing between organisations.** This research provided evidence of youth EM being used primarily for assisting intensive supervision as part of ITB HKA. Within this programme, children's liberty is restricted to the extent where they are only allowed to do what is deemed 'necessary' for the purpose of their development and education, excluding most forms of recreation or natural youthful behaviour. In this context, EM is used as a tool to create an enhanced restriction of liberty. The current regulation fails to recognise the implications of enhanced monitoring, especially those of the data collection and data sharing among the implementing organisations.
2. **Set limits to the expectations from parents to ensure that they are not punished under the sentence of their child.** Voluntary means for parenting training should be fully consensual.
3. **The policy should address concerns related to stigmatisation in the assessment and during the monitoring process.** The stigmatisation of children appears to be one of the key concerns around EM, as it can potentially impact the (re)integration and rehabilitation of children. While the policy recognises the phenomenon, there is a lack of dedicated strategy for minimising the stigmatising effect of EM.
4. **Research should address key features of youth EM and the intervention programmes supported by EM.** Research concerning the indication, duration and outcome of youth EM processes across the country, in the different youth justice measures and in enhanced intervention programmes is essential to gain a better understanding of the use of EM for children. Information about children's experiences and opinions about EM, and its impact on their mental health and daily lives is crucial for the appropriate development of EM measures.

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Annex 1 - Methodology

1 Purpose of this research project and research questions

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

- i. identifying and comparing the legal and policy frameworks in which EM operates in the youth justice systems;
- ii. identifying the existing models of EM schemes targeting young people across jurisdictions and examine their integration in the youth justice system;
- iii. identifying and explain gaps between the principles and operational realities of the use of EM with children and young people;
- iv. investigating the views of stakeholders and children and young people about the use of EM in the context of youth justice; and
- v. 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 interviews with policy makers and practitioners who work in EM (chain partners). 25 interviews were conducted with a variety of actors, representing the Dutch Probation Service (DPS), organisations implementing and coordinating youth probation, the Council for Child Care and Protection (CCCP), the Prison Service (PS), the Prosecution Service, and other stakeholders. Due to the institutional specialisation in the Dutch youth justice system, and procedural arrangements around EM, the majority of our participants were specialised to working with children or worked in youth policy. Many others worked closely with youth justice staff. Table 1 shows the distribution of participants across these organisations. Interviews were conducted with participants working at a variety of areas of the country. The sample includes 14 male and 11 female participants.

Table 1. Interview participants

ORGANISATION	NUMBER OF INTERVIEWS
YOUTH PROBATION	10
PROBATION SERVICE	7
COUNCIL FOR CHILD CARE AND PROTECTION	1
PROSECUTION SERVICE	1
PRISON SERVICE	2
OTHER	4

We have talked to one young person about the experiences on EM. Previous research shows that the despite the appropriate ethical process in place, it is difficult to involve young people and their families in research (Van Deuren, 2018: 8).

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.