

Management  
Model for  
**Electronic  
Monitoring  
of People**

SERIES FAZENDO JUSTIÇA | ELECTRONIC MONITORING COLLECTION







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**ELECTRONIC MONITORING COLLECTION**

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of People**

**BRASÍLIA, 2023**

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## PREFACE

The National Council of Justice (CNJ), in partnership with the Brazilian Ministry of Justice and Public Security (MJSP) and the United Nations Development Program (UNDP Brazil), jointly developed the Programa Fazendo Justiça (Doing Justice Program), which comprises a set of initiatives aimed at addressing systemic challenges related to deprivation of liberty throughout the Criminal and Juvenile Justice in Brazil.

The program aligns with the United Nations Sustainable Development Goals, specifically Goal 16 – Peace, Justice and Strong Institutions, to promote access to justice and strengthen institutions based on social inclusion.

The strategy proposes the creation or improvement of structures and services in the Brazilian Executive and Judiciary Systems, as well as the promotion of professional training, publication of knowledge products, and support in the production of regulations. There are 29 initiatives carried out simultaneously with different stakeholders, focusing on achieving tangible and sustainable results. Among them, the ‘International Articulation and Protection of Human Rights’ initiative seeks to promote the exchange of experiences between Brazil and other countries in the field of public policies on the Criminal and Juvenile Justice.

The program is currently in its third stage, which aims to consolidate the changes made and transfer the knowledge accumulated. The publications bring together the experiences developed and synthesize the knowledge produced during the first three stages, in addition to supporting professional training activities for a broad audience in the field.

Therefore, guides, manuals, researches and models were created in order to relate technical and normative knowledge to the reality observed in different regions of the country. These resources identified best practices and guidelines for the immediate and facilitated management of incidents.

To share its knowledge and communicate successful experiences to a wider audience, the program translated its main titles into English and Spanish. This strategy also involves promoting events, courses, and training in collaboration with international partners, as well as disseminating these translated knowledge products to spread good practices and inspire social transformation on a global scale.

**Rosa Weber**

President of the Federal Supreme Court and the National Council of Justice

## PRESENTATION

The prison and the socio-educational systems in Brazil have always been marked by serious structural problems, reinforced by diffuse responsibilities and the absence of nationally coordinated initiatives based on evidence and good practices. This picture began to change in January 2019, when the National Council of Justice (CNJ) began to lead one of the most ambitious programs ever launched in the country to build possible alternatives to the culture of incarceration, the *Justiça Presente*.

This is an unequalled inter-institutional effort of unprecedented scope, which has only become possible thanks to the partnership with the United Nations Development Programme in the execution of activities on a national scale. The program also counts on the support of the Ministry of Justice and Public Security through the National Penitentiary Department.

The publications of the *Justiça Presente* Series cover topics related to the program involving the criminal justice system, such as detention control hearings, alternatives to imprisonment, electronic monitoring, prison policy, support to people who have left the prison system, electronic system; and the socio-educational system, consolidating public policies and providing rich material for training and raising awareness among actors.

It is encouraging to see the transformative potential of a collaborative work focused on the causes instead of dealing only with the same and well-known consequences suffered even more intensely by the most vulnerable classes. When the highest court in the country understands that at least 800,000 Brazilians live in a state of affairs that operates on the margins of our Constitution, we have no other way but to act.

This “Management Model for Electronic Monitoring of People” proposes conceptual, principled, and empirical advances, offering methodologies for electronic monitoring services to the Judiciary, State Executive, and Municipal Executive. International grounds are used in a purposeful and protocol-based manner, warning, for example, the need to process and protect personal data based on the guidelines of the European Parliament and the Council of the European Union. The other innovations, also compromised with legality, seek to ensure the preservation of the fundamental guarantees of the life and human dignity of the monitored people, using electronic monitoring in a responsible and subsidiary way, considering the application of other less burdensome measures provided for by law.

**José Antonio Dias Toffoli**

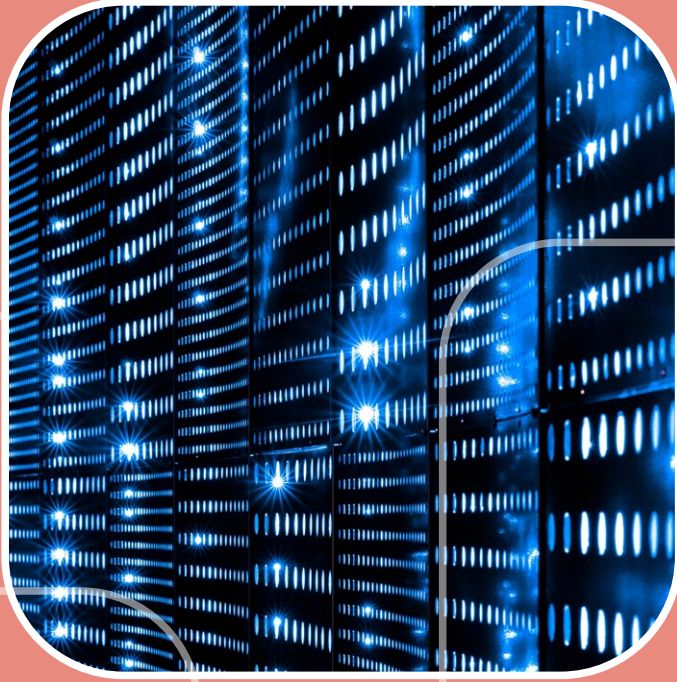
President of the Supreme Court and the National Council of Justice

## **ABSTRACT**

The following document consists of the proposal for the Management Model for Electronic Monitoring of People in Brazil, developed through the partnership between the National Penitentiary Department (DEPEN) and the United Nations Development Programme (UNDP). The model includes: introduction; history of the policy; guidelines and principles; description of the actors involved; guidelines on the use of the technology; guidelines and rules on data processing and protection; training; required resources (including team-building guidelines); indicators; and procedures manual. The Management Model for Electronic Monitoring of People discusses the monitoring bases and concepts and presents the national and international regulations related to the topic. Through specific protocols, the methodology aims to guide the Judiciary, State Executive, and Municipal Executive on the electronic monitoring of people. It also contains recommendations and norms regarding the work of professionals directly or indirectly linked to the Electronic Monitoring Centers, including the social protection network, which is considered essential for monitoring services. The Management Model aims to establish systematicity and standardization, leading to the qualification of services in the Federative Units and the construction and implementation of a national policy on the electronic monitoring of people. The methodology implies: decarceration; the application of electronic monitoring in a subsidiary way, always considering other less burdensome measures provided for by law; the use of monitoring as a resource to contain the number of pre-trial detainees; the application of the electronic monitoring in the phase of criminal investigation; the containment of the punitive power and excessive control; and the valorization of freedom, equity, and human dignity.

## **KEYWORDS**

Electronic Monitoring Management Model – Decarceration – National Penitentiary Department.



# INTRODUCTION

# 1 INTRODUCTION

This specialized technical product is the result of a consultancy developed with collaborative effort between the National Penitentiary Department (DEPEN) and the United Nations Development Programme (UNDP). Under the Public Notice 4/2015 – Project BRA/14/011, aims to develop a comprehensive Management Model for Electronic Monitoring of People in Brazil.

The following document refers to the seventh product of the aforementioned consultancy, supervised by the General Coordination of Alternatives to Imprisonment of the National Penitentiary Department. It is grounded in empirical evidence, research, dialogue with other experiences, and permanent debate involving professionals working in the area. Moreover, the proposal is in line with the national concepts, principles and guidelines for criminal justice services<sup>1</sup>, and several modalities of alternatives to imprisonment, taking into account the peculiarities of each of these fields in relation to electronic monitoring services. The proposed Management Model for Electronic Monitoring of People in Brazil is structured in 5 parts, which are:

- I – Conceptual aspects of the electronic monitoring of people;
- II – Diagnosis of the implementation of electronic monitoring of people policies in Brazil;
- III – Legal grounds, principles, guidelines, and rules for electronic monitoring of people;
- IV – Structuring of electronic people monitoring services;
- V – Educational processes for electronic monitoring.

The management model brings theoretical, conceptual, legal and normative foundations that deal with electronic monitoring, as well as presents contents guided by critical discussions. Then, it analyses quantitative and qualitative data on monitoring, composing the first national diagnosis on the subject since the emergence of Law No. 12,258/2010 (Brasil, 2010a). Procedures, recommendations, and instructions for electronic monitoring services are founded and described, considering the Judiciary, State Executive, and Municipal Executive Branches, as well as the Electronic Monitoring Center and the social protection network, delimiting roles, skills, competencies, and duties of each of the actors. The relevance of creating consensus and partnerships between the institutions that are part of the justice system and the social protection network is guided along the methodology, especially because the monitored people and women in domestic and family violence situations – in the case of restraining orders – are individuals marked by vulnerabilities even before the application of the measure. Also, the proposed model indicates educational plans for capacity building and training for the services.

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<sup>1</sup> The management model presented for monitoring services is aligned with the Prison Management Model produced by Felipe Athayde Lins de Melo and the Management Model for Alternatives to Imprisonment developed by Fabiana de Lima Leite. The materials are fundamental principiologistical bases for the construction of the prison policy and alternatives to imprisonment. Hence, the alignment between policies and their management models.

Taking as a basis the accumulation allowed by the products previously elaborated in this consultancy, as well as the models of prison management and alternatives to imprisonment, it is understood by electronic monitoring:

*the mechanisms of restriction of liberty and intervention in conflicts and violence, other than incarceration, within the framework of criminal policy, executed by technical means that allow indicating the location of the people monitored for control and indirect surveillance, oriented to the incarceration reduction.*

According to the document “The Implementation of the Policy of Electronic Monitoring of People in Brazil” (Brasil, 2015a), electronic monitoring services have not been able to reduce incarceration, since they are directed mainly at law enforcement (86.18% of cases), as an instrument of State control expansion and increase the fulfilling constraints of the sentence of deprivation of liberty. Together, pre-trial non-custodial measures and restraining orders correspond to 12.63% of the cases of electronic monitoring application. Each Federative Unit adopts its own logic and dynamics in applying and implementing the monitoring measure. The absence of national guidelines favors the adoption of varied and even inadequate procedures in the Electronic Monitoring Centers, in disharmony with the objectives of maintaining the measure, and reducing incarceration and the punitive power.

The management model can act in the reversal of the framework briefly drawn above, rooted in punitive practices and excessive criminal control that insists on maintaining imprisonment – and its variations – as an ideal response to solve of social conflicts. The management model is an innovative tool to guide and qualify electronic monitoring services nationally, ensuring the rights and duties of monitored individuals and other actors involved directly or indirectly at any stage of the services. The broad adoption of the management model can reduce the anomaly between normative legal discourses and empirical reality, notably operational. There is no point in drafting and enacting laws, leaving aside guidelines and socialization processes aimed at practice.

The guarantor bias marks the document in the sense of ensuring the rights of monitored people, which includes men in compliance with restraining orders, rights and care of women in situations of domestic violence who choose to use the portable tracking unit (PTU), as well as other actors involved directly or indirectly with the services. Inevitably, the measure does not affect only the person being monitored. It also affects people of their coexistence core – family<sup>2</sup>, friends, neighbors, and acquaintances. Hence, one more reason for the broad adoption of this methodology, given its

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2 The present Management Model does not consider the concept of family/family members in a restrictive perspective of rights. The historical and social nature is recognized in the conformation of the family institution, giving them a variety of forms. Family ties and even friendship, including marital relations, should be understood from an interlacing between the pre-existing parameters, foreseen in the Law Enforcement and the National Policy on Social Assistance – PNAS. Thus, the concept of family/relatives should not stand restricted to consanguinity or marriage, and should be understood from the relationships of emotional, psychic, material, financial and affective security that unites people.



systemic view and an indication of Integral actions to be consolidated in a network, especially referrals to programs and policies of protection and social inclusion already instituted and made available by the public authority. It is recommended that the application of all monitoring modalities existing in Brazil, even in cases aimed at law enforcement, be monitored based on this Model<sup>3</sup>.

Regarding political and methodological aspects, the management model focuses on the monitoring applied in cases of pre-trial non-custodial measures and restraining orders. Although its emphasis is on monitoring applied as a pre-trial measure, leading, as one of the objectives, to the containment of pre-trial detention, the management model can and should guide the implementation and qualification of the services in all Federative Units. It is indicated, then, the wide use of this methodology in the implementation of electronic monitoring services throughout the country. It is also important to highlight the subsidiary and residual application of electronic monitoring due to other modalities legally provided for, according to the National Council of Justice Resolution No. 213/2015 (Brasil, 2015b).

According to the aforementioned resolution, monitoring is not an alternative to imprisonment, does not promote the self-accountability of the monitored person, nor is it aimed at the restoration of relations and the promotion of a culture of peace. The National Penitentiary Department, as well as the National Council of Justice, envisages monitoring as an exceptional measure in relation to alternatives to imprisonment, for example. Electronic monitoring is indicated only when another less severe pre-trial measure does not fit, as an alternative to imprisonment and not as an alternative to liberty, as a tool to contain incarceration and reduce the high number of pre-trial detainees. It is emphasized, once again, that its application is not recommended during the law enforcement phase, since it could act as a mere mechanism of control and prison management.

Such propositions should also guide detention control hearings, recently implemented in Brazil. The potential to reduce the mass, arbitrary and illegal incarceration of people should be a prerogative of these hearings, always considering the exceptionality in the application of the electronic monitoring measure. Detention control hearings cannot mobilize punitive practices and excesses of criminal control, but promote the construction and improvement of a support network for people on temporary release (Ballesteros, 2016).

The purpose of this management model is not to disregard the peculiarities of each Federative Unit but to establish common criteria, discourses, principles, and procedures, legally established. The protocol implementation of electronic monitoring services is an essential element of the Management Model for Electronic Monitoring of People, allowing constant policy improvement according to national indicators, and training courses for stakeholders dealing with the subject. It is possible to minimize errors, based on practices and alternative decisions guided by “common sense”, reducing the field

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<sup>3</sup> This orientation is fundamental, especially because electronic monitoring lacks principles, norms, rules, guidelines of workflows and other protocols aimed at conducting services (Brasil, 2015a).

of interventions with an authoritarian and personal character in the conduct of the monitoring policy that, *a priori*, should be developed with a focus on the people being monitored.

## **1.1. Product context and importance**

### **a) Objectives**

The main objective of this product is to propose the Management Model for Electronic Monitoring of People in Brazil, with a focus on the pre-trial non-custodial measures and restraining orders. The monitoring applied in these measures integrates the objectives and perspectives of the national policy of electronic monitoring and should be applied in a subsidiary and residual way in relation to the other modalities legally provided, as an instrument to contain incarceration and reduce the high number of people in pre-trial detention, in accordance with National Council of Justice Resolution No. 213/2015 (Brasil, 2015b).

### **b) Expected results**

The Management Model for Electronic Monitoring of People must be widely disseminated by the National Penitentiary Department, the National Justice Council, bodies, entities, and institutions that deal with criminal policies directly or indirectly. To enable electronic monitoring services, according to this protocol, it is essential to implement capacity-building plans and training indicated here. Hence, the Model will be able to qualify services, avoid criminal situation worsening, as well as act, in some way, in the containment of pre-trial detention, taking the monitored person as the subject of this policy.

It is expected that, with the implementation of the management model, objective and subjective conditions will be analyzed from the reception and during the follow-up of the person monitored by the multidisciplinary team. According to the transitory nature of the measure, periodic evaluations and substitutions with less severe measures are expected. It is pointed out that the implementation of services focused on the person monitored as a subject of rights should promote referrals to the social protection network, however, without implying obligation.

To ensure the quality of services, the rights and duties of the monitored person require adherence to the management model by the Judiciary, State Executive Branches, and Municipal Executive, companies that provide monitoring services and the social protection network. The ground, concepts, structures, and workflows of this product aim to enable uniformity of the services and the incidents protocol treatment, guided by the actual cases, always seeking to avoid the worsening of the criminal situation. It is not intended, then, to disregard the singularities of the monitored people,

since the work of the multidisciplinary team is essential in the incident's treatment, reports production for the Judiciary, social inclusion, and access to fundamental rights by the monitored people.

The management model seeks to guide the *modus operandi* of electronic monitoring at a national level. It aims to offer a common ground to enable the dialogue and work of several actors in the development of a national policy. Thus, it is possible to generate national indicators for evaluation and continuous improvement of services. In this sense, it is essential to mobilize mechanisms of socialization of the management model for the different actors involved, especially through educational processes capable of guiding and arousing new practices and meanings to monitoring services.

### c) Innovation

Each Federative Unit develops monitoring services according to its own logic and dynamics. The laws and regulations on the subject are too generic and not very practical. There is room for the adoption of several concepts and procedures in the Electronic Monitoring Centers, not always in line with the perspectives of the national electronic monitoring policy.

The absence of protocols developed and applied to monitoring services reduces the quality of these and the maintenance of the measurement. Moreover, non-protocol guidelines based on common sense and value judgments favor discrimination and degrading forms of treatment of monitored people, in disharmony with the principles of the democratic state of law. This being said, the Management Model for Electronic Monitoring of People is an innovative methodology with a guarantee bias.

The proposed model should be adopted as an instrument capable of guiding services, holding the rights and duties of people at any stage of the measure fulfillment, as well as other actors involved directly or indirectly in the monitoring. The theoretical and practical basis, which includes workflows and procedures, consists of a collective task to prevent punitive power in its different forms; ensure the maintenance of the measure judicially imposed, preferring the treatment of incidents by trained multidisciplinary teams; promote monitoring services with a focus on the monitored person; and maintain the measure according to assumptions of legality, normality, privacy, human dignity, transience, reasonableness, and the least harm to the compliant. This Model is an innovative methodology to nationally qualify electronic monitoring services, conceiving them as alternatives to imprisonment.



## **JUSTIFICATION**

**WHY A MANAGEMENT  
MODEL FOR ELECTRONIC  
MONITORING OF PEOPLE?**

## 2 JUSTIFICATION – WHY A MANAGEMENT MODEL FOR ELECTRONIC MONITORING OF PEOPLE?

Although the Brazilian Government and its institutions are formally conceived under the principle of equality before the law, in general, it is characterized by the unique treatment of cases, by the privilege of certain people over others, “by the concern to meet first the interests of the State” (Miranda, 2005). The personal logic, typical of intimate social life environments, also permeates the Brazilian State (Holanda, 1995).

It is not the case to establish a derogatory view of the Brazilian bureaucracy, but only to emphasize its specificities, in which the distinctions to the bureaucratic-rational model cannot be understood as a “defect” of our system. Particular rights remain and management is founded more on status situations and relationships of personal dependence than on competence (Holanda, 1995).

Although surveillance power is widespread in society in a practical and also symbolic way, the monopoly of the use of violence, among other elements, that characterizes the State (Weber, 1979), undergoes changes from the movements of transnational networks not directly or indirectly linked to it. Castells (2005 and 2009) draws attention to the fact that, although the State still has imposing edges with regard to domination and resistance – the two sides of the exercise of power (Foucault, 2003) –, information flows escape the control of the State – an important issue to the electronic monitoring of people. Such a situation imposes new challenges to public policies, either local, regional, or national, especially because information is no longer a finished product, but a continuous work process (Soderberg, 2008, as cited in Albagli and Maciel, 2011) and that inevitably affects people’s lives.

According to the context synthetically mentioned, it is observed, in the country, unpreparedness or absence of structural conditions to deal with contemporary configurations emerged within the framework of information, and power, elements linked to electronic monitoring, the object of this management model. There is a need for definitions and the exercise of a more active and coordinated role on the part of the Brazilian Government that is, in fact, able to guide a way of insertion of the country in the “Age of Knowledge”<sup>4</sup>. Such effort, for example, could minimize the risk of the country remaining in a dependent and extremely fragile scenario in political and economic aspects. Concurrently, these innovation-oriented practices bring resistance with them, because some “established” managers and employees (Elias and Scotson, 2000) can interpret them as a professional or even personal threat, mainly because in Brazil “(...) the particular interests of the employee and the public position interests often get confused and the positions become the property of their occupants” (Schwartz, n.d., as

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<sup>4</sup> It is possible to highlight at this point the insufficiency of public debates, laws and regulatory agencies to deal with the subject, especially because of its complexity. To date, there is no law in Brazil, for example, that deals with the protection of personal data, as we will see later.

cited in Lobão, 1997, p. 46). All that added to an old obstacle, which is the deficit of management in several fields of Brazilian's public policies framework.

The introduction of new standards in line with the paradigm of the "network society" (Castells, 2005) is fundamental in the elaboration and conduct of Brazilian public policies through distinct methods of solving and controlling problems, reviewing and reconciling them. Abandoning practices guided by common sense, by "learning by doing" and by practical knowledge informed by the most experienced people due to work time and experience is elementary. Assuming the value and importance of practical knowledge, on the other hand, it must be recognized that it opens space for interventions of an authoritarian and personal nature when dealing with public policies that, a priori, should be developed for individuals in a universal and uniform manner, considering the assumption of equality<sup>5</sup> as an instrument to combat privileges based on the individuals status. Thinking about the primacy of the democratic state of law, the protocols consolidated here in this management model have a crucial role in the protection and guarantee of fundamental rights in an expanded way for different individuals regardless of their status:

*(...) These protocols, therefore, prevent their agents from committing infractions that could harm them judicially after they have been practiced. Obedience to such protocols is a guarantee not only of those users or customers of institutions, public or private, but also a guarantee of their agents that they acted correctly, by the book. Therefore, to not act like this is to take the calculated risk of doing something morally reprehensible, which will not find judicial support if by chance this disobedience has public effects. Constant surveillance of agents aims to ensure that their practices follow the recommended protocols and do not stray from them. Routines are thus discussed and explained, making them legitimate for the obedience of those involved (LIMA, 2013, p. 572–573).*

The policy of electronic monitoring of people can be implemented as an alternative to incarceration or as a mechanism for prison management and control, as it is widely the case in Brazil (Brasil, 2015a). Although antagonistic, several representations are able to shape imaginaries and practices about monitoring. It is possible to highlight the interweaving of at least two paradigms that form conceptions and practices about the electronic monitoring policy. The punitive paradigm emphasizes the validity of repressive and retributive practices associated with services that, in this case, seem always to lack more punitive apparatuses, especially since imprisonment, rather than the maintenance of an

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<sup>5</sup> One of the biggest problems for citizenship in Brazil would be the existence of a tension between two conceptions of equality. According to Cardoso de Oliveira (2010), this makes the State's actions often perceived by citizens as arbitrary acts. "On the one hand, our Constitution emphasizes a conception of equality defined as uniform treatment, following the dominant standard in Western democracies well expressed in the Constitution of 1988 through the idea of legal isonomy. On the other hand, such conception competes with another that defines equality as differentiated treatment, which seems to me dominant in our institutions in the public space, taken as the universe of social interaction par excellence in relationships outside the intimate circle of the actors" (p. 462–463).

alternative measure, usually sets up as an ideal response to criminal actions by the State. From this conceptual framework and thanks to technological advances, monitoring is also shaped by the paradigm of the “networked society” (Castells, 2009) that envisages processes of information communication at almost any level with high speed and reduced costs, mobilizing the growing fascination for surveillance techniques and disciplinary control based on microelectronics and technology.

According to the numerous outlines that monitoring can assume, the Management Model for Electronic Monitoring of People is justified as a possibility to guide and qualify services through protocols that can be applied at the national level for more diverse actors involved, as will be discussed later. They are considered aspects that organize the services in principled terms, forming a basis for management professionalization, permeating those who act directly or indirectly in the monitoring application, as well as the monitored people themselves – subjects of the monitoring policy. Then, the management model brings essential elements of the national policy of electronic monitoring of people, aiming to reduce incarceration rates, enhance the promotion of fundamental rights and minimize harm to people that are being electronically monitored.

The implementation of the model is able to offer parameters for policy evaluation, as well as actions aimed at improving services. It has an innovative, plural, and inclusive nature, especially because the electronically monitored person is not considered merely a subject of criminal law, but a subject of rights that, being free – even if watched – must have not only obligations, but rights and guarantees expressed herein.

The management model is supported by the Federal Constitution (Brasil, 1988), which enshrines and incorporates international human rights principles and norms. The dignity of the human person is listed in its article 1, highlighting freedom as a universal right of human beings. It also mentions that no one will be deprived of liberty or property without due legal process (art. 5, LIV), and neither can any person be found guilty until an unappealable criminal conviction (art. 5, LVII). The imprisonment sentence is understood, especially in Brazil, as the antithesis of the very notion of humanity. Hence, the need to contain incarceration is a matter of mass communication through actions, conceptions and protocols formulated for this purpose.

In this direction, overcrowding should be reduced by increasing the application of measures aimed at non-custodial measures<sup>6</sup> and alternatives to imprisonment. Deprivation of liberty should be adopted as a last resort and for the shortest possible time (UN, 2014).

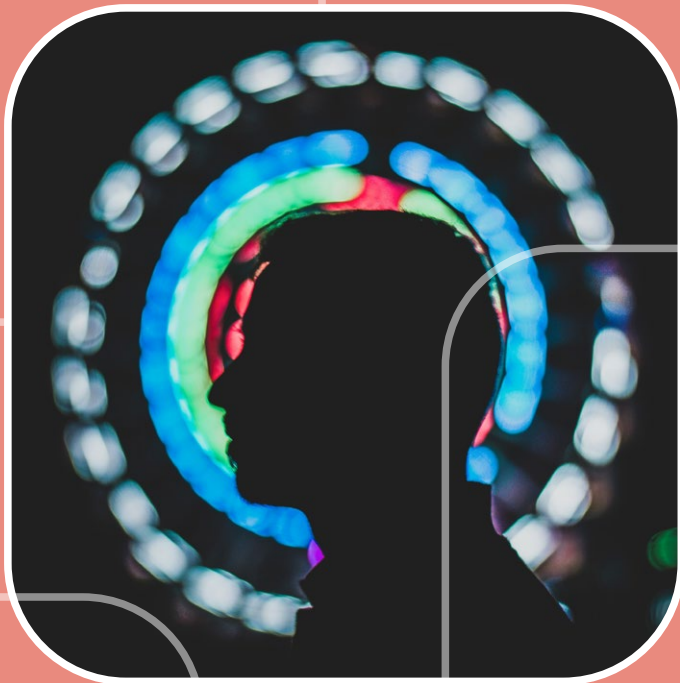
The propositions of the management model are ineffective if they are not linked to a broad dissemination effort, aggregating all actors of the justice system, public security institutions, managers of the Executive Branch, civil society institutions, technical teams and social protection networks. Adherence to the model and effectiveness of the proposed methodology for monitoring services require socialization

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<sup>6</sup> In Brazil, “non-custodial measures” consist of restrictive penalties, which are criminal sanctions imposed substituting the custodial sentence.

through educational processes and continued training. It is about changing and implementing new values and practices rooted and naturalized not only by managers, but by the most varied social segments. It is necessary to face the prevailing imaginaries in monitoring that are notably based on retributive and punitive perspectives, still dominant in the criminal justice system as a whole. And, from the conceptions, practices, workflows, procedures and other protocols listed in the management model, mobilize new representations and practices for services. The challenge contained in the proposal is structural and necessary for the consolidation of the national electronic monitoring policy.





**PART I**

**CONCEPTUAL ASPECTS  
OF THE ELECTRONIC  
MONITORING OF PEOPLE**

### 3 DYNAMICS OF CONTROL AND DISCIPLINARY SURVEILLANCE

In contemporary societies, we live with a multiplicity of technological devices aimed at the control and surveillance of individuals. Often, we observe cameras installed in houses, buildings, and condominiums, as well as in numerous points in the cities. A portion of the population believes that such mechanisms are capable of creating a safer society, even leading to a reduction in criminal occurrences. In addition, forms of control and surveillance are more and more incorporated by States in the “construction of a secure society”, setting the tone justified in policy elaboration in the areas of both public and criminal security<sup>7</sup>.

The urban planner Carlos Nelson Ferreira dos Santos (1985), contrary to the bias of control and surveillance as forms of urban security production, underlines the importance of the inhabitant’s participation in the production of the city, keeping this movement an intimate relationship with the exercise of citizenship. For the author, the city – the public space – is a privileged locus for conflict management resulting from tensions, contradictions, and heterogeneities, being the individuals responsible for the city appropriation and, consequently, for the regulation of the spaces in accordance with democratic outlines. The planner considers false the idea of permanent harmony, security and stability, while disputes and conflicts are inevitable and, above all, desirable elements in the collective construction of the city.

In a similar direction, Stanley Cohen (1972) warns us that the expansion of control and surveillance mechanisms can be associated with “moral panic”, which especially involves exaggeration in the conception of harm and risk, as well as an orchestration of panic by elites or powerful special interest groups, the construction of imaginary deviations and the dependence on diagnostic instruments. The aforementioned criminologist points out that “moral panic” is an exaggerated social response about beliefs on a threat of moral deviations, indicating concern and hostility of the population, which includes disproportionate claims on the potential harm that supposed moral deviants are capable of causing.

The researcher Van Den Hoonaard (2011), seeking to understand the meanings of “culture of fear”, points out that the abandonment of the system of traditional values and codes of behavior has been an important source of fear and aversion to risk, widely disseminated in western cultures,

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<sup>7</sup> In this direction, we observe that public resources are allocated to programs aimed at reducing crime rates, highlighting social control practices. In the Brazilian case, for example, we have the National Program for Public Security with Citizenship (PRONASCI), launched in 2007 by the Ministry of Justice and Public Security, part of which is used for the installation of surveillance cameras in several Federative Units. The program “Crack, It is Possible to Defeat” of the Ministry of Justice and Public Security adopted the strategy of territorial surveillance even more intensified.

and the responses to this fear and insecurity have been guided by the imposition of laws designed to protect us from each other. The citizens begins to define themselves by the consumption of such mechanisms, which, as a rule, promotes the “culture of fear”, and constant surveillance and monitoring are increasingly understood as necessary in the “ideal” social construction. This movement is also addressed by Bauman (1999) when he highlights “urban fear” as an element constantly nourished in people’s lives, being that “(...) avoidance and separation have become the main survival strategies in contemporary megalopolises” (p. 56), generating “the nonrecognition of the other” (Honneth, 2007) and, therefore, systematic suspicion mainly in relation to what represents difference.

Among the specific interest groups, the media stands out as one of the key actors in the production and reproduction of “moral panic”, of the “culture of fear”, mainly because “(...) our connection with the reality that surrounds us is mediated by ‘simulation’, a type of representation or inversion of the vision of this reality in which techniques and technology play an important role, because things and the world are not what they are, but the representation we make of them, a ‘simulacrum’ ” (Baudrillard, 1981–1985, as cited in Santos, 2011, p. 127–128). Moreover, the media, especially journalists, hold an institutionalized and socially legitimized position in creating realities, generally reinforcing spontaneous interpretations and mobilizing prejudices (Champagne, 1998). Remembering that all communication is an intentional action, the media institutions outlets often present the “official version of the drama” in which the “dominated” have fewer resources and power to control their own representations (idem), which corroborates in the production of stereotyped versions about them.

Considering this broader context of the dominant patterns of public security, we can note that the feeling of insecurity also finds broad legal and discursive support in the movements of expanding sentences, increasing punitive power and mass incarceration. The increasing investments in security and isolation, as well as the prison system expansion, is one of the reflections of a globalized society that foresees prison as the most radical form of spatial confinement of sectors considered difficult to control, the largest governmental concern and focus of attention of the political elite (Bauman, 1999).

“Hyper-incarceration” (Garland, 2008) presents itself as a reality in several nations, including Brazil, coordinating multiple factors and actors, reverberating in the increase of prison facilities, a higher number of prisoners, and longer sentences. This being said, we still have in this scenario the dynamics of criminal selectivity, directing the incarceration of groups as well as the punishment more sharply on some types of offenses, such as property crimes and drug trafficking (Brasil, 2015c). The conjugation of these two phenomena, mass incarceration and criminal selectivity, can be understood in the light of the paradoxical and ambiguous principles that organize social life in Brazil, indicating, among other things, that the transition to the democratic regime did not mean the end of inequality production in the criminal justice. Lima (2000) elaborates a model to explain our social organization consisting of unequal and complementary segments:

*(...) differences do not express formal equality, but formal inequality, proper to complementarity logic, where each has its place previously defined in the social structure. The strategy of social control in the pyramidal form is repressive, aimed at maintaining the status quo at any cost, under penalty of crumbling the entire social structure. Therefore, it is not intended that the components of society internalize the rules, but the hierarchy, since their application will never be universal, but hierarchical, which explains why the rules are applied unevenly to the members of society (Lima, 2000, p. 64).*

In this direction, mass incarceration finds support in projects associated with “building a safer society” through the expansion of the repressive capacity commonly associated with the security market. Therefore, day-by-day more people are arrested in Brazil, making the country globally recognized as one of the nations that arrest the most, with an imprisonment rate of more than 300 people deprived of liberty for every 100 thousand inhabitants. According to the “National Survey of Prison Information – Infopen – December/2014”, the prison population in Brazil reaches 622,202 prisoners, making the nation occupy the 4th place in the ranking of countries with the largest prison population. 40.1% of the prison population in the country – 249,668 individuals – consists of prisoners without conviction, who await trial while deprived of liberty (Brasil, 2015c).

A first look at this data indicates that political changes regarding pre-trial detention for drug trafficking may be ways to slow the rapid growth pace in the number of people deprived of liberty in Brazil. However, the implementation of public policies dissociated from the imaginary, and the prevailing punitive practices occupy more and more, a secondary place. We have the adoption of increasingly severe penalties, the broad criminal typification of conduct and, consequently, the increase in the incarceration rate. In addition, according to the report of the United Nations Working Group on Arbitrary Detention in Brazil (UN, 2014), the primacy of deprivation of liberty is noted, leaving other legal possibilities in the background. In fact, incarceration is the first measure adopted in the Brazilian criminal justice system, contrary to international human rights standards. Although states do not have the capacity or structure to, the document indicates a severe trend of mass incarceration. The actions gathered by criminal recrudescence, on the other hand, do not account for resolving social conflicts inherent in which any society – and, much less, minimize “violent sociability” (Machado, 2004).

### **3.1. Modern and multiple forms of criminal control – electronic monitoring of people**

Taking as an assumption the hierarchical dimension and the repressive strategies of social control widely adopted in Brazilian society, the deprivation of liberty penalty, which, in theory, arose in the place of the sentences of banishment and torture (Foucault, 1997), presents several nuances.

The prison has always been a tool widely used in social control, “everything is organized in such a way as to give them [prisoners] a clear sense of belonging to the lowest social stratum” (Thompson, 1980, p. 56). Therefore, it is concluded that prison is the space occupied by social minorities who, before “crowding” the prison, were already deprived of fundamental rights such as education, work, health, and housing, among others. It serves to resize such deprivations, covering an endless number of basic rights violations. Also, in the models we have, the prison does not isolate the individual and much less serves as an instrument of socialization aiming at the adherence of prisoners to laws, rules and social norms. This occurs especially in Brazil because, in the face of legal inequality, obedience to the rules takes a negative assessment, of subordinate obedience (Lima, 2013). In other words,

*(...) the repressive strategies of social control proper to societies legally unequal, in which the rules, by definition, do not represent protection for everyone – because they are not applied in a uniform and universal way, but in a particular and differentiated way to its members, by unequal definition –, have as a consequence the naturalization of externalization process of these same rules, that is, they are represented as external to the subjects, not providing conditions for their normalization. This circumstance, which officially justifies the repression of some segments of society over others, provides socially legitimate justifications for their systematic violation by non-normalized individuals (Lima, 2013, p. 565–566).*

Prison institutions are no longer the only designated control and surveillance spaces for those individuals who have violated the law by committing a possible crime – a moral action and socially framed in the criminal codification (Misse, 1999). Therefore, “in a highly technological world in which the information speed advances in the light of real-time, thinking of prison as dungeons and jails seem inadequate. *The jails should be virtual*” (Neto, 2009, *emphasis added*). Under the foundations of constant disciplinary surveillance arises the electronic monitoring of people, a policy in line with the social imaginary built and reinforced around the validity of repressive and punitive practices<sup>8</sup>. It presents numerous senses and can be read as a State response to the “(...) increasing loss of legitimacy of the criminal justice system, unable to justify their degree of selectivity and their inability to respond to the feeling of insecurity and impunity of the majority of the population (Zaffaroni, 2001). The political system reacts with proposals to reform the criminal control system” (Azevedo, 2004, p. 39).

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<sup>8</sup> On the punitive imaginary cultivated in Brazilian society as a phenomenon, even if it is not the tonic of this work, it is quite evident and increasingly common the practices of lynching/ “justice with own hands”. Research by Martins (2015) indicates that in the last 60 years, more than 1 million Brazilians have participated in an act or attempted lynching, which has become a component of Brazilian social reality, gradually losing its nature as an anomalous fact. The author indexed, over the years, 2,028 cases, concentrated especially between 1945 and 1998: in these, 2,579 individuals were reached by attempts and completed attempts; only 1,150 (44.6%) were saved, in more than 90% of the opportunities by the police. Another 1,221 (47.3%) were swallowed by popular fury, beaten, attacked with stoning, kicked, and punched, in this order and in this progression, up to extreme cases of eye extraction, ear removal, and castration. Among them, 782 (64%) were killed and 439 (36%) injured, according to the pioneering study.

Thus, among the new technologies associated with public security and criminal control, electronic monitoring emerges with vigor, driven by retributive reasons intoned by the punitive paradigm, as already noted. It is difficult to accurately determine all the foundations that have guided this technology since its creation, development, and deployment. We can say, however, that since the 1940s, in Canada, control experiments with the maintenance of people in their homes have been initiated (Japiassú and Macedo, 2008). The proposal to use electronic monitoring in a similar way to what we know today was inaugurated in the 1960s, the first documented experiments under the authorship of Harvard University professor of psychology, Ralph Schwitzgebel, who proposed electronic measures to control “delinquent young people” and “mentally ill” (Rodríguez-Magariños, 2005).

The use of this technology applied to criminal control occurred in the state of New Mexico in the United States, in the year 1977. On that occasion, Albuquerque Judge Jack Love was inspired by an episode of the Spiderman series, which depicted the superhero tracking his steps through the streets of New York through a bracelet purposely placed by the episode’s villain. Then the judge ordered electronics expert Michael Goss to design and manufacture a monitoring device. However, it was only in 1983 that the aforementioned judge ordered, in an experimental way, the monitoring of some sentenced persons in the city of Albuquerque. In that decade, in fact, there was a considerable expansion in the use of this type of surveillance, and in 1988, 2,300 prisoners were being electronically monitored in the United States. After a decade, the number of monitored people had already reached 95,000 (Mariath, 2009), which coincides with the explosion in the numbers of the world prison population.

Since its consolidation, in the 1980s, electronic monitoring applied to the prison universe has become an effective reality in law enforcement, in the control of the different stages of the sentence progression and/or in the precautionary guardianship in countries such as South Africa, Germany, Andorra, Argentina, Australia, Belgium, Brazil, Canada, China, Colombia, Denmark, France, Germany, Italy, Netherlands, Portugal, Scotland, South Africa, Spain, Sweden, Switzerland, Thailand, United Kingdom, and United States, among others.

The expansion of monitoring brings out new risk and danger parameters<sup>9</sup> at the same time it offers possibilities based on the guarantee of fundamental rights, suggesting, for instance, the containment of mass incarceration. The ambiguities and conflicts involving distinct interests, also considering the political value of electronic monitoring, indicate that there is much work to be done in this field, underlining once again the relevance of the proposed model.

Stigma is one of the main problems associated with monitoring services. The monitored individuals are necessarily under the guardianship of the State, both in the case of people complying with pre-trial non-custodial measures and restraining orders or people at different stages of law

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<sup>9</sup> Aspects related to the risks of monitoring will be detailed below, including the principles proposition and guidelines to minimize them.

enforcement, whether convicted or not. A fundamental element that the monitoring device brings to it is the stigma (Goffman, 1988), which in itself can be taken as a downward, highly degrading factor of social inequality, considering that we live in a society largely guided by values and practices that morally condemn and repress any symbol or sign linked to prison. Remembering that “the normal” and the stigmatized are not people, but perspectives that are generated in social situations during mixed contacts, due to norms [*values and meanings*]<sup>10</sup> not fulfilled that probably act on the meeting” (Goffman, 1988, p. 148–149). The author, when discussing social deviation, emphasizes that “delinquents and criminals”, for example, are people considered engaged in a kind of collective denial of the social order, lacking morality and representing “defects in the motivational schemes of society”. According to this perspective, monitoring compromises social engagements within the principle of normality – which will be shown later –, ignoring the promotion of equal dignity and human rights.

Updating the Goffmanian perspective, we include the processes experienced by the people affected in the list of stigmatizing situations. From a symbolic point of view, the monitored person is an individual who is in the liminality between imprisonment – the “anklet” is a symbol associated with imprisonment – and freedom, since the latter is limited in time and space, guarded and threatened by technical incidents or even treatments and responses based on the “common sense” of each employee who can take him/her to prison. However, from a practical point of view, the monitored person is not in a criminal institution, and in the case of those who comply with measures, many have not even passed, at some point in their lives, through the prison environment, not having any familiarity with this type of socialization. With this, electronically monitored people, regardless of whether they are at the stage of a criminal investigation or law enforcement, must have their fundamental rights guaranteed. As they are under the guardianship of the State, their rights cannot become benefits, as if electronically monitored subjects were “benefitted with an alternative measure to imprisonment” when what would fit them would be imprisonment – a recurring narrative identified in many actors’ speeches who daily deal with monitoring services.

When total dichotomies – “arrested”, “monitored”, “guarded” x “citizen”, “worker”, “good man” – are created to “put and keep each one in its place”, it disregards the changes inherent in any individual and society, as if we lived under a watertight structure, which constitutes a complete illusion. The monitored person should have a life as close to normality as possible. Therefore,

*Despite the salutary measures that avoid imprisonment, it is also necessary to make sure that the non-custodial measures are in line with the intent for a minimum criminal law, which does not mean only caution in the typification of conduct of criminal repression, but still, and especially, that alternative penalties are listed aiming only at their fulfillment, and that,*

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<sup>10</sup> Emphasis added by the author.

*to this end, do not exceed the limits of the dignity of the convicted person, nor lead him/her to unjustified embarrassment (Estorilio, 2012, p. 16).*

The Brazilian Code of Criminal Procedure (Brasil, 1941) is also clear in this matter when it comes to rehabilitation in Chapter II in the articles listed below:

*Art. 743. Rehabilitation shall be requested from the sentencing judge after at least four or eight years, depending on the convict or recidivist, counted from the day on which the enforcement of the main sentence or the detention security measure has ended, and the applicant shall indicate the regions in which he has resided during that time.*

*Art. 748. The previous conviction will not be mentioned in the history sheet of the rehabilitated, nor in a certificate extracted from the books of judgment, except when requested by a criminal judge.*

Thus, we presume, especially from the content of art. 748, rights to guarantee that no degrading identity or social representation be permanently assigned. The labels “monitored” or “arrested”<sup>11</sup> are fundamentally transitory since the legislation does not provide for life imprisonment in Brazil. Therefore, one of the most important objectives of the prison system, although its negligence concerning this subject, is to promote the return of individuals to society. The code implies secrecy about the passage through the prison after a certain period counting from the date of the end of the sentence or the detention security measure, promoting the erasing of any designation linked to personal experiences within the prison system and opposing a reified social model that, as a rule, brings inequalities and excludes the “ex-prisoners”. If this is possible and has legal foresight in the case of imprisonment, the same should be considered in the case of electronic monitoring, especially because it is an intermediate measure, which is not exactly incarceration.

If, in the judge’s understanding, the arrest was not necessary, the measure applied (pre-trial non-custodial measure or restraining order) is sufficient for the intended guardianship, so freedom must be primary for the person to adhere to the norms through referral to psychosocial services, as will be explained in the follow-up methodology. The elaboration of an electronic monitoring policy based on the dignity of the human person must necessarily ensure that the monitored person – before and after the measure – has a life as close as possible to normality, in an effort to minimize any type of damage (physical, moral, psychological, etc.), as well as access to fundamental rights. Having a life

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<sup>11</sup> In many Electronic Monitoring Centers, it is recurrent to hear the term “arrested” to designate any person monitored, both at the stage of serving and criminal investigation. The forms of personal treatment follow the flow dictated by the prison system that perpetuates labels and stigmas, a practice that does not comply with our Constitution as provided in art. 5th, LVII – no one will be considered guilty – until an unappealable criminal conviction. Hence, the term “arrested” is highly inappropriate in this context. Expressions such as “monitored person”, “person being monitored”, “measure-compliant” are considered more appropriate.



guided by normality means, among other things, the real possibility of developing activities under the social standards imposed on society as a whole: the "(...) lawful work in search of subsistence should not be prevented under penalty of breaking with any of the 'vital elements' brought by the constituent in the item IV" (Estorilio, 2012, p. 23). To this, we also add education, health, leisure, family, etc.

Monitoring services are seen by most operators as more of a public safety concern and not as a criminal policy. It becomes, for example, a naturalized practice to share the data of the monitored people with the police, especially when there are arrest targets as indicators of public security policies. This indicates a weak alignment of the criminal policies of each Federative Unit, represented in this case by the Electronic Monitoring Centers, with the current criminal policy developed by DEPEN. There are different understandings regarding the preventive work of the police in the treatment of incidents involving monitoring. In this direction, criminal selectivity is driven, since

*the criminal justice system always acts selectively and selects according to stereotypes manufactured by the mass media and in tune with the need for defense and protection of the interests of the elites. These stereotypes allow the cataloging of the criminals matching the image that corresponds to the description created, leaving out other types of delinquents (Zaffaroni, 2001, p. 130).*

This finding also relates to electronic monitoring of people, especially when we analyze the performance of public security institutions in this field. They operate selectively and severely on those subjects and territories that are already criminally labeled (Souza, 2013). Monitoring, insofar as it imprints on the individual's body its weight and its marks, ends up "facilitating" this "selection". This practice is inconsistent with the Constitution, confronting a variety of devices provided for in the legislation, such as the principles of the presumption of innocence, proportionality, reasonability, individualization/humanization of punishment, resocialization, the principle of culpability, subsidiarity, alterity, prohibition of strict liability in the criminal proceedings, offensiveness, and isonomy (Copetti, 2001, as cited in Souza, 2013, p. 40).

### 3.1.1. Technical aspects of electronic monitoring

According to information from the research committee of the *Correctional Service of Canada* (CSC), the first generation of electronic monitoring technology featured frequency radio (RF) transmissions. Such systems are unable to control the movements of the individual, being the vigilance limited to check if the same is in an approved location at a specified point in time (Black and Smith, 2003; John Howard Society, 2000; as cited in CSC, 2007), serving primarily detention purposes. As a result, there has been a growing interest in applying more advanced global positioning satellite (GPS)

technology as an alternative tool to increase surveillance of convicts in society (Lilly, 2006, as cited in CSC, 2007).

Available in active and passive formats, compared to RF systems, GPS technology is able to continuously monitor the movement of an individual 24 hours a day in “real-time” when active systems are used. In addition, areas of inclusion and exclusion can be programmed, designating the geographical locations in which an individual has or does not have permission to enter and remain<sup>12</sup> according to court prescription.

In general, the electronic monitoring that has been adopted in Brazil combines solutions in hardware and software, consisting of the implantation of an electronic device in the body of the individual (indicted or convicted) that begins to have restrictions on their freedom, being observed – monitored – by an Electronic Monitoring Center created and managed by the governments of the states. Monitoring in Brazil works through a device placed on the ankle, named “electronic anklet” or simply “anklet”. The “anklet” is designed to be used for as long as the imposed measure lasts. The model that has been used in Brazil<sup>13</sup> sends continuous signals and personal geolocation data<sup>14</sup> to the Center, enabling verify the presence of the monitored person in the inclusion area, thus as it verifies that the person stays away from the exclusion area, which corresponds to the area not allowed for circulation in accordance with the judicial order. The device is powered by a rechargeable battery and sends specific alarm signals if there is a low charge or bad functioning. Optical fibers are used to detect any damage or violation attempt to the device and transmit the signal to the Centers. GPS technology is predominant in Brazil, but it is possible to observe, in a very restricted way, the use of RF technology, especially in places without GPS and cell phone reception.

Another device that can integrate the monitoring services is the portable tracking unit (PTU), available in some Federative Units. The PTU is usually employed to ensure restraining orders that

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12 Passive GPS operates in a similar manner, but location and movement data is downloaded, usually once a day, when the monitored individual returns home and places the device on a base that connects to the control center. In both its active and passive forms, GPS technology essentially operates by receiving signals from a constellation of satellites capable of triangulating a position, storing or communicating that location to a control center (CSC, 2007).

13 It is noteworthy that radiofrequency is a technology modality adopted in electronic monitoring services in several countries, and GPS technology is used for more restrictive cases, such as in matters related to domestic and family violence.

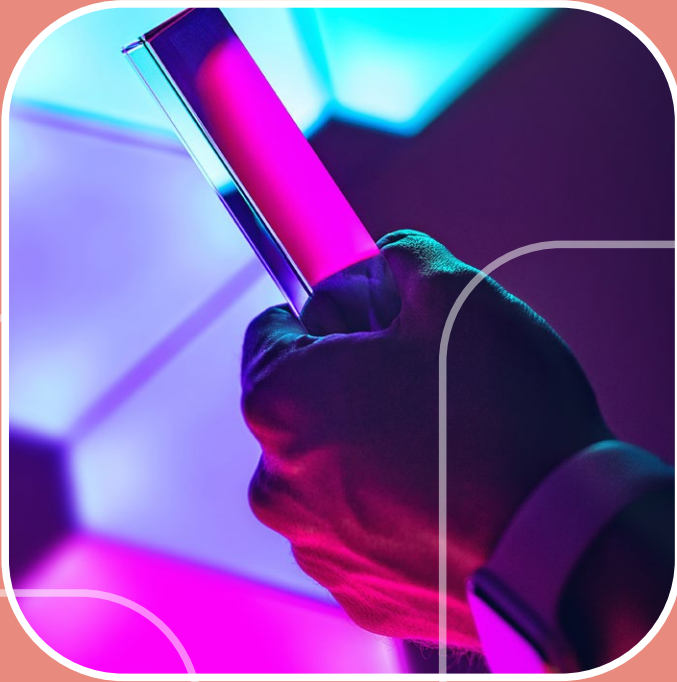
14 Geolocation or georeferenced location is a feature capable of revealing the geographical location through IP address, wireless network connection, cell tower with which the phone is connected, and dedicated GPS hardware that calculates latitude and longitude from the information sent by satellites in the sky. In the case of electronic monitoring, this information is shared with the Electronic Monitoring Centers and the companies that provide services to the Centers. One of the methods of geolocation triangulates the position of the individual with the location of the different towers of their mobile operator (hence, for example, monitoring device models usually adopt two chips of different service providers). This method is fast and does not require any dedicated GPS hardware, but it only gives a rough idea of where the individual is. Another method uses some dedicated GPS hardware in the apparatus to communicate with some dedicated GPS satellite that is orbiting the planet. GPS can normally identify the location within a few meters. The downside of a dedicated GPS chip in the handset is the high energy consumption. Google Maps uses both methods: first, a large circle appears that approximates your position (looking for a nearby cell tower), then a smaller circle (triangulating with other cell towers), then a single point with its exact position (picked up by a GPS satellite).

force the man to keep his distance from the offended, according to Law No. 11,340/2006, known as the Maria da Penha Law, which deals with domestic and family violence against women (Brasil, 2006). When the personal monitoring device, known as “anklet”, and the portable tracking unit are properly used by men and women, respectively, dynamic exclusion areas are generated according to the geolocation of these individuals, informing any inadequate approximation between them to the Electronic Monitoring Center, which should treat the incident as will be detailed below. In other words, this surveillance system allows verifying in real-time the location of those who wear the PTU and those who wear the “anklet” in a relational way to measure the approximation between them and evaluate the situation.

The restraining orders applied by the judge may cumulatively include a pre-trial non-custodial measure with electronic monitoring of men who perpetrated violence against women. However, it is important to carefully analyze each case and apply monitoring measures only when necessary. Active listening of the parties is essential in this process because the wide use of monitoring in domestic violence cases can, depending on the situation, worsen conflicts and violence. Electronic monitoring is not a tool capable of solving and extinguishing domestic and family violence because it does not enable the administration of conflicts that are essentially relational.

In the Electronic Monitoring Centers, the system interface is displayed on large screens, enabling the team to work better on the surveillance activities. The system is built from the storage of information in a database that accumulates data on behavior and location in certain periods of time of each individually monitored person. It is understood that the body of the electronically monitored person is converted into information flows. Geolocation data is transmitted to the plants practically continuously. The continued flows of electronic monitoring information are highly sensitive personal data, as will be explained below. All personal data of monitored individuals are sensitive, as there is potential for discriminatory or particularly harmful use not only to an individual but also to a community, as will be seen below. Carelessness and misuse of this data can incite stalking and unjustified arrests, fueled by stipulated prison targets in the public safety area, for example. Geolocation data have a significant potential for harm concerning the privacy of the monitoring individuals, allowing excessive exposure not previously stipulated in the judicial measure.

There are norms and procedures that the monitored person must observe: respect for the defined limits on areas of inclusion and also exclusion, including schedules when established by the judge; control over battery recharges, enabling their connection to the Electronic Monitoring Center and constant surveillance; care with the “anklet”, avoiding possible damage to the device. Non-compliance and carelessness involving any of these aspects can generate incidents. Every incident is identified by the system, sending a response and intervention of the team that deals with monitoring services.



**PART II**

**DIAGNOSIS OF THE  
IMPLEMENTATION OF  
ELECTRONIC MONITORING OF  
PEOPLE POLICIES IN BRAZIL**

## **4 DIAGNOSIS OF THE IMPLEMENTATION OF ELECTRONIC MONITORING OF PEOPLE POLICIES IN BRAZIL**

This part of the management model lends itself to presenting the first diagnosis of electronic monitoring in Brazil. In a preliminary way, the survey sought an understanding of the essential aspects of electronic monitoring services in each Federative Unit. It is justified, among other things, due to the electronic monitoring policy's lack of standards or guidelines, following the accelerated policy basis, without national principles and guidelines with clear service protocols. As a result of this deficiency, the National Council of Justice and the Ministry of Justice signed the Technical Cooperation Agreement No. 5/2015 (Brasil, 2015d), an important milestone in this arena, which also helped in the elaboration of this management model.

According to the following diagnosis, between January and July 2005, there were 18,172 monitored people in Brazil (88% men and 12% women, a similar pattern found in the actual law enforcement). There were Electronic Monitoring Centers deployed in 19 units of the Federation – in 17 units the services were implemented, and in 2 units the services were in the testing phase. The diagnosis pointed to the expansion of the policy through agreements between the National Penitentiary Department and the Federative Units. The monitoring policy promoted by DEPEN included, at that time, 10 Federative Units, and of the 10 agreements, 6 were concluded in 2014. As for services, the variation of R\$ 167.00 to R\$ 660.00 was observed in relation to the average monthly cost per person monitored in the units of the Federation, with the average cost of R\$ 301.25 and the median of R\$ 240.95. This cost basically involves hiring companies to install and maintain the “anklets”; it does not cover the total cost of electronic monitoring services.

The absence of protocols and guidelines favored and still favors, among other things, the emergence of conflicting situations from the point of view of legislation and the fundamental rights of the monitored person. Moreover, the diagnosis pointed, to the use of electronic monitoring services in cases of external work and probation, despite questions about the legality of such practices.

The services are poorly structured: they are practically in law enforcement, they are not presented as an alternative to imprisonment, and, above all, they have insufficient space for the monitored person to be as a subject of this policy. From this, it follows several violations. There are, for example, many problems involving the protection and processing of electronic monitoring data in the Centers (personal data, location of the monitored, among others), especially when the data are shared with public security institutions indiscriminately (without any establishment of protocols and rules). The absence of norms and protocols capable of, among other things, guiding and regulating the circulation of information with strict purposes in the treatment of incidents favors not only the

lack of care with personal data of the monitored individuals but, above all, induces abusive forms of treatment, such as the investigation by suspicion of the people monitored, especially considering the inquisitorial character of Brazilian police practices (Lima, 1989).

In the framework of punitive reinforcement, we note that the lack of basic consensus in the application of services also encourages responses based on excessive disciplinary control. So, for example, a complete discharge of the electronic monitoring device battery can generate a “violation input” in the monitoring system and trigger the police, which can even cause the arrest of the monitored person.

The use of the “anklet”, as a rule, causes physical, social, and psychological harm, limits social integration, and does not generate a sense of responsibility. The absence of psychosocial staff in most of the Centers impacts the qualitative follow-up of the monitored persons and possible connections to the social support network, maximizing harmful effects. Only 6 of the 17 Electronic Monitoring Centers had, in the period studied, the role of psychologist, social worker or bachelor of laws. Monitoring services are predominantly carried out by prison officers and the contracted company.

The absence of a policy at the national level fuels the growth of monitoring services in an unplanned way, without guidelines and protocols. This being said, the effort of the first diagnosis consisted in building a kind of political portrait, guiding all the other products that were developed and, especially, this management model. We now move on to the former position of methodological aspects of the product. Then, we will present data and other empirical information about the services.

## **4.1. Methodological note**

The report, a product of consultancy contracted from a partnership between the National Penitentiary Department and the United Nations Development Programme, is substantiated in bibliographic research, empirical experience from visits to Electronic Monitoring Centers, seminars directly or indirectly related to the topic, meetings, and informal conversations held with employees of the General Coordination of Alternatives to Imprisonment (CGAP) of the National Penitentiary Department (DEPEN), including detailed reports about the services and the electronic monitoring policy in the country. Part of what follows in these pages was provided through exchanges and discussions with members of the Working Group (WG) established to support the National Penitentiary Department in the formulation of a Management Model for Electronic Monitoring of People.<sup>15</sup>

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<sup>15</sup> The Working Group to support the National Penitentiary Department in the formulation of a Management Model for Electronic Monitoring of People was established by the Director General of DEPEN through Ordinance No. 42 of February 10, 2015. The WG was extended through Ordinance No. 259, on April 26, 2016, for 12 twelve months.

The quantitative information provided in this study was collected from secondary sources maintained by Electronic Monitoring Centers, Departments of Justice, Penitentiary Administration, and similar entities at the state level. DEPEN formally requested this data through official letters to the referred Centers and Departments on January 30, 2015, in order to draw the first diagnosis of the electronic monitoring policy in the country. The instrument for collecting information was a structured questionnaire sent in electronic format, and its completion was preferably carried out by the director or coordinator of the Electronic Monitoring Center. In Federative Units where monitoring services were not deployed during the period of data collection, the questionnaire was completed by a manager appointed by the head of the Department of Justice, Penitentiary Administration, or similar. The objective was to collect essential data on the monitoring services in each Federative Unit, such as: the current stage of the policy; date of implementation; maximum capacity of people monitored simultaneously, according to contractual forecast; total people monitored simultaneously; modalities of use, according to prison conditions or measures applied; specification of the monitored audience according to gender; identification of the team involved; technology used; average monthly cost per monitored person.

As provided in the letter, the completion of the questionnaire and its return to DEPEN (via email or regular mail) should take place by February 6, 2015, in an effort to limit the period of data collection with the Federative Units, considering the dynamism inherent in the numbers of electronic monitoring. However, as many states did not comply with the initially stipulated deadline, the data collection period was considerably extended. Therefore, the period of data collection and systematization began to comprise the months of February to July 2015. It is important to highlight that the due return of some states occurred only after persistent contacts via telephone and email, already within the scope of this consultancy. The constant management exchange in some Centers and States Departments increased this difficulty because obtaining the information meant dealing with additional steps in the process, which are: identifying the manager or the employee responsible for completing the questionnaire, obtaining the contact info (phone number and email), making or remaking the request, etc.

All the barriers encountered during the collection show, on the part of certain states, lack of experience – this being the first national survey on the subject – or absence of a specific structure for data and information processing on monitoring services.

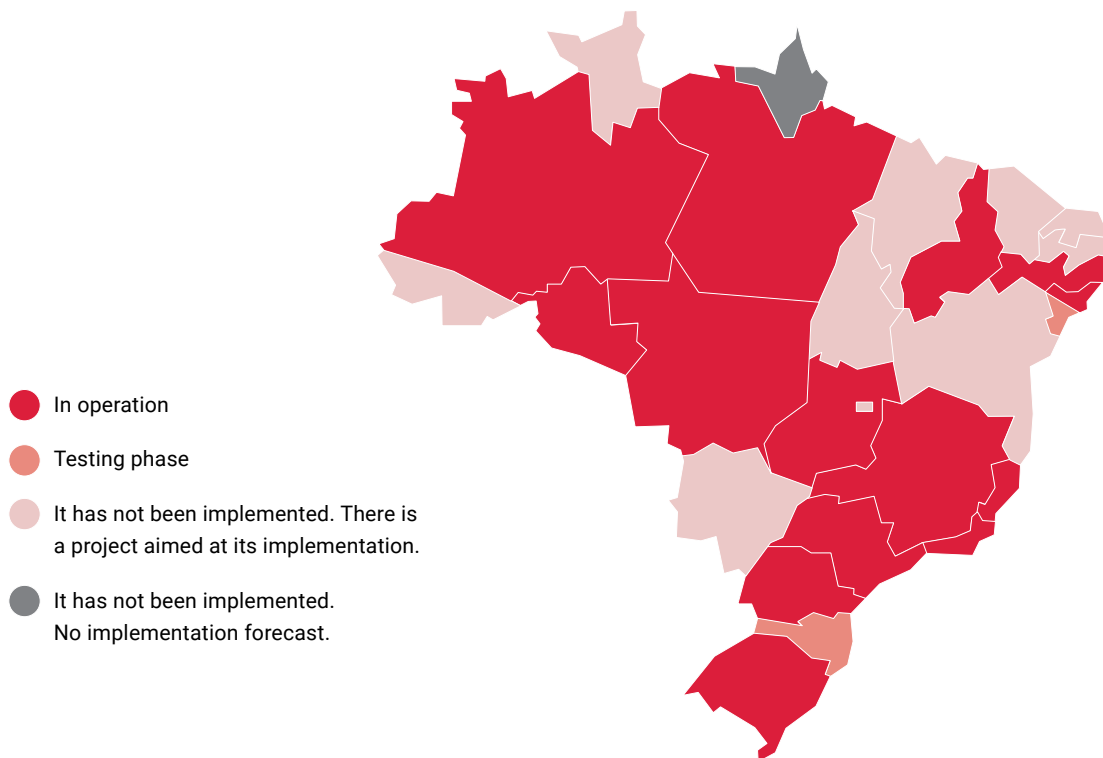
Much information was not recorded/collected, as well as some fields of the questionnaires were not properly filled, which implied contact with the managers for timely assessment and eventual clarification. As a methodological solution, it is essential to indicate that, in the face of the impossibility of complementary measurement capable of resolving the inconsistencies that have arisen, some data were purposely disregarded or considered with caveats (case by case indicated).

The survey that follows, considering the obstacles already outlined, is far from being definitive, demanding improvement with a view to qualifying the information management within the scope of the electronic monitoring of people policy. Its primary objective is to identify and understand the

phase of the electronic monitoring policy in the country, thus allowing an open reading, able to point out important elements in this specific agenda.

## 4.2. Electronic monitoring policy phase in Brazil

**Figure 1: Electronic monitoring policy phase in Brazil**



Source: DEPEN, February to July 2015<sup>16</sup>

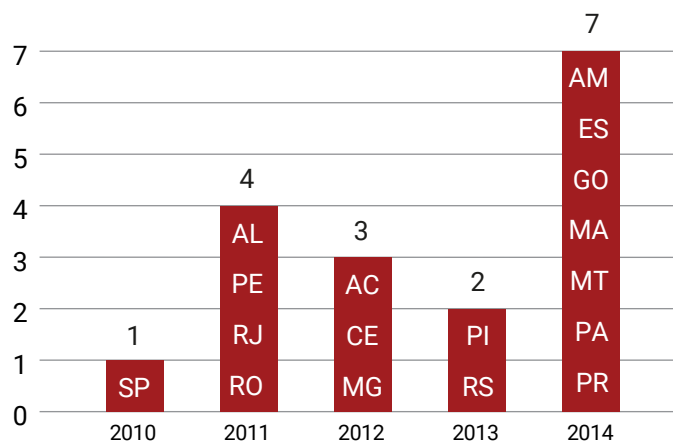
Figure 1 presents an overview of the current phase of the electronic monitoring policy, considering the entire national territory. As can be seen, 16 Federative Units have implemented electronic monitoring services – they are operating in 14 units and being tested in 2 units. Signaling the expansion of the policy, 10 units of the Federation already have a project aimed at implementing monitoring services. Out of this perspective, only Amapá has not implemented and does not present a project in this direction.

<sup>16</sup> All figures, charts and tables in this document have been elaborated based on the information measured through the questionnaires on electronic monitoring services. As explained in the methodological note, the structured questionnaires were preferably completed by the director or coordinator of the Electronic Monitoring Center and/or director of the States Departments. The collection period covered the months of February to July 2015.



### 4.3. Implementation of the policy by year in the Federative Units

Figure 2: Implementation by year in the Federative Units



Source: DEPEN, February to July 2015

Figure 2 shows that 2010 marked the beginning of the effective implementation of electronic monitoring in Brazil, being the state of São Paulo pioneer in the implementation. In 2011, the policy was implemented by Alagoas, Pernambuco, Rio de Janeiro, and Rondônia, totaling 5 Federative Units. Acre, Ceará, and Minas Gerais began to develop electronic monitoring services in 2012, which makes 8 Federative Units performing monitoring services. The year 2013 showed a decrease in the implementation of services growth, incorporating Piauí and Rio Grande do Sul in the policy that, at that time, already gathered 10 Federative units. The year 2014 marks the considerable expansion of the electronic monitoring policy, implemented in Amazonas, Espírito Santo, Goiás, Maranhão, Mato Grosso, Pará, and Paraná, totaling 17 Federative Units with monitoring services.

The significant increase observed compared to previous years (2010 to 2013) indicates a recent emphasis on implementing electronic monitoring services. This growth suggests a priority placed on adopting and utilizing such technologies. In this direction, it is worth highlighting the promotion of the policy through agreements between the National Penitentiary Department and Federative Units started at the end of the year 2013, with an investment of around R\$ 9 million in monitoring services in the last two years. Underlining the recent priority in this specific point of criminal policy, it was planned to invest R\$ 26 million in electronic monitoring services for the financial year 2015.

The monitoring policy promoted by DEPEN included, at that time, 10 Federative Units, and from the 10 agreements, 6 were concluded in 2014. Alagoas, Goiás, Espírito Santo, and Maranhão already develop monitoring services with their own resources, and additionally, they have agreements with DEPEN to expand the services. Bahia, Distrito Federal, Mato Grosso do Sul, Paraíba, Santa Catarina, and Tocantins also have agreements signed with DEPEN, aiming at implementing monitoring services.

#### 4.4. Maximum and total capacity of people monitored simultaneously

**Table 1: Maximum and total capacity of people monitored simultaneously**

Federative Unit	Maximum capacity of people monitored simultaneously (contractual forecast)	Total people monitored simultaneously
AC	1,500	418
AL	728	505
AM	1,000	211
AP	-	-
BA	-	-
CE	300	296
DF	-	-
ES	1,000	356
GO	1,850	1,519
MA	1,800	110
MG	4,653	2,390
MS	-	-
MT	5,000	668
PA	1,000	407
PB	-	-
PE	2,300	2,300 <sup>17</sup>
PI	1,000	63

<sup>17</sup> According to the visit carried out at the Pernambuco Electronic Monitoring Center, it was recorded that the maximum capacity of 2,300 people is deployed in 4,641 monitored. According to the Center's information, all temporary releases are monitored, in addition to modalities such as semi-open conditions in external work, house arrest, pre-trial non-custodial measures, and restraining orders.

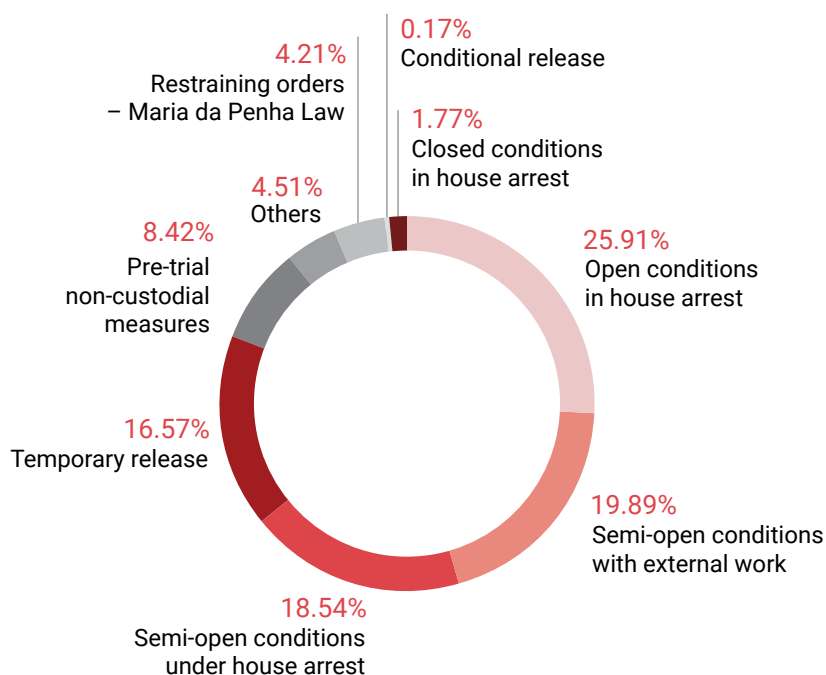
Federative Unit	Maximum capacity of people monitored simultaneously (contractual forecast)	Total people monitored simultaneously
PR	5,000	818
RJ	2,000	1,436
RN	-	-
RO	1,500	1,157
RR	-	-
RS	5,000	1,318
SC	-	-
SE	-	-
SP	4,800	4,200
TO	-	-
<b>TOTAL</b>	<b>40,431</b>	<b>18,172</b>

Source: DEPEN, February to July 2015

Table 1 shows the capacity of people monitored simultaneously, according to the contractual preview of each Federative Unit, totaling a capacity at the national level of 40,431 people. As measured by the answered questionnaires, the total number of simultaneously monitored individuals reached 18,172 people throughout Brazil, that is, about 45% of the total capacity contractually foreseen. In most Federative Units, monitoring services do not work with 100% of contractually planned capacity, indicating a gradual expansion of the services.

## 4.5. Electronic monitoring services modalities use

Figure 3: Methods of use



Source: DEPEN, February to July 2015

Figure 3 shows the percentage of use of electronic monitoring in the country according to prison conditions or measures applied<sup>18</sup>. As can be seen, 82.86% of the people monitored were in law enforcement: open conditions in house arrest (25.91%); semi-open conditions in external work (19.89%); semi-open conditions in house arrest (18.54%); temporary release (16.57%); closed conditions in house arrest (1.77%); conditional release (0.17%). Pre-trial non-custodial measures (8.42%) and restraining orders (4.21%), which add up to only 12.63%, may indicate the possibility of a decarceration process. Still, electronic monitoring in these cases can also serve as a tool for excessive control. To date, it is still being determined whether monitoring has been used as an alternative to imprisonment or as an alternative to liberty.

Electronic monitoring has been used timidly as a pre-trial non-custodial measure (8.42%). This indicates that 1,450 people are monitored under pre-trial non-custodial measures, which has a small impact on the reduction of pre-trial detention in the country, reaching 250,213 people in a universe of 607,731 incarcerated individuals. That is, 41% of people deprived of liberty are imprisoned without conviction, the same proportion of people in closed conditions (Bras

<sup>18</sup> In this specific chart, the category "without information" was not considered, as will be observed in the following table.

il, 2015c). In any case, the high number of pre-trial detainees and the low use of electronic monitoring in pre-trial non-custodial measures may indicate that there is room to be occupied by monitoring as a substitute for the deprivation of liberty of non-convicted people, always in a subsidiary way to the application of alternatives to imprisonment.

Also, as indicated by research published and developed by the Institute of Applied Economic Research (Brasil, 2014a) on the application of penalties and alternative measures, custodial sentences are seen as the solution in the context of criminal policy. In the criminal cases studied, the custodial sentence is the most frequent type of sentence (46.8%), while alternative sentences represent 12.2% of cases.

Restraining orders are also not focused on the monitoring policy, comprising 4.21% of services. That is, 725 monitored people comply with restraining orders in a universe of 18,172 people. This picture indicates, among other things, a conservative and non-disconcerting tendency in the conduct of the electronic monitoring policy, applied as a control tool in law enforcement, even in the hypotheses that have legal forecast questioned, such as, for example, the semi-open conditions in external work and probation, which corresponds to 19.89% and 0.17% of services, that is, 3,425 and 29 people monitored respectively.

Ultimately, this scenario points to a vocation of electronic monitoring for disciplinary control, an aspect contemplated in the hypotheses expressly provided for in the legislation and disseminated by the techniques and practices. Additionally, the hypotheses vetoed in Law No. 12,258/2010 – already discussed in previous pages – indicate that monitoring collaborates in a very subtle and ineffective way in decarceration.

## 4.6. Number of people monitored per Federative Unit, according to the conditions and judicial measures applied

Table 2: Number of people monitored by Federative Unit, according to prison conditions or measures

Federative Unit	Closed conditions in house arrest	Open conditions in house arrest	Semi-open conditions under house arrest	Semi-open regimes with external work	Pre-trial non-custodial measures	Conditional release	Restraining orders – Maria da Penha Law	Temporary release	No information	Others	Total
AC	0	0	418	0	0	0	0	0	0	0	418
AL	0	0	313	0	192	0	0	0	0	0	505
AM	126	0	0	9	0	0	48	0	0	28	211
AP	-	-	-	-	-	-	-	-	-	-	0
BA	-	-	-	-	-	-	-	-	-	-	0
CE	0	0	157	105	13	0	20	1	0	0	296
DF	-	-	-	-	-	-	-	-	-	-	0
ES	8	0	0	7	285	0	56	0	0	0	356
GO	0	677	502	0	269	29	41	1	0	0	1,519
MA	0	0	1	0	106	0	3	0	0	0	110
MG	0	1,676	0	0	284	0	430	0	0	0	2,390
MS	-	-	-	-	-	-	-	-	-	-	0
MT	8	0	2	61	5	0	2	0	0	590	668
PA	3	375	14	0	10	0	0	0	0	5	407
PB	-	-	-	-	-	-	-	-	-	-	0
PE	0	55	0	650	203	0	100	1,150	0	142	2,300
PI	0	0	8	0	47	0	7	1	0	0	63

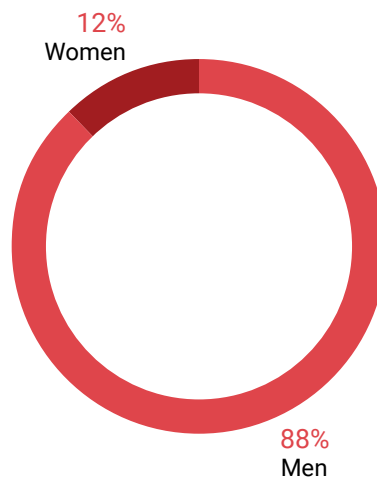
Federative Unit	Closed conditions in house arrest	Open conditions in house arrest	Semi-open conditions under house arrest	Semi-open regimes with external work	Pre-trial non-custodial measures	Conditional release	Restraining orders – Maria da Penha Law	Temporary release	No information	Others	Total
PR	145	8	641	12	0	0	0	0	0	12	818
RJ	0	1,400	0	0	36	0	0	0	0	0	1,436
RN	-	-	-	-	-	-	-	-	-	-	0
RO	0	0	104	81	0	0	18	0	954	0	1,157
RR	-	-	-	-	-	-	-	-	-	-	0
RS	14	271	1,033	0	0	0	0	0	0	0	1,318
SC	-	-	-	-	-	-	-	-	-	-	0
SE	-	-	-	-	-	-	-	-	-	-	0
SP	0	0	0	2,500	0	0	0	1,700	0	0	4,200
TO	-	-	-	-	-	-	-	-	-	-	0
<b>TOTAL</b>	<b>304</b>	<b>4,462</b>	<b>3,193</b>	<b>3,425</b>	<b>1,450</b>	<b>29</b>	<b>725</b>	<b>2,853</b>	<b>954</b>	<b>777</b>	<b>18,172</b>

Source: DEPEN, February to July 2015

Table 2 shows the number of people monitored by Federative Unit, specific to prison conditions or measures to which they are subject. The figures indicate that monitoring focuses on law enforcement, and more than 80% of services are developed in this scope. São Paulo has the highest number of people monitored, with services focused only on law enforcement. Espírito Santo is the state that proportionally has the highest index of people monitored at the stage of criminal investigation – 95.8% of the people monitored comply with pre-trial non-custodial measures and restraining orders. Only Goiás reported monitoring people on probation, although this possibility of use was vetoed from the sanction of Law No. 12,528/2010. The Federative Units that do not concentrate monitoring services only on law enforcement are Alagoas, Amazonas, Ceará, Espírito Santo, Goiás, Maranhão, Minas Gerais, Mato Grosso, Pará, Pernambuco, Piauí, Rio de Janeiro, Rondônia.

## 4.7. Electronic monitoring by gender

Figure 4: electronic monitoring by gender



Source: DEPEN, Feb. to Jul./2015

Figure 4 indicates that the electronic monitoring policy is aimed mainly at male people. We can notice this same pattern regarding law enforcement itself. The greater the criminal rigor, the greater the representation of the male universe. According to research conducted by the Institute of Applied Economic Research<sup>19</sup> (Brasil, 2014a), in criminal cases, 90.3% of the accused are male and 9.7% female. These percentages are close to the reality of electronic monitoring – 88% men and 12% women – which, as we have already noted, is widely used in favor of social control and not as an instrument capable of provoking decarceration. On the other hand, the same research indicates that in the Special Criminal Courts, a structure created to deal with conciliation, trial, and enforcement of minor crimes, the number of women reaches 20.6%, and that of men reaches 79.4%. We can see that the higher the criminal severity, the greater the predominance of men.

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<sup>19</sup> It is important to highlight that the study conducted by the IPEA comprised 10 Federative Units that have a higher rate of homicides by inhabitants, based on analyzing a significant and representative sample of remanded processes from 2011.



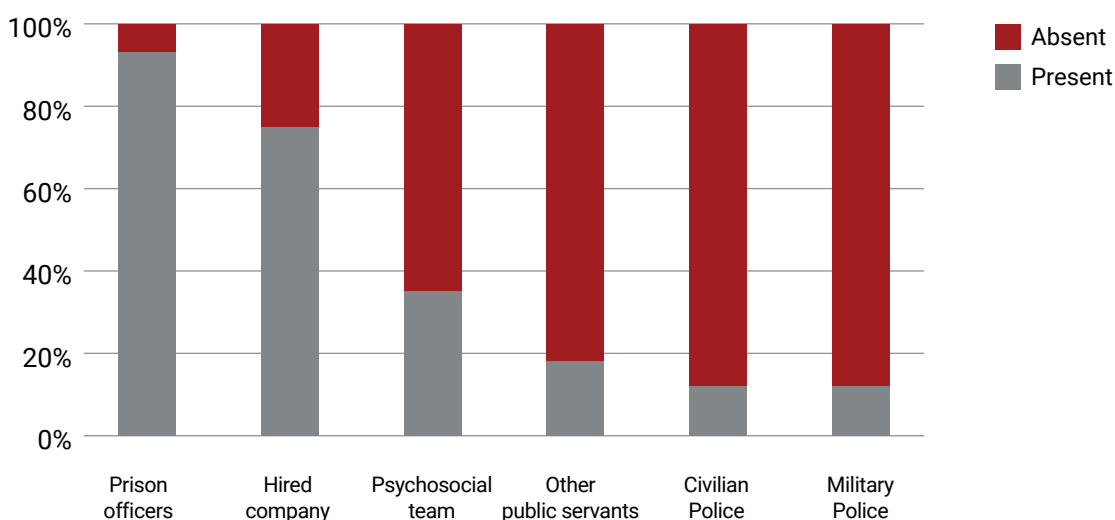
## 4.8. Electronic monitoring services according to technology and cost

According to the information measured in the questionnaires, GPS, which consists of the most advanced global satellite positioning technology, is adopted in all Federative Units that have the monitoring services implemented. According to the data collected, the average monthly cost per person monitored varies from R\$ 167.00 to R\$ 660.00 in the Federative Units that have the policy implemented. The average cost is R\$ 301.25, and the median is R\$ 240.95. It should be noted that this cost refers only to the service provided by the contracted company – other costs essential to the monitoring are not analyzed here.

Some defenses about the expansion of monitoring services are usually based on the idea of cost reduction. Even if electronic monitoring may suggest a “saving” of resources compared to the costs of the prison system, it may imply an increase in expenses, since it prevails in criminal law enforcement.

## 4.9. Presence/absence of workers by segment in the Electronic Monitoring Centers

**Figure 5: presence/absence of workers by segment in the Electronic Monitoring Centers**



Source: DEPEN, February to July 2015

Figure 5 shows the prevalence of prison officers in the composition of the team engaged with electronic monitoring services, followed by employees of the contracted company. The psychosocial professionals appear in the composition of the team in 35% of the Federative Units, which are: Ceará,

Espírito Santo, Minas Gerais, Pará, Piauí, and Rio Grande do Sul. The low presence of professionals such as psychologists and social workers in the teams involved with electronic monitoring indicates that the focus of the policy is not the monitored one. The functions and assignments are usually not formalized and the structure of the Centers makes it impossible to provide adequate psychosocial services.

#### **4.10. Concerns and critical points**

At this moment, we will debate propositions that try to legitimize themselves through repertoires that are instrumentalized by punitive power. Therefore, we will seek, from some empirical information, substantiation in some principles and guidelines proposed by the electronic monitoring WG, primarily instituted with the purpose of supporting the DEPEN in the formulation of a Management Model for Electronic Monitoring of People. It is important to emphasize that the principles and guidelines, still in preparation, aim to guide, induce and promote electronic monitoring services focused on the monitored as a subject of the policy, giving focus to measures that favor decarceration and social insertion, taking as parameters the psychosocial support, the least harm to the compliant, the adequacy, the need, the dignity of the human person, normality, etc.

The WG's contributions occur, above all, from meetings that had as their purpose the active debate and the elaboration of subsidies around specific topics of electronic monitoring, in view of the diverse experience of its members<sup>20</sup>. We emphasize, therefore, that the construction of this product and, more comprehensively, of the management model itself is a collaborative and plural process.

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20 The Working Group to support the National Penitentiary Department in the formulation of a Management Model for Electronic Monitoring of People was established by the Director General of DEPEN through Ordinance No. 42 of February 10, 2015. The WG was extended through Ordinance No. 259, of April 26, 2016, for 12 months. The following are presented the 2 compositions, highlighting that throughout the consultancy, several professionals were invited to participate in the meetings due to the nature of some specific products. The Working Group was coordinated by Victor Martins Pimenta, and its initial composition included the following specialists: I – Bernardo Carvalho Simões, Public Defender of the State of Rio Grande do Sul; II – Daniela Tiffany Prado de Carvalho, Director of Social Inclusion of Former Prisoners of the Prison System (PrEsp/MG); III – José de Jesus Filho, Researcher at Fundação Getúlio Vargas; IV – Luis Geraldo Sant'Ana Lanfredi, Head of the Department for Monitoring and Inspection of Prison and Socio-educational Systems/CNJ; V – Marco Aurélio Farias da Silva, Public Prosecutor of the State of Pernambuco; VI – Mariana Lobo Botelho de Albuquerque, Public Defender of the State of Ceará; and VII – Risomar Braga Regis, Penitentiary Agent of the State of Rondônia. From the extension of the working group on the composition came to be: the Victor Martins Pimenta (coordinator); Daniela Tiffany Prado de Carvalho, Master's in Social Psychology from the Federal University of Minas Gerais; Hugo Leonardo, Director of the Institute for the Defense of the Right of Defence, and a member of the Board of the National Criminal and Prison Policy; Janaina Rodrigues de Oliveira, Public Defender of the State of Rio Grande do Sul; Joseph de Jesus Filho, Researcher at the Getulio Vargas Foundation; Luis Gerardo Sant'Ana Lanfredi, Head of the Department of Monitoring and Oversight of the Prison System, and the System of Implementation of Socio-educational Measures/National Council of Justice; Marco Aurélio Farias da Silva, Public Prosecutor of the State of Pernambuco; Marília Montenegro Pessoa de Mello, Professor at the Catholic University of Pernambuco; Neila Paula Likes, Supervisor of the Department of Monitoring and Supervision of the Prison System and the System of Implementation of Socio-educational Measures/National Council of Justice; Risomar Braga Regis, Penitentiary Agent of the State of Rondônia; and Wellington Caixeta Maciel, researcher of the Center for Studies on Violence and Security of the University of Brasília.

It is often stated that electronic monitoring avoids the perverse effects of incarceration for the convicts and their families and friends<sup>21</sup>, enabling the maintenance of social ties and the exercise of professional and educational activities – however, the current structure of these monitoring services reveals a different reality. It is possible to verify that the principle of dignity, emphasized by the monitoring WG as a fundamental element in the monitoring policy, is often disrespected for various reasons. The mandatory physical visit of the monitored individuals to the Center regardless of the purpose – device installation; violations of the inclusion or exclusion areas; violations related to battery discharge; etc. – leads to discomfort and embarrassment. Monitored people are often grouped and exposed on the street, waiting for a service that sometimes takes hours. Furthermore, even the waiting rooms at these Centers lack the necessary amenities to offer adequate treatment; in some states, it is common to see people sitting on the floor due to insufficient infrastructure.

Although emphasized by the WG, principles such as necessity, adequacy, and individualization of punishment have yet to be observed in implementing the electronic monitoring policy. In some cases, for example, individuals in semi-open conditions only leave the prison units during the day and under electronic monitoring – a clear demonstration of excessive control, which disrespects the WG's guidelines on the exceptional use of electronic monitoring and the personal supervision of monitored individuals, including a periodic review of the suitability and necessity of maintaining the measure.

The appreciation of freedom is a delicate topic in the context of electronic monitoring. It is common to see people, in general, considering that the monitored individual remains “practically free”, given that the prison institution is supposed to be partially or fully replaced by a monitoring device that theoretically can “guarantee the person's freedom”. In this regard, an employee of a Center said: “Many prefer to go to prison than use the ‘anklet’ because of the false idea of freedom. They say it's like having the key of the padlock in hand, but without being able to use it”. It is a challenge to understand the grounds of this feeling. On the other hand, we can note that it arises, among other things, from the over-dimensioning of the exclusion area and the under-dimensioning of the inclusion area, implying restrictions on circulation and the performance of daily activities.

The areas of inclusion and exclusion are defined by the judges and drawn on the map of the monitoring system. In the first case, the definition of the area in the system provides for territorial limits within which the monitored person is authorized to circulate at previously established times. In the second case, an area where the monitored person is not allowed to enter or circulate is defined. The limits set by judges often vary considerably. Just to have an idea, the radius of the exclusion area can vary from 250 to 5,000 meters, which implies constant violations in the monitoring system, suggesting

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21 From Law no 7,210 of July 11, 1984, visits to prisoners were allowed. The manual magazine it is still the most used procedure in Brazil. Popularly known as “strip search” or “humiliating search”, the procedure does not respect constitutional principles of protecting the dignity of the human person, intimacy, non-submission to torture or degrading treatment, causing the visitor to suffer a process of “secondary imprisonment” that generates stigma and violates a series of rights (Duarte, 2010).

that the monitored person should move to other neighborhood or city and causing restrictions on the development of labor and educational activities, impacting the process of social integration. Still, due to the lack of protocols for the definition of the areas, some Centers usually establish such limits according to their own criteria, not necessarily those that cause the least damage to the compliant, which is one of the principles provided for by the WG.

In some Centers, the processing and protection of monitored person's data, which includes personal information like the location of the monitored individuals, the areas of inclusion and exclusion, and time restrictions, among other elements, are not considered a priority. Even more worryingly, in some cases, the discourse is that sharing such data indiscriminately with the police is a proper monitoring practice that protects the monitored person while building a safer society, paying attention to those who by "systematic suspicion" already "usually cause more problems". According to observations made in the WG monitoring report, individuals who wear the "anklet" are easily identified and systematically suspected in "criminal events", which evidences the violation of the presumption of innocence, as well as an abuse of the so-called *in flagrante delicto* arrest.

Indiscriminate sharing of monitoring data with the police, except in cases authorized by the Judiciary, signals the lack of alignment of the Centers with the criminal policy because it aligns, ideologically and operationally, with the logic of public security, guided by the fight against enemies. As the subjects of the two policies are different – monitored person and State, respectively – the problem is posed, synthesized in actions that explicitly envision electronic monitoring as a public security tool.

Information on the occurrence of incidents in monitoring, regardless of the reasons and specificities of the actual case, together with information on the geographical location of the monitored person, is sufficient to stimulate the efforts of the police that, in certain Federative Units, works under public security goals and indicators, among them, the number of arrests made. Some Centers also work with goals. The professionals that take care of the monitoring can be evaluated by productivity. This means that when the system detects any violation, the professional has to treat it, whatever it is. With the help of Google Street View, Centers' operators identify whether, for example, the monitored person is outside the inclusion area but in a "justifiable" environment for such a violation. Employees say it is important to verify first if the monitored person may be in a hospital, forum, or police station, avoiding notifications of violations. However, imprisonment is considered the most "efficient" and usual treatment for violations. In some situations, a "good working day" regarding productivity can be one that presents multiple violations and, consequently, the arrest of monitored people.

The arrest is considered an "efficient procedure" for violations. However, this craving for punitive power generates a feeling of anguish, especially regarding cases where it is not possible to "arrest" – to launch escape – in the face of any violation generated in the monitoring system. This situation usually occurs in cases involving the monitored person under pre-trial non-custodial measures, whose possible procedures in case of non-compliance are: notification, report, and sending of a letter to

the judge. It explains part of the resistance of many managers in prioritizing electronic monitoring services in pre-trial non-custodial measures.

In addition, it is important to point out that this punitive craving does not focus on the monitored person, which makes some employees and managers complain about the lack of tools to punish the person (especially the woman in a situation of domestic violence) who does not carry the portable tracking device (PTU), device that basically aims to identify whether the monitored it is close to the woman, violating the limits previously established in the restraining orders. The criminal justice system, as we can notice, despises the restorative dimension of relations, and it only aims to offer answers to the violations generated in the system.

It is concluded that monitoring is conceived, in practice, as a tool of public security and not as an integral part of criminal policy. It is neither encouraged nor induced its use as an alternative to prison. Hence, the proposition of two of the WG guidelines provides: the adoption of adequate standards of security, secrecy, protection, and use of data of monitored people, respecting the data processing in accordance with the collection purpose; the priority in the maintenance or restoration of the measure in freedom in cases of violation incidents, with the police intervention in a subsidiary way, after the measures adopted by the technical team responsible for supervision and monitoring have been exhausted.

The services are mainly provided by prison officers and the company's employees. In the case of the Centers that have psychosocial teams, it was observed, according to visits, testimonies, and reports of the electronic monitoring WG, that they still remain little explored due to their potentialities. This occurs for reasons ranging from inadequate space for the reception of the monitored persons and women in situations of domestic and family violence to investment in sectors perceived as more relevant, especially responsible for the treatment of violations.

Establishing partnerships between Electronic Monitoring Centers and the social protection network<sup>22</sup> does not occur, or occurs insufficiently, ceasing the guarantee of basic services and rights to monitored people and women in situations of domestic and family violence. The referral to social services does not follow a homogeneous workflow in the Centers, and nor does it occur in all situations, given the lack of focus on the monitored individual as a subject of this type of policy.

Managers and workers of the Centers seem to agree on the importance of effective psychosocial assistance of the monitored person, both in the Centers with insufficient staff such as those where it doesn't exist. It is common to receive reports stating that without the performance of these professionals – psychologists, social workers, and bachelors of law – the rate of violation grows, especially because they would help the monitored person to comply with the norms that the new condition carries, explaining, in a socialization effort, changes in the use of the device. In particular,

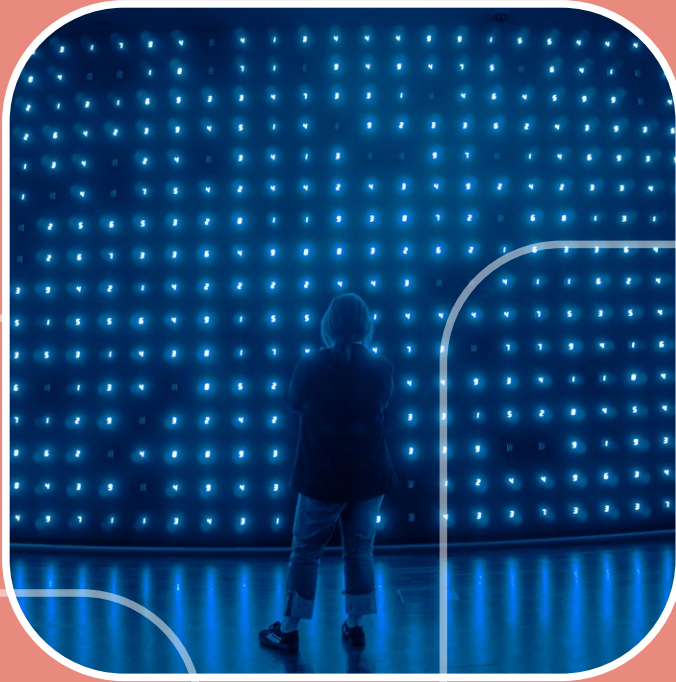
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22 The social protection network is configured by different social programs aimed at assistance and development.

such technical teams are fundamental for a better adaptation of the monitoring conditions to certain specificities of the routines of the monitored people, such as the need to travel for medical treatment, work, family support, religious practices, sports, etc., complying with the principle of normality. In addition, false alarms and violations can occur from the lack of knowledge to operate the electronic devices, but also because of GPS reflexes and even weather events. Unfortunately, the didactic instruction on its use is not observed at all Centers. Others, however, create their own manuals or use those prepared by the contracted companies, as occurs in the state of Espírito Santo, which is not always satisfactory, given the complexity of producing this type of content for an audience that mostly has only elementary education.

The work of the psychosocial team is not intended to assist only the technical dimension of electronic monitoring, because the use of the device causes physical and psychological damage that, by the principle of less harm to the compliant, should be avoided. The existing technologies on the market are “robust”, heavy, and poorly anatomical, causing injuries to the monitored people. These, in turn, often use more than one sock or cloth bands to protect themselves. Such violations do not lead to the development of less uncomfortable devices because, again, the focus is not on the “customer” of this policy (the monitored person) but on the State.

Most Federation Units adopt a device model that requires to be plugged directly into the outlet. In some Centers, it is common to see people using the device even when the battery is charging, which restricts their mobility for about two hours, usually more than once a day, depending on the battery performance. The state of Espírito Santo stands out for adopting a less degrading technology since its device model is charged by a portable battery, preventing the monitored person from remaining stationary during recharging. In addition, in some states, battery performance is improved by adjusting the data transmission interval from 1 to 5 minutes – which means that the device sends data on the location of the individual to the Center every 5 minutes instead of every 1 minute, reducing the energy consumption. On the other hand, in some states, the set interval is 30 seconds, which makes the battery last only about 12 hours. We emphasize, therefore, the relevance of the technological aspects in minimizing the adversities of electronic monitoring.



**PART III**

**LEGAL GROUNDS,  
PRINCIPLES, GUIDELINES,  
AND RULES FOR ELECTRONIC  
MONITORING OF PEOPLE**

## 5 ELECTRONIC MONITORING IN THE BRAZILIAN LEGAL FRAMEWORK

In Brazil, only in the year 2001, bills began to appear in the National Congress with a view to dealing with electronic monitoring, especially due to overcrowding of prison facilities (Mariath, 2009). The scenario favored the emergence of the first bills on the subject, justified by the “failure of the Brazilian prison system” as well as the need to “relieve the State” and to “socially reintegrate people”, as detailed by Souza (2013, p. 61–63):

- Presented in plenary on March 21, 2001, Law Proposal No. 4,342, authored by Deputy Marcus Vicente, was the first to contemplate the topic of electronic monitoring in the country;
- On June 6, 2001, Deputy Vittorio Medioli presented Law Proposal No. 4,834, which later (on June 8, 2001) was attached to Law Proposal No. 4,342 for dealing with the same matter;
- The year 2007 included several bills on the subject. The first of them, Law Proposal No. 337, was presented on March 7, 2007 by Deputy Ciro Pedrosa;
- Authored by Deputy Carlos Manato, Law Proposal No. 510 was presented in plenary on March 21, 2007, and later attached to Law Proposal No. 337;
- Senate Law Proposal No. 165 (No. 1,295/2007 in the Chamber of Deputies) was presented in plenary by Senator Aloizio Mercadante on March 28, 2007. The bill was later amended by Senator Demóstenes Torres (Commission on Constitution, Justice, and Citizenship);
- On March 29, 2007 was exhibited in plenary by Senator Magno Malta, the Senate Law Proposal No. 175 (No. 1,288/2007 in the Chamber of Deputies);
- Based on research carried out in the United States and Europe on the legal and technical feasibility of implementing monitoring of people, Law Proposal No. 641 was seized in plenary on April 3, 2007. The project, authored by Deputy Edio Lopes, aimed to include electronic monitoring as a form of external surveillance of people in semi-open conditions, open conditions, weekend limitation, conditional release, and temporary release;
- On June 27, 2007, Deputy Beto Mansur presented Law Proposal No. 1,440.

In practice, however, monitoring did not contribute to reducing the costs of the prison system, nor did it promote forms of social integration and decarceration. An example is the application of monitoring in the semi-open conditions as an additional control tool during “temporary releases” or even to allow work or study. In this situation, the State invests resources to keep the person arrested



and also monitored, which characterizes the expansion of the use of public resources, poor budget planning and excessive criminal control.

## **5.1. The Electronic Monitoring Law**

The electronic monitoring began to have a legal provision in 2010, initially provided for in Law No. 12,258 (Brasil, 2010a), which amended the Criminal Enforcement Law No. 7,210 (Brasil, 1984), introducing the possibility of applying electronic monitoring in two strict cases: a) temporary exit to the prisoner who is serving a sentence in semi-open conditions (art.146-B, paragraph II); and b) when the sentence is being served under house arrest (art. 146-B, IV). In addition, the minimum rules for the application of the technology were established (articles 146-A to 146-D).

The hypotheses of application reveal that electronic monitoring was introduced in Brazilian legislation as an instrument of control, acting as an alternative to liberty and not as a tool of alternative to prison. Electronic monitoring, used in these cases, adds to the deprivation of liberty and aggravates the enforcement regime, becoming a mechanism of greater rigor in the management of custodial sentences. Prior to this law, prisoners who obtained benefits such as temporary release and house arrest did not undergo any type of electronic control. With the law, these same prisoners could now be subject to the measure.

In addition to temporary release and house arrest, the legislative proposal approved by the National Congress contemplated other possibilities of application: a) apply custodial sentences to be served in open or semi-open conditions or grant sentence progression to such prison conditions; b) apply non-custodial sentences that establish limitations on access to certain places; and c) grant conditional release or suspended sentence. Such hypotheses were vetoed by the presidency of the Republic, evidencing and reinforcing the predominant tone in the criminal policy: the increase of disciplinary control in the case of individuals already in liberty.

According to Souza (2013), despite the innovation brought by Law No. 12,258/2010, in order to introduce electronic monitoring in the Brazilian legal framework, there were no significant changes in reducing the prison population (one of the objectives proposed by the various bills already mentioned). This occurs, in the author's conception, because the authorized hypotheses (even those that were not subject to the presidential veto) were limited to the scope of law enforcement, affecting only convicts who were already outside the prison facilities, as a complement to the deprivation of liberty and aggravation of the prison condition. That is, before the mentioned law, prisoners who earned benefits such as temporary release and house arrest did not submit to any type of electronic control, whereas, with the law, they could now be subject to the measure.

## 5.2. Pre-trial non-custodial measures

Law No. 12,403/2011, commonly called Pre-trial Measures Law<sup>23</sup> (Brasil, 2011a), when modifying the Code of Criminal Procedure (Brasil, 1941), regulated that all criminal prosecution must replace or, at least, minimize the number of pre-trial detentions. By promoting unconditioned liberty measures and several alternatives to imprisonment, the criminal justice system provides pre-trial detention as a last resort, applicable only to individuals who have committed crimes punishable by a custodial sentence of more than four years. Pre-trial detention should not be applied in cases of minor crimes since they are not punishable by custodial sentences (art. 283, Code of Criminal Procedure – adjusted by Law No. 12,403/2011). In addition, Law No. 9,099/1995 (Brasil, 1995) provides that pre-trial detention also should not be applied in case of pre-prosecution transaction or prosecution suspension.

The report of the United Nations Working Group on Arbitrary Detention in Brazil (United Nations, Human Rights Council, (UN, 2014) indicates that the amendments introduced by the Pre-trial Measures Law can lead to decarceration. The document recognizes pre-trial non-custodial measures as alternative instruments to deprivation of liberty, with the ability to reduce the number of prisoners without conviction, who await trial while deprived of their liberty, which reaches 40.1% of the prison population in Brazil (Brasil, 2015c).

According to the “Management Handbook for Alternatives to Imprisonment: pre-trial non-custodial measures” (Brasil, 2016a), the main change promoted in the criminal justice system by Law No. 12,403/2011 is the greater control over pre-trial detention, with limits expressed in the law and an increase in the role of pre-trial measures other than pre-trial detention.

The diagnosis produced by the Ministry of Justice and Public Security in partnership with the Institute of Applied Economic Research (Brasil, 2014) regarding the application of penalties and alternative measures indicates the importance of Law No. 12,403/2011 in dealing with the high number of pre-trial detainees. There were analyzed cases remanded in the year of 2001, distributed among criminal courts and special courts in nine Federative Units – Alagoas, Distrito Federal, Espírito Santo, Minas Gerais, Pará, Paraná, Pernambuco, Rio de Janeiro, and São Paulo. That is, before the enactment of the law on pre-trial non-custodial measures. The study points to the excess of pre-trial detentions in Brazil, revealing that in 37.2% of the cases surveyed in which the defendants were in pre-trial detention there was no conviction to imprisonment at the end of the prosecution.

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23 Pre-trial non-custodial measures are “all restrictions of personal rights and freedom of movement provided for in the Brazilian legal framework, before the transit in court. Other cautions already existed, since the beginning of the Code of Criminal Procedure (CPP), without, however, carrying this name. Examples of pre-trial non-custodial measures of a patrimonial nature are those relating to the restitution of property, arrest, kidnapping, and the institution of legal mortgage, according to the rules of the provisions of art. 120 and others in the CCP. Pre-trial non-custodial measures are also of a probative nature, relating to the breach of personal inviolability provided for in law or in the Constitution” (Queiroz and Lira, as cited in Brasil, 2016a, p. 8).

The research carried out by the Institute for Peace and Association for Prison Reform (2014) regarding the application of pre-trial measures after the promulgation of Law No. 12,403/2011, in the cities of Rio de Janeiro and São Paulo, indicates that measures other than imprisonment were mostly used for crimes without violence against property (theft and reception), although in Rio de Janeiro half of the arrests for thefts continued to be converted into pre-trial detention. The study underlines that, even with the Pre-trial Measures Law, the conversion of *in flagrante delicto* arrest in pre-trial detention remained at extremely high levels, namely, 72.3% of cases in Rio de Janeiro and 61.3% of cases in São Paulo, mainly based on arguments such as the need to maintain public order, lack of residence or fixed work, fear of escape from the defendant as well as many stereotypes and prejudices in the decision.

The reversal of the above frames is essential to not only reduce the number of prisoners but also modify discriminatory and prejudiced schemes and repertoires, which guide the application of pre-trial detention to the detriment of the presumption of innocence and the application of pre-trial non-custodial measures. The task here is precisely to draw up procedures for applying pre-trial non-custodial measures, especially in cases involving electronic monitoring as a requirement for granting provisional release<sup>24</sup>.

Law No. 12,258/2010, also called the Electronic Monitoring Law, was the primary synthesis of several movements to introduce and regulate electronic monitoring in the legal framework. The possibilities of application provided, however, are restricted to prisoners on temporary release or under house arrest. Thus, electronic monitoring was initially envisaged as a mechanism of punitive reinforcement and control over people serving custodial sentences, representing rather an aggravation in law enforcement than an effective alternative to incarceration. Law No. 12,403/2011 amended the Code of Criminal Procedure, admitting electronic monitoring as a pre-trial non-custodial measure (art. 319, Brasil, 1941). Monitoring is no longer restricted to law enforcement and is provided as an alternative measure to arresting indicted people (in the course of the police investigation) or accused people (throughout the criminal proceedings), with a view to preventing their preventive arrest in the course of the process, that is, before the criminal conviction.

Law No. 12.403/2011 presents nine different pre-trial non-custodial measures:

- I – Periodic appearance in court, within the time limit and under the conditions laid down by the judge, to inform and justify activities;

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<sup>24</sup> As already noted in the introduction, this document deals specifically with the pre-trial non-custodial measures involving the application of electronic monitoring. The guidelines on other pre-trial non-custodial measures are presented, as already mentioned in the introduction, in the "Management Handbook for Alternatives to Imprisonment: pre-trial non-custodial measures" (Brasil, 2016a).

- II – Prohibition of access or attendance to certain places when, due to circumstances related to the fact, the defendant must remain distant from these places to avoid the risk of further infractions;
  - III – Prohibition of maintaining contact with a certain person when, due to circumstances related to the fact, the defendant must remain distant;
  - IV – Prohibition to be absent from the district when the stay is convenient or necessary for investigation or instruction;
  - V – Home reclusion at night and on days off when the defendant has fixed residence and work;
  - VI – Suspension of the exercise of a public function or activity of an economic or financial nature when there is fair fear of its use for the practice of criminal offenses;
  - VII – Pre-trial detention of the defendant in cases of crimes committed with violence or serious threat when the experts conclude that it is imputable or semi-imputable (art. 26 of the Criminal Code) and there is a risk of recurrence;
  - VIII – Bails, in the infractions that admit it, to ensure the attendance of acts of the proceedings, to avoid obstruction of its progress or in case of unjustified resistance to the court order;
  - IX – Electronic monitoring.
- (art. 319, Law No. 12,403/2011, Brasil, 2011a)

The pre-trial non-custodial measures can be applied in isolation or cumulatively. It is noted that electronic monitoring is the last option listed in this legal device. This indicates that electronic monitoring should be applied in a subsidiary and residual way to the other modalities legally provided for, as an instrument to contain incarceration and reduce the high number of pre-trial detainees (CNJ Resolution No. 213/2015, Brasil, 2015b). That is, monitoring is indicated only when no other less burdensome pre-trial measure is available. It must act as an alternative to imprisonment and not as an alternative to freedom.

It is observed, however, that even the potential decarceration resulting from applying electronic monitoring as a pre-trial non-custodial measure requires an analysis of who will be monitored in practice: the defendant who, without the availability of electronic monitoring, would be detained or the defendant who would already respond to the process in liberty and, with the availability of electronic monitoring, is now subjected to yet another instrument of control. It should be noted that electronic monitoring has been used timidly in pre-trial measures, especially in relation to its application in law enforcement. The data from the document “The Implementation of the Policy of Electronic Monitoring of People in Brazil” (Brasil, 2015a) report that 86.18% of the monitored people are under law enforcement: open conditions in house arrest (25.91%); semi-open conditions in house arrest (21.87%); semi-open conditions in external work (19.89%); temporary release (16.57%); closed conditions in

house arrest (1.77%); and conditional release (0.17%). The pre-trial non-custodial measures (8.42%) and the restraining orders (4.21%) add up to just 12.63%.

The document also shows that 8.42% of the electronic monitoring refer to pre-trial non-custodial measures. In the first half of 2015, 1,450 people were under electronic monitoring in compliance with pre-trial non-custodial measures. It represents a minor impact on reducing pre-trial detention rates in the country, which adds up to 249,668 people and corresponds to 40.1% of the prison population – 622,202<sup>25</sup> people, according to the “National Survey of Prison Information” (Brasil, 2015e).

### **5.3. Decree No. 7,627/2011**

Decree No. 7,627/2011 regulates the electronic monitoring of people (Brasil, 2011b), presenting specific points that must be observed for the implementation of Law No. 12,258/2010, as well as Law No. 12,403/2011, commonly called the Pre-trial Measures Law, which amended the Code of Criminal Procedure, admitting electronic monitoring as a pre-trial non-custodial measure other than imprisonment (article 319, paragraph IX).

The decree indicates that the rights and duties of the monitored people should be clearly expressed in the form of a document. It is also foreseen that penitentiary management bodies are responsible for the administration and control of electronic monitoring, indicating the importance of multidisciplinary teams in monitoring the measure. This being said, monitoring should be related to the services of the social protection network, mainly to minimize criminal, abusive, and harmful forms during the services, as well as to ensure maintenance and access to work, education, health, and social ties to the people monitored. The legislation does not indicate that the person in compliance with electronic monitoring measure must stop working, studying, or attending spaces of community sociability. It also does not mention that the supervised person should be punished, punished or change routines not provided for in the conditions of the measure itself.

Considering physical, psychological, and social damage caused by electronic monitoring, the decree emphasizes that the monitoring device must be used in order to respect the physical, moral, and social integrity of the monitored person. The document, in articles 6 and 7, proposes the responsibility of the Center manager and other employees in the handling of personal data of electronic monitoring, noting the secrecy and access of authorized personnel if they need to know them by virtue of assignments. Electronic monitoring data are sensitive in nature, as they can lead to

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<sup>25</sup> According to the “National Survey of Prison Information – Infopen – December/2014”, the prison population in Brazil reached 622,202 prisoners in the second half of 2015. 40.1% of the prison population in the country – 249,668 individuals – is made up of prisoners without conviction who await the trial of their processes in custody. There was a small reduction in the number of pre-trial detainees between the first and second half of 2015, but there is no data from electronic monitoring in the second half of 2015 to assess the impact of this on the number of people monitored in compliance with pre-trial non-custodial measures.

discrimination and degrading treatment of monitored people and women in situations of domestic and family violence. Treatment and protection of these data must follow specific protocols, as provided for in the document “Guidelines for Treatment and Protection of Data in Electronic Monitoring of People” (Brasil, 2016b).

## 5.4. Restraining orders

Law No. 11,340/2006, commonly known as the Maria da Penha Law, creates mechanisms to curb domestic and family violence against women, according to art. 226 of the Federal Constitution; to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and to the Inter-American Convention to Prevent, Punish, and Eradicate Violence Against Women. The law also provides for the establishment of Domestic Violence Courts, amending the Code of Criminal Procedure, and the Criminal Code and the Criminal Enforcement Law. Its art. 5 considers domestic and family violence against women any action or omission based on death, injury, physical, sexual, or psychological suffering, and moral or monetary damage within the domestic unit, the family, and in any intimate relationship of affection, in which the accused lives or has lived with the offended. The law also establishes that these relations are independent of sexual orientation, which means the possibility of aggression being exercised between women in a homo-affective relationship. Among the main changes provided for in the law, we highlight: the non-referral of cases to Special Criminal Courts, removing this violence from the list of minor crimes; admission of *in flagrante delicto* arrest for cases of violence against women; the prohibition of applying the delivery of food parcels as a penalty, thus requiring the initiation of a police investigation.

The Maria da Penha Law is innovative in the possibility of applying restraining orders aimed at ensuring the quick protection of women, from anticipating mechanisms. They can be adopted by the judge at any procedural stage, from the establishment of the police investigation until the judicial phase, and aims to ensure the protection of the woman and other family members in situations of violence, in addition to ensuring the effectiveness of the criminal procedure. In the same way, as with the pre-trial non-custodial measures, the restraining orders can be applied separately or cumulatively.

They are restraining orders, among others:

- I – Suspension of possession or restriction of the carrying of weapons, with communication to the competent body, in accordance with Law No. 10,826, of December 22, 2003;
- II – Removal from the home, domicile, or place of coexistence with the offended;
- III – Prohibition of certain conduct, such as:
  - a) approaching of the woman, her family members, and witnesses, setting the minimum distance between these and the monitored individual;

- b) contacting the woman, her family members, and witnesses by any means of communication;
  - c) attending certain places in order to preserve the offended physically and psychologically;
- IV – Restriction or suspension of visits to minor dependents after hearing the multidisciplinary care team or similar service;
- V – Provision of temporary food or alimony.
- (art. 22, Law No. 11,340/2006, Brasil, 2006)

The “Management Handbook for Alternatives to Imprisonment: restraining orders<sup>26</sup>” (Brasil, 2016d) emphasizes that the restrictions on men brought by the law consider the attitudes that the perpetrator of domestic and family violence commonly uses to intimidate, threaten, paralyze, and restrict the autonomy, freedom, and dignity of women. Once this kind of violence happens almost always in the domestic environment, it was also necessary for the law to promote restraining orders that concerned this environment. Restraining orders are based on guarantees of the physical, psychological, and material integrity of the woman and her family. Most of these measures indicated in the law also have a civil or administrative nature, such as those of a family order that obliges the provision of maintenance and restriction or suspension of the right to visit the children, as well as the one that restricts possession of a firearm. Because they are insurance measures from criminal law, it is already consensus the understanding that they are not conditioned to the proposition of proceedings in the civil sphere and may be in force until the final criminal decision regardless of civil proceedings. This combination of skills was assertive in the sense of not compartmentalizing elements that are integral to the context of domestic and family violence.

Unlike the pre-trial non-custodial measures that the Code of Criminal Procedure establishes, restraining orders are not restrictive and do not prevent the application of others provided for in the legislation, whenever the safety of women in a situation of sexual and family violence is required and to ensure the effectiveness of the measures. The absence of protocols specific to the application of restraining orders generates ambiguities regarding their very nature and the way of processing them. It is not specified, for example, what the “other” measures are or the objective circumstances capable of motivating the cumulative application of other measures:

*Regarding the procedures of restraining orders, Law No. 11,340/2006 does not provide for a specific rite, and there is no peaceful understanding as to the form of its processing. Part of the magistrates understands the pre-trial measures rite of the Code of Civil Procedure must be applied to restraining orders, while others adopt a more simplified rite, solely with*

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<sup>26</sup> The monitoring of restraining orders presented in the “Management Handbook for Alternatives to Imprisonment: restraining orders” (Brasil, 2016d), previously cited, provides for accountability services for men, referrals of women to the protection network, etc.

*the scope of meeting the emergency character of the requested providence. Despite the lack of consensus on the procedural rite, these two positions, regardless of their origin (presented directly by the party, through the police authority, by a lawyer, or requested by the Public Prosecutor's Office), should be the subject of their own assessment and registration. It is not recommended that the matter be dealt with in the police investigation or criminal proceedings. Restraining orders are intended to protect women in situations of domestic and family violence in case of imminent risk to their psychophysical integrity (National Council of Justice, Brasil, 2010b, p. 23)*

The document mentioned above indicates that, even with the absence of specific protocols for the application of restraining orders, the rite must be simplified, in order to allow speed in the process, in addition to ensuring the full understanding of the procedures by the people who seek emergency protection. It is also necessary to include the information which the law determines in the file on the application for such measures. In addition to subsidizing the judge's decision in front of objective elements capable of guaranteeing the referral, this type of action can safeguard human rights in the face of criminal proceedings. The publication points out that the inadequacy in this matter and the delay in the deferral of the measures may endanger the protection of women.

In this regard, it is important to point out that the activation of the criminal justice system by women in situations of domestic and family violence still implies the possibility of experiencing an entire culture of discrimination, humiliation, and stereotyping (Andrade, 2005, p. 76). Investing in retributive and punitive responses, often unable to offer an adequate treatment to the conflicts and violence brought to the knowledge of the criminal justice system, implies the maintenance of "criminal subjection processes" (Misse, 1999) and of "violent sociability" (Machado, 2004) in a selective, stigmatizing way, based on asymmetries of class, gender, ethnicity, etc.

*The neo-criminalization feminist discourse, commendable for good intentions and the historical substrate, seems to find itself, in this perspective, immersed in the reproduction of the same matrix (patriarchal and juridical) of which criticism makes, in an extraordinarily circular movement. First of all, it reproduces male dependence in the search for female autonomy and emancipation; that is, segments of the feminist movement seek to free themselves from male oppression (translated into different forms of violence) by resorting to the protection of a demonstrably classist and sexist system and believe that they find in him the Great Father capable of their social and legal orphanage (Andrade, 1996, p. 48).*

Therefore, the Maria da Penha Law offers mechanisms to reverse violence against women, but its application still requires improvement, which demands expanding social protection and minimizing punitive logic. The effectiveness of this law in changing the male patterns of violent sociability towards



women depends on the institutionalization of various protective services, which still occurs unevenly in the territory and requires the mobilization of various social sectors and the State to implement women's police stations, special courts, shelters, etc. It is essential to recognize that the enactment of the law and its application does not impose rapid or automatic changes in the patterns of violence when preventive and educational programs are disregarded. The structural transformations in gender relations are not in the criminal field because "the stereotypical intervention of the criminal justice system acts both on the 'victim' and on the 'delinquent' in the same way" (Hulsman and Bernat De Celis, 1993, as cited in Andrade, 2005, p. 82). Still, the Maria da Penha Law is essential in promoting change in gender relations and equitable management of social conflicts; therefore, the government must support its implementation to move towards an emancipatory direction.

#### 5.4.1. Restraining orders and electronic monitoring

Restraining orders have a precautionary nature, which underlines the speed in their application to contain violence. The judge's decision on applying this measure must be followed by the reasons since they are pre-trial non-custodial measures. As already noted, restraining orders can be accumulated with other measures. Law No. 11,340/2006 does not describe these other measures; however, the application of restraining orders is observed cumulatively with other pre-trial measures, especially electronic monitoring.

Electronic monitoring, when applied cumulatively with restraining orders, aims to increase the protection of women in situations of domestic and family violence. The individual monitoring device – the "anklet" – used by the perpetrator of violence allows monitoring of its geolocation in real-time through information systems. Therefore, exclusion areas are created that should not be accessed by the monitored person, such as the woman's home or other places prohibited by the measure to preserve her physical and psychological integrity. The monitoring allows the Center detecting their proximity to the areas of exclusion judicially delimited and possible incidents of violation of the area. The Electronic Monitoring Center has mechanisms to identify such incidents and means to deal with them to ensure compliance with the stay-away provision and women's protection, as detailed below.

As already explained in previous pages, the electronic monitoring services, in addition to the individual monitoring device – anklet – can also count, when available, with the portable tracking unit (PTU). The PTU can be used by women in situations of domestic violence if the perpetrator of violence is being monitored. This surveillance system allows verifying in real time the location of those who carry the PTU and those who use the "anklet" in a relational way to measure the rapprochement between the author and the woman more accurately.

It is important to note that restraining orders applied with electronic monitoring can be fulfilled without the use of PTU. That is, even when the PTUs are not available or when the woman

does not wish to use them, the exclusion areas are informed and applied in the Center's system, which is sufficient for monitoring the measure and possible handling of incidents of violation by the responsible team.

In this direction, the use of PTU is not compulsory by women at any stage of the prosecution. The refusal to use it cannot generate punishments or sanctions for women in situations of domestic and family violence, especially because neither the Maria da Penha Law, the Pre-trial Measures Law, nor the Electronic Monitoring Law, do not oblige her to use this type of device in order to guarantee access to rights and social protection. Thus, when electronic monitoring is a necessary follow-up mechanism in complying with restraining orders, the measure must be applied by the judge and monitored by the Center, regardless of whether the woman uses the PTU.

Electronic monitoring, despite helping the protection of women in situations of domestic violence, is not able to solve gender-based violence, an issue that is not only related to the use of force but also to the position of women in the social structure<sup>27</sup>. The indiscriminate use of electronic monitoring can actually worsen conflicts and violence in the domestic and family environment. That is, electronic monitoring alone does not account for resolving relational conflicts because it is an instrument linked to criminal control and is therefore not effectively implicated in the conflict resolution that is at the root of violence. As it is a measure that imposes severe restrictions and punishments on the electronically monitored person, it can even motivate other forms and levels of violence. Certain conditions imposed without proper individualized analysis can also provoke or accentuate vulnerabilities, implying, for example, restrictions in health treatments, in the development of work, educational, and community activities, among others<sup>28</sup>.

In this regard, research conducted by Montenegro (2015)<sup>29</sup> points out that numerous cases reveal the frustration of women in the search for a legal solution to domestic and familiar conflicts, especially since the answers are predominantly punitive. The criminal route is insufficient to meet these types of conflicts, which are relational. The inability of problem-solving by the State is evident, mainly because acts of violence are configured in a large number of cases from unresolved conflicts of lower offensive potential. Then, these conflicts become recurrent and aggravated by the inability

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27 The prevalence of a gender paradigm unrelated to human rights but tied to the oppressive patterns of the male universe notably contributes to the trivialization and disqualification of domestic violence in various social spheres, including State's institutions that were supposed to ensure equal rights for individuals, whatever their gender.

28 The limits and conditions set by judges often vary greatly. For example, the radius of the exclusion area can vary from 250 to 5,000 meters, which implies constant violations in the monitoring system, suggesting the change of address of the monitored to other neighborhoods or cities and restrictions on the development of labor and educational activities, impacting on the process of social integration (Brasil, 2015a).

29 The Montenegro studies were conducted over three years with the Court of Domestic and Family Violence against Women in the city of Recife, state of Pernambuco. They pointed out that 52.3% of the crimes brought to that instance are of threat and 25.7% of crimes against honor, among which the insult stands out. It was also found the withdrawals in a large part of the processes where such an initiative is allowed procedurally to the woman. According to the researcher, the withdrawal does not necessarily mean that the conflict has been resolved. It can reveal the inability of problem-solving by the State, especially when the only answer offered it's the punitive one.

of the State to guarantee proper spaces, which ends up resulting in an increasing number of violent acts against women. The indiscriminate application of electronic monitoring, therefore, can contribute to the increase of these indices because the surveillance of the man who perpetrates violence, by itself, does not mean the resolution, in fact, of conflicts. We need to think about ways of managing conflicts beyond the arenas of control and punishment.

The justice system should look at the cases in an individualized way, promoting the listening of the parties and a better understanding of the relationships through the work carried out by the psychological team. This type of procedure makes it possible to understand the seriousness of each situation for each of the parties involved, guiding the application of the appropriate measures. Electronic monitoring is indicated only when another less burdensome measure does not fit, as an alternative to imprisonment and not as an alternative to liberty, in a residual way in relation to the other existing options, as underlined by the the CNJ Resolution No. 213/2015 (Brasil, 2015b). Likewise, it is necessary to ensure the follow-up of the compliant and the women in situations of domestic violence, with referrals to the social protection network and practices capable of leading, among other things, accountability of the perpetrator of violence and autonomy/empowerment of women.

## 5.5. Detention control hearings

Detention control hearings were implemented late in Brazil. In February 2015, the National Council of Justice, in partnership with the Ministry of Justice and Public Security and the Court of Justice of the state of São Paulo, launched the detention control hearings project. Brazil was one of the few countries in Latin America where detention control hearings were not mandatory. According to the document “Implementation of Detention Control Hearings in Brazil: analysis of experiences and improvement recommendations” (Brasil, 2016c)<sup>30</sup>, the International Human Rights Clinic of Harvard University (2015) reports that 28 of the 35 member countries of the Organizations of American States (OAS) have already adapted, by law or decision of higher courts, to the determinations of external standards in order to ensure that the *in flagrante delicto* arrest is subject to judicial scrutiny as to its legality and strict necessity.

Aiming for such adequacy, CNJ Resolution No. 213/2015, regulates the “presentation of all people arrested to the judicial authority in 24 hours”, providing that “regardless of the motivation or nature of the act”, people arrested *in flagrante delicto* should be heard about the circumstances in which their arrest took place. In addition to detailing other elements and steps that must be part of

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30 The National Penitentiary Department, in partnership with the United Nations Development Program, has sought to propose improvements to the full functioning of detention control hearings through consultancy developed by Paula R. Ballesteros, which includes the document “Implementation of Detention Control Hearings in Brazil: analysis of experiences and recommendations for improvement” (Brasil, 2016c).

the hearing and its preparatory acts, the art. 8 of the resolution lists what should be the judge's main duties regarding the arrested person:

- I – clarify what the detention control hearing is, highlighting the issues to be analyzed by the judicial authority;
- II – ensure that the arrested person is not handcuffed, except in cases of resistance and of a well-founded fear of escape or danger to the physical integrity of its own or others – the exceptionality must be justified in writing;
- III – make the person aware of their right to remain silent;
- IV – to question whether the person was aware of their effective opportunity to exercise the constitutional rights inherent to their condition, particularly the right to consult with a lawyer or public defender, to be attended by a doctor, and to communicate with their family members;
- V – inquire about the circumstances of the arrest or seizure;
- VI – ask about the treatment received in all the places through which the person has passed before the attending the hearing, questioning about the occurrence of torture and ill-treatment and adopting the appropriate measures;
- VII – verify if there was a forensic medical examination, determining its conduct in cases where:
  - a) it has not been carried out;
  - b) records are insufficient;
  - c) the allegation of torture and ill-treatment refers to the time after the examination was carried out;
  - d) the examination was carried out in the presence of a police officer, observing the CNJ Recommendation No. 49/2014 regarding the formulation of questions to the expert;
- VIII – refrain from asking questions with the purpose of producing evidence for the investigation or criminal proceedings relating to the facts subject to the *in flagrante delicto* arrest;
- IX – take the measures at their expense to remedy possible irregularities;
- X – to ascertain, by questions and visually, hypotheses of pregnancy, the existence of children or dependents under the care of the person arrested *in flagrante delicto*, history of serious illness, including mental health disorders and chemical dependence, to analyze the role of referral assistance and the granting of provisional freedom, without or with the imposition of pre-trial measures.

The detention control hearing verifies the exceptional need for converting the *in flagrante delicto* arrest into pre-trial detention, or into freedom with or without the application of pre-trial non-custodial measures. All legal requirements authorizing these possibilities must be observed, promoting an individualized and reasoned analysis of the situation. The detention control hearing is also intended to assess the possible occurrence of violence or ill-treatment in the act of arrest, adopting necessary measures (Brasil, 2016c). The freedom of the person charged is one of its main objectives, assuming its presumption of innocence until a possible conviction. Therefore, the detention control hearing must ensure that the pre-trial detention is not usurped by a possible intention to anticipate a possible sentence, and should be used only “when it is not possible to replace it with another pre-trial non-custodial measure” (art. 282, Brasil, 1941).

Cooperation Agreements No. 5, No. 6, and No. 7, of April 9, 2015, signed between the National Council of Justice and the Ministry of Justice and Public Security, underline that people subjected to pre-trial non-custodial measures applied in the context of detention control hearings should be referred to services preferably instituted within the framework of the State Executive Branch, called Integrated Centers of Alternatives to Imprisonment or with another nomenclature, as well as to Electronic Monitoring Centers, in strict cases (Brasil, 2015d; Brasil, 2015e; Brasil, 2015f).

These agreements provide that the adoption of the measures shall have as its purpose, in addition to reducing the prison population, promoting the person’s autonomy and citizenship; encouraging the participation of the community and the woman in a domestic violence situation in conflict resolution; self-accountability and maintenance of the bond between the person submitted to the measure with the community, with the guarantee of their individual and social rights; and, the restoration of social relations. According to the assumptions presented so far and Resolution No. 213, of December 15, 2015, of the National Council of Justice<sup>31</sup>, the application of electronic monitoring should be residual, preventing its exponential growth<sup>32</sup>:

*The application of electronic monitoring shall be exceptional and should be used as an alternative to pre-trial detention and not as an additional element of control for defendants who, due to the circumstances established in court, would already be facing prosecution in freedom. Thus, electronic monitoring, as a pre-trial non-custodial measure, should be applied exclusively to people accused of intentional crimes punishable by a maximum deprivation of liberty of more than four years or convicted of another intentional crime in the sentence passed in court, subject to the provisions of paragraph I of the caput of art. 64 of the Brazilian Criminal Code, as well as to people in compliance with restraining*

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31 Resolution no 213, of December 15, 2015, of the National Council of Justice, provides for the presentation of any person arrested to the judicial authority within 24 hours (Brasil, 2015b).

32 From field findings, it is noted that many judges do not usually feel safe with the application of measures without the use of monitoring, evidencing an exaggeration by control and disciplinary surveillance, as well as ignorance of magistrates around the services.

*orders accused of crimes involving domestic and family violence against women, children, adolescents, elderly, sick or disabled persons, always in an exceptional way, when another less burdensome pre-trial measure does not fit (Protocol I, CNJ Resolution No. 2013, Brasil, 2015b)<sup>33</sup>.*

The application of pre-trial non-custodial measures and restraining orders in the detention control hearings can contain the excess of pre-trial detention in Brazil, concretizing constitutional principles such as freedom, the presumption of innocence, the due legal process, and the broad defense. Electronic monitoring of people is a tool that, in an exceptional way, should compose this context for the sake of maintaining freedom. However, in order for detention control hearings to fulfill their objectives, which are to prevent the mass, arbitrary and illegal incarceration of people, each of the institutions that make up the justice system must assume its responsibilities by adhering to the procedures of proper hearings. It is up to the Executive Branch to seek to consolidate, with the justice system and civil society, mechanisms for supporting and social inclusion of people after detention control hearings. Systematized critical evaluations conducted by civil society, universities, and research institutes are essential, which can improve its objectives and expose arbitrariness still in progress.

Detention control hearings, as has been seen, have the potential to reduce serious structural problems of the criminal justice system pointed out by the United Nations (UN, 2014) as the 'endemic overcrowding' of prison establishments, the diminished access to justice which, in addition to being 'severely deficient', continues to resort to incarceration as a rule, and not an exception, even in cases of light and non-violent crimes. On the other hand, there is a huge discrepancy between states regarding the effective implementation of the guidelines established by the CNJ resolution and, therefore, the results achieved so far with the detention control hearings project. The document "Implementation of Detention Control Hearings in Brazil: analysis of experiences and improvement recommendations" (Brasil, 2016c) points out that it is essential to treat each of the local realities in a particular way and not strictly only to the quantitative results that have been disclosed, otherwise the generalizations may compromise a substantial reach of the objectives to which the hearings are intended.

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<sup>33</sup> Protocol I of Resolution No. 213, of December 15, 2015, of the National Council of Justice describes procedures for the application and of pre-trial non-custodial measures to custodians presented at detention control hearings (Brasil, 2015b).

## 6 SENSITIVE PERSONAL DATA AND ELECTRONIC MONITORING

It is necessary to recognize the specificities involving “public” and “private”, in the sense of considering individual freedom, collective equality, and justice, not always in opposition, but in a complementary way. The idea is not to limit human rights and the legal situations of private law to stagnated sectors: “the person, in the light of the constitutional system, requires protection the dichotomy public law and private law and meets the general clause fixed in the larger text, the promotion of human dignity” (Tepedino, 2001, as cited in Pezzi, 2007, p. 38). Thus, such complexity is magnified because

*(...) one can probably determine the fields of public law or private law by the prevalence of public interest or private interest, not already by the absence of public intervention in private law activities or by the exclusion of citizen participation in spheres of Public Administration. The amendment has enormous hermeneutic significance, and it must be absorbed by operators (Tepedino, 2001, as cited in Pezzi, 2007, p. 38).*

The inaccuracies and imbrolios arising from the notions of public and private permeate the doctrine and jurisprudence. Doneda and Viola (2010, p. 101) identify that:

*“Doctrine and jurisprudence agree on the absence of an absolute right to privacy because the protection of this right can be removed when plausible reasons outweigh the individual right” (STJ, Writ of Mandamus No. 9,887, Minister Eliana Calmon, 2001); and “The right to privacy is constitutionally guaranteed. However, it is not absolute and shall yield in the light of the public interest” (STJ, Writ of Mandamus No. 15,771, Minister José Delgado, 2003).*

The *habeas data*, a constitutional action provided for in art. 5, subsequently led to the promulgation of Law No. 9,507/1997 – the Habeas Data Law (Brasil, 1997). In its art. 1, the law claims protection only to databases considered public: “any record or database containing information that is or that can be transmitted to third parties (...) is considered public”. The law is considered as an original instrument in the debates and propositions about the protection of personal data and privacy in Brazil because it is a

*(...) constitutional action directly linked to the need for the protection of personal data, that is, refers to the right of the citizens to have control over the information that concerns their person, allowing them to decide what will be accessible or not, guarding their privacy.*

*(...) Even if it does not have the desired degree of effectiveness, habeas data aroused the debate about the control of personal information stored in numerous databases, registers, and public records. Because it is guaranteed and regulated, it is an instrument that can be used to protect the rights of personality, more precisely, the protection of privacy (Pezzi, 2007, p. 117)*

For Doneda (2010), it is possible to achieve a balance in this field through the application of the principle of proportionality, that is, by evaluating the interests at stake, seeking to protect the essential content of the right to privacy, while taking into account the need for the use of personal data in the specific case. With this, Legislative Branch directions are based on the protection of the persons and their privacy, as well as the need to define a level of lawfulness so that the various services that make use of personal data can operate with greater efficacy, respecting individual rights. Thus, there are no ready solutions, but to be built on a case-by-case basis, corroborating the complexity of the issue, especially when considering groups or segments in conditions of structural inequality, for example.

Privacy is recurrently recognized as opposed to what is public and which often requires transparency<sup>34</sup>, understood as an essential democratic component. According to Serra (2002), the debate is not recent. In Kafka's novel "The Trial", there is a denunciation of the over-experience of the punitive societies of the seventeenth and eighteenth centuries, in which the administration of justice was done in absentia of the public and the accused, an already "fascist" machine. The author draws attention to the importance of transparency as a fundamental principle in the organization of the State and its relationship with the citizen. Moreover, the affirmation of transparency as a necessary condition of democracy is common to authors like Rousseau and repeated by several theorists of democracy who thought it inseparable from the right to information (an active duty). Serra (2002) highlights, however, three dangers related to transparency, which is important for this document:

- 1 – the confusion between the public and the private – translated into the claim that everything, from the most intimate and private, should be available. To the limit, this confusion turns transparency into a panoptic and democratic society into a "surveillance society", as already denounced by Foucault, since surveillance has been a trend in recent topics such as "electronic surveillance" and "digital surveillance" (electronic monitoring of people fits perfectly into this framework);
- 2 – the manufacture of events by the media – resulting in the construction of a false transparency;
- 3 – the omnipresence of information – threatening to turn the media into an agent of social control, of the power of society over the individual. Deleuze uses the expression "control societies", but we can also call them "information

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34 The Law No. 12,527/2011 – the "Access to Information Law" (Brasil, 2011c) is the main Brazilian landmark around the topic.



societies”, where the surveillance mechanisms take new, more effective forms, giving way to social control that is carried out through information.

The aforementioned researcher underlines a kind of information market that comes if firming more and more and on a large scale: “the first categorical imperative of social life is that the individual becomes a consumer and, incidentally, a producer of information, which consumes information, always more information, regardless of the form and content of such information – on pain of becoming a true outcast, a true excluded from the social system (...) (Serra, 2002, p. 208).

According to his vision:

*Bentham and Foucault’s “prison society” thus turns into the “network society”. Immersed in an actual sea of information in which the essential and the superfluous, the true and the false, the genuine and the manufactured are mixed, intertwined, confused, (...) the subject has the feeling that reality and history have finally become a huge screen at the fingertips, the eye and the ear, a canvas from which a total and permanent transparency flows, tending to forget to ask about the reasons why there is so much transparency. Here, and paradoxical as it may seem, the freedom not to have available information becomes a fundamental right (Serra, 2002, p. 208).*

## **6.1. Protection of personal data in the international scenario**

The Universal Declaration of Human Rights<sup>35</sup> (UN, 1948) emphasizes in Article 3 that “every individual has the right to life, liberty, and security”. Article 12 points out that: “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”. We can understand that the statement already signaled, in some ways, the need for personal security and, consequently, security in the area of personal information since the free movement of personal information may violate fundamental rights, such as privacy, intimacy, and dignity, which presupposes non-discrimination.

In the same year of the declaration referred to above, the American Declaration of the Rights and Duties of Man, in its Article 5, indicated similar concern: “every person has the right to the protection of the law against abusive attacks upon their honor, reputation and private and family life” (OAS, 1948). The two statements and their respective repercussions entailed privacy as a self-imposed autonomous

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<sup>35</sup> Brazil is one of the signatory countries of the Universal Declaration of Human Rights, although it is notably recognized as a country that daily violates numerous human rights, presenting political and social fronts still fragile for the change of this scenario, mainly because the State representatives themselves are often the main drivers of such violations. For more references on this topic, see Misse (1999).

right in the international context. The European Convention on Human Rights in 1950 established the right to privacy, and from there, several directives on the subject were edited.

In the international scene, the debate has taken place since the late 1940s, being strongly driven from the 1990s on several fronts. The various documents and regulations resulting from these discussions serve as the basis for the discussion of this document on rules and guidelines for the processing and protection of electronic monitoring data.

Directive No. 95/46/EC of the European Parliament and of the Council, on October 24, 1995, refers the protection of individuals regarding the processing of personal data and the unrestricted flow of such data. It conciliates national laws requiring high-quality data management practices by “data controllers” and guarantees rights for citizens. Personal data is designed as any information relating to an identified or identifiable natural person; any person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more specific elements of his physical, physiological, psychological, economic, cultural or social identity is considered identifiable. The document provides for specific rules on the transfer of personal data outside the European Union (EU) with the aim of ensuring the best possible protection of personal data when exported to other nations (EP, 1995).

Other normative also addressed the topic and were considered in this document:

- Regulation No. 45/2001 of the European Parliament and of the Council on the protection of individual people with regard to the processing of personal data by the community institutions and bodies and on the free movement of such data (EP, 2001);
- Directive 58/2002 of the European Parliament and of the Council on the processing of personal data and the protection of privacy in the electronic communications sector (EP, 2002);
- Council Framework Decision No. 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (EP, 2008);
- Council Decision No. 2009/426/JHA on the strengthening of Eurojust and amending Decision No. 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (EP, 2008).

Also, since 2012, the European Commission has been dedicated to a general reform of the rules for the protection of personal data in force in the European Union to give back to citizens control over their personal data and simplifying the regulatory framework for companies, which it is seen as essential for the achievement of the Digital Single Market strategy. The Commission stresses that

everyone has the right to the protection of personal data, ensuring that citizens have the right to complain and seek justice if their data is misused within the EU.

The humanism that transpires at first sight in European Community legislation is analyzed by Doneda (2010). The free movement of personal data was fundamental to the consolidation of the European Common Market, one of the major purposes of Community Law. On the other hand, he points out that the legislation, while marking the free movement of goods, people, services, and capital, as well as personal data, does not leave aside the protection of fundamental rights of people, denoting a purposeful balance.

## 6.2. The Brazilian picture on personal data

Numerous States, including Brazil, still do not have answers to all the questions raised by the protecting and processing of personal data in its intrinsic complexity. Without projecting onto the other our “delay” or “deficiency” in this field, realizing the role of the historical context in the technological, political, social, and economic transformation as a process, it should be emphasized that the consolidation of the right to privacy was slow and fickle even in its doctrinal cradle – the United States. Being a theme that never exhausts itself, so far, the data and its necessary protection are the subjects of conventions, treaties, laws, and regulations, promoting constant dialogue between States, organizations, and researchers interested in giving an account of their dilemmas.

There is not yet passed a law exclusively for the protection of personal data in the country. The Brazilian Federal Constitution in art. 5 presents guarantees as to the inviolability of the intimacy, private life, honor, and image of people<sup>36</sup>; however even if we take such elements as fundamental and self-applicable rights, it is essential, as has already been highlighted, the elaboration of specific law able to guarantee the protection of personal data, especially in the case of sensitive personal data. In addition, it is necessary to establish a National Data Protection Authority, agencies and supervisory instruments, which are still non-existent.

The absence of specific legislation regarding the protection of personal data does not exempt the public authority from providing adequate processing of such data. On the contrary, the need

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36 Doneda (2009) points out that such expressions and other profusions in the Brazilian doctrine to represent privacy are considerable, signaling the complexity of the issue that also extends into the semantic field. In addition to “privacy” we have private life, intimacy, secrecy, confidentiality, reserve, intimacy of private life, among others. They remember that the lack of an “anchor” definition, which reflects a consolidation of its semantic treatment, is not an exclusive problem of the Brazilian doctrine. Thus, “the repudiation of the violation of private life, despite its resonance as a commandment and general rule, is not something that can be easily qualified concretely, which ends up softening the absolute character – and, therefore, something rhetorical – that apparently, the norm has” (2009, p. 1). In the following we will refer to the various expressions used in the Constitution, but we will adopt the term “privacy” as a more reasonable and effective option for unifying the values expressed by the terms “intimacy” and “private life”.

to comply with the aforementioned constitutional precepts requires the establishment of specific protocols in different fields to ensure the proper protection of personal data.

In addition to the general propositions highlighted in the Constitution, there are some sectoral norms and decrees that, in specific topics, offer treatment on data protection. The Civil Code, for example, deals with the right to privacy in the list of personality rights in its article 21, which is still insufficient in recognition of this as an autonomous right with proper regulations:

*The so-called positivity of personality rights by the Civil Code is not the founding element of these rights, and its function is to guide the interpretation and facilitate the application and protection in cases in which the experience and the nature of the interests may have inspired the legislature to address them in more detail (Doneda, 2006, p. 96).*

The Brazilian Civil Framework Rights on the Internet (Law No. 12,965/2014), by establishing principles, guarantees, rights and duties for the internet use in Brazil, deals with the protection of records, personal data and private communications through the notion of personal, data and preservation of privacy:

*Art. 10. The custody and availability of connection data and access to internet applications dealt with in this Law, as well as personal data and the content of private communications, must attend to the preservation of intimacy, private life, honor, and image of the parties directly or indirectly involved.*

(...)

*Art. 11. In any operation of collection, storage, and processing of personal data, or communications by internet connection and application providers in which at least one of these acts occurs in national territory, the Brazilian legislation and the rights to privacy, the protection of personal data and the secrecy of private communications and records must be respected (Brasil, 2014b).*

Since there is no specific law on the protection of personal data, as well as there is no national authority to control and monitor compliance with the legal and regulatory provisions, movements in this direction happen in a still gradual way, especially in contrast to the reality of other countries such as Argentina and Uruguay<sup>37</sup>. In the Brazilian case, the protection of personal data still remains notably linked to consumption, to the consumer, in a reductionist perspective of rights and consequent

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37 In Argentina, there is Law No. 25,326/2000. In Chile, Law No. 19,628/1999. In Uruguay, Law No. 18,331/2008.

limitations on the exercise of citizenship, a constitutional right. There are, however, bills aimed at the protection of personal data, which also served as conceptual subsidies for this document.

The Access to Information Law No. 12,527/2001 indicates that personal information<sup>38</sup> is related to an identified or identifiable natural person. Decree No. 7,724/2012, which regulates the aforementioned law, defines personal information as information related to the identified or identifiable natural person, relating to intimacy, private life, honor, and image. As already noted, the Access to Information Law can be understood as the main legal instrument that aims to ensure broad access of the population to information of a public nature, that is, those that do not present elements capable of identifying individuals who must, in this case, have their personal data protected:

*Art. 6. It is up to the bodies and entities of the Public Administration, observing the applicable norms and specific procedures, to ensure:*

*III – the protection of confidential information and personal information, observing its availability, authenticity, integrity, and possible restriction of access.*

Section V of Law No. 12,527/2011, entitled “On Personal Information”, emphasizes, according to the selected fragment, the form of treatment of personal information, indicating concerns regarding the notion of personal privacy, intimacy, honor, as well as defines accessibility, term of access, punishment for misuse, etc.:

*Art. 31. The processing of personal information must be transparent and with respect for the intimacy, private life, honor, and image of people, as well as individual freedoms and guarantees.*

*§ 1º Personal information, referred to in this article, relating to privacy, private life, honor and image:*

*I – shall have restricted access, regardless of the secrecy classification and for a maximum period of 100 years from the date of production, to legally authorized public agents and to the person to whom they refer; and*

*II – may have their disclosure or access authorized by third parties in the face of legal provision or express consent of the person to whom they refer.*

*§ 2º Whoever gains access to the information referred to in this article will be held responsible for its misuse.*

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<sup>38</sup> Data and information are distinct elements. “Both expressions serve to represent a fact, a certain aspect of reality. Nevertheless, each carries a particular weight to be taken into account (...). The data would be associated with a kind of ‘pre-information’, prior to the interpretation and the drafting process. The information, in turn, alludes to something beyond the representation contained in the data, reaching the threshold of cognition and even the effects that this can present to its recipient (Doneda, 2006, p. 152).

*§ 3º The consent referred to in item II of paragraph 1 will not be required when the information are necessary:*

*II – to carry out statistics and scientific research of obvious public or general interest, provided for by law, being forbidden the identification of the person to whom the information refers (Brasil, 2011c).*

The Access to Information Law can be an instrument to increase transparency and social participation. We live in an environment where “the lack of information jeopardizes not only the social follow-up of the impact of State’s actions but also the formulation, by public agencies, of public policies based on evidence, which can be improved through monitoring and evaluation” (Pimenta and Moura, 2015). This law advances in making research feasible, which drives innovations in the Brazilian scientific field and encourages the elaboration of public policies and other related activities based on evidence and empirical analysis. The intimacy of the people to whom the information refers is protected since the law prohibits such identification and promotes the need for the protection of personal data. Decree No. 7,724/2012 also defines how third parties should access personal information. The applicants must prove their identity and justify the need and purpose of accessing personal data, together with a signed term of responsibility that provides for the purpose and destination on which their authorization was based, as well as the obligations to which they will be submitted under the law.

The law mentioned above, on the other hand, is not enough to ensure the person’s self-determination concerning their own personal information and their privacy, even because its object is not the protection of personal data. This situation is aggravated in the case of individuals being electronically monitored, as their personal data is sensitive. Given the particularity of our proposal, we consider some definitions and propositions of the draft bill that provides for the processing of personal data to protect the personality and dignity of the natural person.

The document, currently in a public debate organized by the Ministry of Justice and Public Security<sup>39</sup>, can be seen as a democratic and participatory effort. The basic text available on the internet opens up a virtual space for debates between individuals and organizations interested in the topic, aiming to complement or even replace traditional forms of elaboration based on commissions of jurists.

On the webpage where the aforementioned draft bill is available, in addition to the each person’s comments on numerous points, the dialogue is made possible. In a simple and clear way, the law’s objectives are defined, taking personal data as that data related to an identified or identifiable natural person, including identification numbers, local data, or electronic identifiers:

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<sup>39</sup> Among the several draft bills that deal with the subject, we will consider what is available at the following address: <http://pensando.mj.gov.br/dadospessoais/texto-em-debate/anteprojeto-de-lei-para-a-protecao-de-dados-pessoais/>

*A data protection law allows citizens to control how their information is used by organizations, businesses, and the government. It aims to establish minimum standards to be followed for the use of personal data, such as the limitation to a specific purpose, the creation of a safe and controlled environment for its use and others, always ensuring the citizen protagonism in the fundamental decisions in this regard. The biggest impact of a law on the protection of personal data is the balance of asymmetries of power over personal information between the holder of personal data and those who use and share them (Brasil, 2015g).*

The absence of protocols is a relevant matter when we think of public policies of any nature. Doneda (2010) notes, from Carvalho (2003), that the only Brazilian standard that deals specifically with data protection, except the *habeas data*, is the Consumer Protection and Defense Code. It regulates the maintenance of databases and consumer registries, determining several guarantees for them. In addition, in addition to having been influenced by the most modern norms related to personal data protection, this Code is guided some of the principles of data protection that will be described later.

Thinking, prioritizing, and implementing the policy of personal data and information in Brazil is fundamental, especially in order to disengage it from the arena of consumption, expanding it to situations where such protection has the capacity to assist in the equal and universal guarantee and promotion of fundamental rights expressed in the Constitution, as already underlined. Personal data protection in Brazil, however small it may be, is linked to the world of consumption. Personal data protection should be expanded to other domains of social life, conferring quality in the management of public policies and greater applicability to constitutional precepts. This expansion must necessarily cover sensitive personal data that inherently has the potential to discriminate and harm its owners, such as personal data from electronic monitoring of people.

The management of electronic monitoring services, in many cases, promotes the sharing of personal data with public security institutions in an indiscriminate, and illegal manner because it does not properly respect the privacy of the monitored person:

*The monitoring system will be structured to preserve the confidentiality of the data and information of the monitored person (art. 6, Decree No. 7,627/2011, Brasil, 2011b).*

### **6.3. Considerations on data processing, data protection, and information security in electronic monitoring of people**

Protecting and processing the monitored person's personal data through appropriate protocols and in tune with equal human dignity in order to guarantee constitutional rights aimed at the protection of honor, image, and private life, during the fulfillment of the measures is fundamental, as well as at their end. Decree No. 7,627/2011 already weaves requirements in this sense:

*Art. 5. The electronic monitoring device shall be used in such a way as to respect the physical, moral, and social integrity of the monitored person (Brasil, 2011b).*

Moral and social integrity is strictly linked to the protection of honor, image, privacy, dignity, and, therefore, the personal data of the monitored person, especially for the risk that its misuse presents.

International legislation, more specifically the directives of the European Union, follow directions that reinforce the paradigm of security in the name of the State. Therefore, the processing of personal data does not apply when the subject permeates the criminal arena, as specified:

*Article 1*

*Scope and aim*

*3. This Directive shall not apply to activities outside the scope of the Treaty establishing the European Community, such as those covered by titles V and VI of the Treaty on European Union, and in any case to activities concerning public security, defense, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law. (Directive 2002/58/EC of the European Parliament and of the Council of July 12, 2002).*



The personal data of the monitored person, including its geolocation<sup>40</sup>, are sensitive data that can, directly and indirectly affect the person's life:

*The imbalance of forces caused by the use of sensitive data stored in databases is cause enough for this category to have a special care. How can two people apply for a job, under the same conditions, considering that the employer has access to a database where it appears that one of them went through the prison system due to serving a sentence?<sup>41</sup> (excerpt from Folha de São Paulo newspaper of June 4, 2006, as cited in Pezzi, 2007, p. 92).*

In general, the data of electronically monitored individuals are kept in computerized databases of personal data developed and managed by companies operating in the field. The feeding of banks is carried out by employees of the contracted company, several public servants such as prison officers, third-party employees, etc. They are created and maintained without nationally established protection and treatment criteria, compromising the management of the services.

Nothing or little is said about the dangers embedded in the processing of personal data in the criminal area, probably because the "arrested" or the "monitored" are not considered as subject of the rights. Monitoring is an institutionalized system, and it has its risks. Hence the need for changes through protocols with a view to safeguarding the fundamental rights of the monitored people since it is understood that

*The control and uncertainty about who has access to personal data goes beyond the power of choice that delimits and defines the personal sphere of each human being, stripping the most intimate in an overwhelming way. The need for legal protection for those who trust their personal data to public or private entities becomes evident to the extent that these data have an economic value due to its use for commercial purposes (Pezzi, 2007, p. 10).*

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40 Geolocation or georeferenced location is a feature capable of revealing the geographical location through IP address, wireless network connection, cell tower with which the phone is connected, and dedicated GPS hardware that calculates latitude and longitude from the information sent by satellites in the sky. In the case of electronic monitoring, this information is shared with the Electronic Monitoring Centers and the companies that provide services to them. One of the methods of geolocation triangulates the position of the individuals based on the relative location of the different towers of their mobile operator (hence, for example, monitoring device models usually adopt two chips of different service providers). This method is fast and does not require any dedicated GPS hardware, but it only gives a rough idea of where the individuals are. Another method uses dedicated GPS hardware in the apparatus to communicate with a dedicated GPS satellite that is orbiting the planet. GPS can normally identify the location within a few meters. The downside of a dedicated GPS chip in the handset is the high energy consumption. Google Maps uses both methods: first, the system's interface shows a large circle in the map (with data from nearby cell towers) that approximates the individual's position. Then, triangulating with other cell towers shows a smaller circle. Finally, a single point is the exact position picked up by a GPS satellite.

41 The report highlights: "Government wants to sell data of citizens of São Paulo". According to the above-mentioned author, it was a bill presented by the Secretary of Public Security, Saulo De Castro Abreu Filho, authorizing private companies to manage and market databases with the personal files of all individuals in the state.

Such banks are tools that allow the advancement of limits in the sphere of privacy because of their geometric potential in the storage of virtually any type of data and with quality. So, "(...) if it is noticeable the value of having a database organized individually, what will be said when they are crossed. The power that emanates from this fusion is enshrined in more accurate but more invasive information (...). This power takes on an even greater dimension due to the ease of data transmission and circulation" (Pezzi, 2007, p. 10-11).

It is necessary to predict,, charge in an instrumental way and log the responsibility of the manager of an electronic monitoring file so that it remains diligent and attentive to the manipulation of this data, as well as of the other employees who deal with such data:

*The monitored person should be provided with a document stating, clearly and expressly, the rights and duties to which they will be subject, the period of surveillance and the procedures to be observed during the monitoring. (art. 3, Decree No. 7,627 of November 24, 2011)*

With this, we understand that the rights, duties, and procedures during the application of the measure should be informed in writing to the monitored person. Since privacy is a right and the procedures resulting from monitoring necessarily include the processing of the personal data of the monitored, this type of protocol is essential. In addition, the non-positivity of a fundamental right does not imply its non-existence since there are fundamental human rights not inscribed in the constitutional text that are possible for plural implementation and development. Hence the norm with *fattispecies aperta* (Baldassare) or, rather, the principle of no legal provision of fundamental rights (Canotilho, 2003).

The term of confidentiality signed between the company and the service contractor is the most used form in the field of information security. In the case of monitoring, this procedure is not enough if it is not extended to all individuals who deal with personal data. That is, for anyone to collect, record, organize, store, adapt, alter, retrieve, consult, broadcast, or conduct any operations involving personal data, regardless of whether they are public officials or employees of the contractors working in the Electronic Monitoring Centers, companies, and departments must sign a term of responsibility concerning the processing and protection of the monitored people's personal data, the women in cases of domestic violence, as well as the family members and friends, relatives of both the monitored and women in situations of domestic and family violence.

For sure there is potential harm in publicizing such databases since they do not deal with indeterminate or anonymous people, as is the case with opinion polls and census databases. It is built and fed from the personal data of the monitored person and the woman in a situation of domestic and family violence, that is, data related to the natural person identified or identifiable, including identification numbers, location data, or electronic identifiers.

The data generated by electronic monitoring alone is characterized as sensitive data. It is sensitive personal data, it is not open data, and in the face of the potential risks it carries, it is not anyone who can freely use it, reuse it, and redistribute it<sup>42</sup>.

There is a potential in sensitive data for discriminatory or particularly harmful use not only to an individual but also to a collective (those monitored on temporary leave can be a good example, as well as relatives and friends of the monitored). Neglect and misuse this data can incite persecution of victims<sup>43</sup> and unjustified arrests, fueled by imprisonment targets stipulated in the area of public safety, for example. Proper treatment and protection, in line with the principles of information security, are even more urgent and necessary as data of family members, friends, neighbors, and acquaintances of monitored people are also stored. This procedure, according to the Centers, occurs to facilitate the location of the monitored people in case of any incident when they do not have a phone or do not answer their own phone.

Processing and protecting sensitive data help fighting against degrading forms of treatment for monitored people, women in situations of domestic family violence and, equally, for their families, friends, neighbors, and acquaintances, which is supported by article 5 of the Constitution:

*All are equal before the law, without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, freedom, equality, security, and property, in the following conditions:*

*III – no one shall be subjected to torture or inhuman or degrading treatment.*

*LVII – no one will be found guilty until the an unappealable criminal conviction.*

In addition, from the point of view of moral damage, degrading treatment, according to art. 186 of the Civil Code is an unlawful act:

*Art. 186. The one who, by voluntary action or omission, negligence or recklessness, violates rights and causes harm to others, even if exclusively moral, commits an unlawful act.*

Additionally, it aims “a new reading of the principle of equality, and its intention is that the stored data do not serve to harm people (...) seeking greater protection both in their collection and in their

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42 For more information on open data, see the Brazilian Open Data Portal. Available at: <https://dados.gov.br/>

43 It is not the case to disregard or relegating to the background the rights and roles of the offended in the criminal justice system. The ideal is to promote practices that take into account treating with respect the rights of the offended and the perpetrator of the criminal offense. Moreover, according to the foundations of the alternatives to imprisonment policy, it is essential to hold accountable with autonomy and freedom; promote the involvement, reparation, and protection of the persons and the community; Act end-to-end in the justice system and invest in mediation and restorative practices, which is consolidated in “Guideline n.4: to the various practices of alternatives to imprisonment in progress in Brazil, one must seek to add the strengthening of potentialities and affirmation of people’s trajectories, the protagonism of the parties, the participation of the offended, the reparation of damages and the restoration of relationships whenever possible” (Brasil, 2015a, p. 49).

custody or use for the purposes for which they were collected, thus avoiding situations of inequality (Limberger as cited in Pezzi, 2007, p. 92).

Information and knowledge have always been important pillars of humanity. The internet has yet to have had its repercussions and applications properly scaled. Since the data of the monitored people are usually kept in databases with local or even web access, the rigor in the treatment and protection should be greater because, throughout this scaling and learning, misconceptions and errors can arise more easily. The eventual "database leak" containing personal information about electronically monitored individuals, through guilt or willful misconduct, has a huge discriminatory potential. This data can be shared through the internet, promoting and intensifying the criminalization of these individuals in various spheres of social life during and after the fulfillment of the measure. This can negatively affect their socialization and access to fundamental rights such as work, health, education, and among others.

Privacy and intimacy are fundamental rights that can be easily violated in the case of electronically monitored people. Personal geolocation data deserve special protection and treatment because they have a highly harmful potential, allowing excessive exposure of intimacy not stipulated in the judicial measure, which consists of abuse of power. In addition to these data being intrinsically sensitive, the availability of software crossover of data capable of mapping individual personality profiles amplifies the need for protection.

The complexity inherent in the right to privacy has been strengthened with the informatic expansion because "its logic is not usually that of the individual, since the costs and means of production involved require the quantity to be feasible; and, therefore, we can say that this system works in view basically of the large numbers – within which individuals are diluted and also classical humanism with supporting balances in its ethical connotation" (Doneda, 2006, p. 30).

Considering that technology does not determine social processes, "it is the society that shapes technology according to the needs, values, and interests of the people who use the technologies" (Castells, 2005, p. 17), the effort here is highly purposeful. The objective is to circumvent a series of problems involving the protection and processing of electronic monitoring data, in and outside the Centers, for the subjects involved – at any level – directly or indirectly in the services. The real interest contained in the protection of privacy and self-determination of the person in relation to his own personal information is undoubtedly that of the dignity of the human person:

*(i) it can include both the protection of the information provided and received the control of the inputs and outputs of the information) by a person; (ii) it can also be used in situations where privacy is at the heart of the problem, as well as in others in which privacy is a secondary aspect, but which also depends on guardianship. It would be inserted, therefore, both in patrimonial and non-patrimonial situations, increasing the spectrum of the effectiveness of guardianship (Doneda, 2006, p. 146-147).*

In some Centers, in addition to the databases stored electronically (centralized or not), the data is kept in a physical environment (external hard drive, flash drive, magnetic tapes, mobile and portable file storage drives), folders containing documents of the monitored person, notifications, letters and other documents generated over services, generating duplicity of information and a greater risk of inconsistencies regarding the same individual. From the point of view of information security, this type of procedure doubles our concern since the data materialized on paper implies varied and, certainly, more onerous treatments. When the monitored person leaves the system due to death or the end of the measure, the documents, in some states, go to the archive of the Department of Justice or Department of Penitentiary Administration. However, there are no protocols to guide any phase of the processing of personal data from electronic monitoring.

Finally, we emphasize once again that the privacy and confidentiality of the monitored person's personal data is provided for in Decree No. 7,627/2011, justifying the urgency of the proposal and its effective application, which also finds legal support in the Code of Criminal Procedure, as we have analyzed in previous pages:

*Art. 6. The monitoring system will be structured in such a way as to preserve the confidentiality of the data and the information of the monitored person.*

## **6.4. Composition of sensitive personal data of monitored people**

The personal data of monitored individuals and women in situations of gender and family violence, as well as their family members, friends, neighbors, and acquaintances, are sensitive personal data due to their discriminatory and harmful potential, individual or collective. The following rules aim to fight against discrimination and any form of degrading treatment attributed to monitored people and women in situations of domestic violence, including family members, friends, neighbors, and acquaintances of both categories, according to the fundamental precepts of the democratic state of law.

Whatever the type of media – paper, electronic, computer, sound, or image – the physical data of the monitored person is inherently sensitive. It is redundant to say “sensitive personal data of the monitored person”, because their personal data is sensitive in its nature<sup>44</sup>. Personal data must be collected in accordance with the principle of the minimum information and only when necessary for compliance with the measure. They should consist of, at most, the following information:

- name;
- photo;

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<sup>44</sup> We will highlight the expression “sensitive” only when it is important to reinforce this characteristic of the personal data of the monitored person.

- personal identification document numbers;
- residential, work, study, hospital, or related addresses (in case of work, study, and continued health treatments);
- phone number;
- email;
- date of birth;
- marital status;
- racial or ethnic origin;
- traffic data, i.e., personal location information (through geolocation systems, for example);
- electronic identifiers.

The collection of other personal data should be exceptional and carried out after careful evaluation of the team responsible for the procedure, necessarily respecting the purpose of the measure and all risks involved in the processing and protection of sensitive personal data from monitoring.

The personal data of women in its situations of domestic and family violence are equally sensitive in nature and should consist of, at most, the following information:

- name;
- address(es) to define the exclusion area(s);
- phone number;
- traffic data, i.e., personal location information when a woman in a situation of domestic or family violence chooses to use the portable tracking unit.

The sensitive personal data of family members, friends, neighbors, or acquaintances, both of the monitored people and of women in situations of domestic and family violence, should consist of, at most, the following information:

- name;
- phone number;
- type of relationship maintained with the person being monitored or with the woman in a situation of domestic and family violence.

## **7** PRINCIPLES, GUIDELINES, AND RULES FOR ELECTRONIC MONITORING OF PEOPLE

Public policies are the most relevant instruments that the State has to leverage processes of change and improvement in the social, economic and political fields, among others. Different institutional structures, mechanisms, and strategies are now necessary for the elaboration and conduct of policies in any field. Since the main subject of the monitoring policy is the monitored person, the nodal point of the policy and of this product is the human being. Pezzi (2007) broadens this understanding by denoting this emphasis:

*The theoretical background used was the displacement of the human person to the center of both public and private legal relations, that is, the recognition of the primacy of the person over the State, identifying the person as an end in itself and the State only as an instrument for the guarantee and promotion of their fundamental rights (Pezzi, 2001, p. 13).*

The electronic monitoring policy requires efforts of different fields of knowledge in order to substantiate and demarcate principles and guidelines for the services. This type of confrontation is essential because monitoring, by itself, is an embarrassing measure and highly capable of degrading the individual's life in the spheres of family, work, and other social relations, as already pointed out in previous pages.

The principles applied to electronic monitoring constitute a confrontation with the prevailing punitive precepts because "(...) no further theory is intended to apply to criminal law to justify the right to punish, but to build limits on the powers of this punitiveness." (Estorilio, 2012, p. 20). Power is glimpsed not in its restrictive dimension but especially productive and positive (Foucault, 2003). Thus,

*This type of debate has repercussions in the field of politics as a sphere of power dispute but also in the field of policies as strategies of action. It brings out different implications to possible strategies for strengthening and affirming marginalized social segments, projection of peripheral countries and regions in the international system, as well as democratic construction, the exercise of citizenship, and development in a general way (Albagli and Maciel, 2011, p. 34).*

This is a public policy, a criminal policy, that is, distinct from public security policies due to its different subjects and objects. The main subject of criminal policies is the individual, the person in custody, the person being monitored (regardless of the nature of the measure and the procedural stage). Thus, principles aimed at guaranteeing the fundamental rights of the development of practices

and routine workflows in the field of monitoring is necessary. Also, considering the technological and informational aspects inherent to the services, it is necessary to establish principles, guidelines and rules for the processing and protection of data in the electronic monitoring of people, especially because such data are sensitive.

It is worth explaining the following expressions: principles, guidelines, and rules.

“Principle” is the promotion of an ideal state of affairs theoretically and conceptually, regardless of whether or not there is a broad consensus around it. Principles do not determine normative consequences, unlike rules. They establish value guidelines to be achieved without describing the ways to do so (Ávila, 2003).

A “guideline” indicates how the propositions contained in the principles can be achieved, acting as a path that orients the principle. They are objective and normative.

“Rules” are primarily descriptive, objective norms and have a terminative claim. They are norms that may or may not be achieved, but they are decisive and precise.

A system, including its public policies, cannot be composed only of principles or rules. According to Ávila (2003), a system built solely by principles would be too flexible due to the absence of clear guidelines of behavior, causing problems in coordination, knowledge, costs, and power control. On the other hand, a system formed by rules, applied in a formalistic way, would be too rigid due to the absence of opening valves for the adjustment of solutions to the particularities of the concrete cases. Thus, the author concludes that it can neither be said that principles are more important than rules nor that rules are more necessary than principles. That is, performs different and complementary functions. That said, we move on to the principles, guidelines, and rules governing electronic monitoring:

## **7.1. Principles**

### **7.1.1. Principles for minimum penal intervention and decarceration**

#### **1 – Non-contingent response**

There is a punitive culture in vogue in several nations, including Brazil, which trivializes the use of penal intervention and adopts this mechanism to segregate, control and exclude specific society segments. It is possible and necessary to consider other solutions in conflict management. We must therefore focus on the exhaustiveness of the debate on the possibilities of responses before considering the primary criminalization of conducts.



## **2 – Wide prevention**

It is necessary to shift the State's emphasis on forms of social control of a repressive and punitive character to accommodate preventive, non-punitive, and socially participating forms in managing social conflicts. Electronic monitoring services should avoid reproducing punitive processes since these are extremely capable of mobilizing stigmas; disseminating discriminatory practices in labor and consumption relations; limiting or restricting access to basic services and rights such as education, health, social assistance, etc.

## **3 – Subsidiarity and minimum penal intervention**

Before a sentence is applied, it is necessary to consider whether a non-criminal response to the case is possible. Even if there is a law that provides for punishment, it should only be applied if there is no alternative extra-criminal measure to the case. Both arrest and electronic monitoring should be understood as exceptional measures, limiting themselves to the most serious violations of human rights and the minimum necessary to stop the violation, giving priority whenever possible to the application of less burdensome measures.

## **4 – Legality**

The electronic monitoring measure may not be applied in a case not provided for in the legislation that implies an aggravation in the procedural condition or the sentence of the person submitted to the measure, nor determine additional restrictions not provided for in the legislation to the monitored people. In addition, no disciplinary sanction should contradict the relevant norms and legislation, in particular international treaties, the Federal Constitution, and the Criminal Enforcement Law.

## **5 – Presumption of innocence**

The democratic rule of law must guarantee people the right to defense and due process. The criminal labeling crystallized in the monitored people is highly selective and discriminatory. The monitoring measure, especially when it is a pre-trial non-custodial measure, cannot assume the meaning of punishment, and full defense and due legal process must be guaranteed before the application of sanctions. In the occurrence of incidents at any proceedings stage, the present principle should be observed until intent factors are verified with respect to violations of certain conditions.

## **6 – Suitability**

To determine the application of the electronic monitoring measure, it will be up to the applicator to carry out an accurate study on the need, effects, and meaning of such a measure for the people involved and the community, so that such a measure adheres to the minimum useful and necessary.

## **7 – Need**

The measure can only be applied when the electronic surveillance of the person is considered essential, from the evaluation in the specific case demonstrated the insufficiency of measures less burdensome for the judicial guardianship sought. Electronic monitoring is a measure that should be adopted in exceptional cases, in the face of other legal possibilities closer to the purposes of the person's self-liability.

## **8 – Social adequacy**

The full capacity and conditions of fulfillment should be evaluated, considering schedules and other elements related to social, economic, family conditions, work and study, physical and mental health, religious belief, among others. Also, it must consider the particularities of each person, considering individual trajectories and potentialities.

## **9 – Legal adequacy**

The electronic monitoring should not be applied as a pre-trial non-custodial measure in cases in which any future convictions will not result in a custodial sentence.

## **10 – Temporariness**

The measures must be applied within a determined and reasonable time, ensuring periodic review as to the necessity and adequacy of the maintenance of the measure, also aiming at restoring the principle of least damage. Monitoring services should be applied always considering the transient condition of the measure. The delay of the criminal proceedings can mean an indeterminate or unjustly prolonged time of the measure, which hurts the reasonability and the principle of minimum penal intervention.

## **11 – Proportionality**

Criminal responses, even when they are alternatives to incarceration, must strictly concern the necessary intervention to stop the violation and repair the damage, in a proactive and non-arbitrary manner.

## **12 – Personal imputation**

Electronic monitoring may not overtake the person in compliance with the measure. Discriminatory and harmful treatment cannot be imputed to individuals directly or indirectly related to the compliant and to women in situations of domestic and family violence. Electronic monitoring services may not imply any kind of criminal or vexatious measure to the family, friends, neighbors, and acquaintances of the monitored people, as well as to women in situations of domestic violence, their family, friends, neighbors, and acquaintances.

## **13- Responsibility for the fact**

It is still common to refer to people affected by criminal law as "deviant subjects", which indicates a disagreement with the criminal justice system, which must keep to the act. The media

plays a fundamental role in creating and reinforcing stereotypes, building collective imaginaries based on a culture of dangerousness capable of imputing and crystallizing in individuals a criminal identity. In this sense, electronic monitoring services must contribute to data protection without any moralizing or arbitrarily curative or treatment claim.

#### **14 – Instrumentality and simplicity of acts and forms**

The process must stick to acts strictly necessary for a fair legal order without exaggerating procedures and rites that delay and hinder the purposes of the electronic monitoring of people. At the same time, it must provide the parties the minimum necessary to guarantee their rights, especially regarding self-defense and due criminal procedure.

#### **15 – Limits of discretion**

The police and criminal procedure bodies are required to fully comply with the constitutional principles of the right to freedom, physical safety, self-defense, presumption of innocence, and minimum intervention. Pre-trial detention should be limited to the possibilities determined by law and occur only when the total impossibility of maintaining freedom remains proven. The discretion of the instances of the criminal justice system must stick to the limits imposed by law.

#### **16 – Division of competences**

Each body or instance must stick to its skills and knowledge within the penal system in a systemic and complementary way, respecting the specificities from other fields when determining the penalty or measure, such as demands related to treatment for chemical dependency, mental health disorders, and other specificities related to diseases or other special circumstances.

#### **17 – Economy**

The cost of intervention must be strictly the minimum necessary. Considering the expenses already incurred by the State for criminal liability, duplication of control procedures must be avoided, as well as new expenses arising from social actions to minimize the side effects of electronic monitoring. Such intervention also generates social costs, which should not be valued only from an economic perspective, but should especially consider the negative impacts in the social context of the people directly affected, their families, and their community. The harms of criminal intervention should be considered and weighed when applying a criminal response in order to ward off its counterproductive effects, which requires the search for less socially harmful solutions.

## 7.1.2. Principles for the promotion of human rights and social justice

### **18 – Dignity and freedom**

The electronic monitoring policy must promote dignity, freedom, and social justice for the people. In this context, the guarantee of health conditions is also understood as related to dignity, including the need for medical examinations, surgeries, emergency care, and other medical interventions that impact the use of the individual monitoring device. The application of the monitoring measure cannot lead to degrading forms of compliance, disregard for fundamental rights, and perpetuation of stereotypes. It is necessary to face repressive and punitive representations and practices that are perpetuated in the field criminal of law, proposing concepts and instruments capable of dealing with conflicts and building responses in a more democratic way.

### **19 – Minor damage**

No person in compliance with electronic monitoring measures may be subjected to ill-treatment, torture, or inhuman treatment. Individual monitoring device – “anklet” – already causes numerous damages to the monitored people. The services should seek to minimize the physical, psychological, and social damage caused by the use of the device and the restrictions imposed by the measures. In addition, the measure must have established deadlines with periodic review of the adequacy and necessity of its maintenance to minimize damage to the compliant.

### **20 – Normality**

The restrictions imposed by the measures must stick to the minimum possible and necessary to protect of the judicial provision, ensuring the least possible damage to the normal routine of the person monitored electronically. Priority should be given to not interfering or doing so in a less impactful way in people’s daily routines and relationships in compliance with monitoring measures.

### **21 – Electronically monitored people as subjects of their individual and collective processes**

The monitored people must lead the process of (re)signifying their individual and collective trajectories. For each person in compliance with an electronic monitoring measure, it must be granted the right to choose and participate in the sessions and referrals. Also, other services offered must be ensured, so that the individualization of punishment is possible. The management of the Electronic Monitoring Center should guarantee, among other things, the work of the multidisciplinary team in applying the measures.

### **22 – Recognition and respect for differences**

Respect for differences (sex/gender, race/ethnicity, age, origin, nationality, religion, and others) and their recognition in electronic monitoring services must be guaranteed. The measures must not be only an instrument of control and surveillance of people monitored, implying the suppression of senses linked to the diversity of social life. Thus, the importance of the integrated work of the

actors involved in the application of the measure is emphasized in order to give, among other things, recognition and respect for differences. Electronic monitoring services should be guided by the right of the monitored person, regardless of any attribute of their social identity, to be treated with respect and consideration, facing any action arising from value judgments.

### **23 – Policies for women**

Rights and policies for women must be guaranteed, according to gender specificities, in monitoring services, including voluntary follow-up by multidisciplinary teams and voluntary referrals. The use of handcuffs or any other means of containment during childbirth and postpartum of women in compliance with electronic monitoring measures should not be allowed. It is essential to pay attention to the importance of family life and restoration of bonds in cases of domestic and family violence, avoiding the unnecessary use of electronic monitoring when it is possible to apply other restraining orders.

### **7.1.3. Principles for personal data protection**

#### **24 – The sensitive nature of personal data in electronic monitoring**

The data collected in the electronic monitoring services are considered sensitive data due to its harmful and discriminatory potential and should receive adequate treatment and protection.

#### **25 – Privacy**

Electronic monitoring services should offer effective means of protecting privacy, guaranteeing it as a fundamental right to all monitored people and women in situations of domestic violence, as well as to their family, friends, neighbors, and acquaintances – the natural person to whom the sensitive personal data refers. All personal data built from electronic monitoring services are sensitive. Geolocation personal data deserve special processing and protection because they are more likely to harm the privacy of the monitored person, allowing excessive exposure of intimacy not stipulated in the judicial measure.

#### **26 – Limitation of purpose**

The processing and protection of personal data must be carried out for lawful, legal, legitimate, specific, explicit, and known purposes by those directly and indirectly involved in this process, considering that the personal data of electronic monitoring is highly sensitive. Processing the monitored people's data should aim at developing electronic monitoring services within the scope of the criminal policy, aiming exclusively at the service's legal purpose: the monitoring of compliance with the conditions determined by the court for pre-trial non-custodial measures or restraining orders or, also, temporary releases and house arrest. Personal data, including geolocation, may not be used indiscriminately.

## **27 – Minimum information**

Only the personal information essential and necessary for electronic monitoring services should be collected and processed, considering the harmful and discriminatory potential associated with this data. The personal data collected concerning monitored individuals, women in situations of domestic and family violence, as well as their relatives, friends, neighbors, and acquaintances, should therefore stick to the minimum necessary, receiving adequate processing and protection. Electronic monitoring personal databases should be built based on a minimum information ground, not excessive in relation to the purposes of the treatment, according to the principles of adequacy, necessity, and proportionality. Sensitive personal data cannot be used as arbitrary tools in the invasion of the intimate life of the monitored person, which consists of abuse of power, resulting in discrimination and other forms of degrading treatment.

## **28 – Transparency**

Transparency is an essential component in the development and evaluation of public policies. The policy of electronic monitoring of people is essentially of collective interest, which should lead to broad social participation. Encouraging social participation cannot mean the exposure of monitored individuals and women in situations of violence. Electronic monitoring services should provide research, especially to guide the development, and evaluation of public policies in the area. Transparency must also govern all stages of monitoring services. The monitored person must have ensured the right to prior information about all the conditions imposed by the measure, as well as norms, rules, regulations, and sanctions, so that no punishment is applied to subjects for lack of knowledge of their obligations.

## **29 – Availability**

Availability is essential and mandatory in the electronic monitoring services, ensuring their continued provision without interruptions in the provision of information that must be analyzed and pre-formatted to avoid misconceptions at any stage of the services, which includes the proper treatment and protection of personal data.

## **30 – Integrity**

It is mandatory to preserve the accuracy of personal data and other information, as well as processing methods, maintaining all its original characteristics, to ensure that the information has not been modified or destroyed in an unauthorized manner, either accidentally or intentionally. The integrity of the information is related to its reliability, i.e., the principle of accuracy because the personal data must correspond to the current reality of the monitored individual and the woman in a situation of domestic and family violence.

### **31 – Confidentiality**

Confidentiality is a mandatory element in the processing and protection of personal data related to electronic monitoring, acting as a guarantee that the information will be accessible only for civil or public servants in the performance of their duties and identified within the system. Unauthorized, accidental, or intentional access must be prevented by ensuring that only duly authorized and accredited individuals, systems, bodies, or entities have access to personal data or any other type of information.

### **32 – Authenticity**

The public bodies or the service provider company responsible for the electronic monitoring should have documents easily proving their authenticity and, in cases of computerized systems, preferably their digital certificates for possible interoperability with external and distinct agencies systems. The digital certificate must consist of an electronic document capable of identifying individuals, companies, systems, and information in the digital world, increasing the protection of online transactions and virtual data exchange. Still, with a view to promoting the authenticity in the services, the Electronic Monitoring Center should check the personal identification documents and the court decision of the monitored person to ensure the personal authenticity of the individual, preventing the measure from being applied to those who are not intended.

### **33 – Safety and prevention**

Electronic monitoring data must contain protective barriers in order to minimize vulnerabilities in systems, physical and logical infrastructure. Intrusions or unauthorized access to Electronic Monitoring Centers and their information storage units must be prohibited. Educational, technical, and administrative efforts commensurate with the nature of the information processed, i.e., sensitive personal data, should be constantly employed. Such measures should be minimally intertwined with the purposes of training the operators responsible for managing access to data, and adopting adequate infrastructure, avoiding unauthorized access, destruction, loss, alteration, communication or dissemination, or any damage of natural, accidental, or illicit nature. Security measures must include plans business continuity in order to ensure an adequate level of commitment in the planning and treatment of these occurrences and effective control of information.

#### **7.1.4. Principles for integrated action between Federative Units, the justice system, and the community for decarceration**

### **34 – Inter-institutionality**

It is necessary to build flows and instances of interaction between institutions that assemble the criminal justice system in all its phases, considering the Executive Branch, the courts, the Public Defender's Office, the Public Prosecutor's Office, the police and civil society institutions that

participate directly or indirectly in the electronic monitoring services. The level of political-institutional sustainability, as well as their capacity to cope with incarceration, directly depends on the degree of coordination, common understanding, and alignment of methodologies and strategies among the highlighted institutions.

### **35 – Interactivity or social participation**

The principle of interactivity values the guarantee of social participation from the reception of the monitored people and the guarantee of support, aiming at their enrollment in assistance and community programs, and also in a structuring way from the conception and evaluation of the electronic monitoring policy as a social control mechanism. This participation, primarily of a deliberative nature, must be ensured in bodies such as councils, committees, committees, working groups, and other structures.

### **36 – Interdisciplinarity**

In order for electronic monitoring services to be implemented according to the principles established herein, technical structures must be consolidated with adequate knowledge and specialties capable of supporting its activities, following-up the monitored people according to specific methodology and protocols.

### **37 – Professionalization of electronic monitoring services and their management structures**

The effective implementation of a Management Model for Electronic Monitoring of People requires the professionalization of the management structure and the staff of servers and employees of the Electronic Monitoring Centers in the Federative Units. The scope of electronic monitoring, either with regard to the quantitative increase in people monitored or the roles – still ambiguous – that the services occupy in criminal justice and also public security policies, requires that each Federative Unit compose a specific structure for the services. Improvements and propositions for services must be operated through specific planning with qualified professional training, aiming at the effective application of principles, rules, structures, defined procedures, and workflows.

## **7.2. Guidelines for the Management Model for Electronic Monitoring of People**

The following guidelines support the basis for activities to be taken by federal, state and municipal governments, as well as by the justice system and civil society to consolidate the principles of electronic monitoring of people. They are general guidelines for services aimed at adequate processing and protection of these data.



- 1 – DEPEN should consolidate forms of social participation, prioritizing modalities of democratic discussion, experimentation, and cooperation for the construction, consolidation, and improvement of the national electronic monitoring policy, involving actors such as the criminal justice system, public security institutions, institutions of the social protection network, universities, and civil society organizations.
- 2 – DEPEN should promote, in coordination with the justice system, full compliance with international treaties, to which Brazil is a signatory, relating to the containment of incarceration in Brazil.
- 3 – DEPEN should seek, through institutional agreements, the awareness and commitment of the organs of the criminal justice and public security systems around the protocols established here for the electronic monitoring policy, especially as a way to face mass incarceration and guarantee the fundamental rights of the monitored people, regardless of the nature of the measure and the procedural phase.
- 4 – Electronic monitoring services should focus on the promotion and guarantee of fundamental rights of the monitored people, mobilizing and strengthening potentials through access to services and public policies already instituted, always considering the plurality and diversity of each individual's trajectories.
- 5 – DEPEN should promote monitoring services on a precautionary and residual base, and when these are assessed as necessary, considering the fundamental rights of the people involved and when the other pre-trial measures prove to be insufficient to contain incarceration.
- 6 – The justice system and Electronic Monitoring Centers should ensure the respect for diversity of generational, social, ethnic/racial, gender/sexuality, origin and nationality, income and social class, religion, and belief of all practices, policies, assistance, and services performed during the application of the electronic monitoring measure. The social differences of the subjects should not be treated as differences in the status of political and humanitarian equality that characterizes all subjects.
- 7 – The justice system, the Executive and Legislative Branches, and civil society must, throughout the application of the electronic monitoring measure, adopt discourses and practices aimed at confronting the criminalization of poverty, youth, and black people, as well as other groups vulnerable to the selectivity of the criminal justice system, ensuring equality with respect to diversities, and contributing to social protection.
- 8 – Under no circumstances will torture, ill-treatment, harassment, or cruel treatment of monitored people, women in situations of domestic and family violence, and their relatives be allowed or tolerated, being the functional obligation of any server and employee, under risk of penalty of omission. In cases where the public officer is the complaint, they must report occurrences of which they are a witness or become aware, without prejudice to the

- guarantee of their professional practice. This scope includes actions of offense or moral and psychological harassment, as well as any type of derogatory and discriminatory treatment.
- 9 – The application of sanctions, penalties, or measures that are not expressly determined in the court decision should be prohibited, which makes any referral of the monitored people expressly voluntary.
  - 10 – The Executive Branch in the states will be responsible for the structuring of Electronic Monitoring Centers for allowing the application of electronic monitoring measures and their management, with a suitable number of qualified professional teams, specialized knowledge, and labor rights assured, besides considering the adequate institutional and functional separation in relation to the penitentiary administration and other public security and criminal justice bodies, as well as ensuring the interdisciplinarity as a working method in the monitoring services.
  - 11 – The monitoring services must necessarily be guided by the follow-up of the person monitored by multidisciplinary teams, preferably composed of social workers, bachelor of laws, and psychologists, since the services cannot be oriented solely in control and surveillance practices.
  - 12 – The Executive Branch in the states and cities, coordinated with the justice system and civil society, should seek to constitute broad networks of care and social assistance for the inclusion of people from the demands received and felt in multidisciplinary services, in the application of the electronic monitoring measure, highlighting the following areas:
    - a. health care for users of drugs, alcohol, and other psychoactive substances;
    - b. mental health;
    - c. work, income, and professional qualification;
    - d. social assistance;
    - e. legal assistance;
    - f. development, production, training, and cultural diffusion, especially for the young public.
  - 13 – DEPEN should seek ways of coordination and mobilization with the Legislative, Judicial, and Executive Branches, with organizations and civil society movements, to expand the debate about the electronic monitoring of women, seeking to avoid as much as possible the monitoring measure for pregnant women due to their potential harm, thus prioritizing other less burdensome measures. In the inevitability of the application of the monitoring measure, the Centers should prioritize referrals, always on a voluntary basis, to the social protection network and the women’s protection network.
  - 14 – All actors involved directly or indirectly in the implementation of electronic monitoring services must join forces to commit themselves to research and develop personal monitoring devices with less harmful technologies to the monitored people. The application of measures

should be oriented toward the minimization of physical, social, and psychological harm. States should adopt this methodology: technologies less harmful to the person; individual monitoring device with technical specifications that potentiate the use of the battery, reducing recharging procedures; the device must allow recharging without limitation of movement of the monitored person, from portable battery recharging devices; the monitored person cannot, in any hypothesis, stay connected to the electrical power outlet while recharging the battery; individual electronic monitoring device must be made of hypoallergenic material, which does not emit sound signals, but only luminous and vibrating to avoid public exposure and stigmatization of the person being monitored.

- 15 – All efforts related to the production, reception, classification, indexing, filing, appraisal, disposal, archiving, storage, transportation, usage, access, reproduction, transmission, and distribution of documents and information, as well as the procedures for provisioning data to third parties through communication, interconnection, dissemination, or database extraction must comply with the “Guidelines for Data Protection in Electronic Monitoring of People” (Brasil, 2016b), published by the National Penitentiary Department in partnership with the United Nations Development Programme.
- 16 – There should be no integration of electronic monitoring systems and systems of public security institutions. Electronic monitoring is a penal policy and not a public security policy. The work of the police in dealing with specific incidents should be always carried out from the demand of concrete cases by the Electronic Monitoring Center. The sharing of electronic monitoring data should only take place in concrete cases not solved by the Center or within the of a specific police investigation in which the duly identified monitored person already appears as a suspect, being submitted to the judicial authority, which will analyze the actual case and will grant or not the request.
- 17 – The justice system and the Electronic Monitoring Centers shall ensure that the monitored people are informed verbally and in writing of all the conditions imposed by the electronic monitoring measure, the device’s functioning, the services and procedures available, the forms of processing and protection of the sensitive personal data collected. The monitored persons must have ensured the right to information regarding the procedural situation, family and community relations, the offered assistance, and the rules and regulations of the monitoring services.
- 18 – In partnership with Federative Units and the justice system, DEPEN will be responsible for building and implementing initial and continuous training courses for all professionals and partner networks that work at some stage of the application of the electronic monitoring measure, considering the educational plans of the present management model.
- 19 – States must establish policies for the professionalization of Electronic Monitoring Centers, providing career and salary plans for servers from selective processes that seek to ensure

the entry of capable professionals for implementing the management model proposed here, with adequate initial and continuous training and fair remuneration. States must also provide control mechanisms and information on institutional and professional practices, performing investigations and sanctions for any inappropriate behavior in the exercise of the profession, especially with regard to their position as public servants.

- 20 – The professionalization of Electronic Monitoring Centers should consider: the civil nature of the occupation of posts related to the services of electronic monitoring with appropriate differentiation of police or military models – because the professionals working in the monitoring services must have a technical profile aimed at education, accountability, promotion and guarantee of rights an operational separation between the Electronic Monitoring Center, the prison administration and other public security and criminal justice bodies; public management; transparency in the occupation of positions, especially the positions of leadership, to which should be provided criteria of merit, experience, suitability, technical capacity and academic training; the processing and protection of sensitive personal data of people in compliance with monitoring measures, as well as of women in situations of domestic and family violence, family members, friends, neighbors and acquaintances who may have their data collected and processed at any time by the Electronic Monitoring Center; and the transparency of public information.
- 21 – The guidelines consolidated by DEPEN in this document should be considered for agreements and other forms of transferring resources to the Federative Units.
- 22 – DEPEN and the states should jointly consolidate mechanisms and instruments for the evaluation of electronic monitoring services, mobilizing the culture of regulation through the production, construction, and analysis of quantitative and qualitative data in an interdisciplinary and integrated manner. There should be permanent methodological improvement, systematic and permanent evaluation processes.
- 23 – It is up to DEPEN, together with local institutions of the Executive Branch and actors of the justice system in the states, to carry out communication campaigns aimed at informing the population about the objectives and purposes of electronic monitoring, mainly emphasizing its subsidiary character in relation to alternatives to imprisonment and its effective use as a substitute mechanism for deprivation of liberty.

### 7.3. Rules applied to the processing and protection of data of monitored people

Electronic monitoring databases are fundamentally made up of sensitive personal data of monitored individuals. Such data inherently present potential risks for discriminatory or harmful use to the monitored people, individually and collectively, exposing subjects, during and after services, to various forms of degrading treatment as unjustified arrests. Their discriminatory and harmful potential extends to the sensitive personal data of women in situations of domestic violence and their families, friends, neighbors, or acquaintances because they can also mobilize controls of a vexatious, punitive, or even criminal character.

It is essential to consider that the indiscriminate and improper use of the database containing personal information about electronically monitored individuals, women in situations of domestic violence, as well as their family members, friends, neighbors, and acquaintances, through guilt or intent, has a huge discriminatory potential. The circulation of such personal sensitive data on the internet on the internet can promote not only discrimination but also the criminalization of these people (even those who are not in compliance with electronic monitoring measures), keeping them away from a normal social life, with access to work, health, education, etc. The privacy of monitored individuals is even more sensitive because personal geolocation data have greater potential for harm with regard to excessive exposure of intimacy, not stipulated in the judicial measure, that is, an abusive form of power.

This being said, the following rules must be applied in electronic monitoring services. The natural person, the public or private entity that, by virtue of a link of any kind with bodies or entities, is authorized to access personal data from the electronic monitoring services but subjects them to improper treatment or unauthorized disclosure shall be held liable for such unlawful conduct:

*Art. 32. Constitutes unlawful conduct that entails the responsibility of the public or military agent:*

*IV – disclosing or allowing disclosure or access or allowing improper access to confidential information or personal information;*

*Art. 34. Public bodies and entities are directly liable for the damage caused as a result of unauthorized disclosure or misuse of confidential or personal information, with the determination of functional responsibility in cases of intent or negligence, ensuring the respective right of recourse (Law No. 12,527/2011, Access to Information Law, Brasil, 2011c).*

Criminal Code establishes liability and punishment in the case of violation of functional secrecy:

To reveal a fact that one is aware of because of one's position and that should remain secret, or to facilitate its disclosure: sentence: detention from six months to two years, or fine, if the fact does not constitute a more serious crime (art. 325, Decree-Law No. 2,848/1940, Brasil, 1940). The same penalties apply to those who allow or facilitate, by assigning, providing, or borrowing a password or in any other way, the entry of unauthorized people to information systems or databases of the Public Administration (included by Law No. 9,983/2000, Brasil, 2000).

According to the draft bill on the protection of personal data used as one of the references<sup>45</sup>, data processing is the:

*set of efforts related to the production, reception, classification, indexing, filing, appraisal, disposal, archiving, storage, transportation, usage, access, reproduction, transmission, and distribution of documents and information, as well as the procedures for provisioning data to third parties through communication, interconnection, dissemination, or database extraction (Brasil, 2015g).*

The sensitive data that make up the databases of each Electronic Monitoring Center, Department of Penitentiary Administration – and related bodies in the states – as well as companies providing monitoring electronic monitoring services, may include the following information of the monitored people: name; photo; phone number; numbers of personal identification documents; addresses – work, study, hospitals or similar (in case of work, study and continued health treatments) –; email; date of birth; marital status; recording of telephone calls originating from the Center with the monitored individual; personal location through geolocation systems; electronic identifiers; and data on racial or ethnic origin.

In the case of women in situations of domestic or family violence, sensitive personal data may include: name; telephone number; addresses to delimit the exclusion area(s); and personal location information through geolocation systems. Sensitive personal data of family members, friends, neighbors, or acquaintances of the perpetrators and of women in situations of domestic violence – considered indirect holders – may include: name, address, and telephone, in order, for example, to enable indirect contact with the monitored person when dealing with an incident, after all the modalities of treatment of these through the Center.

The protocols provided in this document aim to promote the protection for the users of the electronic monitoring network – not only the electronically monitored people but also companies, public institutions, corporations, employees, and servers that work directly or indirectly at some stage

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<sup>45</sup> As already noted above, it is considered the draft law on data processing and protection available at the following address: <http://pensando.mj.gov.br/dadospeessoais/texto-em-debate/anteprojeto-de-lei-para-a-protecao-de-dados-peessoais/>.

of the electronic monitoring services. Since the second half of 2015, *in loco* appointments have been carried out to learn about the services. Private employees and public servants at any hierarchical level, here referred to as operators<sup>46</sup>, that is, the natural or legal person, public or private law, who processes personal data on behalf of the data controller, usually act, in most cases, without formally established procedures. Operators, therefore, are more susceptible to errors at any stage of the processing and protection of personal data, as well as are at greater risk of penalization in the face of making random decisions guided by “common sense”. This practice should be avoided by following the highest foundations of information security protocols.

The Normative Instruction No. 1, of June 13, 2008, issued by the Institutional Security Office of the Presidency of the Republic, has the purpose of disciplining the information security and communications management in the Brazilian Public Administration and establishes the following concepts of information security and communications: “efforts which aim to enable and ensure availability, integrity, confidentiality, and authenticity of the information” (Brasil, 2008).

All information has value (economic, political, cultural, etc.) and needs to be protected against accidents or attacks, regardless of whether it is stored in electronic or physical databases. Physical security protects equipment and information against unauthorized users and prevents damage caused by natural causes. Logical security is applied in cases where a user or network process tries to access an object that can be a file or other data resource; that is, it aims to protect data, programs, and systems against unauthorized access attempts made by users or software.

### 7.3.1. Rules prior to the processing and protection of personal data of the monitored people

- 1 – The monitoring system shall be structured in such a way as to preserve the confidentiality of the monitored person’s data and information (art. 6, Decree No. 7,627/2011, Brasil, 2011).
  - 1.1 – The personal data of the monitored people, of the women in situations of domestic violence and their relatives, friends, neighbors, or acquaintances are sensitive personal data. They should be treated and protected so as not to cause them any discrimination or degrading treatment by the operators of the Electronic Monitoring Centers and other bodies, institutions, or individuals involved directly or indirectly in the electronic monitoring services during and after compliance with the judicial measure.

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<sup>46</sup> Operators may also include directors and coordinators of the electronic monitoring services, as these also handle the personal data of the monitored. That is any private or public employee in the performance of his function.

- 2 – Access to the monitored person’s data and information will be restricted to servers expressly authorized who need to know them due to their duties (art. 7, Decree No. 7,627/2011, Brasil, 2011).<sup>47</sup>
  - 2.1 – Only operators of the Electronic Monitoring Centers trained and duly authorized by means of a document signed by the manager shall process and have access to the personal data of the monitored people and women in situations of domestic violence and of their family, friends, neighbors or acquaintances;
  - 2.2 – Access to the personal data of the monitored people and women in situations of domestic violence and of their families, friends, neighbors, or acquaintances to operators and other individuals not authorized to process such data is prohibited. Their stay in the spaces designated for any processing action involving the personal data referred to is also not permitted.
- 3 – There are mandatory procedures for selecting and training operators who deal with the personal data of the monitored people, of the women in situations of domestic violence and their families, friends, neighbors, and acquaintances at any level of activity for processing and protection of the data.
- 4 – Training should occur initially and continuously for all operators who work with the personal data of the monitored people, of the women in situations of domestic violence, and their families, friends, neighbors, and acquaintances.
- 5 – The contracts concluded between the companies providing the monitoring services and the Electronic Monitoring Centers should include the training of all operators regardless of the area of activity<sup>48</sup>, aiming to ensure technical capacity and maintain compliance with the principles, guidelines, and rules established in this document.
- 6 – All operators, including the manager, at any level of access and security, must sign a term of responsibility for processing and protection of personal data related to the electronic monitoring services necessarily stating their professional commitment about confidentiality necessary in the activities related to the processing and protection of personal data of people in electronic monitoring, women in situations of domestic violence and their family, friends, neighbors or acquaintances, during and after application of the measure.
- 7 – The companies that provide electronic monitoring services to the Centers must sign a

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47 Decree No 7,627, of November 24, 2011, regulates the electronic monitoring of people (Brasil, 2011) provided for in Decree-Law No. 3,689, of October 3, 1941, the Code of Criminal Procedure (Brasil, 1941), and Law No. 7,210, of July 11, 1984, the Criminal Enforcement Law (Brasil, 1984).

48 We recommend the following functional structure to guide the formation of teams of Electronic Monitoring Centers: a Coordination; a Monitoring Department consisting of operators working on call to identify possible non-compliance situations with court decisions or statistics; an Administrative Support Center, made up of operators with experience in the administrative area; an Operations Center, responsible for the care of the monitored people, device replacement and maintenance at the first level; a Social Center, responsible for receiving the person before monitoring starts, explaining their duties, raising relevant information about the individual regarding the psychosocial aspects, making referrals to the social protection network and performing psychosocial support.



term of responsibility for processing and protection of personal data related to electronic monitoring services necessarily stating their professional commitment about confidentiality necessary in the activities related to the processing and protection of personal data of electronically monitored individuals, women in situations of domestic violence and their family, friends, neighbors or acquaintances, during and after the application of the measure.

7.1 – When processing citizens' personal data, all public or private entities should develop integrated actions to ensure overall effectiveness in data processing and protection through internal and external controls and audits, among others.

### 7.3.2. Rules by type for the processing and protection of the personal data of monitored people

#### 7.3.2.1 – Data entry

##### Collection, production, reception, classification

8 – During the collection of sensitive personal data of the monitored people and the women in situations of domestic violence and registration in the electronic monitoring system:

8.1 – The judge's decision should be the basis for the collection of personal data and registration in the electronic monitoring system, covering the monitored person, the woman in situation of domestic violence, and their family, friends, neighbors, or acquaintances for compliance with the measure;

8.2 – In addition to the judge, only the monitored persons may inform their personal data necessary for compliance with the measure, including personal data of their family, friends, neighbors, or acquaintances;

8.2.1 – The collection of personal data of family, friends, neighbors, or acquaintances will be done with the sole purpose of facilitating the location of the monitored persons in the treatment of any incident only when they do not have or do not answer the telephone or, for another reason, cannot be contacted;

8.3 – Judges, in decisions involving restraining orders, shall inform the personal data of women in situations of domestic and family violence for the definition exclusion area(s);

8.3.1 – In addition to the judge, only the woman herself in a situation of domestic and family violence may grant personal information of her relatives, friends, neighbors, or acquaintances;

8.4 – The woman in a situation of domestic and family violence should be guided but may not be required to appear at the Electronic Monitoring Center for procedures related to the collection of personal data and registration in the electronic monitoring system;

8.5 – The woman in a situation of domestic and family violence should be guided but may not be required to use the portable tracking unit (PTU), regardless of whether the

Center offers this type of service;

- 8.6 – The woman in a situation of domestic and family violence who chooses to use the portable tracking unit (PTU) should come to the Center to get the device, receive information about its use, and, when necessary, request the repair or exchange of the PTU;
  - 8.6.1 – A woman in a situation of domestic and family violence who chooses to use the portable tracking unit (PTU) may not be penalized if she decides to interrupt the use of the PTU, and must return the device to the Center;
  - 8.6.2 – The woman in a situation of domestic and family violence who interrupts the use of the portable tracking unit (PTU) should be followed-up until the end of the restraining order, according to the area(s) of exclusion delimited(s) and other conditions provided for in the measure;
- 8.7 – The procedures for collecting information and registering the monitored person and the woman in a situation of domestic and family violence should be carried out individually and in a reserved place, ensuring the preservation of privacy and preventing unauthorized access, disclosure, and appropriation of any personal information;
- 8.8 – The environment should be able to provide privacy, avoiding exposure of the information of the monitored person and the woman in a situation of domestic and family violence, minimizing constraints, and observing the secrecy provided for in the professional councils of psychology, social work, and law;
- 9 – The monitored person must be informed about their rights, including privacy and the proper treatment and protection of personal data;
- 10 – The monitored person must receive a document containing, clearly and expressly, their rights and duties to which they will be subject as well as the surveillance period and the procedures to be observed during the application of monitoring measure (art. 3, Decree No. 7,627/2011, Brasil, 2011), embodied in a consent form, which should:
  - 10.1 – Be the instrument adopted to inform the rights and duties of the monitored person and women in situations of domestic and family violence;
  - 10.2 – Contain precise, objective, and clear instructions on all stages and activities of processing information, including protection of personal data, ensuring its use in compliance with the measure, and prohibiting its use for discriminatory and harmful purposes;
  - 10.3 – Present precise, objective, and clear instructions on all stages and activities of processing information of family members, friends, neighbors, or acquaintances, ensuring that personal data is not used for discriminatory and harmful purposes;
  - 10.4 – Be read together by the person monitored and the operator responsible for the service in order to promote a full understanding of the parties and possible clarifications;

- 10.5 – Be signed and dated, dated, voluntarily, by the person monitored and by the operator responsible for the service;
- 10.6 – The monitored persons must receive a document that informs their rights and duties, including the procedures relating to the protection and processing of personal data;
- 10.7 – The woman in a situation of domestic and family violence should not be required to attend the Center to sign and receive any consent form;
  - 10.7.1 – Only the woman in a situation of domestic and family violence who chooses to use the portable tracking unit PTU, sign the consent form, including the date of the signature, and receive an authentic copy of that document, emphasizing, in addition to the aforementioned aspects, the procedures relating to personal traffic data, that is, information relating to personal location;
- 10.8 – If the monitored person or woman in a situation of domestic violence who opts for the use of PTU is not able to read and sign the informed consent form, the operator must explain the content verbally, allowing any clarifications;
  - 10.8.1 – If the monitored person or the woman in a situation of domestic violence who opts for the use of the PTU is not able to sign the consent form, the operator must verbally confirm the full understanding of the content and carry out the signature by reading witness on the document, including the date of the signature;
  - 10.8.2 – If the monitored person or woman in a situation of domestic violence who opts for the use of PTU refuses to sign the informed consent form during the collection of personal data, the refusal must be registered in writing at the end of the document itself with the date and signature of a witness. It may not entail any sanction;
- 11 – The databases that integrate the electronic monitoring services may not contain personal information that is excessive, unnecessary, and does not comply with the purposes of the services;
- 12 – The registration of the monitored person in the system of the Electronic Monitoring Center must contain only:
  - 12.1 – Name, photo, phone number, personal identification document numbers, telephone number, home address, email, date of birth, marital status, racial or ethnic origin;
  - 12.2 – Criminal offense related to the prosecution that justified the application of the measure;
  - 12.3 – The nature of the measure;
  - 12.4 – All the conditions related to the fulfillment of the measure: deadline with start and end date; limits of the areas of inclusion and exclusion; circulation and isolation periods; conditions and prohibitions in general; work, study, and health treatment consents; other authorization involving social inclusion through family, community,

- or religious activities as well as access to justice and other public services;
- 12.5 – Personal data relating to health and address of hospitals or the like when the person monitored is receiving health treatments;
  - 12.6 – Personal data relating to work, including the work address, when the supervised person is carrying out some labour activity;
  - 12.7 – Personal data relating to education and address of educational establishment when the monitored person is enrolled in any academic activity;
  - 12.8 – In the case of family, friends, neighbors, or acquaintances of the monitored person, only: name, phone number, and the type of relationship maintained with the monitored person;
    - 12.8.1 – The quantity and quality of this information should not exceed the measure's strict purpose;
- 13 – The registration of women in situations of domestic and family violence in the system of the Electronic Monitoring Center should contain only:
- 13.1 – Name and phone number;
  - 13.2 – Residential, professional, and academic addresses for the delimitation of the exclusion area(s), as specified in the court decision;
  - 13.3 – In the case of family members, friends, neighbors, or acquaintances of the woman in a situation of domestic and family violence, only: name, telephone number, and the type of relationship maintained with her;
    - 13.3.1 – The quantity and quality of this information shall not exceed the measure's strict purpose;
- 14 – In addition to the registration data, personal data necessary for the settlement of the judicial measure will be collected in the system of the Electronic Monitoring Center:
- 14.1 – Geolocation of the monitored person through continuous data gathering throughout the application of the measure, that is, data relating to the personal location of the monitored person through continuous and permanent geolocation systems;
  - 14.2 – Geolocation of the woman in a situation of domestic and family violence only when she chooses to use the portable tracking unit (PTU) through continuous data gathering throughout the application of the measure, that is, data relating to the personal location of the woman in a situation of domestic violence through a continuous and permanent geolocation system, which can make the exclusion areas dynamic.
- 15 – The personal data collected by the professionals of the psychosocial team, recorded in physical or electronic media shall be used for exclusive purposes of monitoring and social protection and cannot be accessed by third parties, including professionals responsible for electronic monitoring services.
- 16 – Any changes related to the personal data necessary for the electronic monitoring services, in addition to the registration data procedures, as mentioned above, should refer to:

- 16.1 – Telephone number, personal identification document numbers (in the case of acquisition of such documents after registration), residential address, marital status of the monitored person;
- 16.2 – New conditions determined judicially for compliance with the measure: areas of inclusion and exclusion; periods of circulation and isolation; conditions; prohibitions; and consents;
- 16.3 – Beginning of health treatment as well as labor or academic activity. Personal data related to work, health, study, religious, familiar, and community activities, as well as the respective addresses of such establishments;
- 16.4 – Telephone number and addresses of woman in a situation of domestic and family violence;
  - 16.4.1 – In the case of family, friends, neighbors, or acquaintances of the monitored person and the woman in a situation of domestic or family violence: name, telephone number, and the type of relationship maintained with the monitored person and the woman.

### **7.3.2.2 – Data handling**

#### **Use and access**

- 17 – Access to the data and information of the monitored person will be restricted to servers expressly authorized who need to know them due to of their duties (art. 7, Decree No. 7,627/2011, Brasil, 2011).
  - 17.1 – Each trained operator, previously authorized and registered in the electronic monitoring system, must have access levels determined, specified, and justified according to the purposes of their respective position;
  - 17.2 – User authentication should be mandatory for all operators of the monitored people information logging system and the incident logging system;
  - 17.3 – All operators, whether they deal directly or indirectly with the personal data of the monitored person, women in situations of domestic violence, and their family, friends, neighbors, or acquaintances, should use such data for the purposes of electronic monitoring services, so as to prevent irregularities or illegalities linked to the improper use of data, disregard for privacy and discrimination;
  - 17.4 – The personal data of family members, friends, neighbors, or acquaintances of the monitored individuals and women in situations of domestic and family violence should be used for the purposes of electronic monitoring, in case of impossibility of direct communication with the monitored person, when such a procedure is necessary, especially in the dealing with incidents.

### **7.3.2.3 – Data output**

#### **Archiving and storage**

- 18 – The processing of personal information must be done transparently and with regard to the privacy, private life, honor, and image of individuals, as well as their fundamental rights and guarantees, according to art. 31 of Access to Information Law No. 12.257/2011 (Brasil, 2011c).
- 19 – The personal data of monitored individuals, women in situations of domestic violence, and their relatives, friends, neighbors, or acquaintances should be kept active in the monitoring system only during the period of compliance with the judicial measure.
- 20 – The personal data shall be deleted when their processing ends, being authorized their conservation for the following purposes: historical, scientific, or statistical research with the detachment of personal data whenever possible (art. 15, draft bill on the protection of personal data, Brasil, 2015g).
- 21 – Only statistics data shall be kept after the application of the judicial measure, being assured the anonymity of the people, observing purposes such as evaluating the electronic monitoring policy and conducting research.

#### **Disposal**

- 22 – The personal data of monitored individuals, women in situations of domestic violence, and their family, friends, neighbors, or acquaintances should be deleted at the end of the enforcement of the judicial measure, observing the principles of this protocol.
- 23 – Information on the regular follow-up of electronic monitoring measure activities and any eventual incident should be documented and referred to the court.

### **7.3.3. Provision to third parties by communication, interconnection, transfer, diffusion, or extraction**

- 24 – As it covers data that presuppose secrecy, the use of information collected during the electronic monitoring of people will depend on judicial authorization, in accordance with art. 5 of the Federal Constitution (art. 10, CNJ Resolution No. 213/2015, Brasil, 2015b).
- 25 – The activities of the Electronic Monitoring Centers should be guided by adequate standards of security, secrecy, protection, and use of the data of the monitored people, respecting the processing of data in accordance with their purpose;
- 26 – The data collected during the application of an electronic monitoring measure should have a specific purpose and be related to the follow-up of conditions established in court.

- 27 – The information of the monitored people cannot be shared with third parties outside the process that entails the application of the measure.
- 28 – Access to data, including by public security institutions, may only be requested within the scope of a specific police investigation in which the duly identified monitored person already appears as a suspect, being submitted to the judicial authority, which will analyze the respective case and grant or reject the order (Protocol I, CNJ Resolution No. 213/2015, Brasil, 2015b).<sup>49</sup>.
- 28.1 – It is prohibited to share data of the monitored individuals or any data from the electronic monitoring system with third parties without prior judicial authorization, except when the Center, given the continuous monitoring, needs to deal with an incident of violation of the exclusion area by complying with restraining orders with the specific need to activate public security institutions;
- 28.2 – The incident related to the violation of the exclusion area by the person complying with an restraining order shall be recorded in the electronic monitoring system, in accordance with the date and time, mobilizing methods of dealing with the incident in the following order: 1) sending a signal to the electronic monitoring device; 2) telephone contact with the monitored person; 3) telephone contact with the woman in a situation of domestic and family violence to check the occurrence of the incident, only in the case of restraining orders; 4) telephone contact with relatives, friends, neighbors or acquaintances of the monitored person; and 5) telephone contact with relatives, friends, neighbors or acquaintances of the woman in a situation of domestic violence to check the occurrence of the incident, only in case of impossibility of contact with the woman;
- 28.3 – All the information about the incidents and the modalities of handling them must be recorded and verifiable by the monitoring system;
- 28.4 – After applying all the modalities above to incidents of violation of the exclusion area in the case of individuals under restraining orders, duly accompanied and recorded in the system, and only when it is not possible to handle the specified incident through direct or indirect contact with the monitored person, the woman in a situation of domestic violence or their respective family members, friends, neighbors or acquaintances, the urgent and immediate activation of public security institutions should be made possible by the electronic monitoring system through the generation of a sub-incident;
- 28.5 – The specific sub-incident, which enables the activation of the public security institutions by the Electronic Monitoring Center, should allow the sharing of personal data of the monitored according to the principles of necessity and the minimum information, limited to the following data: 1) name; 2) last personal location; 3) addresses; and 4) photo;

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<sup>49</sup> The provision of personal data for criminal investigation purposes, especially personal geolocation data during the storage period, will depend on prior authorization.

- 28.6 – Other sensitive personal data may be available exclusively in the event of a specific police investigation in which the monitored person, duly identified, already appears as a suspect with prior judicial authorization, as previously mentioned;
- 28.7 – All incidents, their respective follow-ups; and conclusions must be compulsorily registered in the electronic monitoring system, especially in exceptional cases and in cases of restraining orders that mobilize external procedures to the routine procedures of the Electronic Monitoring Center with the activation of public security institutions and provision of the monitored person's personal data.
- 29 – Any imputation of civil or criminal liability must be duly investigated, proceeding to penalties applicable in the case of deviations of purpose or the non-compliance with the rules at any stage of the processing of the personal data of the monitored person;
- 29.1 – To allow for fair accountability processes in any case of misuse of personal data, the electronic monitoring system must record information from the public security institution with which it shared sensitive data of the monitored individuals or any other person who has personal data stored in the system. Also must be reported in the system the media or channel through which the data were made available (telephone, radio, email, telephone messages, etc.) and, above all, information that precisely identifies the institution, which may include the address of the establishment, the requesting department, and the professional identification of the officer to whom the data were made available;
- 29.2 – It is prohibited to share with third parties the personal data of the monitored individuals, women in situations of domestic violence, and their family, friends, neighbors, or acquaintances;
- 29.3 – The system should mandatorily record identification metadata on the individuals who accessed personal data of the women in situations of domestic violence and their families, friends, neighbors, or acquaintances, as well as identification metadata of the institutions to which the individuals belong;
- 29.4 – In order to enable individualized accountability for the use of sensitive personal data, public security institutions that have access to the personal data of monitored individuals, women in situations of domestic violence, and their family, friends, neighbors, or acquaintances should develop workflows for internal and external control of this information, including audits.
- 30 – The sharing of personal data of monitored individuals, of women in situations of domestic violence, and of their families, friends, neighbors, or acquaintances with the public security institutions should be subsidiary, exceptional, and avoided through the handling of incidents by trained operators, seeking to prioritize the compliance, maintenance, and restoration of the measure in freedom, as well as the awareness of the individuals and psychosocial care.



- 31 – Referrals made by the Electronic Monitoring Center for work, health, education, psychosocial care, or any service aimed at the exercise of rights, observing the principles of necessity, purpose, minimum information requirements, and the separation of duties between institutions, should be carried out considering only the sharing of the following data of the monitored people: 1) name; 2) address; 3) personal identification document numbers; and 4) data that are necessary for referral according to the psychosocial team<sup>50</sup>.
- 32 – The National Penitentiary Department, the Department of Justice of the state, or the State Judicial Branch may authorize the use of the personal data of the monitored individuals, women in situations of domestic violence, and their family, friends, neighbors, or acquaintances for scientific purposes, provided there is adequate identification of those responsible for the research and strict treatment of data confidentiality, upon request from the researcher or research organization sent to abovementioned institutions.<sup>51</sup>
- 32.1 – The development of research duly authorized by competent bodies and institutions must adopt a term of responsibility to guarantee the purpose and obligations related to the access of sensitive personal data, including the description of research methods and techniques to prohibit the sharing of any personal identification of the monitored individuals, their family, friends, neighbors or or acquaintances;
- 32.2 – Since it is mandatory to maintain the anonymity of the personal data of monitored individuals, the women in situations of domestic violence and their family, friends, neighbors, or acquaintances, the results and analyses of the surveys must respect privacy and confidentiality of these data, regardless of any publication for any purpose.

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50 According to Protocol I of the CNJ Resolution No. 213/2015, the performance of the Electronic Monitoring Centers should "(...) seek to integrate into services and social assistance networks for the non-mandatory inclusion of the individuals based on the decision of the court, as well as verify the specificities and social demands of each case, with emphasis on the following areas or others that prove necessary: a) emergency demands such as food, clothing, housing, transportation, among others; b) labor, income, and professional qualification; c) legal assistance; and d) development, production, training, and cultural dissemination mainly for the young individuals" (Brasil, 2015b). Protocol I also emphasizes that the Centers need to "(...) carry out necessary referrals to the health care network of the Brazilian Unified Health System (SUS) and the social assistance network of the Unified Social Assistance System( SUAS), as well as other policies and programs offered by the public authority; the results of the care and follow-up of the individuals must be periodically communicated to the court after the detention control hearing" (Brasil, 2015b).

51 Observe art. 31 of the Access to Information Law No. 12.527/2011 (Brasil, 2011c), mentioned above in chapter "7.3.2.3 Data output (archiving and storage)".

#### 7.3.4. Rules of physical and logical security, evaluation or control of information<sup>52</sup>

- 33 – The Electronic Monitoring Centers and the spaces for monitoring services should have structures compatible with the Network Operations Center (NOC)<sup>53</sup> model, ensuring the proper management of access levels and confidentiality.
- 34 – The operator must adopt constantly updated technical, administrative, and security protocols adequate with the nature of the processed information and able to protect personal data from unauthorized access and accidental or unlawful situations of destruction, loss, alteration, communication, dissemination, or any form of inappropriate treatment, according to art. 42 of the draft bill on personal data protection (Brasil, 2015g).
- 35 – Security protocols must be compatible with the current state of the technology, with the data's nature and the specific characteristics of the processing, particularly in the case of sensitive data from electronic monitoring of people.
- 36 – The infrastructure required for the databases should contain an application server and storage compatible with the technology of the company contracted to perform the electronic monitoring activities.
- 37 – It is prohibited to store any personal data of the monitored individuals and their families, friends, neighbors, or acquaintances on desktops, external hard disks, flash drives, or any other portable data storage device.
- 38 – It is prohibited to maintain a database outside the system, altering the information held therein, without a change plan containing: motivation, backup method, return plan, and the name of those responsible for implementing such changes and authorizing them.
- 39 – The physical infrastructure of the storage and the area of the server computers must follow the minimum security standards for the due treatment and protection of personal data, preferably including: 1) restricted access; 2) doors with biometric control; 3) surveillance cameras; 4) air conditioning; 5) fire extinguishers suitable for information technology equipment, 6) smoke detectors, 7) temperature monitoring devices, and 8) humidity monitoring devices.
- 40 – All information technology infrastructure should be evaluated regarding its high availability by qualified professionals, guaranteeing the continuous operation of electronic monitoring services even in case of an outage in any component.

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52 Several international information security management standards can be adopted in the electronic monitoring system, such as ISO/IEC 27001, that describe how to implement and independently certify an system to protect sensitive data more efficiently and minimize the possibility of illegal or unauthorized access.

53 The Network Operations Center (NOC) centralizes the management of public or private communication networks and monitors the status of each part within the network in real time.

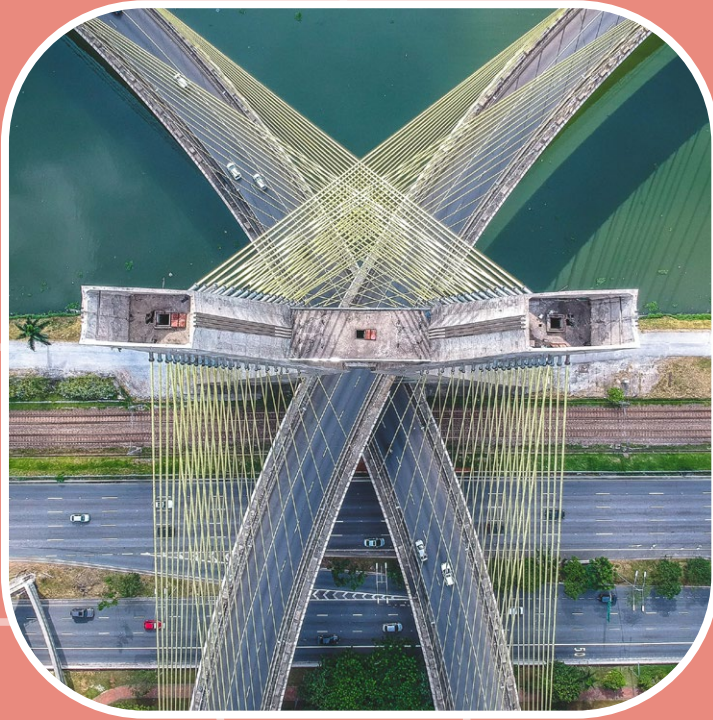
- 41 – All computers used by Electronic Monitoring Centers should have appropriate software licensing for 1) the operating system and its main applications; and 2) an antivirus. The software licensing must include periodic updates of the applications for security maintenance.
- 42 – The data network that enables connection to the internet must have a properly installed firewall to minimize the chances of unwanted access.
- 43 – Qualified and trained professionals in information technology should periodically: 1) verify that the networks are operating without violations; 2) investigate and assess any damage resulting from security breaches; and 3) validate the information in the databases. These procedures aim to maintain the data's quality and the information updated.
- 44 – The information of the monitored individuals must be kept updated, as well as the data related to personal location generated by systems. Workflows for periodical informational updates must be created to comply with the conditions determined in court.
- 45 – If there is automatic interoperability between systems of the Electronic Monitoring Center with other institutions, the Center must have mechanisms to guarantee the authenticity of the data provided and the identification of the users and applications that access the system.
- 46 – The companies contracted to perform the monitoring activities must make any information available when requested by the Electronic Monitoring Center or the National Penitentiary Department. They must have mechanisms to guarantee the data's authenticity and identify the users and applications that access the system.
- 47 – Security mechanisms should be created to prevent database invasions or access to physical documents. Transmission of confidential information between systems must be encrypted.
- 48 – The personal databases of electronic monitoring, including all incident records, should be kept in computerized systems through secure networks and preferably with encrypted databases, that is, an information protection technique that consists in encrypting the content of a database, a message, or a signal, turning it into an unreadable text.
- 49 – Encryption<sup>54</sup> assists the maintenance of adequate security standards to ensure that data is not accessed by any individual without authorization or even interceptions of data transmissions, but since it is susceptible to failures, other security mechanisms should be used concomitantly, such as levels of access to the system, audit, offices to deliberate authorization of access to systems, security protections for interoperability between systems, etc.
- 50 – The monitoring company should perform audit routines periodically (quarterly or semi-annually) in their databases to identify possible anomalies.

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<sup>54</sup> Encryption aids the perception of the existence of a higher level of confidentiality, privacy, integrity, authentication, irretrievability and availability.

- 51 – The National Penitentiary Department may maintain audits for validation of information, data storage, physical, and logical security of the information that the Center informed to ensure the credibility and authenticity of the processes.
- 52 – Electronic monitoring centers should be responsible for the appropriate use of information assets, only for electronic monitoring services, such as internet use, physical and logical access management, and use of professional email accounts, so that the information is kept intact and reliable.
- 53 – In any place or room of the electronic monitoring centers where any type of processing or protection of personal data of the monitored person is carried out, operators and other employees are prohibited from using: 1) mobile devices such as private mobile phone trimmings; 2) hard drive external; 3) flash drive or any other mobile and portable file storage unit; 4) photographic cameras; 5) camcorders.
- 54 – Access to private email accounts is prohibited on any computer used by the electronic monitoring centers or on any mobile device in a location or room of the Centers where any processing of personal data of the monitored person is carried out.
- 55 – It is mandatory to prepare a business continuity plan that deals with cases of incidents and unavailability of electronic monitoring services. It should include the time and strategy adopted for recovery and restoration of services.
- 56 – The preparation of the business continuity plan that deals with cases of incidents and unavailability of electronic monitoring services should be the responsibility of the company providing the electronic monitoring services, following minimum conditions established by the Electronic Monitoring Centers and other applicable standards.
- 57 – It is mandatory to carry out backups daily, weekly, and monthly of all electronic monitoring system and Incident Control system databases.
- 58 – The backups' data must be stored in different places of the room or building where the procedures were carried out and, preferably, in fire safes to protect the data and enable restoration of the data or services in cases of various accidents, such as electrical problems, floods, fires, etc.
- 59 – The Electronic Monitoring Center should preferably contain a monitoring external and internal surveillance circuit with a view to identifying all accesses, presenting posted warnings that alert to the existence of the cameras, once the environment is susceptible to invasions or entries of unauthorized people, misuse of resources and equipment by the employees themselves, accidental actions, storing for at least 30 days such images.

60 – The National Penitentiary Department shall comply with the due observance of the applicable regulations on the processing and protection of personal data for the conclusion of agreements, lack of resources, or any other type of investment that is destined to the service of electronic monitoring, and may restrict the transfer of resources to the public and private sector institutions that do not process and protect the personal data of the monitored people and their family members, friends, neighbors, or acquaintances, in accordance with the rules specified in this document.



**PART IV**

**STRUCTURING ELECTRONIC  
MONITORING SERVICES**

## **8 DESCRIPTION OF THE ACTORS INVOLVED AND REQUIRED RESOURCES**

The management model aims to guide electronic monitoring services throughout the Brazilian territory. The protocols to offer electronic monitoring services are crucial for developing and consolidating the policy. The measures must not be implemented just as a pure and simple form of control. They can give commitment and protection to all actors directly or indirectly involved in the services<sup>55</sup>. It is essential to think in an interdisciplinary way when developing the roles of the judiciary, public security institutions, executive managers, civil society organizations, work teams, and social protection networks. Based on these strategies, the methodology presented for electronic monitoring services may provide uniformity of services, respecting local specificities and focusing on decarceration.

The roles, actions, and responsibilities of each electronic monitoring actor are described below. The aim is to structure a systemic policy, which requires the commitment of several interlocutors.

### **8.1. The application of electronic monitoring**

Seeking to ensure the legal grounds and purposes for the application and follow-up of electronic monitoring adopted in pre-trial non-custodial measures and in restraining orders in a precautionary character, it is proposed to observe Brazil's Federal Constitution, specific legislation on the topic, as well as international norms and treaties of which Brazil is signatory. In this direction, as well as the deprivation of liberty, the electronic monitoring measure should be adopted as a subsidiary resource for the shortest possible time. In the same way, the exceptionality in the application of electronic monitoring is in line with the application of less harmful measures and alternatives to imprisonment (CNJ Resolution No. 213/2015, Brasil, 2015b).

Decree No. 7,627/201, which regulates the electronic monitoring of people, presents grounds to be followed for the enforcement of Law No. 12,258/2010, as well as Law No. 12,403/2011, which amended Brazil's Code of Criminal Procedure, admitting electronic monitoring as a pre-trial non-custodial measure (article 319, paragraph IX), mainly the following articles:

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<sup>55</sup> In the democratic rule of law, protocols are crucial in protecting and guaranteeing fundamental rights, "preventing public agents from committing infractions that could harm them judicially. Following such protocols is a guarantee for users of public services and for the agents themselves. Therefore, any contradiction to the protocols is a calculated risk of doing something morally wrong. Constant vigilance should ensure that agents do not deviate from protocols. Thus, the routines must be analyzed individually, adapting them to those involved" (Lima, 2013, p. 572-573).

*Art. 3. The monitored people should be provided with a document stating, clearly and expressly, their rights and duties to which they will be subject, the period of surveillance, and the procedures to be observed during the monitoring.*

*Art. 5. The electronic monitoring device shall be used in such a way as to respect the physical, moral, and social integrity of the monitored person.*

*Art. 6o. The monitoring system will be structured in such a way as to preserve the confidentiality of the data and the information of the monitored person.*

*Art. 7o Access to the data and information of the monitored person will be restricted to the servers expressly authorized who need to know them due to their duties (Decree No. 7,627/2011, Brasil, 2011b).*

In implementing the measures, the CNJ's guidelines should be observed to ensure the legal grounds and the purposes of the monitoring measure as a pre-trial non-custodial measure. Regarding the procedures for the application and follow-up of pre-trial non-custodial measures, CNJ Resolution No. 213/2015 determines that the following principles should be adopted:

- I. Legality:** The application and follow-up of pre-trial non-custodial measures must stick to the hypotheses provided for in the legislation, and it is not possible to apply restrictive measures that extrapolate the legality.
- II. Subsidiarity and minimum penal intervention:** It is necessary to limit criminal intervention to the minimum and ensure that imprisonment is a residual recourse, favoring other responses to social problems and conflicts. Penal interventions must stick to the most serious human rights violations and restrict themselves to the minimum necessary to stop the violation, considering the social costs involved in pre-trial detention or pre-trial custodial measures.
- III. Presumption of innocence:** The presumption of innocence should guarantee people the right to freedom, defense, and due process of law. The granting of provisional freedom with or without pre-trial non-custodial measures should be a right and not a benefit, and the presumption of innocence of the accused people should always be assured. Granting provisional release without applying pre-trial non-custodial measures should be the rule, safeguarding this right especially in relation to segments of the population most vulnerable to criminalization processes and with less access to justice.
- IV. Dignity and freedom:** The application and follow-up of pre-trial non-custodial measures must take precedence over the dignity and freedom of the person. This freedom presupposes active participation of the parties in constructing the measures, ensuring individualization, reparation, restoration of relations, and fair measures for all involved.



- V. Individualization, respect for individual trajectories, and recognition of potentialities:** In the application and follow-up of pre-trial non-custodial measures, one must respect the individual trajectories, promoting solutions that positively compromise the parties, observing the personal potentialities of the subjects, removing the measures from a sense of mere retribution on past acts, incompatible with the presumption of innocence guaranteed constitutionally. It is necessary to promote emancipatory paths for the people involved, contributing to build a culture of peace and the reduction of various forms of violence.
- VI. Respecting and promoting diversity:** In the application and follow-up of pre-trial non-custodial measures, the Judiciary and the programs to support the law enforcement should guarantee respect for generational, social, ethnic/racial, gender/sexuality, origin and nationality, income, and social class, religion, belief, among others.
- VII. Liability:** Pre-trial non-custodial measures should promote the autonomy and freedom of the individuals involved. In this sense, the application and follow-up of pre-trial non-custodial measures must be established from and with the commitment of the parties so that the adequacy of the measure and its compliance translates into the feasibility and meaning for those involved.
- VIII. Normality:** The application and follow-up of pre-trial non-custodial measures must be outlined from each concrete situation, in tune with the rights and individual trajectories of the people. Thus, such measures should prevail because they do not interfere or do so in a less impactful way in the daily routines and relationships of the people involved, limiting themselves to the minimum necessary for the protection intended by the measure, at the risk of deepening the processes of marginalization and criminalization of the people subjected to the measures.
- IX. Non-penalization of poverty:** The situation of social vulnerability of the people charged and brought to the detention control hearing cannot be a criterion of selectivity in their disfavor when considering the conversion of in *flagrante delicto* arrest into pre-trial detention. Especially in the case of homeless people, the convenience for criminal investigation or the difficulty of summons to attend the court cannot justify the procedural arrest or pre-trial measure, and to ensure, also, the social referrals in a non-mandatory way, whenever necessary, preserving the freedom and autonomy of the subjects.

Also, in accordance with the aforementioned resolution, the following elements must be considered by the justice system at detention control hearings, in accordance with Protocol I of CNJ Resolution No. 213/2015:

- I. By presenting the reasons for the decision in accordance with art. 310 of the Criminal Code, safeguarding the principle of the presumption of innocence, it will be up to the

- judge to grant provisional freedom or apply pre-trial non-custodial measures. When there is a sentence of pre-trial detention, it must be explained and justified by the court.
- II. Guarantee to the accused the right to medical and psychosocial care possibly necessary, safeguarding the voluntary nature of these services by referring them to the Integrated Centers for Alternatives to Imprisonment or similar bodies. Avoid the application of pre-trial measures for compulsory treatment or hospitalization of people with mental health disorders – including chemical dependence – arrested in *flagrante delicto*, as provided for the art. 4 of Law No. 10,216/2001 (Brasil, 2001) and art. 319, paragraph VII, of Law No. 3,689/1941 (Brasil, 1941);
  - III. Coordinate, at the local level, the appropriate procedures for the referral of individuals in compliance with pre-trial non-custodial measures to the Integrated Centers for Alternatives to Imprisonment or similar bodies, as well as the reception procedures of the compliant, monitoring of the applied measures and guidelines for public policies of social inclusion;
    - i. In regions where there are no such centers, the psycho-social team of the court responsible for detention control hearings will seek the integration of the attorney in wide networks with the state and municipal governments, seeking to ensure social inclusion in a non-mandatory manner, based on the specifics of each case.
  - IV. Coordinate, at the local level, the appropriate procedures for the referral of the people in compliance with the pre-trial non-custodial measure provided for in art. 319, paragraph IX, of Brazil's Code of Criminal Procedure, to the Electronic Monitoring Center, as well as the reception procedures of the monitored people, accommodation of the measures applied, and referrals for public policies of social inclusion.

In addition to the elements indicated above, the judges and other actors of the justice system must observe the following guidelines complementary to Resolution No. 213/2015 of the National Council of Justice:

- a) Apply electronic monitoring as a pre-trial measure only in a residual manner and when it is assessed as necessary<sup>56</sup>, considering the fundamental rights of the people involved and when the other pre-trial measures prove to be insufficient;

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<sup>56</sup> The document "Implementation of Detention Control Hearings in Brazil – analysis of experiences and recommendations for improvement", regarding this subject, points out that "Even with the exceptionality determined by art. 10 of Resolution No. 213/2015 of the CNJ, the use of the electronic ankle is seen by a large part of the judges and almost all the prosecutors as the 'solution' in the detention control hearings, placing itself not as an alternative to prison, but as a general substitute for full freedom. In the word of interviewees, 'all people that pass through the hearings should leave monitored'. This only does not happen because, in the absence of funds to hire a large amount of monitoring devices and the entire structure for their monitoring, in the places visited, when available, anklets have been used mostly in cases of domestic violence" (Brasil, 2016c, p. 49-50).

- b)** The public defender, or constituted lawyer, must always first ask for a less burdensome arrest without conditions and, only in a subsidiary way, ask for the conditional release conditioned to pre-trial measures, reserving the application of electronic monitoring as a last possibility;
- c)** Take into account the operational capacity of the Electronic Monitoring Centers, which involves the number of devices available and personnel for the proper monitoring of the measure;
- d)** Avoid excessive pre-trial non-custodial measures applied cumulatively with electronic monitoring, setting up excess restrictions, which entails greater difficulty in the compliance of the measures;
- e)** Apply electronic monitoring considering the active listening of the person by a multidisciplinary team, examining the need for the measure according to the facts and the objective and subjective conditions of compliance;
- f)** Avoid oversizing the exclusion area and under-sizing the inclusion area, especially to minimize restrictions on work routines, study, health, and sociability of the monitored people;
- g)** Consider a period determined in the application of the electronic monitoring measure, of a maximum of 90 days, allowed a single extension, by reasoned decision, for the maximum period of the same period;
- h)** Re-evaluate the application of the electronic monitoring measure, over the determined, when the report prepared by the multi-professional team of the Electronic Monitoring Center inform the need for replacement for less burdensome measure or its maintenance;
- i)** Guarantee the right to information by people in compliance with electronic monitoring regarding the procedural situation, the conditions of compliance with the measure, at the start and end dates of the measure, the periods envisaged for reevaluation of the measure, to the services and assistance offered;
- j)** Ensure that the data collected during electronic monitoring is not shared with third parties, except for the possibility of judicial authorization in cases where the monitored person appears as a suspect or indicted in specific police investigations due to the harmful and discriminatory potential in the treatment of these data, applying the same to family, friends, neighbors, and acquaintances, as well as women in situations of domestic and family violence who eventually have their data collected and processed at any time by the Electronic Monitoring Center;
- k)** Evaluate notifications and letters sent by Electronic Monitoring Centers involving incidents in compliance with the measure in order to ensure the maintenance or restoration of the measure in freedom, adopting, when necessary, the justification to make a new agreement on the measure with the compliant;

- l)** Promote the social inclusion of the monitored person in a non-mandatory manner, according to with the specificities, from the coordination of the Judiciary and the Electronic Monitoring Center with other public policies, such as work, education, health, and social assistance, promoting coordination in broad networks with state governments and municipalities;
- m)** Avoid the application of monitoring in cases where the future court decision may not lead to a custodial sentence;
- n)** Avoid the application of electronic monitoring when the measure appears to be inadequate considering the conditions or the circumstances related to the situation of the person prosecuted or investigated, particularly for socially vulnerable groups such as people who live on the streets; people with drug use disorder; older people; people who have dependent; people with mental health disorders; people who live, work, study, or take health care in places with no or unstable signal from the GPS or cellphone reception. In these cases, other pre-trial measures more appropriate to the situation must be applied, as well as the optional referral to the social security network;
- o)** Consider the peculiarities of groups that have historically suffered discrimination and prejudice, such as black people, the LGBTI+ population , indigenous people, foreigners, etc.;
- p)** Do not impose additional conditions not provided for in the legislation for compliance with the electronic monitoring measure, such as attendance at courses, medical treatments, attendance at churches, and institutionalization in hostels, among others;
- q)** Promote the use of technologies that are less harmful to the monitored person, minimizing physical, psychological, and social damage, stigmatization, and constraints caused by the use of the device;
- r)** Ensure the maintenance and access to work, education, health, culture, sport, leisure, spaces of community, and religious sociability, when applying the electronic monitoring measure;
- s)** Participate in the spaces for the formulation, implementation, and evaluation of the electronic monitoring policy with a focus on decarceration and promotion of human rights;
- t)** Enable interdisciplinary projects and interventions with civil society aimed at eradicating violence, marginalization processes, and criminalization of monitored people, disseminating democratic practices of prevention and conflict management.

In the specific case of restraining orders, especially when the PTU is available, it is recommended that judges and other actors of the Judiciary also observe the following guidelines in addition to Resolution No. 213/2015 of the National Council of Justice:

- a) Consider, initially, the application of restraining orders or other pre-trial non-custodial measures without electronic monitoring;
- b) Take into account the operational capacity of the Electronic Monitoring Centers in the application of monitoring, which involves the number of individual monitoring devices (anklets) and portable tracking units available<sup>57</sup>, as well as personnel for the proper monitoring of the measure;
- c) Apply electronic monitoring as a pre-trial measure in the case of restraining orders only in a residual way, and when this is assessed as necessary for the protection of women in situations of domestic and family violence, consider the fundamental rights of the people involved and when the pre-trial non-custodial measures prove insufficient;
- d) Avoid oversizing the exclusion area in case of restraining order with the application of electronic monitoring, considering the maximum radius of 300 meters in their delimitation, except in exceptional circumstances in which the concrete case reveals the need for larger areas, to enable better accommodation and prioritize the handling of incidents that involve, in fact, a real approach between the woman and the perpetrator of violence, distinguishing more precisely incidents and eventual displacement;<sup>58</sup>
- e) Guarantee women in situations of domestic and family violence space for qualified listening by the professionals of the multidisciplinary team of the Electronic Monitoring Center so that they can freely choose to use the portable tracking unit according to information received about the restraining order, the use and the function of the PTU, that is, create dynamic exclusion areas based on the geographical approach between the perpetrator of violence and the woman;
- f) Do not require the use of the portable tracking unit for women in a situation of domestic and family violence as a requirement for the application or follow-up of the measure, providing the possibility of monitoring the restraining order only from areas of exclusion determined judicially;
- g) Do not apply punishments to women in situations of domestic and family violence who opt for interrupting the use of the portable tracking unit during the measures, ensuring the continuity of restraining orders with electronic monitoring from the perpetrator of violence;

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<sup>57</sup> It is important to consider that the portable tracking unit is not present in most Federative Units that have implemented electronic monitoring services.

<sup>58</sup> According to the report "The Implementation of the Policy of Electronic Monitoring of People in Brazil – critical analysis of the use of electronic monitoring of people in the enforcement of the sentence and the application of pre-trial non-custodial measures and restraining orders" (Brasil, 2015a), there are no defined limits in the creation of the areas of inclusion and exclusion. The lack of reasonableness significantly reduces the adequate monitoring focused, for example, on the detection of a real approximation between the perpetrator and the offended. Areas of exclusion too extensive minimize processes of social integration of the monitored person, suggesting the change of address to other neighborhoods or cities and restrictions on the development of labor and educational activities to avoid incidents and non-compliance.

- h) Ensure referrals aimed at the social inclusion of women in a situation of domestic and family violence in a non-mandatory manner, according to the specificities, from the integration and coordination of the justice system with the women's protection network and other social inclusion networks with the governments of the states and municipalities, such as public policies aimed at access to work, education, health, and social assistance;
- i) Participate in the spaces of construction of the electronic monitoring policy in order to enable interdisciplinary projects and interventions with civil society, aiming to eradicate gender violence, values, and practices associated with the punitive paradigm, as well as to disseminate democratic practices of prevention and administration conflict.

## 8.2. The follow-up of electronic monitoring of people

Following-up the person in compliance with an electronic monitoring measure must respect and follow laws, regulations, resolutions, and recommendations that deal with the subject. First, the Federal Constitution of 1988 with regard to international principles and norms of human rights, incorporating the dignity of the human person (art.1) and freedom as a universal right of human beings. The Constitution highlights that no one will be deprived of liberty or property without the due process of law (art. 5, LIV), emphasizing that no person can be considered guilty until an unappealable criminal conviction (art. 5, LVII). In addition to Brazil's Constitution and specific legislation, norms, and international treaties to which Brazil is a signatory should guide the follow-up of electronic monitoring measures.

The follow-up must meet the judicially imposed conditions, including electronic monitoring, such as:

*mechanisms of liberty restriction and of intervention in conflicts and violence, other than incarceration, within the scope of the criminal policy, carried out by technical means that allow indicating the location of the people monitored for control and independent surveillance, oriented to decarceration.*

The Center should focus on its main subject – the monitored person. It is essential to ensure that the services are performed so that the monitored people are aware of their rights and duties, allowing a full and broad understanding of the measure and its fulfillment conditions. In this direction, the present methodology provides for the qualified handling of incidents, enhancing access to fundamental rights and minimizing vulnerabilities capable of provoking new criminalization processes.

Decree No. 7,627/2011, which regulates the electronic monitoring of people, emphasizes the need for multidisciplinary programs and teams in following up the measure, assistance, and social inclusion of the monitored person, ensuring its full compliance. The National Council of Justice, through

Resolution No. 213/2015, indicates that it is necessary to guarantee instances of implementation of the measures, which implies methodologies and qualified teams capable of adequate monitoring to comply with the pre-trial non-custodial measures.

Electronic monitoring should be consolidated through integrated action between federal entities, the justice system, and civil society through inter-institutional and interdisciplinary action, eradicating gender-based violence, values, and practices historically grounded in punitive acts and social discrimination. The objective is to implement the monitoring policy in an affirmative and systematic way, according to the principle common to every democratic order, namely, the guarantee and strengthening of human rights (fundamental, political, economic, social, cultural, etc.) in the protection and development of life. Therefore, the extreme relevance of the work of multidisciplinary teams, making referrals to the social protection network.

The following topics will present responsibilities, duties, skills, and attributions of the State Executive Branch, the Municipal Executive Branch, the Judiciary, the Electronic Monitoring Center, the partner network, as well as the monitoring methods for monitored people and the monitoring of women in situations of domestic and family violence.

### 8.2.1. State Executive Branch

The implementation of electronic monitoring necessarily takes place through Electronic Monitoring Centers. The State Executive Branch, through its penitentiary management bodies, is responsible for the administration and control of electronic monitoring:

- Art. 4o. The responsibility for the administration and control of electronic monitoring will lie with the penitentiary management bodies, and:
- I – verify compliance with legal duties and conditions specified in the judicial decision authorizing electronic monitoring;
  - II – forward a detailed report on the monitored person to the competent court at the established periodicity or, at any time, when determined by the judge or when circumstances so require;
  - III – adapt and maintain multi-professional monitoring programs and teams to support the convicted monitored persons;
  - IV – to guide the monitored persons in fulfilling their obligations and to assist them in social reintegration, when appropriate; and
  - V – communicate immediately to the competent judge any fact that can motivate revocation of the measure or modification of its conditions.

Single paragraph. The preparation and sending of a detailed report may be done by electronic means digitally certified by the competent body (Decree No. 7,627/2011).

For the follow-up of electronic monitoring measures, it is up to the State Executive:

- a)** Establish an Electronic Monitoring Center in an easily accessible building with a wide range of public transport, preferably next to the court or the place where detention control hearings are held;
- b)** Structure the Electronic Monitoring Center in a building that is not used concomitantly for sentence enforcement (pre-trial detention center, prisons, etc.) or in “Integrated Command and Control Centers” or similar structures so as to follow the principles, guidelines, and rules provided for in this management model, considering that monitoring services should focus on the follow-up of the person and cannot be restricted only to the control and surveillance of the monitored person. In addition, the purpose of the service is to attend and follow up the installation of the electronic monitoring service in the Integrated Command and Control Centers, in view of its character of restricted access and preponderant presence of police forces, which disadvantages the provision of all the services of care and support to the people monitored by the Electronic Monitoring Center;
- c)** Guarantee the fullness of services for all people in compliance with electronic monitoring measure, including the man who have perpetrated domestic and family violence, from reception, non-mandatory referrals to the social protection network and follow-up until the end of the measure;
- d)** Ensure that electronic monitoring services are capable of generating the location of the monitored person, areas of inclusion and exclusion, as established in the court decision;
- e)** Ensure the availability of technical and operational support via telephone, 24 hours a day, receiving both fixed and mobile long-distance phone calls and, without causing any kind of cost to the compliant, enabling the communication of the monitored person with the Center, the treatment of possible incidents and the maintenance of the measure, according to the concrete cases-seeking to avoid the aggravation of the criminal situation;
- f)** Adopt individual monitoring devices with technologies that are less harmful to the monitored people in order to minimize physical, social and psychological harm caused to the electronically monitored people;
- g)** Prioritize individual monitoring device that sends light or vibration signals when dealing with incidents, avoiding the adoption of devices that emit a sound signal or other modality that implies public exposure and stigmatization of the monitored person;
- h)** Ensure the protection and processing of sensitive personal data of the monitored individuals, and women in situations of domestic violence and other people who have



personal data collected, according to principles, guidelines and rules pre-seen in this management model;

- i)** Not to provide sensitive personal data or any type of information of the monitored people to third parties, including also possible demands made by women in situations of domestic violence;
- j)** Ensure that the data collected during electronic monitoring is not shared with third parties, except for the possibility of judicial authorization in cases where the monitored person appears as a suspect or indicted in specific police investigations due to the harmful and discriminatory potential in the treatment of these data, applying the same to family, friends, neighbors, and acquaintances, as well as women in situations of domestic and family violence who eventually have their data collected and processed at any time by the Electronic Monitoring Center;
- k)** The services must be offered by a multidisciplinary team, with adequate number of professionals, specialized knowledge, and labor rights assured;
- l)** Ensure interdisciplinarity as a working method in the monitoring of electronic monitoring measures;
- m)** Promote processes of continuous training of the teams and partner networks that act next to the Center, considering the knowledge, demands, specificities, and technological innovations in the field of electronic monitoring;
- n)** Consider the national policy guidelines, especially regarding the management model and methodological guidelines, in addition to seeking ways of financing to qualify the actions, from the contribution of own resources and partnerships;
- o)** Ensure the availability of the services of the state public network aimed at the social inclusion of the monitored people, forwarded without obligation by the Electronic Monitoring Center;
- p)** Disseminate forms of social and community participation in the formulation, implementation and evaluation of the electronic monitoring policy, focusing on decoupling, curbing punitive power, and promoting human rights, social justice, and life;
- q)** Improve the services according to the periodic evaluations of actors such as users (monitored people and women in situations of domestic and family violence), the justice system, the Public Prosecutor's Office, the Public Defender's Office, the Executive Branch, and civil society organizations;
- r)** To ensure the construction of collegiate bodies of coordination with the municipalities, Public Prosecutor's Office, Public Defender's Office, Judiciary, and civil society organizations in order to ensure the subsidiary use of electronic monitoring in the application of pre-trial non-custodial measures and restraining orders, as a way to reduce incarceration, ensuring alignment with the national body.

### 8.2.2. Municipal Executive Branch

Electronic monitoring services should not be restricted only to the electronic control and supervision of those who comply with pre-trial non-custodial measures and restraining orders. Monitored people are, *a priori*, subjects of rights. Access to services aimed at social inclusion and the promotion of autonomy should generate referrals to the protection network without, however, giving rise to other forms of control or impositions not provided for in the judicial measure. For the follow-up of electronic monitoring measures, it is up to the Municipal Executive Branch:

- a) Ensure the availability of services of the municipal public network aimed at health care and social inclusion, in a non-mandatory way, from the indications of the judge, the specifics of each case, and the social demands presented directly by electronically monitored people and by women in situations of domestic and family violence;
- b) Coordinate with civil society organizations ways to expand and complement the network of services necessary for the promotion of health, education, work, and other activities aimed at the social inclusion of electronically monitored people, as well as women in situations of domestic and family violence

### 8.2.3. Partnership between the Executive Branch and the criminal justice system

For the structuring of electronic monitoring services in the states, the State Executive Branch should sign a technical cooperation agreement with the criminal justice system, considering the Judiciary, the Public Prosecutor's Office, and the Public Defender's Office, aiming at the effectiveness of services in accordance with related laws and regulations and the methodology presented here. It should be noted that the responsibility for the administration and control of electronic monitoring lies with the penitentiary management bodies of the State Executive.

This cooperation should unfold in the effective integration of this network, consolidating the methodology proposed here, ensuring attendance and monitoring of electronic monitoring measures, which includes demands arising from detention control hearings. People subjected to electronic monitoring, either alone or cumulatively, in compliance with pre-trial non-custodial measures or restraining orders, should be referred to the Electronic Monitoring Center. However, it is recommended that the first service, the installation of individual monitoring device and registration in the monitoring system be carried out in the court, avoiding coercive or escort driving to the Center. The same initial procedure is suggested for women in a situation of domestic violence, that is, first care and, when appropriate, registration in the system and delivery of the portable tracking unit. For this, it is necessary to grant adequate space for the deployment of a post of the Electronic Monitoring Center in the premises of the court, mobilizing collaborative efforts between the State Executive and the Judiciary.

The work in general and the first calls at the Electronic Monitoring Center's station depend on a minimum team, made available by the Center. In any case, the collaborative work of the multidisciplinary teams of the Judicial Branch and the Electronic Monitoring Center is indicated.

Other activities, such as reception and referrals, should be carried out at the Electronic Monitoring Center. The Center is the ideal space for procedures such as reception, referrals to the social protection network (when necessary), technical support, incident handling, etc. This being said, all hearings, including detention control hearings, which imply compliance with electronic monitoring measure must necessarily carry out, for example, the referral of the person under monitoring to the Center. The copy of the court decision must inform the personal data; the nature; all the conditions of compliance with the measure (limits of the areas of inclusion and exclusion, circulation and collection times, conditions, authorizations, and various prohibitions); start and end dates of compliance with the measure; as well as the address of the Center, the date and time of the first attendance.

The continuous dialogue between these actors is able to improve electronic monitoring services. This being said, it is recommended that this cooperation involve the establishment of agreements and protocols between the Center and the judges, especially involving incident handling and re-evaluation of the measure, which should consider the flows and procedures provided for in this handbook. In addition, interdisciplinary projects and interventions with civil society should be encouraged in order to eradicate gender violence, values and practices associated with the punitive paradigm, minimize stigmas associated with electronically monitored people, mobilize conduct founded on human rights, the protection and development of life for all individuals and disseminate democratic practices of conflict prevention and management.

It is particularly suggested that this cooperation be able to:

- a)** Ensure the fullness of services for all people in compliance with electronic monitoring measures, including the man who perpetrated domestic and family violence, from welcoming, non-mandatory referrals to the social protection network and follow-up to the end of the measure;
- b)** Guarantee women in situations of domestic and family violence an active listening space by the multidisciplinary team of the Electronic Monitoring Center so that they can freely choose to use the portable tracking unit according to information received about the restraining orders, the use and the function of the PTU, that is, to create dynamic exclusion areas from the geographical approximation between the perpetrator of violence and the woman;
- c)** Ensure that the first attendance and the PTU delivery for women in a situation of domestic violence take place in an appropriate space in the premises of the forum to avoid unnecessary or forced attendance at the Electronic Monitoring Center;

- d)** Prioritize scheduling the welcoming, the day after the hearing, in the Electronic Monitoring Center for the services and assistance offered with the issuance of a letter informing the address of the Center, the date and time for the service;
- e)** Do not require the attendance of women in situations of domestic and family violence to the Electronic Monitoring Center, except in the case of women who choose to use the portable tracking unit and need repairs or replacement of the device, avoiding revitalization processes;
- f)** Enable the re-evaluation of the measure by the judge to be made collaboratively from evidence related to compliance and adequacy of the measure, according to an evaluation report prepared by the multidisciplinary team of the Electronic Monitoring Center;
- g)** Motivate the establishment of agreements between the judges and the Centers with the aim of adjusting the measure;
- h)** Promote incident communication standards with judges based on reasonability, enabling the multi-professional team to work with terms of adjustment of the measure;
- i)** Ensure that individual monitoring equipment is removed immediately upon the end of the period stipulated in the court decision;
- j)** Carry out communication campaigns aimed at informing the population as to character, objective, effectiveness, and need of the monitoring measure applied as a pre-trial measure, aiming at the social inclusion of the people monitored and the reduction of gender violence and punitive practices;
- k)** Enable interdisciplinary projects and interventions with civil society, aiming to eradicate violence, marginalization processes, and criminalization of monitored people, spreading democratic practices of conflict prevention and management.

#### 8.2.4. The Electronic Monitoring Center

The work carried out at the Centers should prioritize the physical, moral and social integrity of the monitored person. Preference should be given to the use of individual monitoring device that is increasingly light; anatomically comfortable; dimensioned to ensure discretion, ergonomics and portability; with anti-allergenic characteristics and without offering any kind of risk to health, especially because of its continuous use; resistant to aquatic submersion, mechanical impact, heat and cold, considering the weather in Brazil. It is also indicated the adoption of device models with technical specifications that enhance the use of the battery, reducing procedures recharge. It should also be ensured that the device allows recharging without limitation of mobility of the monitored person, using portable battery recharging devices.

The Centers should also handle incidents on the basis of this document, with the public security institutions acting in a subsidiary way to deal with strict incidents. The attendance of the monitored person to the Center should be minimal, and referrals to the protection network should be made only when requested, without mandatory character. Also, in this sense, confidentiality and secrecy are mandatory at any stage of the services, ensuring the protection and processing of personal data collected due to its potential harmful and discriminatory use. The access and processing of personal data should be allowed only to the trained and capable operators of the Centers, authorized according to the need to know them by virtue of assignments, strictly following the “Guidelines for the Processing and Protection of Data in the Electronic Monitoring of People” (Brasil, 2016b).

According to the guidelines consolidated in Protocol I of Resolution No. 213/2015 of the National Council of Justice, the performance of the Electronic Monitoring Centers should consider the following procedures:

- I. Ensure the reception and follow-up by multidisciplinary teams, responsible for the coordination of the network of protection and social inclusion services available by the public authority and for the monitoring of compliance with the measures judicially established, from the individualized interaction with the people surveyed.
- II. Ensure priority to compliance, maintenance, and restoration of the measure in freedom, including in cases of incidents of violation, preferably adopting measures of awareness and care by the psychosocial team, and the action of the judicial authority should be subsidiary and exceptional, after exhausting all the procedures adopted by the technical team responsible for monitoring people.
- III. Prioritize the adoption of appropriate standards of security, secrecy, protection and use of data of people under monitoring, respecting the processing of data in accordance with the purpose of the activities. In this sense, the data collected during the electronic monitoring have specific purpose, related to the monitoring of judicially established conditions. The information of the monitored people may not be shared with third parties outside the process of criminal investigation or investigation that justified the application of the measure. Access to data, including by institutions of public safety, can only be requested in the context of police investigation specific in which the duly identified monitored person already appears as suspect, being submitted to the judicial authority, which will analyze the concrete case and grant or not the request.
- IV. Foster wide networks of care and social assistance for the non-mandatory inclusion of the defendants from the indications of the judge, the specificities of each case and of the social demands presented directly by the penalized, with emphasis on the following areas or others that prove necessary:

- a) emergency demands such as food, clothing, housing, and transportation, among others;
  - b) work, income, and professional qualification;
  - c) legal aid;
  - d) development, production, training, and cultural diffusion mainly for the young public.
- V. Carry out necessary referrals to the Health Care Network of the Unified Health System (SUS) and the Social Assistance of the Unified Social Assistance System (SUAS) network, in addition to other policies and programs offered by the government, being the results of the attendance and follow-up of the indictment, as indicated in the court decision, regularly communicated to the court to which the in flagrante arrest warrant is distributed after the end of the routine of detention control hearings.

In addition to the elements indicated above, complementary guidelines to CNJ Resolution No. 213/2015 should guide electronic monitoring services. It is the responsibility of the Electronic Monitoring Center:

- a) Follow the electronic monitoring measure, observing and following all the conditions expressed in the court decision, such as:
  - period of the measure, with start and end date;
  - limits of inclusion and exclusion areas;
  - circulation and retreat times;
  - permissions and general conditions;
  - prohibitions.
- b) Ensure the maintenance of the electronic monitoring measure through the handling of incidents with qualified technical team and multidisciplinary team, working jointly in order to avoid the triggering of public security institutions, only recourse to be used in the handling of incidents involving restraining orders and only when all pre-trial non-custodial measures have already been taken;
- c) Privilege the maintenance of the electronic monitoring measure in freedom, avoiding the early and often unnecessary arrest of monitored people whose incidences must be remedied based on the protocols of this Management Model;
- d) Ensure that police calls are always subsidiary and guided by the incident handling protocols provided for in this management model, recognizing the real need for police intervention in the handling of specific incidents demanded by the Center;
- e) Avoid excessive activation of public security institutions, considering, above all, the great demand of police forces in events of another nature and due to the responsibility of the Center and its teams in monitoring the measure and protocol handling of incidents;

- f)** Ensure that Electronic Monitoring Centers function as a place of assistance to the monitored person, regardless of the type of measurement and procedural phase because it is a service of qualified attention to the public, which presents marked patterns of social vulnerabilities;
- g)** Ensure that the Center is a welcoming environment so that the public feel encouraged to attend the service, providing the creation of bonds that are essential, both for the full fulfillment of the measure, and for adherence to social referrals;
- h)** To ensure the purpose of the electronic monitoring service, namely the attendance and follow-up of the monitored person to allow the formation and restoration of bonds and the proper fulfillment of the measure;
- i)** Carry out referrals to the social services networks of the national, states and municipalities' institutions and civil society organizations, based on the specificities of each case, respecting the voluntary nature of these services;
- j)** Follow-up compliance with the electronic monitoring measure through indirect contact with the person, avoiding unnecessary and excessive attendance to the Center;
- k)** Deal with incidents according to this methodology, considering agreements with the Judiciary able to admit the adjustment of the measure by the Center, when necessary;
- l)** Consider secondary interference factors in incident handling, such as:
  - failures or defects in the monitoring device;
  - reduced coverage or instability in cell phone signals;
  - varied interference to Global Positioning System (GPS) mechanisms;
  - elements related to geography, as type of vegetation, architecture of buildings, wheather variations, etc.;
  - the existence of localities without or with unstable GPS signal or cellphone reception, especially in the case of people residing, working, studying, undergoing health treatment, or participating in religious or spiritual activities in these specific localities;
- m)** Follow-up the restraining orders applied, taking in and referring women using the PTU to the women's protection network always in a voluntarily basis from the specificities of each case, aiming at the reversal of social vulnerabilities;
- n)** Schedule procedures and referrals, avoiding long waiting periods and permanence of people monitored at the Center, especially women in situations of domestic violence who choose to use PTU;
- o)** Schedule procedures and referrals on different days and times for monitored people and for women in situations of domestic violence, avoiding possible constraints and possible non-compliance with restraining orders;

- p)** Provide essential structures, before, during and after any type of service or procedure, such as: female and male toilets; waiting room with sufficient number of chairs to accommodate scheduled and spontaneous demands, including a waiting room reserved only for women in situations of domestic violence; drinking fountains; adequate lighting; ventilation in accordance with local climatic conditions; cleaning services;
- q)** Constitute and participate in broad networks of care and social assistance for the realization of fundamental rights and the inclusion of people, with emphasis on the following areas:
  - food;
  - clothing;
  - housing;
  - transport;
  - health and mental health;
  - health care for people with drug use disorder;
  - work, income, and professional qualification;
  - education;
  - family and community living;
  - legal aid.
- r)** Ensure the full understanding by the monitored person about the electronic monitoring measure, according to the determinations expressed in the court decision;
- s)** Ensure understanding about the proper use of individual electronic monitoring device and PTU, in order to minimize incidents of violation and physical, psychological, and social harm to monitored people;
- t)** Maintain structures for possible maintenance procedures and exchange of the individual electronic monitoring device;
- u)** Send monitoring reports of the measure periodically, as agreed with the Judiciary, for reassessment of the electronic monitoring measure;
- v)** Guarantee the right to information by people in compliance with electronic monitoring measure, regarding the procedural situation, the conditions of compliance with the measure, at the start and end dates of the measure, the periods envisaged for the reassessment of the measure, at services and assistance offered;
- w)** Certify that the monitoring system is structured in such a way as to preserve the secrecy of all sensitive personal data and to ensure the management of quantitative and qualitative data and information, following the guidelines established in this management model;



- x)** Promote respect for generational, social, ethnic, racial, gender, sexuality, origin and nationality, income, social class, religion, and belief, among others, regarding referrals and compliance with the electronic monitoring measure;
- y)** Contain any type of discrimination or degrading treatment at any stage of the electronic monitoring services, during and after compliance with the judicial measure.

## **9 MANAGEMENT, ADMINISTRATIVE, AND TECHNICAL STRUCTURE OF THE ELECTRONIC MONITORING CENTER**

Recognizing challenges and singularities that permeate monitoring services in each Federative Unit, the aim is not the determination of a cast model of Center. On the other hand, it is necessary to establish protocol-based guidelines on services. The establishment of national parameters favors the consolidation of the policy in the country, assists in the development of evaluation and improvement methods, as well as favors aligned and more effective exchanges involving the trajectories of each state. In this sense, the monitoring team must be close and aligned with the multi-professional team-social workers – law graduates and psychologists – acting in the Center, because it is a service of special care to the public served, which presents marked patterns of social vulnerabilities, in the best interest of complying with the measures determined judicially.

Thus, it is sought that the monitored people feel encouraged to go to the Center for the service, providing the creation of bonds that are essential, both for the integral fulfillment of the measurement, and the accession of them to social referrals. In short, the service's purpose is the care and follow-up of the monitored person to allow the formation and restoration of bonds and the proper fulfillment of the measure, and the installation of the electronic monitoring service in the Integrated Command and Control Centers (CICC), in view of its restricted access character and preponderant presence of police forces, disadvantages the proper implementation of the Center.

The structuring use of CICC in the management of electronic monitoring makes it impossible for the continuous and necessary coordination between the monitoring and psychosocial teams. This lack of coordination impairs the intervention and treatment of incidents, many of which can be solved without police institutions. Even, as a measure of greater efficiency, police forces should be reserved for cases of greater severity, from the identification of the Center teams, according to protocols developed in this management model. Using the police force as the first instance, leaving aside multidisciplinary interventions, technical and operational interventions, and social protection strategies, in addition to saturating the capacity of police institutions to act, can delegate to it a character of symbolic action, since it will not reach much of the daily occurrences that, in turn, could be solved through psychosocial teams and monitoring technicians.

Thus, triggering the police should occur in the last case, only when all protocols have already been used in the treatment of incidents, giving priority to the handling of the measure in freedom. Otherwise, the early and often unnecessary arrest of monitored people whose incidents could be

remedied by the protocols here established may occur. Thus, police actions must follow the logic of action via procedures previously established.

Also in this direction, priority should be given to the permanence of the Center in an easily accessible building with a wide range of public transport, preferably near the criminal court or the place where detention control hearings are held.

The model presented here for the electronic monitoring centers is part of the understanding of the responsibility of the Executive Branch on the monitoring of the electronic monitoring measure. That is, the State Executive Branch and the prison management bodies are responsible for the administration and control of electronic monitoring measures, which implies the responsibility for structuring the Electronic Monitoring Center. The support by the Federal Government, with the contribution of resources for the creation and maintenance of structures and services, is now centered on this model of partnership with the State Executive.

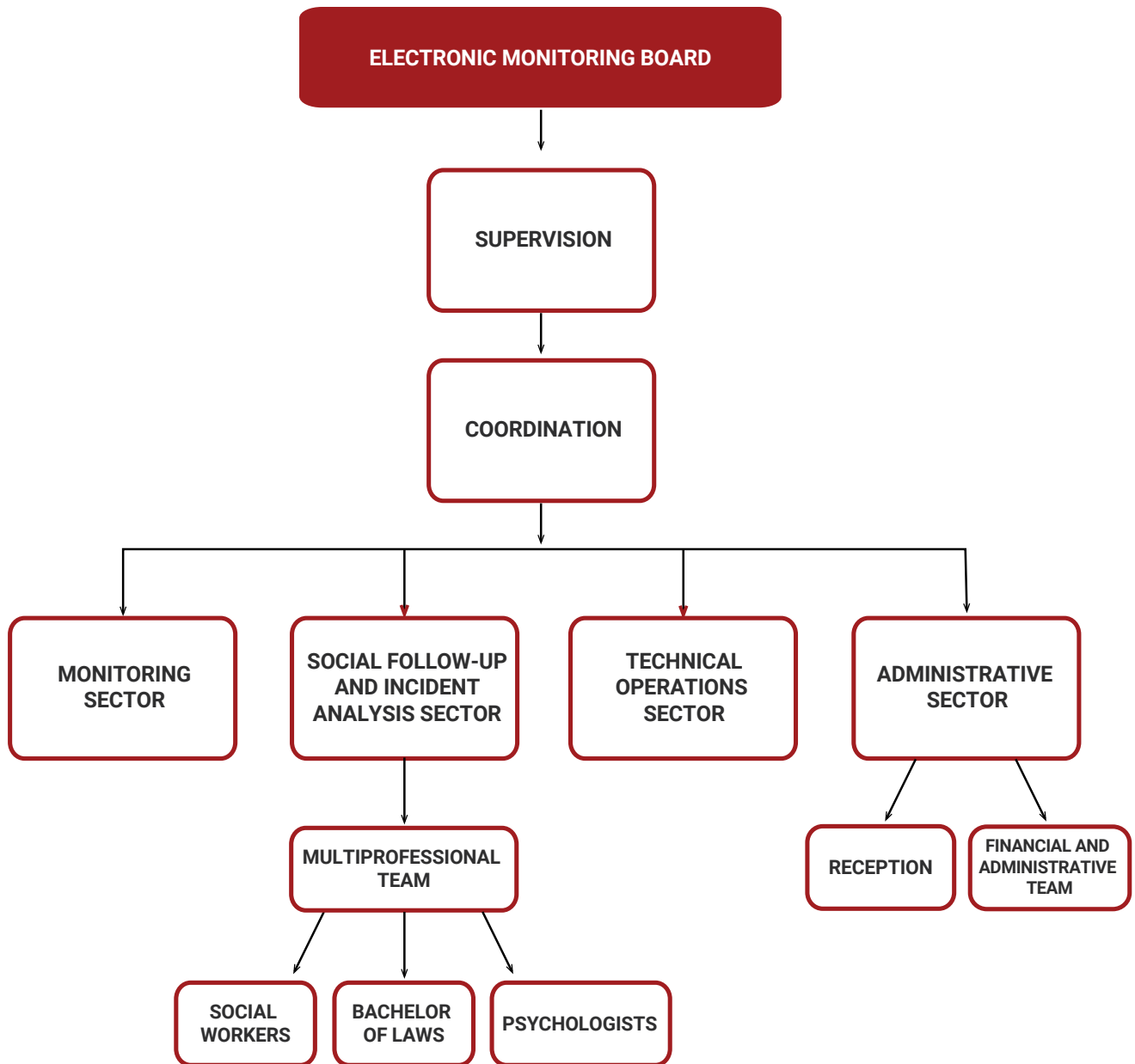
## **9.1. The management structure with the State Executive Branch**

According to the diversity of public policy management arrangements in Brazil, determining which public institution should allocate the electronic monitoring policy is not the most relevant consideration for this proposal. However, it is important to note that, according to this methodology, it is not recommended that the public security departments be at the forefront of the monitoring policy. In addition, it should be noted that the main purpose of monitoring services is the follow-up of the monitored person to allow the formation of bonds through technical support capable of promoting adequate compliance with the measure.

It is essential to establish a management of the electronic monitoring policy with the Executive Branch. This management must be autonomous from the prison management or from any public security authority, with specific competence for the management of the electronic monitoring policy in the state. This management structure with the Executive Branch must contain a technical staff capable of responding to the management of the policy in the state and will not be directly responsible for the services, which should be developed by the Electronic Monitoring Centers.

This structure should contain professionals allocated in specific sectors according to their competencies and responsibilities in electronic monitoring services. It is essential that the professionals cover technical and technological specificities of the monitoring, as well as the need for multi-professional monitoring, which can favor compliance of the measure and access to fundamental rights by the monitored people. The following organizational chart indicates the functions considered essential to the management structure considered here:

a) Organization chart



## b) Assignments

The Center should provide services to the citizen, not reproduce stereotypical practices of behavior or confinement, avoiding accentuating social vulnerabilities. It is therefore essential that the structure and functioning of the Center assume the monitored person as the main subject, regardless of the nature of the measure or procedural phase (criminal investigation or law enforcement). The woman in a situation of domestic and family violence should receive the first service only when the judicial measure imposed involves the use of the portable tracking unit, indicating the referral of the woman to services of the women's protection network<sup>59</sup>, without mandatory character.

It is recommended that professionals working in the Electronic Monitoring Center be of civil nature and capable of performing administrative functions. They should not be servants of the police career, because the policy of electronic monitoring should not be treated as a public security activity. The Center should not resemble prison institutions, because it should work as a place to provide services to citizens, including service to this public, which presents marked patterns of social vulnerabilities.

All recommendations in this management model also apply to women in domestic and family violence who use the portable tracking unit. It must be ensured that they are treated preferentially by name and cannot be called "victim" or any word that reinforces this stereotype or any other meaning contrary to women empowerment provided for in the Maria da Penha Law. In a similar direction, such recommendations should apply to men in compliance with restraining orders, and it is also indicated that they should be treated preferentially by name, avoiding the reproduction of stereotypes.

All public servants or hired employees of the Electronic Monitoring Center, regardless of functions, assignments and hierarchical issues, must necessarily:

- Follow the conditions informed in the court decision, which prevents the creation and implementation of conditions, measures and restrictions not provided for in court;
- Ensure the treatment and protection of all personal data of monitored people, women in situations of domestic violence and other people who have their data collected, considering the sensitive nature of these data, their harmful and discriminatory potential;
- Recognize the monitored people as a subject of rights who, being at liberty must have not only their obligations, but also their rights and guarantees preserved;
- Not cultivate or disseminate any degrading, discriminatory or vexatious form of treatment towards monitored people, at any stage of the services;
- Address monitored people preferably by name, not referring to them by prisoner, prisoner, aggressor, or words with similar meaning and meaning, as well as any vexatious word implying moral disqualification;

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<sup>59</sup> There are services developed and intended specifically for women in situations of domestic and family violence (Brasil, 2016d).

- Stimulate and support processes to eradicate gender-based violence by disseminating democratic practices of conflict prevention and management;
- Act so that the application of the measure is not reversed in punishments, social discrimination and restrictions on fundamental rights related to health, education, legal aid, work, income, professional qualification, family and community life;
- Be engaged in the task of disseminating knowledge, sharing meanings together with the various social segments to minimize segregation and social isolation processes of the monitored person.

It is recommended that Electronic Monitoring Centers adopt the structure below, described in terms of their objectives, procedures, and competencies. Even if the routines and processes be designed according to specific competencies and assignments of each professional in the exercise of their functions, the structures should enable the efficient management of electronic monitoring, which requires cooperation between sectors, interdisciplinarity, collaboration and participation of multidisciplinary teams in the monitoring of measures, especially in dealing with incidents.

- i) Coordination**
- ii) Supervision (on-call regime)**
- iii) Monitoring sector (on-call regime)**
- iv) Social Follow-up and Incident Analysis Sector**
- v) Operations Sector Techniques**
- vi) Administrative Sector**

#### **i) Coordination**

##### **Composition**

Public server with commission or specific charge

##### **Requirements for the position**

###### **a) Mandatory**

- Diploma in humanities studies, social sciences or similar;
- Experience in team coordination;
- Experience in public policy management;
- Sensitivity and conceptual and practical affinity with the principles, guidelines, and rules of electronic monitoring presented in this management model;
- Have participated in the training proposed in this management model – “Educational processes for Electronic Monitoring”;
- Personal skills: leadership, planning and organization, empathy, assertiveness, decision-making, teamwork, communication and ethics;

- General knowledge of computer science;
- Visual, verbal, and hearing ability.

#### **b) Desirable**

- Experience in the activities of electronic monitoring measures.

#### **Skills and objectives**

- Coordinate and evaluate monitoring services;
- Coordinate and ensure the proper information management;
- Authorize, through a signed document, the operators of the Center responsible for accessing and processing the personal data of the monitored individuals, of women in situations of domestic violence, and of their families, friends, neighbors, or acquaintances;
- Seek resources from the Federal Government, the State Government, and other sources of funding to improve policy structures and methodologies of the electronic monitoring policy, including initial and continued training for all Center's employees;
- Ensure that selection processes are carried out on the basis of professional skills required for monitoring services, as expressed in the present document;
- Trigger, in the absence of the supervisor, public security institutions, in accordance with monitoring system underreporting involving incident handling in restraining orders that demand so, as established in the protocols of this management model;
- Record in the system the any calling to public security institutions, at absence of the supervisor, when the procedure becomes necessary;
- Refer reports from the multidisciplinary team to the Judiciary on the compliance of the measure according to the stipulated deadlines for reassessment of the measure or when identified and analyzed criteria preventing compliance with the electronic monitoring measure, or others that are necessary;
- Send general notices to the judge;
- Coordinate and mobilize the network, expanding partnerships;
- Promote network meetings for dissemination, improvement, alignment, broadening of partnerships, awareness, and training of institutions involved in electronic monitoring services;
- Propose and ensure the protocols and routing workflows with network institutions and other partners;
- Propose and ensure technical cooperation agreements with various actors of the justice system;
- Seek to ensure adequate physical structures, equipment and materials for the proper functioning of the Center;

- Ensure that selection processes are based on professional skills required for monitoring services;
- Promote regular case studies;
- Conduct periodic action alignment meetings involving all sectors;
- Ensure collaborative work and integration across sectors;
- Represent the Electronic Monitoring Center in external activities;
- Collaborate for the development of communication campaigns for information and awareness of civil society regarding electronic monitoring.

## **ii) Supervision (on-call regime)**

### **Composition**

Public servers or hired personnel.

### **Requirements for the position**

#### **a) Mandatory**

- Sensitivity and conceptual and practical affinity with the principles, guidelines, and rules presented in this management model;
- Have participated in training proposed in this management model – “Educational Processes for Electronic Monitoring”;
- Personal skills: empathy, assertiveness, decision-making, teamwork, communication, ethics, attention to standards and procedures;
- General knowledge of computer science;
- Visual, verbal and hearing ability.

#### **b) Desirable**

- Experience in public policy;
- Knowledge of the territory.

### **Skills and objectives**

- Act directly and collaboratively in the work of the coordination, replacing the coordinator when necessary;
- Supervise and evaluate monitoring services;
- Supervise and ensure the proper information management;
- Authorize, in the absence of the coordinator, through a signed document, the operators of the Center responsible for accessing and processing the personal data of the monitored people and their relatives, friends, neighbors, or acquaintances;
- Call public security institutions, in the absence of the coordinator, according with



- monitoring system underreporting involving specific incident handling, as established in the protocols of this management model;
- Record any calling to public security institutions in the system, when the procedure is necessary;
  - In the absence of the coordinator, forward the multidisciplinary team’s reports to the judge on the compliance of the measure in accordance with the deadlines stipulated for re-evaluation of the measure or when identified and analyzed criteria preventing compliance with the electronic monitoring measure or other that are required;
  - Send general notices to the judge in the absence of the coordinator;
  - Coordinate and mobilize the network, expanding partnerships together with the coordinator;
  - Promote network meetings for dissemination, improvement, and alignment, broadening of partnerships, awareness, and training of institutions involved in electronic monitoring services, together with the coordinator;
  - Propose and ensure the protocols and routing flows with the institutions of the network and other partners, together with the coordinator;
  - Propose and ensure technical cooperation agreements with various actors of the justice system, together with the coordinator;
  - Seek to improve the structures and methodologies of the electronic monitoring policy, including initial and continued training for all Center employees, together with the coordinator;
  - Seek to ensure adequate physical structures, equipment, and materials for the proper functioning of the Center, together with the coordinator;
  - Promote the case studies on a regular basis, together with the coordinator;
  - Ensure collaborative work and integration between sectors, together with the coordinator;
  - Represent, when indicated, the Electronic Monitoring Center in external activities.

### **iii) Monitoring sector (on-call regime)**

#### **Composition**

Public servers or hired personnel.

#### **Requirements for the position**

##### **a) Mandatory**

- Sensitivity and conceptual and practical affinity with the principles, guidelines, and rules presented in this management model;
- Have participated in training proposed in this management model – “Educational Processes for Electronic Monitoring”;
- Personal skills: empathy, assertiveness, decision-making, teamwork, communication,

- ethics, attention to standards and procedures;
- General knowledge of computer science;
- Visual, verbal and hearing ability.

**b) Desirable**

- Experience in public policy;
- Knowledge of the territory.

**Skills and objectives**

- Follow-up the monitoring system paying attention to the conditions of application of electronic monitoring for each case;
- Feed the monitoring system with information on the conditions of application of electronic monitoring, among others;
- Issue, when requested, various monitoring system reports;
- Identify possible incidents and non-compliance provided for in court decisions, carrying out all the procedures and incident treatments, case by case, as expressed in this management model;
- Generate underreporting in the monitoring system so that Coordination or Supervision may call the police in the case of incidents requiring such a measure;
- Participate in periodic alignment meetings, among other objectives.

**Restrictions**

- Employees in the Monitoring Sector cannot advise or refer the person in electronic monitoring or the woman in a situation of domestic and family violence;
- They are not allowed to set up public security institutions nor to refer or conduct compliant to police stations;
- Strangers or third parties shall not be allowed to enter and remain in the Monitoring Sector without authorization from the Coordination or Supervision;
- Employees in this sector should avoid face-to-face contact with monitored people and women in situations of domestic violence, passing this type of care to the competent sectors.

**iv) Social Follow-up and Incident Analysis Sector**

**Composition**

- Multi-professional team composed of social workers, law graduates, and psychologists – public server or hired employees;
- Trainees from the above or related areas.

## **Requirements for the position**

### **a) Mandatory**

- Diploma in social work, law, or psychology, according to the table below of the multi-professional team quantification;
- Sensitivity and conceptual and practical affinity with the principles, guidelines, and rules presented in this management model;
- Have participated in the training proposed in this management model – “Education processes for Electronic Monitoring”;
- Experience in public policy;
- Personal skills: empathy, assertiveness, decision-making, teamwork, communication, ethics, resilience, and analytical and writing skills.

### **b) Desirable**

- Experience in the activities of electronic monitoring measures;

### Quantification of the multi-professional team

In accordance with the skills and objectives previously summarized, as well as the follow-up capacity of the Electronic Monitoring Center, the following minimum configuration of the multi-professional team is recommended:

( ) when up to 150 people monitored:

- 1 social worker;
- 1 law graduate;
- 1 psychologist.

( ) when 151 up to 300 people monitored:

- 2 social workers;
- 1 law graduate;
- 2 psychologists.

( ) when 301 up to 450 people monitored:

- 3 social workers;
- 1 law graduate;
- 3 psychologists.

( ) when 451 up to 600 people monitored:

- 4 social workers;
- 2 law graduates;
- 4 psychologists.

If the number of people monitored is more than 600, it is recommended to follow the ratio presented above.

Constant alignments are indispensable, observing professional skills as well as the ability to act in an interdisciplinary and transdisciplinary way in the reception, care and other activities related to the follow-up of the public served. Experience in the social area is recommended, in order to enhance the implementation of the methodology related to electronic monitoring services.

## **Trainees**

The hiring of interns is not mandatory. However, it is recommended to hire trainees in the areas listed above, provided that they are regularly attending the course for which they applied for the vacancy. It is desirable to have proven experience in social movements, NGOs, or government projects. The role of the trainee is to provide support to the professionals mentioned, and it is not their competence to carry out services, referrals, evaluations, and reports without due technical support.

### **Skills and objectives**

- Welcome the person in compliance with electronic monitoring measure, explaining and clarifying obligations, duties and rights;
- Welcome women in situations of domestic and family violence who make use of the portable tracking unit – provide recommendations on the use of the device, raise and analyze relevant information about it with regard to psychosocial and legal aspects;
- Collect and analyze relevant information about the monitored individual regarding psychosocial and legal aspects;
- Identify if the monitored person resides, works, studies, does health treatments, participates in religious or spiritual activities, or develops other activities, interacting with the Monitoring and Technical Operations Sectors for a better measure adequacy and possible incident handling;
- Make referrals to the social protection network, as needed and in accordance with the monitored person;
- Perform psychosocial and legal follow-up of the monitored person;
- Analyze incidents forwarded by the Monitoring and Technical Operations Sectors, aiming at the best execution of the judicial measure;
- Refer to the monitoring sector, when necessary, underreporting in the monitoring system for the coordination or supervision to call the police in the specific incident cases;
- Prepare follow-up reports of the measure, evaluating psychosocial and legal elements, providing subsidies for the re-evaluation of the measure by the judge;
- Propose in writing, to the judge of the case, the replacement of the monitoring measure by a less burdensome measure when the monitoring proves inadequate to the individual, according to psychosocial and legal factors analyzed as impediments to compliance;
- Inform the administrative sector of any conditions and restrictions to be observed in the scheduling of specific cases, preventing possible non-compliance and unnecessary interruptions in the routine;

- Schedule appointments in order to follow the court decision and preserve the routines of the monitored people, observing days and hours of work, study, and health treatment;
- Hold periodic meetings to evaluate specific cases, improve the services and prepare external activities;
- Conduct case studies regularly;
- Participate in periodic action alignment meetings, among other topics;
- Actively seek partnerships with the social protection network, public institutions, non-governmental organizations, and the private sector to ensure and expand care and referrals for social inclusion, and access to fundamental rights, with emphasis on the following areas: health care for people with drug use disorders; mental health; work, income, and professional qualification; social assistance; legal assistance; development; production; formation and cultural diffusion;
- Follow protocols and routing flows with network institutions and other partners;
- Carry out follow-up visits to the entities that receive the monitored person in programs and services for social inclusion;
- Maintain periodic contact by phone, email, and other possible means with the social protection network, entities, and institutions;
- Actively participate in committees, councils, and other spaces of the network, ensuring representation in these spaces;
- Establish broad networks with local and federal policies and programs to support the referral of the Electronic Monitoring Center's public;
- Promote network meetings for dissemination, improvement, and alignment, broadening of partnerships, awareness, and training of institutions involved in electronic monitoring services;
- Collaborate with communication campaigns for information and awareness of civil society on electronic monitoring;
- Participate in events, seminars, and meetings with the network, the justice system, civil society, and other partners.

### **Restrictions**

- The law graduate will at no time assume the duties of a public defender and must guide and inform people on the compliance of the electronic monitoring measure, especially the conditionalities aggregated to the measure; legal advice to aid in the elaboration of technical cooperation agreements, contracts, conventions, models of legal instruments, as well as all legal parts of the electronic monitoring policy. This professional should be responsible for the dialogue with legal departments of government secretariats and other institutions with which the electronic monitoring policy should establish partnerships. If the person served, at any time, requests the judicialization of the case,

- this should be referred to the Public Defender's Office;
- Psychologists will not assume clinical assignments and will not have the competence to issue psychological reports. If such specific services are required, they must refer it to the specialized network, following the procedures;
  - None of the professionals in this sector can directly call public security institutions;
  - Social referrals or activities not legally determined may not be carried out with a mandatory or coercive character. Conditions or restrictions that are not properly indicated in the court decision may not be created or established;
  - Periodic returns to the services may not be imposed, but its importance for the preparation of a report to the judge for periodic reassessment of the measure should be highlighted;
  - Professionals in this sector cannot apply sanctions or punishments to the monitored person or woman in a situation of domestic violence who choose not to return to the services offered by the team;
  - Strangers or third parties should not be allowed to enter or stay in the sector when unauthorized.

#### **v) Technical Operations Sector**

##### **Composition**

- Public servers or hired personnel.

##### **Requirements for the position**

###### **a) Mandatory**

- Present specific training and training to work with all electronic monitoring equipment and information systems, being the company responsible for offering such training in an initial and continuous way;
- Personal skills: empathy, teamwork, communication, ethics, and attention to standards and procedures;
- General knowledge of computer science;
- Visual, verbal, and auditory ability;
- Sensitivity and conceptual and practical affinity with the principles, guidelines, and rules presented in this management model;
- Have participated in the training proposed in this management model – "Education Processes for Electronic Monitoring".

###### **b) Desirable**

- Experience in public policy;
- Knowledge of the territory.

### **Skills and objectives**

- Install the individual monitoring device, checking identity documents – personal information with photo and data of the court decision to avoid possible installation in people not subjected to the measure;
- Request the assistance of the analysis and monitoring sector in cases where the person to be monitored, or the woman in a situation of domestic violence does not have a personal identification document with photo at the time of installation of the device or the PTU delivery;
- Carry out procedures in a collaborative way with the analysis and monitoring sector, especially in the first installation of the device and in the delivery of the PTU to women in situations of domestic violence;
- Adopt safety standards during installation, ensuring that the device is adjusted to the person's ankle without causing physical damage or allowing its eventual removal;
- Check, after the installation of the individual monitoring device, by asking the monitored person directly, the level of comfort felt with its use, evaluating possible adjustments;
- Inspect the monitoring device and portable tracking units (when available in the services), performing maintenance and substitution procedures;
- Verify the full operation of the repaired or exchanged monitoring device immediately with the monitored person or with the woman using the PTU and, if necessary, with the collaboration of other sectors;
- Check if the device has caused any damage to the body of the monitored person, providing this information to the analysis and monitoring sector for the preparation of the periodic report;
- Visit on different days and times monitored people and women in situations of domestic violence who have opted for the use of PTU;
- Check GPS and cell phone signals in the field when necessary;
- Participate in periodic alignment meetings, among other topics.

### **Restrictions**

- Public servers and employees of the Technical Operations Sector may not advise, refer or analyze the person in electronic monitoring or woman in a situation of domestic and family violence;
- They are not allowed to call public security institutions, nor to refer or conduct the monitored people to the police stations;
- Strangers or third parties shall not be allowed to enter and remain in the Technical Operations Sector without authorization from the Coordination or Supervision.



**vi) Administrative**

**Sector Composition**

- Public servers or hired employees, prioritizing experience in the administrative area;
- Trainees from the areas mentioned above or related areas.

Teams	Requirements for the position	Skills and objectives
Financial and administrative	<ul style="list-style-type: none"> <li>- Experience in management and public administration;</li> <li>- Personal skills: planning and organization, strategic vision, empathy, assertiveness, decision-making, teamwork, communication, and ethics;</li> <li>- Experience in personnel management, finance and budget, legislation, and computer science;</li> <li>- Sensitivity and conceptual affinity and practice with the principles, guidelines and rules presented in this management model;</li> <li>- Have participated in the training proposed in this management model               <ul style="list-style-type: none"> <li>- "Education processes for Electronic Monitoring";</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Administrative and financial support to Electronic Monitoring Center's Coordination;</li> <li>- Financial management of the monitoring policy;</li> <li>- Administrative management of the monitoring policy;</li> <li>- Asset and contract management;</li> <li>- Purchase and control of permanent and consumption material for the Center.</li> </ul>

<p>Reception</p>	<ul style="list-style-type: none"> <li>- Personal skills: empathy, assertiveness, flexibility, teamwork ability, communication, ethics, and attention to standards and procedures;</li> <li>- General knowledge of computer science;</li> <li>- Sensitivity and conceptual affinity and practice with the principles, guidelines, and rules presented in this management model;</li> <li>- Have participated in the training proposed in this management model – “Education processes for Electronic Monitoring”;</li> </ul>	<ul style="list-style-type: none"> <li>- Welcome the people arriving at the Electronic Monitoring Center;</li> <li>- Carry out initial evaluation to refer people to sectors specific, according to the needs presented;</li> <li>- Answer telephone calls and provide information related to the opening hours of the Center and location;</li> <li>- Answering phone calls and direct them to responsible sectors;</li> <li>- Schedule, preferably by telephone, general visits to monitored people and women who use PTU, in the case of the latter, always on days and times different from men subjected to compliance with restraining orders;</li> <li>- Schedule appointments in order to preserve the routines of people and women who use PTU, observing days and hours of work, study, health treatment, conditions, and restrictions capable of causing non-compliance with the measure, according to information provided by the analysis and monitoring sector;</li> <li>- Maintain control of the agendas of each of the sectors, adequately planning meetings and activities in general;</li> <li>- Participate in periodic alignment meetings between sectors.</li> </ul>
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**Restrictions**

- The public servants or employees of the two teams that make up the administrative sector cannot advise, refer, or analyze the person in electronic monitoring or the woman in a situation of domestic and family violence;
- They are not allowed to call public security institutions to deal with incidents, nor to referral or conduct of monitored people to police stations.

## **10** PARTNER NETWORK

During the implementation of the electronic monitoring measure, the inclusion of the monitored people in public social protection policies, as well as civil society institutions (work, education) oriented towards inclusion in assistance and community programs should be sought. That is, practices aimed at social promotion must structurally integrate the policy of electronic monitoring, integrating methodological routine of technical teams and stages of evaluation and improvement.

The social protection network is composed of several entities: public and private non-profit organizations, working in partnership with Center for inclusion in social demands: health, education, income and work, housing, programs, and projects, etc. This includes, in the case of women in situations of domestic violence, referrals to institutions and programs that are part of the women's protection network.

The mapping and coordination of this network by the Center allows to potentiate the referrals for access to rights and, consequently, to reduce the social vulnerabilities of the electronically monitored people. The relationship of Center professionals with the network should be continuous, to improve capacity and sensitivity to issues involving the activities of electronic monitoring services and social inclusion, through the following actions:

- Follow-up visits to the entities that receive the monitored person in programs and services for social inclusion;
- Periodic contacts by phone, email, and other possible means;
- Participation in events and other activities promoted by the network;
- Holding seminars and meetings with the network, the justice system, civil society, and the technical team.

The partner network has an important role in electronic monitoring services, as it has the ability to meet social demands and expand objective and subjective conditions of the person monitored in compliance with the measure. It must be in line with the principles of the electronic monitoring policy and able to follow-up the referred person. The social protection network, regardless of partnership, should welcome and meet the specific social demands of people referred, considering the institutional mission, the universality, and availability of services.

## **11 FOLLOW-UP METHODOLOGY FOR ELECTRONICALLY MONITORED PEOPLE**

The follow-up of the electronic monitoring measure, for the monitored people, should consider the following procedures, which will be detailed below:

- i) Awareness raising and referral by the Judiciary to attend the Center;
- ii) First attendance;
- iii) Welcoming;
- iv) Case studies;
- v) Referrals;
- vi) Returns/routine services;
- vii) Dealing with incidents;
- viii) Handling incidents in cases of restraining orders;
- ix) Compliance adjustment;
- x) Non-compliance;
- xi) Relationship with the criminal justice system;
- xi) Relationship with the public security system;
- xii) Information management.

### **i) Awareness raising and referral by the Judiciary to attend the Center**

It will be up to the judge, prosecutor or public defender to inform and guide the person to be monitored electronically at the hearing or when they make the decision that determines the electronic monitoring the attendance at the Electronic Monitoring Center. The electronic monitoring, when applied by the judge, necessarily implies the person's attendance to the Center, even if the installation of the individual electronic monitoring device and the registration of the person in the monitoring system (first attendance) are carried out in the court.

Initial attendance at the Center favors access to other services, as well as specialized assistance to the monitored person. Monitoring services should prioritize the maintenance of the judicial measure, also considering the emergency demands of the person and the need for social inclusion in public policies, as well as adequate guidance and support to the monitored person.

## **ii) First attendance**

In the first attendance, the device will be installed, the person will be registered in the system, the welcoming at the Center will be scheduled and, if necessary, emergency referrals can be carried out. These procedures, especially the installation of the individual electronic monitoring device, should take place immediately after the hearing that led to the application of the electronic monitoring measure, preferably in the premises of the Court, in a reserved place, appropriate for this purpose. This procedure is essential to avoid coercive or escort driving of people subjected to electronic monitoring to the Center for the device installation.

At this first moment, the person in compliance with the monitoring measure must receive verbal and written instructions on the use of the individual electronic monitoring device by trained professionals from the Center Technical Operations Sector and at least one professional of analysis and monitoring sector (social worker, law graduate, or psychologist). This procedure includes the delivery of equipment (charger, portable battery, etc.) and the 2-way signature of the “term of use of individual electronic monitoring device” by the monitored person and at least one of the professionals responsible for this step, being one of the ways delivered to the person monitored and the other kept in the Center.

The monitored person must be registered in the system, preferably by a professional from the monitoring sector. The conditions provided for in the court decision should guide the registration of the personal data of the monitored people, which includes various prohibitions, limits and permissions. In this phase, the monitored person may, optionally, inform personal data of family members, friends, neighbors, or acquaintances, to enable the handling of possible incidents, limited to the provision of name, address, telephone, and type of relationship (brother, mother, neighbor, etc.). The monitored person must be informed verbally and in writing about the procedures aimed at the processing and protection of the personal data collected. For this, the “term of treatment and protection of personal data in the electronic monitoring services of people” must be signed, and one of the copies should be delivered to the monitored person and the other kept in the Center. The signature of the term is optional and can be carried out by witness, in case of possible refusal.

In addition to providing instructions about the device, the professional from the Social Follow-up and Incident Analysis Sector should ensure the understanding of the conditions and restrictions imposed by the measure. Then this same professional should guide and sensitize the compliant to attend the Center for the reception, scheduling the procedure for the day following the hearing. The maintenance of the monitored person’s routine should be observed, preventing labor, and educational activities, among others, from being interrupted.

### **iii) Welcoming**

The reception must take place the day after the hearing that led to the application of the electronic monitoring measure, in order to enable physical and mental rest and adequate nutrition, essential for the welcoming. Attendance at the Center, even if it is mandatory for the fulfillment of the measure, should not involve threat, embarrassment or escort.

The reception is carried out by the multidisciplinary team and is configured as a listening space where factors such as physical, social and psychological situation are evaluated, understanding about the criminal procedural context or the imposed measure, place of residence, demands for inclusion in the programs or specific treatments. This information must compose a welcoming form. They are important for social inclusion, monitoring of the measure, and referral to the network according to the demands presented by the monitored person. In addition, this information is able to guide the handling of possible incidents, especially those caused by the monitored person living, working, studying, doing health treatments, participating in religious or spiritual activities or other activities in localities without or with GPS or cellphone signal, which may lead to a request for the replacement of the measure to the judge or guidance to the Center regarding the routine of the monitored person, which should be preserved as much as possible.

In the reception, the multidisciplinary team can also identify aspects of orders that may indicate the inadequacy of electronic monitoring to that individual, considering their actual capacity to comply with the measure. In these cases, the Follow-up and Analysis Sector may indicate the referral for adequacy of the applied measure, described in the item below. It should be noted that this procedure should not imply an aggravation for the person and should not lead to the replacement of the electronic monitoring as a pre-trial non-custodial measure by pre-trial detention.

One should seek an integral view of the person, such as: emotional state, social conditions and interpersonal and family relationships, aspects that contribute to build a relationship and routine capable of guiding compliance with the electronic monitoring measure. The monitored people present several legal doubts and resistance as to compliance with the measure. Therefore, the reception should be a place for listening and not just for guidance around the measure and the device. The perception of the monitored person as to the ability to be heard by the team can lead to the construction of bonds capable of contributing to the fulfillment of the measure. It is possible to schedule specific appointments and outside the judicial determination, if the person demands it or agree with it.

At this time, the multidisciplinary team should solve doubts about the measure and inform the how its follow-up works, including the production of reports for reassessment of the measure by the judge. It should be noted that the instructions regarding the use of the device may be resumed at this stage, being the joint responsibility of the multidisciplinary team and technical operations professionals, aiming at the integral understanding of the conditions imposed by the measure and

the device. Additional information from the reception should not be subject to the monitoring system, because they have different purposes. Such information may be registered and kept in the Center Information System provided that it has security and access levels capable of restricting them to specific professionals, as provided for in the “Guidelines for Data Processing and Protection in the Electronic monitoring of People” (Brasil, 2016b).

#### **iv) Case studies**

It is recommended to carry out case studies in the Electronic Monitoring Center with established periodicity, seeking an interdisciplinary look and the definition of management definition of strategies for follow-up, approaches and appropriate referrals. Teams will be able to invite network partners, as well as representatives of the criminal justice system and public security institutions, to discuss cases that require specific care, referrals, knowledge, and guidance.

The networks must have specific meetings and it is essential that the Center be represented in these routines, potentiating the strengthening of such spaces, bonds, and coordination.

#### **v) Referrals**

##### **a) For adequacy of the applied measure**

The team of the Electronic Monitoring Center must ascertain, from the reception, whether the application of electronic monitoring considered the full capacity and the conditions of compliance by the person, such as schedules and other elements related to socio-familiar conditions, aspects related to work, health, religious belief, study, among others. If incompatibilities and disabling factors the full compliance of the electronic monitoring measure are identified, the multidisciplinary team should elaborate a report, asking the judge to readjust to the specific conditions or even to replace the measure by another less burdensome one, presenting the necessary justifications. This procedure can occur at any stage of the follow-up, considering dynamics identified by the team or demands of the monitored person.

It should be noted that this procedure should not lead to an aggravation for the monitored person nor to the replacement of electronic monitoring by pre-trial detention.

##### **b) To increase access to fundamental rights**

These referrals are carried out by the multidisciplinary team according to the demands presented by the monitored person. For social inclusion in the protection network or in cases where there is a need for treatment, it is important that such referrals are not made as a judicial determination, but from the awareness of the person by the responsible team. Any referral for social inclusion can only occur with the consent of the person; they should never be imposed. As already mentioned, a large part of the those who arrive at the Center



present social vulnerabilities, and referrals to the partner network are aimed at minimizing these vulnerabilities.

After any referral to social inclusion services, the multidisciplinary team should follow-up the progress: whether or not the person accessed the service; what the reasons for doing so or refusing to do so, as well as understand how it was received.

#### **vi) Returns/Routine services**

The monitored person will be advised to return to the Center, preferably at scheduled times, in the following circumstances:

- if there are technical problems in the electronic monitoring device, for eventual repairs and replacements, aiming at maintaining the judicial measure, according to the concrete cases and seeking to avoid the aggravation of the criminal situation;
- periodic evaluation of the multidisciplinary team to guide the judge in the reassessment of the electronic monitoring measure, being the attendance voluntary;
- at the measure deadline for removal and return of electronic monitoring device;
- if there are social demands, being the attendance voluntary.

In specific cases of periodic evaluation of the multidisciplinary team and referrals, the following recommendations should be observed:

#### **Periodic evaluation of the multidisciplinary team (social worker, law graduate, and psychologist)**

In this case, attendance is voluntary. The person's absence, therefore, cannot lead to sanctions or punishments, neither configures incident or noncompliance. In any case, the multi-professional team should, from the first attendance and reception, sensitize the monitored person to appear at the Center for the periodic evaluation of the multidisciplinary team (social worker, law graduate, and psychologist). It should be emphasized that this activity is relevant to certify compliance to the judge, but also request changes and adaptations demanded by the monitored person or identified as necessary by the multi-professional team and, even, enable the replacing of monitoring with a less burdensome measure.

The team may therefore make telephone contact for three days in a row with the person to reschedule the procedure, reminding its relevance, without, however, coercing the individual to attend the Center.

## Referrals

In this case, attendance is voluntary. The person's absence, therefore, may not result in any type of charge or be mentioned in a report with the aim of penalizing the compliant.

### vii) Dealing with incidents

**Incident** – any situation that interferes with regular compliance with the electronic monitoring measure, according to the procedures presented in this management model, not necessarily involving communication to the judge.

Incidents in electronic monitoring can occur because of one or more facts cumulatively, including diverse human failures, but also **factors of secondary interference**, such as: failures or defects in the monitoring device; reduced coverage or instability in cell phone signals; interference in Global Positioning System (GPS) mechanisms; elements related to geography, type of vegetation, architecture, weather variations, etc.<sup>60</sup> Thus, the recurrence of some incidents may be related to secondary interference factors, especially when the monitored person resides, works, studies, receives health treatments, or participates in religious or spiritual activities in localities without or with unstable GPS or cellphone signal.

**Incident handling** – there are many ways of handling incidents, aiming at the measure compliance and implying the **incident resolution** or **adjustment of measure compliance**. Handling incidents requires the collaboration of sectors in an interdisciplinary way, considering the factors already listed. Since monitoring measures provide for equipment, components and communicational technology that are susceptible to various failures and interruptions, signal sending and telephone contacts, for example, should never be carried out only once. In the handling of incidents or at any stage of the services may not be contacted people whose personal data have not been informed by the monitored person voluntarily.

**Incident resolution** – incident handled with or without the need for adjustment of compliance with the measure, resuming the normal course of follow-up, without sending notification to the judge.

**Measure compliance adjustment** – procedure that results from the non-solution of the incident, generating communication and registration of the unresolved incident with the Social Follow-up and Incident Analysis Sector or Technical Operations Sector. These

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<sup>60</sup> Contrastively, it is possible to think about the operation of individual monitoring devices used in Brazil and smartphones, increasingly used in the country. Smartphones are mobile phones with advanced technologies that usually support chips from different service providers, work in a computer-like manner, including programs run by operational system, GPS, etc. Still, not infrequently, the various failures that affect the full operation of smartphones are the same that influence the operation of the monitoring device.

sectors must, through telephone or face-to-face contact with the monitored person, understand and analyze the causes related to the incident, alerting, and making a new agreement on the measure in accordance with the conditions judicially established, in order to avoid its non-compliance with sending notification to the judge. Thus, if the measure is reestablished, the resolution of the incident occurs and compliance with the measure follows normally, without the need for adjustment.

**Non-compliance** – exceptional situation, which occurs when there is no solution of the incidence, with or without the adjustment of compliance of the measure, according to the protocols provided by this management model. In this case, the notification to the judge is carried out.

**Attendance at the Center** – dealing with certain incidents requires the monitored person’s attendance at the Center. Attendance should be preferably scheduled, avoiding interrupting work, study, health treatment, religion, leisure, and other daily activities.

The following are some of the most common cases of incidents. Subsequently, the appropriate procedures for maintenance or restoration of the measure by type of incident are established.

Incident
Inability or refusal to sign term sheets.
<p>Non-attendance of the person on scheduled dates or in emergency situations for:</p> <ul style="list-style-type: none"> <li>- technical repairs to electronic monitoring device and replacements, aimed at maintaining the judicial measure;</li> <li>- periodic evaluation by the multidisciplinary team;</li> <li>- removal and return of electronic monitoring device at the end of the measure;</li> <li>- referrals.</li> </ul>
Violation of inclusion or exclusion areas.
Detection of movement without GPS signal or loss of cellular signal.
Equipment communication failure or false location detection.
<p>Battery incidents:</p> <ul style="list-style-type: none"> <li>- partial discharge or low battery level;</li> <li>- full battery discharge.</li> </ul>
Non-observance of schedules or restrictions to specific locations.
Damage to the device, break or breach of the fastening strip or the casing of the electronic monitoring device.

### **a) Inability or refusal to sign term sheets**

The multidisciplinary team can sensitize the person through an individual conversation. The inability or refusal to sign the terms of use of the individual electronic monitoring device and/or the protection and processing of personal data shall not result in sanction or punishment. The operator and the multidisciplinary team shall verbally confirm the full understanding of the content and perform the signature by reading witness on the document signed and dated by the operator responsible for the collection. Refusal to sign such terms shall be recorded in writing at the end of the term itself with date and signature of a witness and may not result in any kind of punishment.

Failure or refusal to sign the measure adjustment term shall also not result in sanction or punishment. The operator and the multidisciplinary team shall sign verbally the full understanding of the content and perform the signature by witness of reading on the document signed and dated by the operator responsible for the activities. If the person refuses to sign specifically the term of measure compliance adjustment, one can ask the judge for a justification hearing to hold the person liable for complying and resume the normal course of the monitoring measure.

Public security institutions should not be called in the face of the monitored person's inability or refusal to sign any terms.

### **b) Non-attendance of the person on scheduled dates or in emergency situations for**

#### **b.1) technical repairs in the electronic monitoring device and replacements**

Monitoring equipment must function properly for the measure compliance. When identifying failures in the communication of the device with the Center's monitoring system, the Monitoring Sector along with the Technical Operations Sector should request the attendance of the monitored person to the Center for eventual replacement of parts or the device itself.

The Monitoring Sector, in collaboration with the Technical Operations Sector, shall treat such incidents according to the following protocols:

- 1) Record the incident in the electronic monitoring system with date and time;
- 2) Send luminous and vibrating signal to the electronic monitoring device 3 times with 10-minute intervals.

#### **In case the incident remains unresolved**

- 3) Make telephone contact with the monitored person 3 times with intervals of 20 minutes between attempts, informing the incident and the need to resume monitoring in order not to generate non-compliance with the court decision.

**In case the incident remains unresolved**

- 4) Make telephone contact with family, friends, neighbors, and acquaintances who have provided data to the Center by the monitored person 3 times, altering the contact, when possible, with 10-minute intervals between attempts, to locate the compliant and inform about the urgency of contacting the Center to maintain the judicial measure.

**In case the incident remains unresolved**

- 5) Communication and registration of the unresolved incident with the Technical Operations Sector and the Social Follow-up and Incident Analysis Sector;
- 6) Scheduled attendance at the Center on the same day or the following day for equipment inspection and measure compliance adjustment.

If the person does not go to the Center	If the person goes to the Center
<ul style="list-style-type: none"> <li>- Repeat all the procedures described above for 3 days in a row. If the incident remains unresolved after repeating the procedures for 3 days in a row:</li> <li>- The incident becomes a non-compliance and must be recorded in the system;</li> <li>- Send a non-compliance notification to the judge by the Coordination or Supervision of the Center and follow-up report of the measure prepared by the Social Follow-up and Incident Analysis Sector for the measure adequacy, presenting the necessary justifications and considering the secondary interference factors.</li> </ul>	<ul style="list-style-type: none"> <li>- The Technical Operations Sector should inspect the device. If technical fault is detected in the device:</li> <li>- The device must be replaced or have its parts changed immediately for the maintenance of the measure. If the Technical Operations Sector detects malfunction of the apparatus due to any intervention intentionally directed at the device:</li> <li>- It should be carried out the communication and registration of the fact with the Social Follow-up and Incident Analysis Sector for adjustment of compliance with the measure;</li> <li>- The Social Follow-up and Incident Analysis Sector should alert the monitored person in order to resume their responsibility during the compliance of the measure;</li> <li>- Sending notification to the judge by Coordination or Supervision of the Center and of the measure settlement report drawn up by the Social Follow-up and Incident Analysis.</li> </ul>

**When the Center does not have replacement parts or devices for defective equipment**

- Send a notification to the judge by the Center’s Coordination or Supervision, informing the fact and send a monitoring report of the measure prepared by the Social Follow-up and Incident Analysis Sector for the adequacy of the measure, presenting the necessary justifications and the need to replace the monitoring by a less burdensome measure.

**b.2) removal and return of electronic monitoring equipment at the end of the measure**

The Center should make telephone contact for three days in a row with the person monitored, being possible to contact from data of family, friends, neighbors, and acquaintances that have been provided optionally by the person monitored in the first attendance for the same period. If the person is not located for the return of the device, the Center must send a communication to the judge responsible for the case.

**c) Violation of inclusion or exclusion areas**

The Monitoring Sector should handle such incidents according to the following protocols:

- 1) Record the incident in the electronic monitoring system with date and time;
- 2) Send luminous and vibrating signal to the electronic monitoring device 3 times with 10-minute intervals.

**In case the incident remains unresolved**

- 3) Make telephone contact with the monitored person 3 times with intervals of 20 minutes between attempts, informing the incident and the need to return to the permitted areas so as not to generate non-compliance with the court decision.

**In case the incident still remains unresolved**

- 4) Make telephone contact with family, friends, neighbors and acquaintances who have data provided to the Center by the monitored person 3 times, alternating contact, when possible, with intervals of 10 minutes between attempts, to locate the compliant and inform about the urgency to contact the Center to restore the judicial measure.

**If the same incident remains unresolved for more than 6 hours**

Repeat all the procedures described above.

**If the same incident remains unresolved**

- 5) Communicate and record the unsolved incident to the Social Follow-up and Incident Analysis Sector
- 6) Adjust the measure by phone or face-to-face with scheduled attendance to the Center.

If the person does not go to the Center	If the person goes to the Center
<ul style="list-style-type: none"> <li>- Repeat all the procedures described above for 3 days in a row;</li> <li>- If the incident remains unresolved after the repetition of the procedures for 3 days in a row:</li> <li>- The incident becomes a non-compliance and must be recorded in the system;</li> <li>- Send a non-compliance notification to the judge by the Center's Coordination or Supervision and follow-up report of the measure prepared by the Social Follow-up and Incident Analysis Sector for the measure adequacy, presenting the necessary justifications and considering the secondary interference factors.</li> </ul>	<ul style="list-style-type: none"> <li>- The Social Follow-up and Incident Analysis Sector should alert the monitored person in order to resume their responsibility during the compliance of the measure.</li> </ul>

**d) Motion detection without GPS or cellphone signal**

Detection of movement without GPS signal or cellphone signal can be caused by human failure and secondary interference factors. The handling of the incident should involve the Monitoring Sector and the Technical Operations Sector.

The Monitoring Sector, in collaboration with the Technical Operations Sector, shall handle such incidents in accordance with the following protocols:

- 1) Record the incident in the electronic monitoring system with date and time;
- 2) Send luminous and vibrating signal to the electronic monitoring device 3 times with 10-minute intervals.

**In case the incident remains unresolved**

- 3) Make telephone contact with the monitored person 3 times with 40-minute intervals<sup>61</sup> among the attempts, informing the incident and the need to return to areas with GPS and mobile signal coverage so as not to generate non-compliance with the court decision.

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<sup>61</sup> The interval between telephone contact attempts in this case should be longer since the monitored person may be in an area without cellphone reception.

**In case the incident remains unresolved**

- 4) Make telephone contact with family, friends, neighbors, and acquaintances who have information provided to the Center by the monitored person, 3 times, alternating contact, when possible, with 10-minute intervals between attempts, to locate the compliant and inform about the urgency to contact the Center to maintain the judicial measure.

**In case the incident remains unresolved for 6 hours**

Repeat all the procedures described above.

**In case the incident remains unresolved after repeated procedures**

- 5) Communicate and record the unresolved incident to the Technical Operations Sector and the Social Follow-up and Incident Analysis Sector.



If the person does not go to the Center	If the person goes to the Center
<ul style="list-style-type: none"> <li>- Repeat all the procedures described above for 3 days in a row; if the incident remains unresolved after the repetition of the procedures for 3 days in a row:</li> <li>- The incident becomes a non-compliance and must be recorded in the system;</li> <li>- Send a notification to the judge by the Center's Coordination or Supervision informing the fact and sending a monitoring report prepared by the Social Follow-up and Incident Analysis Sector for adequacy of the measure, presenting the justifications necessary, considering the secondary interference factors.</li> </ul>	<ul style="list-style-type: none"> <li>- The Technical Operations Sector should inspect the device;</li> <li style="padding-left: 20px;">If technical fault is detected in the device:</li> <li>- The device must be replaced or have its parts changed immediately for the maintenance of the measure;</li> <li style="padding-left: 20px;">If the Technical Operations Sector detects a malfunction of the device due to any intervention intentionally directed at it:</li> <li>- It should be carried out communication and registration of the fact with the Social Follow-up and Incident Analysis Sector for adjustment of compliance with the measure;</li> <li>- The Social Follow-up and Incident Analysis Sector should alert the monitored person about the consequences of non-compliance with the measure;</li> <li>- Alert in order to mobilize the monitored people's liability during the measure compliance;</li> <li>- The Center's Coordination or Supervision must send a notification and a monitoring report (prepared by the Social Follow-up and Incident Analysis Sector) to the judge.</li> </ul>

**When the Center does not have parts or devices for the replacement of defective equipment**

- The Center's Coordination or Supervision must send a notification to the judge, informing the fact and sending a monitoring report prepared by the Social Follow-up and Incident Analysis Sector for the adequacy of the measure, presenting the necessary justifications and the need to replace the monitoring measure with a less burdensome measure.

#### **e) Equipment communication failure or false location detection**

Equipment communication failure or false location detection may be caused by human failure and secondary interference factors. The handling of the incident should involve the monitoring sector and the Technical Operations Sector.

The Monitoring Sector, in collaboration with the Technical Operations Sector, shall handle such incidents in accordance with the following protocols:

- 1) Record the incident in the electronic monitoring system with date and time;
- 2) Send luminous and vibrating signal to the electronic monitoring device 3 times with 10-minute intervals.

##### **In case the incident remains unresolved**

- 3) Make telephone contact with the monitored person 3 times with intervals of 40 minutes between attempts, informing the incident and the need to resume monitoring in order not to generate non-compliance with the court decision.

##### **In case the incident remains unresolved**

- 4) Make telephone contact with family, friends, neighbors, and acquaintances who have information provided to the Center by the monitored person, 3 times, alternating contact, when possible, with 10-minute intervals between attempts, to locate the compliant and inform about the urgency to contact the Center to maintain the judicial measure  
If the incident remains unresolved for 6 hours, repeat all the procedures described above.

##### **In case the incident remains unresolved after repeated procedures**

- 5) Communicate and record the unresolved incident to the Technical Operations Sector and the Social Follow-up and Incident Analysis Sector.

If the person does not go to the Center	If the person goes to the Center
<ul style="list-style-type: none"> <li>- Repeat all the procedures described above for 3 days in a row; if the incident remains unresolved after the repetition of the procedures for 3 days in a row:</li> <li>- The incident becomes a non-compliance and must be recorded in the system;</li> <li>- The Center's Coordination or Supervision must send a notification to the judge, informing the fact and sending a monitoring report prepared by the Social Follow-up and Incident Analysis Sector for adequacy of the measure, presenting the justifications necessary, considering the secondary interference factors.</li> </ul>	<ul style="list-style-type: none"> <li>- The Technical Operations Sector should inspect the device;</li> <li style="padding-left: 20px;">If technical fault is detected in the device:</li> <li>- The device must be replaced or have its parts changed immediately for the maintenance of the measure;</li> <li style="padding-left: 20px;">If the Technical Operations Sector detects a malfunction of the device due to any intervention intentionally directed at it:</li> <li>- It should be carried out communication and registration of the fact with the Social Follow-up and Incident Analysis Sector for adjustment of compliance with the measure;</li> <li>- The Social Follow-up and Incident Analysis Sector should alert the monitored person in order to resume their responsibility during the compliance of the measure;</li> <li>- The Center's Coordination or Supervision must send a notification to the judge, as well as a monitoring report prepared by the Social Follow-up and Incident Analysis Sector.</li> </ul>

**When the Center does not have parts or devices for the replacement of defective equipment**

- The Center's Coordination or Supervision must send a notification to the judge informing the fact, as well as a monitoring report prepared by the Social Follow-up and Incident Analysis Sector for the adequacy of the measure, presenting the necessary justifications and the need to replace the monitoring measure with a less burdensome measure.

## **f) Battery incidents**

### **f.1) Partial discharge or low battery level**

The Monitoring Sector should handle such incidents according to the following protocols:

- 1) Record the incident in the electronic monitoring system with date and time when the monitoring system detects the full operation of the battery for only another 2 hours in a row;
- 2) Send light signal to the electronic monitoring device 3 times with intervals of 20 minutes.

#### **In case the incident remains unresolved for more than 1 hour:**

- 3) Make telephone contact with the monitored person 3 times with intervals of 15 minutes between attempts, informing the incident and the need to recharge the battery in order not to generate non-compliance with the court decision.

### **f.2) Full battery discharge**

The Monitoring Sector should handle such incidents according to the following protocols:

- 1) Record the incident in the electronic monitoring system with date and time;
- 2) Make telephone contact with the monitored person 3 times with intervals of 20 minutes between attempts, informing the incident and the need to recharge the battery in order not to generate non-compliance with the court decision.

#### **In case the incident remains unresolved**

- 3) Make telephone contact with family, friends, neighbors, and acquaintances who have data provided to the Center by the monitored person, 3 times, alternating contact, when possible, with intervals of 10 minutes between attempts, to locate the compliant and inform about the urgency of recharging the battery, according to court decision;
- 4) Follow it for 3 hours, checking the re-establishment of the communication of the alarm with the monitoring system, shortly after the start of the battery recharge.

#### **In case the incident remains unresolved**

- 5) Repeat all the procedures described above.

#### **In case the incident remains unresolved after repeated procedures**

- 6) Communicate and record the unresolved incident to the Technical Operations Sector and the Social Follow-up and Incident Analysis Sector.

If the person does not go to the Center	If the person goes to the Center
<ul style="list-style-type: none"> <li>- Repeat all the procedures described above for 3 days in a row. If the incident remains unresolved after repeating the procedures for 3 days in a row:</li> <li>- The incident becomes a non-compliance and must be recorded in the system;</li> <li>- The Center's Coordination or Supervision must send a notification to the judge, informing the fact and sending of monitoring report prepared by the Social Follow-up and Incident Analysis Sector for adequacy of the measure, presenting the justifications necessary, considering the secondary interference factors.</li> </ul>	<ul style="list-style-type: none"> <li>- The Technical Operations Sector should inspect the device; If technical fault is detected in the device:</li> <li>- The device must be replaced or have its parts changed immediately for the maintenance of the measure. If the Technical Operations Sector detects a malfunction of the device due to any intervention intentionally directed at it:</li> <li>- It should be carried out communication and registration of the fact with the Social Follow-up and Incident Analysis Sector for adjustment of compliance with the measure;</li> <li>- The Social Follow-up and Incident Analysis Sector should alert the monitored person in order to resume their responsibility during the compliance of the measure;</li> <li>- The Center's Coordination or Supervision must send a notification to the judge, as well as a monitoring report prepared by the Social Follow-up and Incident Analysis Sector.</li> </ul>

**When the Center does not have parts or devices for the replacement of defective equipment**

- The Center's Coordination or Supervision must send a notification to the judge, informing the fact and sending a monitoring report prepared by the Social Follow-up and Incident Analysis Sector for adequacy of the measure, presenting the necessary justifications and the need to replace the monitoring with a less burdensome measure.

**g) Non-compliance with the schedules or restrictions to specific locations**

The Monitoring Sector should handle such incidents according to the following protocols:

- 1) Register the incident in the electronic monitoring system with date and time;
- 2) Send luminous and vibrating signal to the electronic monitoring device 3 times with 10-minute intervals.

**In case the incident remains unresolved**

- 3) Make telephone contact with the monitored person 3 times with intervals of 20 minutes between attempts, informing the incident, the need to return to the permitted areas and strictly follow the established times so as not to generate non-compliance with the court decision.

**In case the incident still remains unresolved**

- 4) **make** telephone contact with family, friends, neighbors and acquaintances who have data provided to the Center by the monitored person 3 times, alternating contact, when possible, with intervals of 10 minutes between attempts, to locate the compliant and inform about the urgency to contact the Center to maintain the judicial measure.

**If the same incident remains unresolved for more than 6 hours**

- 5) Repeat all the procedures described above. If the same incident remains unresolved

**If the same incident remains unresolved.**

- 6) Communicate and record the unresolved incident with the Technical Operations Sector and the Social Follow-up and Incident Analysis Sector.

If the person does not go to the Center	If the person goes to the Center
<ul style="list-style-type: none"> <li>- Repeat all the procedures above for 3 days in a row; If the incident remains unresolved after the repetition of the proceedings for 3 days in a row:</li> <li>- The incident becomes a non-compliance and must be recorded in the system;</li> <li>- The Center's Coordination or Supervision of the Center must send a notification to the judge, informing the fact and sending a monitoring report of prepared by the Social Follow-up and Incident Analysis Sector for adequacy of the measure, presenting the necessary justifications and considering the secondary interference facts.</li> </ul>	<ul style="list-style-type: none"> <li>- The Social Follow-up and Incident Analysis Sector should alert the monitored person in order to resume their responsibility to comply the measure.</li> </ul>

**h) Damage to the equipment, break or breach of the fastening strip, or the casing of the electronic monitoring device**

These incidents should be handled collaboratively between the monitoring, Technical Operations and Social Follow-up and Incident Analysis Sector in accordance with the following protocols:

- 1) Record the incident in the electronic monitoring system with date and time;
- 2) Make telephone contact with the monitored person 3 times with intervals of 10 minutes between attempts, checking the incident and its possible causes with the collaboration of the Technical Operations Sector, requesting urgent attendance at the Center to not generate non-compliance with the court decision.

**In case the incident remains unresolved**

- 3) Make telephone contact with family, friends, neighbors and acquaintances who have data provided to the Center by the monitored person 3 times, alternating contact, when possible, with intervals of 10 minutes between attempts, to locate the compliant and inform about the urgency to contact the Center to maintain the judicial measure.

**In case the incident remains unresolved for 6 hours**

- 4) Repeat all the procedures described above with the collaboration of the Social Follow-up and Incident Analysis Sector.

If the person does not go to the Center	If the person goes to the Center
<ul style="list-style-type: none"> <li>- Repeat all the procedures described above for 3 days in a row. If the incident remains unresolved after repeating the procedures for 3 days in a row:</li> <li>- The incident becomes a non-compliance and must be recorded in the system;</li> <li>- The Center's Coordination and Supervision must send a notification to the judge, informing the fact and sending of monitoring report prepared by the Social Follow-up and Incident Analysis Sector for adequacy of the measure, presenting the justifications necessary and considering the secondary interference factors.</li> </ul>	<ul style="list-style-type: none"> <li>- The Technical Operations Sector should inspect the device; If technical fault is detected in the device:</li> <li>- It must be replaced or have its parts changed immediately for the maintenance of the measure. If the Technical Operations Sector detects a malfunction of the device due to any intervention intentionally directed at it:</li> <li>- It should be carried out communication and registration of the fact with the Social Follow-up and Incident Analysis Sector for adjustment of compliance with the measure;</li> <li>- The Social Follow-up and Incident Analysis Sector should alert the monitored person in order to resume their responsibility during the compliance of the measure;</li> <li>- The Center's Coordination or Supervision of the Center and must send a notification to the judge, as well as a monitoring report prepared by the Social Follow-up and Incident Analysis Sector.</li> </ul>

**When the Center does not have parts or devices for the replacement of defective equipment**

- The Center's Coordination or Supervision must send a notification to the judge, informing the fact and send a monitoring report prepared by the Social Follow-up and Incident Analysis Sector for the adequacy of the measure, presenting the necessary justifications and the need to replace the monitoring with a less burdensome measure.



### **viii) Handling incidents in cases of restraining orders**

The procedures described above should be observed when handling incidents involving electronically monitored people who are also in compliance with restraining orders. However, there are incidents involving restraining orders that require special handling to ensure the protection of women in situations of domestic and family violence.

It is necessary to indicate specific treatments for some incidents because electronic monitoring applied cumulatively with restraining orders aims, in addition to the monitoring of the man who perpetrates violence against women, to increase the protection of women in a situation of domestic and family violence, according to the specificities and needs of the concrete case previously analyzed, implying greater agility of the teams. In this way, it is aimed at the immediate protection of women, emphasizing that handling certain incidents may involve the triggering of the police in a preventive manner, according to the need diagnosed by the Electronic Monitoring Center or when the woman herself in a situation of domestic violence demands this type of intervention.

The follow-up carried out in a systematic and interdisciplinary way by the responsible teams is the main instrument to guide the preventive action of the police in dealing with concrete incidents. Prevention and collaborative work of public security institutions should always occur from specific incidents identified by the Electronic Monitoring Center according to the protocols provided herein. Tracking the people monitored, including those complying with restraining orders, it is the duty and responsibility of the Center. Police intervention must be demanded by the Center's professionals in handling specific incidents in order to ensure the protection of woman in a situation of domestic and family violence or when the woman herself demands. That is, prevention with police action is meaningless if there is no specific incident with demand of the Center, responsible for monitoring the individuals.

The police action lends itself to checking the incident reported by the Center, ensuring the protection of women. Police intervention should therefore not be based on repression. In addition, incidents and non-compliance related to the monitoring measures applied as pre-trial measures, by itself, do not constitute a crime, nor should they mobilize the detention of the monitored person. The crime situation can be set up when the man being monitored perpetrate new violence against women.

The importance of focusing on maintaining the measure is underlined again. This being said, the activation of the police does not necessarily imply non-compliance and sending notification to the judge. The Center is responsible for analyzing the cases individually, observing concrete situations that involve treatments aimed at maintaining the normal course, re-establishment or non-compliance with the measure.

The following procedures are highlighted for handling incidents involving electronically monitored people who are also in compliance with restraining orders.

**a) Technical repairs in the electronic monitoring device and replacements, aimed at maintaining the judicial measure**

The Monitoring Sector in collaboration with the Technical Operations Sector should handle such incidents according to the following protocols:

- 1) Record the incident in the electronic monitoring system with date and time;
- 2) Send luminous and vibrating signal to the electronic monitoring device 3 times with intervals of 5 minutes.

**In case the incident remains unresolved**

- 3) Make telephone contact with the monitored person 3 times with 10-minute intervals between attempts, informing the incident and the need to resume monitoring in order not to generate non-compliance with the court decision.

**In case the incident remains unresolved**

- 4) Make telephone contact with family, friends, neighbors, and acquaintances who have data provided optionally to the Center by the monitored person 3 times, alternating contact, when possible, with intervals of 5 minutes between attempts, to localize the compliant and inform about the urgency to contact the Center to maintain the judicial measure.

**In case the incident remains unresolved**

- 5) Communicate and record the unresolved incident with the Technical Operations Sector and the Social Follow-up and Incident Analysis Sector;
- 6) Schedule attendance at the Center on the same day, or the next day, for inspection of the device and for adjustment of compliance with the measure.

If the person does not go to the Center	If the person goes to the Center
<p>The sectors of Monitoring, Technical Operations and Social Follow-up and Incident Analysis should continue to monitor the case even after sending a notice to the judge, verifying the need to trigger, or not, the police.</p>	<ul style="list-style-type: none"> <li>- The Technical Operations Sector should inspect the device; If technical fault is detected in the device:</li> <li>- It must be replaced or have its parts changed immediately for the maintenance of the measure. If the Technical Operations Sector detects a malfunction of the device due to any intervention intentionally directed at it:</li> <li>- It should be carried out communication and registration of the fact with the Social Follow-up and Incident Analysis Sector for adjustment of compliance with the measure;</li> <li>- The Social Follow-up and Incident Analysis Sector should alert the monitored person in order to resume their responsibility during the compliance of the measure;</li> <li>- The Center's Coordination or Supervision must send a notification to the judge and a monitoring report prepared by the Social Follow-up and Incident Analysis Sector.</li> </ul>

**When the Center does not have parts or devices for the replacement of defective equipment**

- The Center's Coordination or Supervision must send a notification to the judge, informing the fact and send a monitoring report prepared by the Social Follow-up and Incident Analysis Sector for the adequacy of the measure, presenting the necessary justifications and the need to replace the electronic monitoring with a less burdensome measure.

**b) Violation of exclusion areas**

ELECTRONIC MONITORING APPLIED CUMULATIVELY WITH RESTRAINING ORDERS AIMS TO **EXPAND THE PROTECTION OF WOMEN IN SITUATIONS OF DOMESTIC AND FAMILY VIOLENCE**, ACCORDING TO THE SPECIFICS AND NEEDS OF THE CONCRETE CASE PREVIOUSLY ANALYZED. HANDLING CERTAIN INCIDENTS MAY INVOLVE CALLING THE POLICE, ACCORDING TO THE NEED DIAGNOSED BY THE ELECTRONIC MONITORING CENTER IN THE ORDER ESTABLISHED IN THE PROTOCOLS THAT FOLLOW OR ACCORDING TO THE NEED OBSERVED BY THE TEAMS. **TRIGGERING THE POLICE SHOULD ALWAYS BE PREVENTIVE, THAT IS, FOR TO PREVENT SPECIFIC INCIDENTS AND NON-COMPLIANCE FROM BECOMING A REAL DANGER TO WOMAN.** POLICE ACTION LENDS ITSELF TO **CHECK THE INCIDENT REPORTED BY THE CENTER DURING THE MONITORING OF THE MEASURE, WITH A VIEW TO THE PROTECTION OF THE WOMAN.** POLICE INTERVENTION SHOULD NOT BE REPRESSIVE. **INCIDENTS AND NON-COMPLIANCE WITH THE ELECTRONIC MONITORING AS A PRE-TRIAL MEASURE, BY THEMSELVES, DO NOT CONSTITUTE A CRIME AND CANNOT MOBILIZE THE DETENTION OF THE MONITORED PERSON.** THE TRIGGERING OF THE POLICE DOES NOT NECESSARILY IMPLY NON-COMPLIANCE AND SENDING NOTIFICATION TO THE JUDGE.

The Monitoring Sector as well as the Social Follow-up and Incident Analysis and Technical Operations sectors shall handle such incidents according to the protocols below. In parallel, professionals from the three sectors should analyze the displacements in the system to verify if the violation is occasional, observing possible secondary interference factors (failures or defects in monitoring equipment; reduced coverage or instability in cellular telephony signals; varied interference in Global Positioning System (GPS) mechanisms; elements related to geography, the type of vegetation cover, the architecture of buildings, weather variations, the existence of localities without or with unstable GPS signal or cellphone reception, especially in the case of people who reside, work, study, do health treatments or participate in religious or spiritual activities at these specific locations) and other information of the concrete case. In cases involving the use of PTU by women should be

analyzed the pattern of rapprochement between the monitored person and the woman in identifying occasional violation of the measures' conditions.

Given the singularities involved in handling this type of specific incident, it is recommended two standard protocols that should run in parallel:

### PROTOCOL 1

- 1) Record the incident in the electronic monitoring system with date and time;
- 2) Send luminous and vibrating signal to the electronic monitoring device 3 times with intervals of 5 minutes.  
**If the incident remains unresolved or concomitantly to the previous procedure, when necessary**
- 3) Make telephone contact with the monitored person 3 times with intervals of 5 minutes between attempts, informing the incident and the need to return to the permitted areas so as not to generate non-compliance with the court decision. The number of calls can be increased, and the time shortened whenever it is deemed necessary and appropriate.  
**In case the incident remains unsolved, with the system indicating the presence of the monitored person in the exclusion area**
- 4) The Monitoring Sector together with the Social Monitoring and Incident Analysis and Technical Operations sector should continue to monitor the case and analyze the need for police action, assessing the displacements and routine patterns of the monitored person and women in situations of domestic violence, especially when using PTU.  
**In case the incident remains unsolved, with the system indicating the presence of the monitored person in the exclusion area**
- 5) Make telephone contact with the woman in a situation of domestic violence who is registered in the system until reach her, and call to third parties registered in the system, with intervals of 3 minutes between attempts, to locate the woman and check, by phone, its protection as determined judicially and warn about possible approach of the perpetrator of violence  
**In case the incident remains unsolved, with the system indicating the presence of the monitored person in the exclusion area**

## PROTOCOL 2 – CALLING THE POLICE

Throughout the procedures provided for in Protocol 2, the professionals of the Monitoring and Social Follow-up and Incident Analysis and Monitoring Sectors should, in parallel, assess the situation checking if the approach poses risk to the protection of the woman and continue to try telephone contact with the monitored person and the woman in a situation of domestic violence who is registered in the system, as previously reported.

THE HANDLING OF CERTAIN INCIDENTS MAY INVOLVE THE IMMEDIATE CONTACT WITH THE POLICE, ACCORDING TO THE NEED FOR PREVENTION DIAGNOSED BY THE ELECTRONIC MONITORING CENTER IN THE ORDER ESTABLISHED IN THE PROTOCOLS THAT FOLLOW OR ACCORDING TO THE NEED OBSERVED BY THE TEAMS.

**If the incident remains unsolved, with the system indicating the presence of the monitored person in the exclusion area, signaling a well-founded risk to the protection of women**

- 1) Generate underreporting in the monitoring system, preferably with agreement of the Social Follow-up and Incident Analysis Sector for preventive action by the police to ensure the protection of the woman;
- 2) The Coordination or Supervision may call the police, recording it within the system and sharing personal data of the monitored person, limited to the following data: 1) Name; 2) last Personal Location; 3) addresses; 4) Photo.

During the preventive action of the police to ensure the protection of the woman:

If the incident is solved by the Center	In case the incident remains without resolution
<ul style="list-style-type: none"> <li>- The police trigger must be canceled and justified by the Coordination or Supervision with registration in the system;</li> <li>- The Social Follow-up and Incident Analysis Sector should analyze the case, assessing the need for compliance adjustment of the measure or of service to the judge with a request for a justification hearing.</li> </ul>	<ul style="list-style-type: none"> <li>- The incident becomes a non-compliance and must be recorded in the system;</li> <li>- The Center's Coordination or Supervision must notify the judge, informing the fact and sending a monitoring report prepared by the Social Follow-up and Incident Analysis Sector.</li> </ul>

### c) Motion detection without GPS or cellphone signal loss

- **Equipment communication failure or false location detection**

- **Full battery discharge**

The Monitoring Sector, together with the Social Follow-up and Incident Analysis and Technical Operations Sectors, should handle such incidents according to the protocols below.

In parallel, professionals from the three sectors should analyze the information provided by the monitoring system to check if the incident is occasional, observing possible secondary interference factors (faults or defects in monitoring equipment; reduced coverage or instability in cellphone signal; varied interference in the mechanisms of the Global Positioning System (GPS); elements related to geography, the type of vegetation cover, the architecture of buildings, weather variations, the existence of localities without or with unstable GPS or cellphone signal, especially in the case of people who reside, work, study, receive health treatments, or participate in religious activities in these specific locations, and other relevant information of the concrete case. In cases involving the use of PTU by women, the approximation pattern between the monitored person and the woman should be analyzed to identify an occasional or intentional violation. They should also check the return of GPS and cellphone signals, the location and the re-establishment of communication of the device with the monitoring system by starting the battery recharge.

6) Record the incident in the electronic monitoring system with date and time;

7) Send luminous and vibrating signal to the electronic monitoring device 3 times with intervals of 5 minutes (except in the case of complete battery discharge).

**If the incident remains unresolved or concomitantly to the previous procedure, when necessary**

8) Make telephone contact with the monitored person 03 times with intervals of 05 minutes between attempts, informing the incident and the need to reestablish the measure (return to areas with GPS and cellular signal coverage or urgency to recharge the device) so as not to generate non-compliance with the court decision. The number of calls can be extended, and the time shortened whenever it is deemed necessary and appropriate.

**In case the incident remains unresolved**

9) The monitoring sectors along with the social monitoring and Incident Analysis and Technical Operations sectors should continue to monitor the case and analyze the need for police action, assessing the displacements and routine patterns of the monitored person and the woman in a situation of domestic violence, especially when she uses the PTU.

**If the incident remains unresolved, when deemed necessary**

10) Make telephone contact with family, friends, neighbors and acquaintances who have provided data optionally to the Center by the monitored person 3 times, altering the contact, when possible, with intervals of 5 minutes between attempts, to locate the compliant and inform about the urgency to contact the Center for the maintenance of the judicial measure;

- Communicate and register with the Technical Operations Sector and the Social Follow-up and Incident Analysis Sector.



If the person does not go to the Center	If the person goes to the Center
<ul style="list-style-type: none"> <li>- The incident becomes a non-compliance and must be registered in the system;</li> <li>- The sectors of monitoring, Technical Operations and Social Follow-up and Incident Analysis should continue to monitor the case after sending notice to the judge, verifying the need to call or not the police;</li> <li>- The Center's Coordination or Supervision must send a notification to the judge</li> </ul>	<ul style="list-style-type: none"> <li>- The Technical Operations Sector should inspect the device; If technical fault is detected in the device:</li> <li>- It must be replaced or have its parts changed immediately for the maintenance of the measure. If the Technical Operations Sector detects a malfunction of the device due to any intervention intentionally directed at it:</li> <li>- It should be carried out communication and registration of the fact with the Social Follow-up and Incident Analysis Sector for adjustment of compliance with the measure;</li> <li>- The Social Follow-up and Incident Analysis Sector should alert the monitored person in order to resume their responsibility during the compliance of the measure;</li> <li>- The Center's Coordination or Supervision must send a notification to the judge, as well as a monitoring report prepared by the Social Follow-up and Incident Analysis Sector.</li> </ul>

**When the Center does not have parts or devices for the replacement of defective equipment**

- The Center's Coordination or Supervision shall send a notification to the judge, informing the fact and sending a monitoring report prepared by the Social Follow-up and Incident Analysis Sector for the adequacy of the measure, presenting the necessary justifications and the need to replace the electronic monitoring with a less burdensome measure.

**d) Damage to the device, break or breach of the fastening strip, or the casing of the electronic monitoring device**

The Monitoring Sector, jointly with the sectors of Social Follow-up and Incident Analysis and Technical Operations, should handle such incidents according to the following protocols:

- 1) Record the incident in the electronic monitoring system with date and time;
- 2) Send luminous and vibrating signal to electronic monitoring device 3 times with 1-minute intervals;

**Concomitantly**

- 3) Make telephone contact with the monitored person 3 times with intervals of 2 minutes between attempts, checking the incident and its possible causes with the collaboration of the Technical Operations Sector, requesting urgent attendance at the Center to not generate non-compliance with the court decision.

**In case the incident remains unresolved**

- 4) Make telephone contact with family, friends, neighbors, and acquaintances who have data provided optionally to the Center by the monitored person 3 times, alternating contact, when possible, with intervals of 5 minutes between attempts, to localize the compliant and inform about the urgency to contact the Center to maintain the judicial measure;
- 5) Communicate the incident to the woman in a situation of domestic violence through direct telephone contact.

**In case the incident remains unresolved**

- 6) The monitoring sectors together with the sectors of Social Follow-up and Incident Analysis and Technical Operations should continue to follow the case and analyze the need for police action, assessing the prior displacements and routine patterns of the monitored person and the woman in a situation of domestic violence, especially when she uses the PTU;
  - Communicate and register with the Technical Operations Sector and the Social Follow-up and Incident Analysis Sector.

If the person does not go to the Center	If the person goes to the Center
<ul style="list-style-type: none"> <li>- The incident becomes a non-compliance and must be recorded in the system;</li> <li>- Send a notification of non-compliance with the judge for the Coordination or supervision of Center;</li> <li>- The sectors of Monitoring, Technical Operations and Social Follow-up and Incident Analysis should continue to monitor the case even after sending notice to the judge, verifying the need to call or not the police.</li> </ul>	<ul style="list-style-type: none"> <li>- The Technical Operations Sector should inspect the device. If technical fault is detected in the device:</li> <li>- It must be replaced or have its parts changed immediately for the maintenance of the measure. If the Technical Operations Sector detects a malfunction of the apparatus as a result of any intervention intentionally directed at it:</li> <li>- It should be carried out the communication and registration of the fact with the Social Follow-up and Incident Analysis Sector to adjust compliance with the measure;</li> <li>- The Social Follow-up and Incident Analysis Sector should alert the monitored person in order to resume their responsibility during the compliance of the measure;</li> <li>- The Center's Coordination or Supervision shall send a notification to the judge, as well as a monitoring report prepared by the Social Follow-up and Incident Analysis Sector.</li> </ul>

**When the Center does not have parts or devices for the replacement of defective equipment**

- The Center's Coordination or Supervision shall send a notification to the judge, as well as a monitoring report prepared by the Social Follow-up and Incident Analysis Sector for the adequacy of the measure, presenting the necessary justifications and the need to replace the electronic monitoring with a less burdensome measure.

### ix) Compliance Adjustment Measure

Incidents should be handled collaboratively between sectors, in order to prioritize the maintenance of the applied measure. Measure compliance adjustment occurs when the handling of specific incidents by the Monitoring Sector or Technical Operations Sector generate communication and registration of the unsolved incident with the Social Follow-up and Incident Analysis Sector. However, if the measure is re-established, the solution of the incident occurs and compliance with the measure normally follows, without the need for adjustment.

<b>UNRESOLVED INCIDENTS THAT GENERATE MEASURE COMPLIANCE ADJUSTMENT</b>
VIOLATION OF INCLUSION OR EXCLUSION AREAS
MOTION DETECTION WITHOUT GPS OR CELLPHONE SIGNAL
EQUIPMENT COMMUNICATION FAILURE OR FALSE LOCATION DETECTION
FULL BATTERY DISCHARGE
NON-COMPLIANCE WITH THE SCHEDULES OR RESTRICTIONS TO SPECIFIC LOCATIONS
EQUIPMENT DAMAGE, BREAK OR BREACH OF THE FASTENING STRIP, OR THE CASING OF THE ELECTRONIC MONITORING DEVICE

Measure compliance adjustment is an activity under the responsibility of the Social Follow-up and Incident Analysis Sector. The purpose of adjustment is not to punish or act in a repressive manner, nor should it mobilize any kind of violence, including psychological, and symbolic violence. During the compliance adjustment, the multidisciplinary team should understand the contexts and situations that led to the unresolved incident.

If the team notes the absence of objective conditions for compliance with the measure or certain conditions, the monitoring report of the measure must include such information. If necessary, the staff should also ask the judge for a justification hearing, aiming to hold the person liable for compliance and return to the normal course of the measure.

Measure compliance adjustment should preferably be carried out by telephone. However, the multi-professional team, depending on the case and as needed, can request the face-to-face adjustment from different limits. The contact must prioritize the sensitization of the person in compliance with the monitoring measure according to the conditions stipulated judicially. It must not result in any kind of repression, punishment or coercion of the monitored person. The multi-professional team should understand the causes of the incident, analyzing possible secondary interference factors. If

the monitored person requests face-to-face attendance, the same should be scheduled observing the compliance routine.

It is recommended that the third unresolved incident per person monitored should be adjusted to comply with the measure in person. This procedure should be scheduled as a priority so as not to interrupt work routines, study, health treatments, etc. The third procedure for adjusting compliance with the measure should also focus on person's sensitivity and new agreement on the measure with signature of specific term to be joined in the process. On this occasion, the monitored person should also be alerted about the possibility of notification to the judge in the face of any unresolved incident from that moment.

Thus, after overcoming these phases, if any unresolved incident occurs, it will be up to the Center to communicate the fact to the judge, that is, the non-compliance. The unresolved incident generates exclusively the communication to the judge, not being the competence of the Center any other provision, except in specific incidents with restraining orders.

#### **x) Non-compliance**

Non-compliance with the electronic monitoring measure are unresolved incidents which necessarily generate notification to the court. Non-compliance with the electronic monitoring applied in the scope of pre-trial non-custodial measures should be recorded in the monitoring system, according to date and time, and notification to the judge by the Coordination or supervision of the Center, according to each of the protocols specified earlier.

Non-compliance involving restraining orders can lead to the immediate trigger of the police, according to the need for prevention diagnosed by the Electronic Monitoring Center in the order established in the previous protocols or according to the need observed by the teams.

#### **xi) Relationship with the criminal justice system**

The Electronic Monitoring Center should build agile and fast workflows with the Judiciary. It should also seek to carry out constant awareness with all professionals who work in detention control hearings, considering their high turnover. Information on compliance with the measures should be given within the time agreed between the Center and the Judiciary. It is recommended that the multidisciplinary team prepare and send reports to the judges, with a view to replacing electronic monitoring with a less burdensome measure or maintaining it on a case-by-case basis. It is pointed out that the multidisciplinary team may, whenever necessary, forward reports and requests to the judges aiming at replacing the monitoring by another measure and changes related to the imposed conditions, according to the eventual objective incapacity of certain people to comply with it.

The maintenance of the imposed measure requires continuous dialogue between the Center and the Judicial Branch, considering the concrete cases, in order to avoid the aggravation of the criminal situation. This implies the commitment of these actors in building and applying workflows to improve the services. Measure compliance adjustment is recommended because it fosters the multi-professional team to raise awareness and update the measure in the case of specific incidents, according to the protocols previously defined. It is also suggested that pre-trial detention is not decreed by the judge in the face of any type of non-compliance reported by the Center. It is recommended that the case be analyzed together with the monitoring report of the measure and other recommendations of the multidisciplinary team.

### **xii) Relationship with the public security system**

The Electronic Monitoring Center should build with the public security institutions agile and fast workflows. Constant awareness, training and improvement should be sought methodology necessary to the topic with public security agents, especially those who work in specialized patrols such as the Maria da Penha Patrol, in specialized police stations for women (DEAM), among others. In this direction, it is up to the National Secretariat of Public Security initial and continuing training aimed at the improvement of policies designed to confront domestic and family violence<sup>62</sup>.

Dealing with specific incidents requires ongoing dialogue between the Center and public security institutions, always considering concrete cases and according to the need perceived by the Center teams. This relationship can prevent the aggravation of the criminal situation and increase the efficiency of the work of public security agents, since calling the police should be reserved for cases of greater severity, from the identification of the Center's teams, according to the protocols consolidated in this document. The purpose of this strategy is not to saturate the capacity of police institutions due to their broad demands and to expand the effectiveness of its action in the face of concrete situations identified as a priority by the Center.

### **xiii) Information management**

It is essential that all the procedures of the Electronic Monitoring Center be informed and updated periodically by the team. Therefore, it is recommended to properly manage the information according to the "Guidelines for the Processing and Protection of Data in the Electronic Monitoring of People" (Brasil, 2016b).

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62 The "Technical Norm of Standardization of the Specialized Women's Service Stations", produced by the DEAMs presents, among other things, that "Professionalization: the modernization of the Brazilian civil police requires highly professionalized positions through management techniques in accordance with national legislation and international treaties, particularly with regard to the respect for the fundamental rights of men and women; (...) Education and citizenship: this social vocation recommends frank openness to the inflows of social reality, especially for the correct audience, which is a premise for overcoming the merely reactive role of investigative activity, since it is there, in the reality of the conflict on which it projects daily, the effective place of production of a criminal law that breaks with the stigmas against the hyposufficient social segments" (Brasil, 2010c).

## **12 FOLLOW-UP METHODOLOGY FOR WOMEN IN SITUATIONS OF DOMESTIC AND FAMILY VIOLENCE**

This stage of electronic monitoring services should be considered only when the judge applies the monitoring measure cumulatively with the restraining orders that oblige the perpetrator of violence against women. It makes no sense for a woman to use the portable tracking unit (PTU) if the perpetrator of violence is not monitored. That is, the PTU is an additional tool for restraining orders because it allows the creation of dynamic areas of exclusion. Thus, it is possible to more accurately identify the approach between the monitored person and the woman who carries the PTU. It must be clarified, again, that the PTU is an additional device that aims to ensure restraining orders applied cumulatively with electronic monitoring. Monitoring can only be carried out through the author, since the monitoring system allows the creation of permanent areas of exclusion, such as the woman's residence, work and study places, among others. The use of PTU is therefore optional and the autonomy of the woman must be respected.

The follow-up of the electronic monitoring measure applied cumulatively with restraining orders should consider the following procedures aimed at women in situations of domestic and family violence, which will be detailed below:

- i) Attendance at the Court of Domestic and Family Violence Against Women;
- ii) First attendance and possible referrals:
  - a. Guidance on the portable tracking unit (PTU);
  - b. Delivery of the PTU and registration in the monitoring system.
- iii) Eventualities;
- iv) Returns;
- v) Relationship with the Judiciary;
- vi) Relationship with the public security system;
- vii) Case studies;
- viii) Information management.

### **i) Attendance at the Court of Domestic and Family Violence Against Woman**

It is indicated that the judge, when applying the electronic monitoring measure to the perpetrator of domestic violence, request the attendance of the woman in a situation of domestic violence to the Court of Domestic and Family Violence Against Women responsible for the case. The appearance to the Court must not involve any kind of threat, embarrassment or escort. The Maria da Penha Law, precisely, serves to curb and eradicate any form of violence and discriminates against women. Women must, according to the aforementioned law, have their rights of protection guaranteed; therefore, any coercion can be seen as a form of violence and revictimization to be eradicated, rather than an instrument of guaranteeing the legally provided protection.

The Court must offer, through prior partnership with the State Executive, an active listening space for women, necessarily involving the Electronic Monitoring Center's multidisciplinary team. This type of intervention aims to provide detailed information on restraining orders in a clear and welcoming manner. The procedure applies to any cases of restraining orders, according to Federal Law No. 11,340/2006.

When the monitoring services of the Federative Unit rely on the PTU, attendance to the Court is also essential so that the woman can receive guidance about the use of the device. From this, she will be able to choose whether or not to use the device during the restraining orders applied cumulatively with the monitoring measure. It should be emphasized that the use of PTU should not be compulsory at any stage of the prosecution, under the risk of generating obligations that are not provided for in the Maria da Penha Law, nor in the law and other regulations on electronic monitoring. It is important to note that if the woman chooses not to use PTU during restraining orders or if the state does not have the PTU, the measures must continue to be in force from the author's exclusive electronic monitoring. Furthermore, as already explained and recommended by the CNJ (Resolution No. 213/2015), monitoring should be applied in a subsidiary way. Cases should be analyzed individually according to the type(s) and level(s) of violence, guiding the application of more appropriate measures contextually, especially to prevent monitoring from aggravating conflicts and violence in the sphere domestic and family.

## **ii) First call and possible referrals**

The first attendance includes procedures for raising awareness and welcoming the woman in situations of domestic and family violence, as well as explaining the measures, emphasizing their comprehensive understanding. It should preferably take place after the hearing that led to the application of restraining orders cumulatively with an electronic monitoring measure to the perpetrator of the violence. As already noted, the court must offer, through a partnership with the State Executive Branch, a space for the realization of the first attendance by the Center. The Center's multidisciplinary team that are acting within the court's premises are responsible for the reception of women in situations of domestic violence. To improve the services, work, and development of activities in collaboration with the psychosocial team of the court are recommended.

In this listening space, factors such as: physical, social, and psychological situation should be evaluated; understanding about the procedural context or the measures imposed on the defendant or the offended; location and housing; demands for inclusion in specific programs or treatments. This information is important for the referral to the network of protection and care for women, in case of demands presented. Any referral may not be made as a judicial determination, but from the awareness of the person by the responsible team, being inadmissible any type of imposition, coercion or embarrassment.



#### **a) Guidance on the portable tracking unit (PTU)**

During the reception, the multidisciplinary team should offer guidance on the PTU service, when it is available. Therefore, it must be initially clarified that restraining orders, regardless of the use of PTU, continue to be in force according to the Maria da Penha Law. In other words, the right to protect women in situations of domestic and family violence is not bound to the PTU, much less suspended or revoked due to non-use of the device.

The multidisciplinary team should point out that the restraining order applied with electronic monitoring can be fulfilled without the use of the PTU.

That is, from the exclusion areas informed by the judge and created in the Center's system, which is sufficient for the follow-up of the measure and possible handling of incidents by the responsible team. Women should also understand that monitoring the perpetrator of violence is not limited to criminal control but involves the work of a multidisciplinary team – social workers, law graduates and psychologists – that helps to comply with the measures.

This procedure aims to ensure, therefore, that the PTU is not adopted in the monitoring services in a compulsory manner and that the right of protection of women is ensured with or without the electronic monitoring services. The PTU should only be used when available in the monitoring services of the state and when the woman, after being informed and heard by the multidisciplinary team, feels the need to have available this surveillance mechanism capable of informing the monitoring system of the Center the distance between her and the perpetrator. The team should note that this type of control necessarily depends on the proper use of the PTU and the individual monitoring equipment (anklet).

When a woman in a situation of domestic violence makes clear the need to use the PTU, the multidisciplinary team, after providing all the information on the measures and the device, must deliver her a term of use of PTU containing information on the device, the rights of protection of women and their duties. In this document it must be expressed that, regardless of the use of the PTU, the rights of the woman remain and must be ensured as provided for in the Maria da Penha Law, as well as the right to interrupt the use of the device at any moment. The consent to use PTU must be registered with the signature of the woman and the professionals who assisted her. The term must inform that the interruption in its use does not imply punishment, and the device must be returned to the Electronic Monitoring Center.

## **b) PTU delivery and registration in the monitoring system**

The delivery of the PTU must take place immediately after reception, also at the service station of the Electronic Monitoring Center. It is not recommended the woman's referral to the Monitoring Center to retrieve the device or be registered in the monitoring system.

The PTU delivery must take place upon delivery of two terms – “term of use of the PTU” and “term of protection and processing of personal data” – signed by the woman in a situation of violence and by the multidisciplinary team's professionals that carried out the reception. The woman must receive verbal and written instructions to use the PTU by trained professionals in the Center Operations Sector and the multidisciplinary team (analysis and monitoring sector). This procedure includes the delivery of device (charger, portable battery, etc.) and the signing of the terms by the woman and at least one of the professionals responsible for this stage. The PTU shall only be delivered with the signature of the two terms. If the woman refuses to sign them, the multidisciplinary team may try to sensitize the person through an individual conversation. Refusal to sign the terms or one of the terms must be registered in writing at the end of the term with the date and signature of a witness and shall impede the delivery of the PTU.

If the woman is unable to sign the terms, the fact should not cause sanction or punishment. The operator and the multidisciplinary team must confirm verbally the full understanding of the content and perform the signature by reading witness on the document signed and dated by the operator responsible for the collection.

The terms must be kept by the woman in a safe place and presented at the end of the measure for registration of return of the PTU in the Electronic Monitoring Center.

The professional of the Analysis and Monitoring sector should ensure the understanding of the measures and use of the device. The woman may, optionally, inform personal data of family, friends, neighbors, or acquaintances to enable the handling of possible incidents, limited to providing name, address, telephone and type of relationship.

Registration in the monitoring system is a responsibility of the Center, subject to the conditions provided for in the court decision. Any personal data of third parties can only be registered in the system if informed optionally by the woman, according to the terms signed by the same and kept in the Center.

### **iii) Eventualities**

#### **a) Non-attendance of the person on scheduled dates or in emergency situations for:**

##### **a.1) technical repairs and replacements on the portable tracking unit**

The Center should make telephone contact for three days in a row with the woman in situation of domestic and family violence action who chooses to use the PTU, including relatives, friends, neighbors, and acquaintances. If the person is not located, the Center must send a notice to the judge of the case. When the woman in a situation of domestic violence chooses to interrupt the use of the PTU during the restraining order, the multidisciplinary team must communicate the fact to the judge, requesting the suspension of the use of the device, without generating sanction or punishment to the woman, maintaining the measure from the electronic monitoring of the compliant.

##### **a.2) return the portable tracking unit at the end of the measure**

The Center should make telephone contact for three days in a row with the woman in a situation of domestic and family violence who chooses to use the PTU, including family members, friends, neighbors, and acquaintances registered in the system. If the person is not located to return the PTU, the Center should send communication to the judge of the case.

### **iv) Returns**

Women in situations of domestic and family violence who choose to use the PTU will be directed to attend the Electronic Monitoring Center, preferably with scheduled hours, only in the following circumstances:

- if there are technical problems in the PTU, identified by the woman or the Center, to any repairs and replacements;
- if she chooses to stop using the PTU;
- at the end of the measure to return the PTU.

#### **If there are technical problems in the PTU identified by the woman or the Center, for eventual repairs and replacements**

If the woman notices any type of failure in the device, she should go to the Center for technical repairs. If the Monitoring Center detects any technical failure in the monitoring system involving the PTU, the woman should be contacted by telephone and asked to attend the Center for technical repairs to the device. Telephone contact with the woman should be tried for three days in a row and registered in the Center Information System.

If the woman is not located, the Center should send communication about the fact to the judge of the case. It is recommended that the judge request the presence of the woman to the court to reassess the need for use of PTU by the multidisciplinary team of the Center.

#### **If the woman chooses to stop using the PTU**

The woman in a situation of domestic violence who chooses to interrupt the use of the PTU during the restraining order should come to the Electronic Monitoring Center to inform the multidisciplinary team and to return the device. The Center must communicate the fact to the judge. There is no sanction or punishment for women, nor the revocation of restraining orders.

#### **At the end of the measure for the return of the PTU**

The woman in a situation of domestic violence who chooses to use the PTU must return the device at the end of the measure to the Electronic Monitoring Center. If the device is not returned at the end of the measure, the Center should contact the woman by phone respecting the deadline of three days and request the return of the PTU. If the PTU is not returned, the Center must communicate the fact to the judge.

#### **v) Relationship with the criminal justice system**

The Electronic Monitoring Center should build with the public security institutions agile and fast workflows. Constant awareness, training and improvement should be sought methodological necessary to the topic with public security agents, especially those who work in specialized patrols such as the Maria da Penha Patrol, in Special Police Stations for Women Assistance (DEAMs), among others. In this direction, it is up to the National Secretariat of Public Security (SENASP) initial and continuing training actions aimed at the improvement of policies designed to confront domestic and family violence.

Dealing with specific incidents requires ongoing dialogue between the Center and public security institutions, always considering concrete cases and according to the need perceived by the Center teams. This relationship can prevent the aggravation of the criminal situation and increase the efficiency of the work of public security agents, since the police should only be triggered in cases of greater severity, from the identification of the Center's teams, according to the protocols consolidated in this document. This strategy aims not to saturate the capacity of police institutions due to their wide demands and expand the capacity of the police effectiveness of its action in the face of concrete situations identified as a priority by the Center.

#### **vi) Relationship with the public security system**

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#### **vii) Case studies**

It is recommended to carry out case studies at the Center with established periodicity, seeking an interdisciplinary look and the definition of follow-up strategies, approaches and appropriate referrals. The teams will be able to invite network partners, as well as representatives of the justice system, to discuss cases that require calls, referrals, specific knowledge, and guidance.

Networks can have specific meetings and it is essential that the Center be represented in these routines, potentiating the strengthening such spaces, bonds, and coordination.

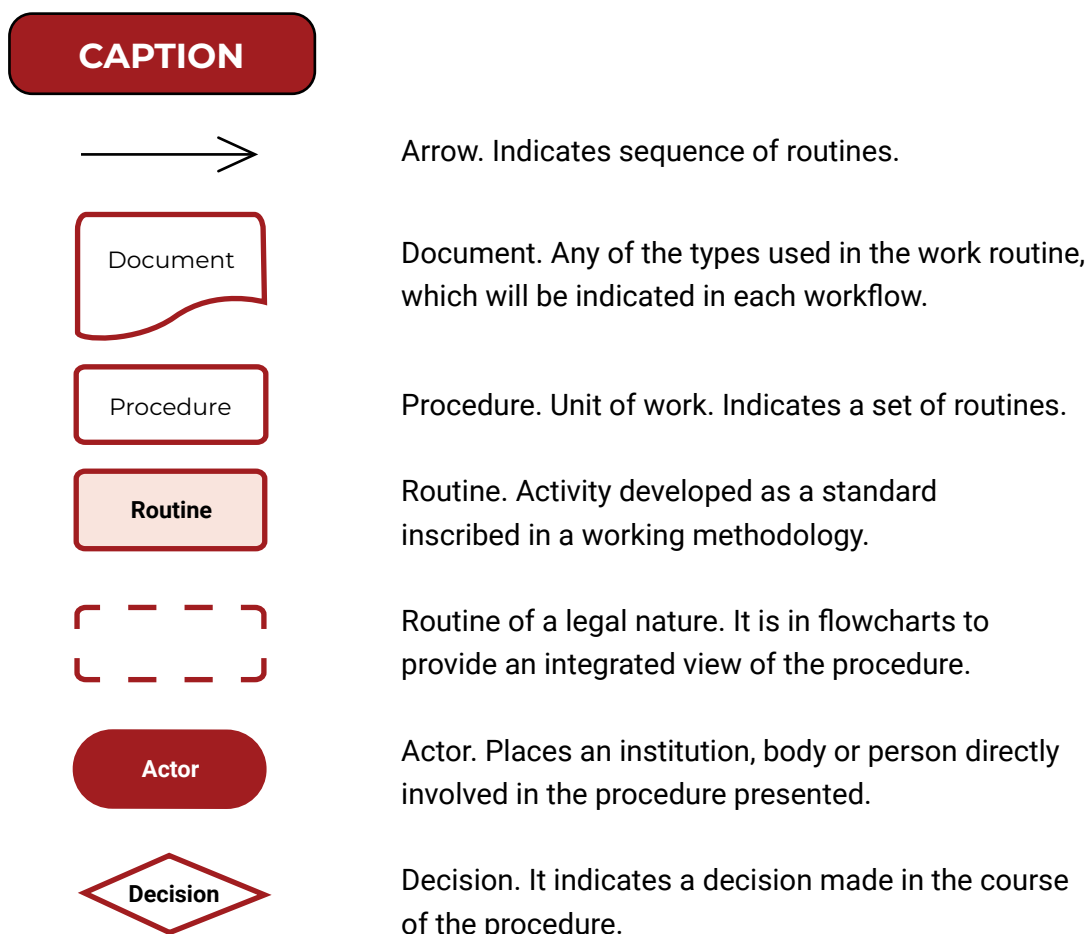
#### **viii) Information Management**

It is essential that all procedures carried out at the Center Station and the Electronic Monitoring Center itself be computerized and updated periodically by the responsible team. Therefore, it is recommended to properly manage information according to the "Guidelines for Data Processing and Protection in Electronic Monitoring of People" (Brasil, 2016b). The same applies to services aimed at women in situations of domestic and family violence.

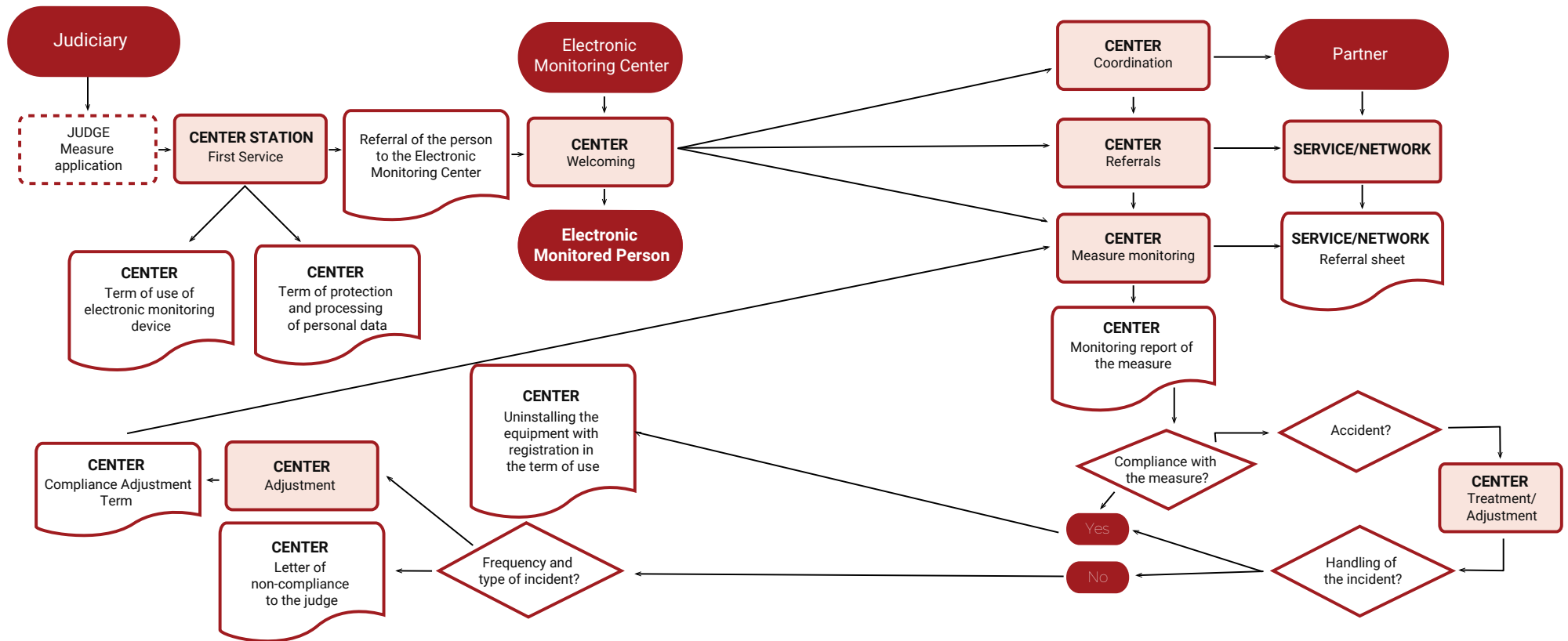
## 13 PROCEDURE FLOWS

The technical procedures to be followed by the Electronic Monitoring Center teams are configured from collaborative work with: the justice system; public security; the people electronically monitored; social protection network; the woman in domestic and family violence situation in use of PTU; the protection and care network for women; civil society. The performance levels unfold into specific technical procedures, which will be detailed in the flowcharts and descriptions that follow.

In order to maintain alignment with the national criminal policy, promoting understanding of and socialization of the workflows, the symbols presented in this management model follow the standard of the procedural handbooks for alternatives to imprisonment (Brasil, 2016a), published through the partnership between the National Penitentiary Department (DEPEN) and the United Nations Development Programme (UNDP), from the following legend:



### 13.1. General flowchart – Processing of the electronic monitoring measures



Each numbered routine unfolds into procedures with specific flowcharts that are detailed below.

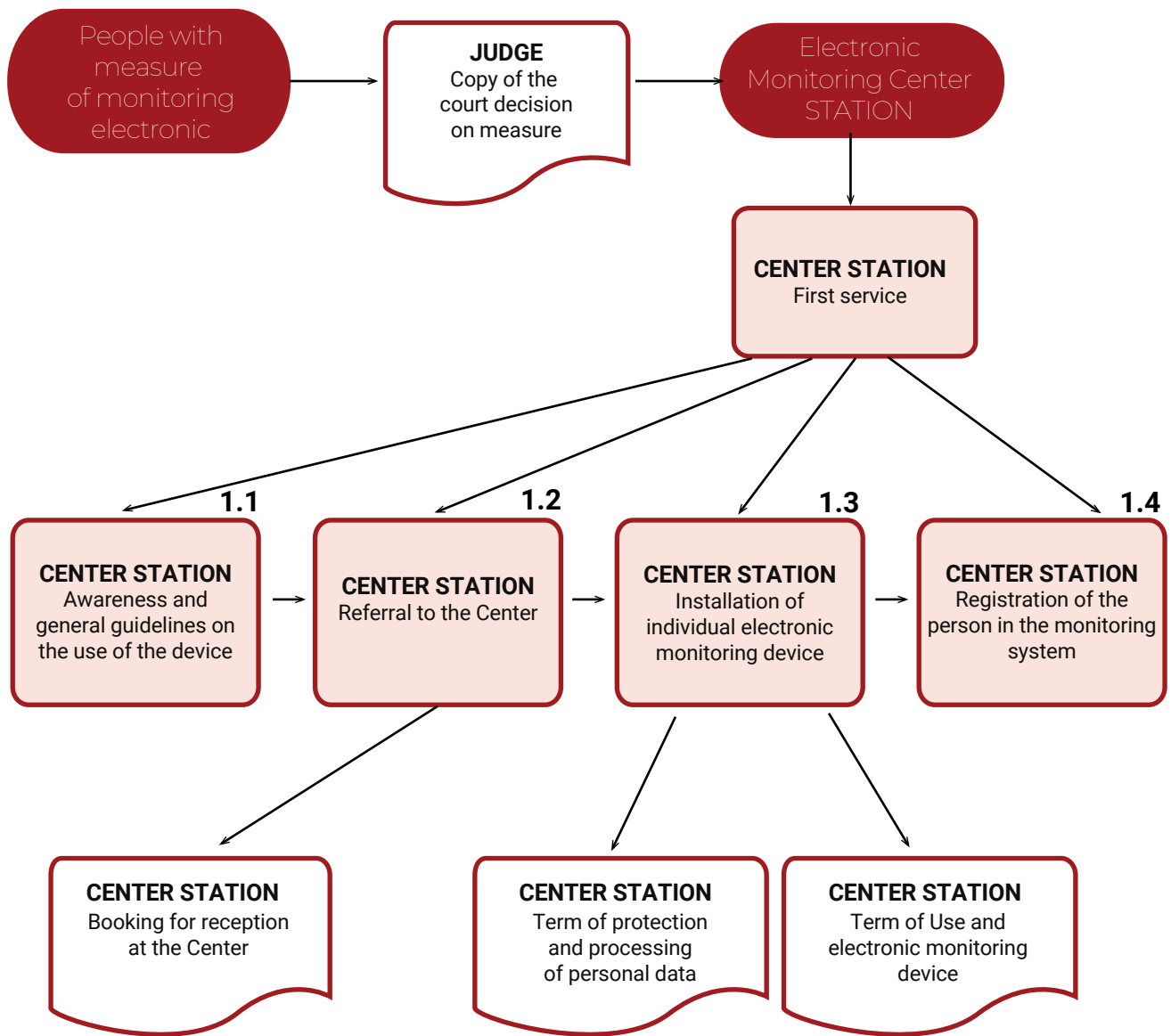
## Description of procedures

Measure Procedures	Description
<b>1. First attendance (Center Station)</b>	1.1. Installation of monitoring equipment 1.2. Awareness and guidelines for the use of the device 1.3. Referral to the Center 1.4. Registration in the monitoring system 1.5. Reading and signing the terms
<b>2. Reception</b>	2.1. Multidisciplinary care (social worker, law graduate, and psychologist) 2.2. Network referrals 2.3. Routine return if necessary
<b>3. Coordination</b>	3.1. Preliminary research 3.2. Coordination visit 3.3. Initial training 3.4. Routine visits and case discussions 3.5. Routine training 3.6. Inclusion of the person 3.7. Service routine
<b>4. Referrals</b>	4.1. Presentation to the institution 4.2. Inclusion of the person 4.3. Service routine 4.4. Return to the Center if necessary
<b>5. Inclusion</b>	5.1. Partner network - Essential services: <ul style="list-style-type: none"> <li>- Health</li> <li>- CRAS/CREAS</li> <li>- Housing or Temporary housing</li> <li>- Potential benefits</li> <li>- Legal assistance</li> <li>- Education</li> <li>- Work and income</li> <li>- AA, NA, or other treatments for people with drug use disorder</li> <li>- Other services</li> </ul>
<b>6. Follow-up</b>	6.1. Monitoring 6.2. Incident handling 6.3. Technical maintenance of the device, when necessary 6.4. Individualized care 6.5. Monitoring report of the measure 6.6. Case studies 6.7. Compliance adjustment



<b>7. Incident handling</b>	<ul style="list-style-type: none"> <li>7.1. Monitoring</li> <li>7.2. Registration in the system</li> <li>7.3. Sending signal to the device</li> <li>7.4. Telephone contact with the person</li> <li>7.5. Telephone contact with family, friends, neighbors, and acquaintances of the monitored person</li> <li>7.6. Aid from the Social. Monitoring and Analysis Sector and other sectors, if necessary</li> <li>7.7. Technical maintenance of the device, if necessary</li> <li>7.8. Service by the multidisciplinary team</li> <li>7.9. Monitoring report of the measure</li> <li>7.10. Letter of non-compliance to the judge</li> </ul>
<b>8. Adjustment</b>	<ul style="list-style-type: none"> <li>8.1. Service by the multidisciplinary team</li> <li>8.2. Restatement of the conditions imposed by the measure</li> <li>8.3. Monitoring report of the measure</li> </ul>
<b>9. Completion</b>	<ul style="list-style-type: none"> <li>9.1. Uninstallation of the individual monitoring device at the end of the measure</li> <li>9.2. Recording the return of the device and other materials in the term of use of the device</li> </ul>

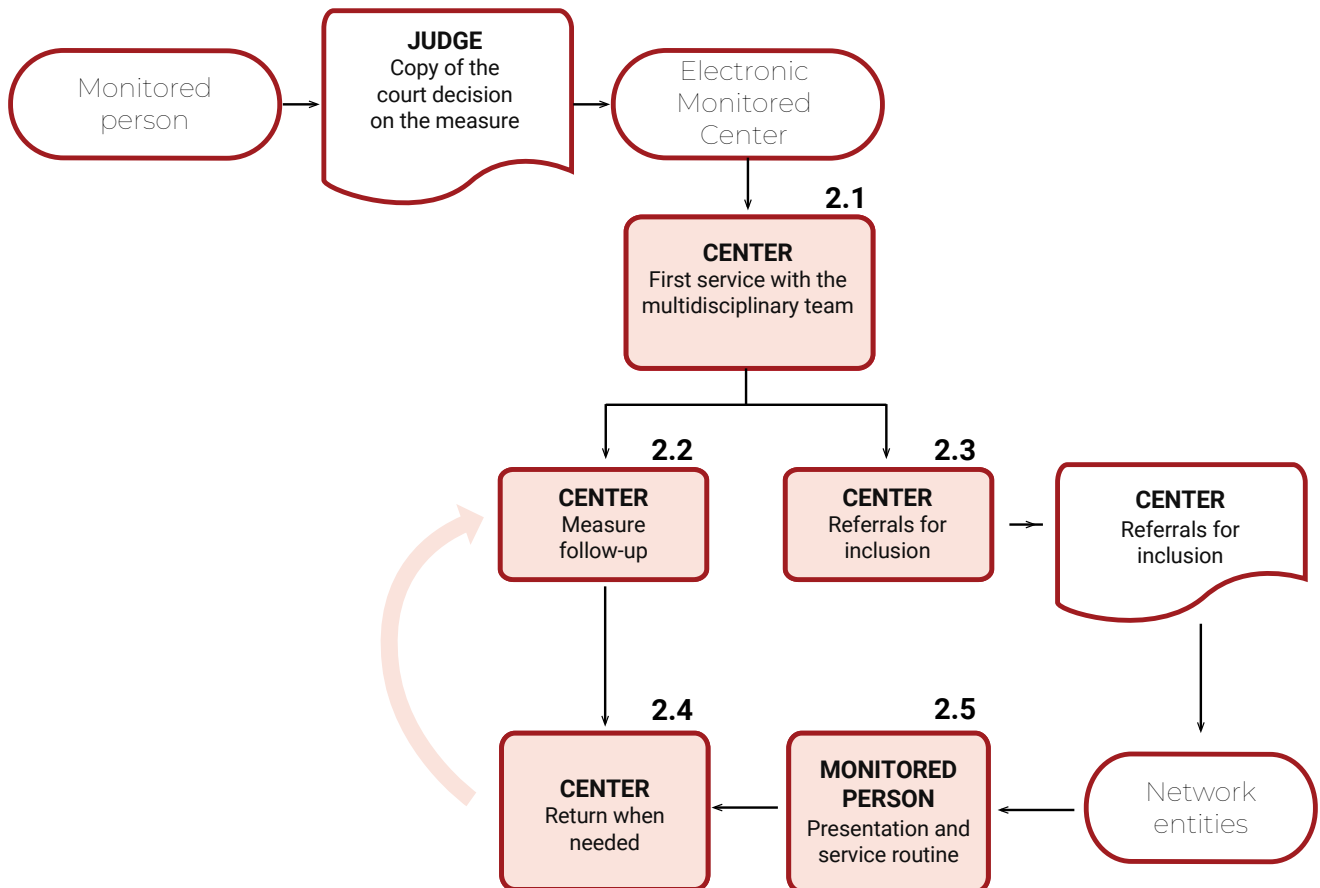
## 13.2. First Assistance



## Description of procedures

First attendance	Description	Actors involved	Documents (attached)
<b>1.1. Awareness raising and guidance general terms of equipment use</b>	<p>Service performed by psychology, social work professionals, together, with information confidentiality guarantee.</p> <p>General instructions for the use of the individual electronic monitoring device.</p> <p>Ensure the person's understanding of the conditions and restrictions imposed by the measure.</p>	<p>Multidisciplinary team of the Center (social worker, law graduate, and psychologist) and the person in compliance with electronic monitoring measure.</p>	
<b>1.2. Mandatory referral to the Electronic Monitoring Center</b>	<p>Guidance and awareness of the compliant for compulsory attendance at the Center for welcoming. Reception should be scheduled as soon as possible – on the same day or the day after the first visits. The maintenance of the routine of the monitored person should be observed, preventing work, educational activities, among others, from being interrupted.</p>	<p>Multidisciplinary team of the Center (social worker, law graduate, and psychologist) and the person in compliance with electronic monitoring measure..</p>	<p>F11- Letter of Referral for welcoming at the Electronic Monitoring Center</p>
<b>1.3. Installation of the individual electronic monitoring device</b>	<p>Install the individual monitoring device.</p> <p>Ask the monitored person directly about the level of comfort felt when using the device, evaluating possible adjustments.</p> <p>Give specific instructions for the use of the individual electronic monitoring device.</p> <p>Confirm understanding about the use of the device for compliance with the court decision in accordance with all the imposed conditions.</p>	<p>Professional of Center Technical Operations Sector; at least one professional of the multidisciplinary team and the person in compliance with the electronic monitoring.</p>	<p>F7- Term of use of the electronic monitoring device</p> <p>F6- Term of protection and processing of personal data</p>
<b>1.4. Registration of the person in the Monitoring System</b>	<p>The monitored person must be treated, preferably, by professional of the monitoring sector in the system, according to all the conditions provided for in the court sentence. The compliant must not be present at this stage of the service.</p>	<p>Monitoring Sector professionals or professional of Technical Operations Sector duly authorized by the coordination/ supervision and trained.</p>	

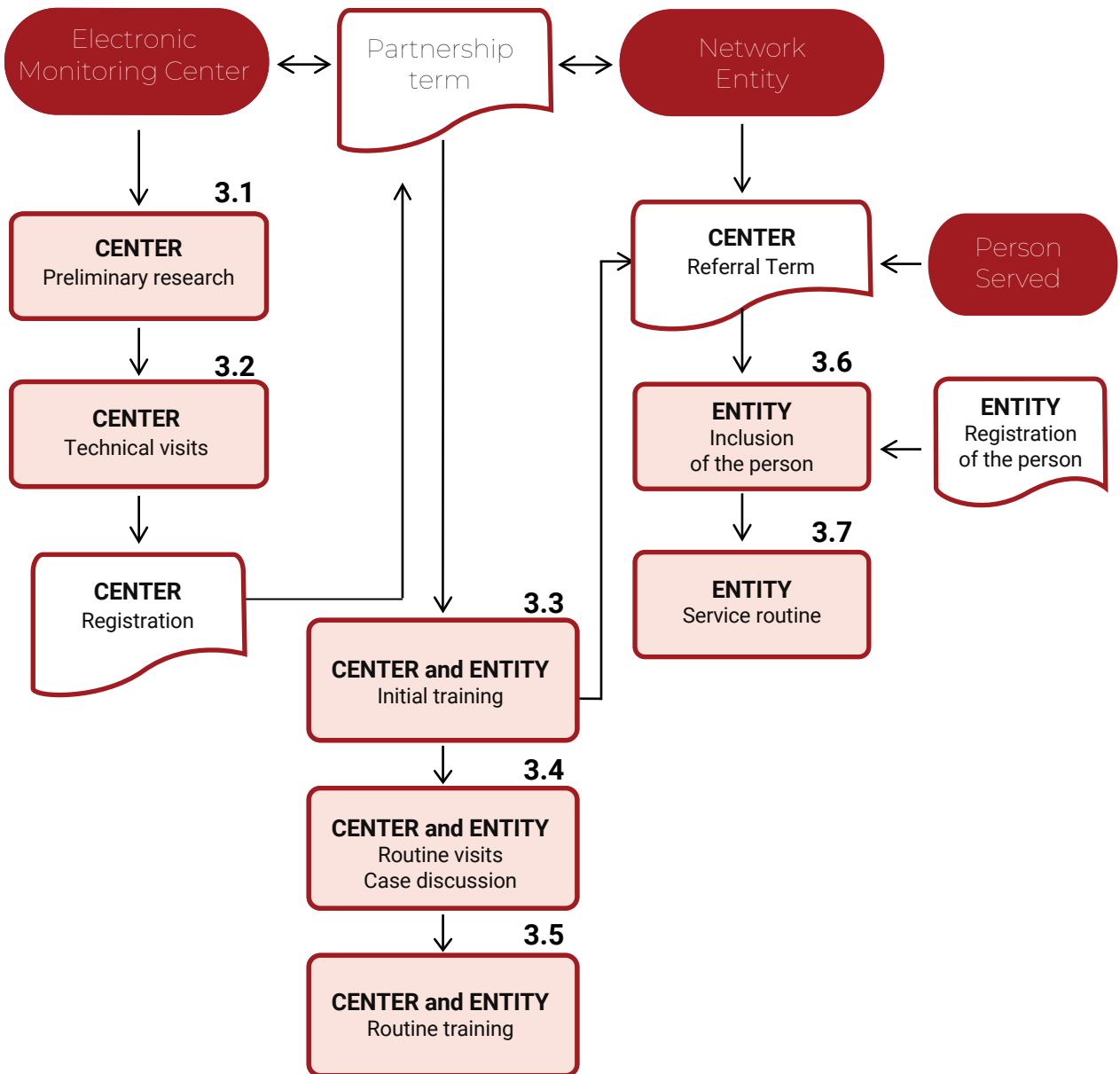
### 13.3. Welcoming the monitored person



## Description of procedures

First attendance	Description	Actors involved	Documents (attached)
<b>2.1. First multidisciplinary assistance</b>	Service performed by professionals of psychology, social work, and law, separately, with filling standard form for inclusion of the person, with guarantee of confidentiality of information.	Social Follow-up and Incident Analysis Sector (social assistance, Bachelor of law and psychologist) and the person in compliance with electronic monitoring measure.	F1 – First Service Form
<b>2.2. Measure Follow-up</b>	Follow-up procedures are individualized and separated by sectors according to the type and need of care. Monitoring considers the application of electronic monitoring with or without restraining orders, according to the need to treat some incidents specific, aiming at the maintenance of measure and also the protection of women in situations of domestic violence, as already detailed throughout this publication.	All sectors of the Center are involved in the electronic monitoring follow-up, according to the skills and responsibilities of the teams detailed in this management model.	F2- Measure follow-up form
<b>2.3. Referrals for inclusion</b>	The person is referred to network services, in a non-mandatory manner, based on the demands presented and noted by the multidisciplinary team's services.	Social Follow-up and Incident Analysis Sector (social worker, law graduate, and psychologist) and the person in compliance with the electronic monitoring measure.	F3- Referral form for social inclusion
<b>2.4. Routine return</b>	The monitored person must return to the Center: - if there are technical problems in the electronic monitoring device, for possible repairs and replacements; - periodic evaluation of the multidisciplinary team to guide the judge in the reassessment of the electronic monitoring measure. - at the end of the measure, for removal and return of electronic monitoring equipment; - if there are social demands, being that in this case the attendance is voluntary	Monitoring Sector; Technical Operations Sector; Social Follow-up and Incident Analysis Sector (social worker, Bachelor of law and psychologist); Administrative Sector Person in compliance with electronic monitoring measure.	F2 – Measure follow-up form

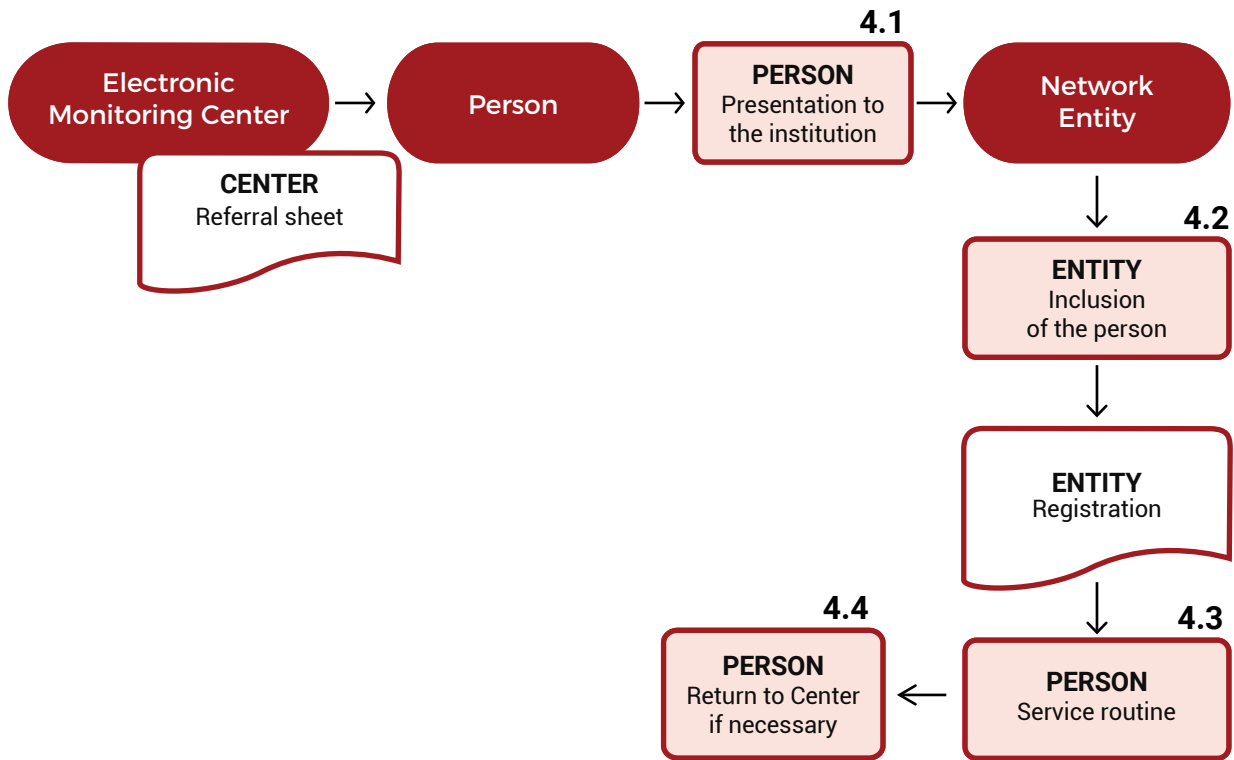
### 13.4. Coordination with the social protection network



## Description of procedures

First attendance	Description	Actors involved	Documents (attached)
<b>3.1. Preliminary research</b>	Survey of the Social Protection Network considering public policy bodies, public and private institutions, philanthropic entities.	Center's multidisciplinary team and network	-
<b>3.2. Coordination visit and registration</b>	Coordinate a visit to meet, register the institution and enter into partnership.	Center's multidisciplinary team and network	F4- Entity registration form F5- Technical cooperation agreement
<b>3.3. Initial training</b>	Individualized training with the partner entity aimed at the experiences exchange and training for electronic monitoring, inclusion network, justice system, among other fundamental topics relevant to the partnership consolidation.	Center's multidisciplinary team and network	Attendance list
<b>3.4. Routine visits and case discussions</b>	The Center should schedule visits to institutions at least biannually, but it should include extra schedules, invitations for case studies at the Center headquarters, common schedules in network meetings, periodic telephone and email contacts, as well as other resources and schedules that become necessary.	Center's multidisciplinary team and network	Meeting minutes notebook
<b>3.5. Training</b>	Annual meeting between partner entities through the holding of meetings/ meetings aimed at the exchange of experiences, training, Inclusion Network, justice system, among other fundamental and relevant thematic aspects.	Center and Network multidisciplinary team	Attendance list
<b>3.6. Inclusion of the person</b>	In a non-mandatory manner, the monitored person comes to the suggested institution with the referral term delivered to the Center.	Person in compliance with the electronic monitoring measure and partner institution	F3- Referral form for social inclusion
<b>3.7. Service routine</b>	The monitored person is invited to return to the partner institution, in case of social inclusion, within the schedule period in a consensual manner in the institution, according to the specificities of the case, always in a non-mandatory way.	Person in compliance with the electronic monitoring measure and partner institution	Term of responsibility of network institutions, in the face of social demands

### 13.5. Referrals

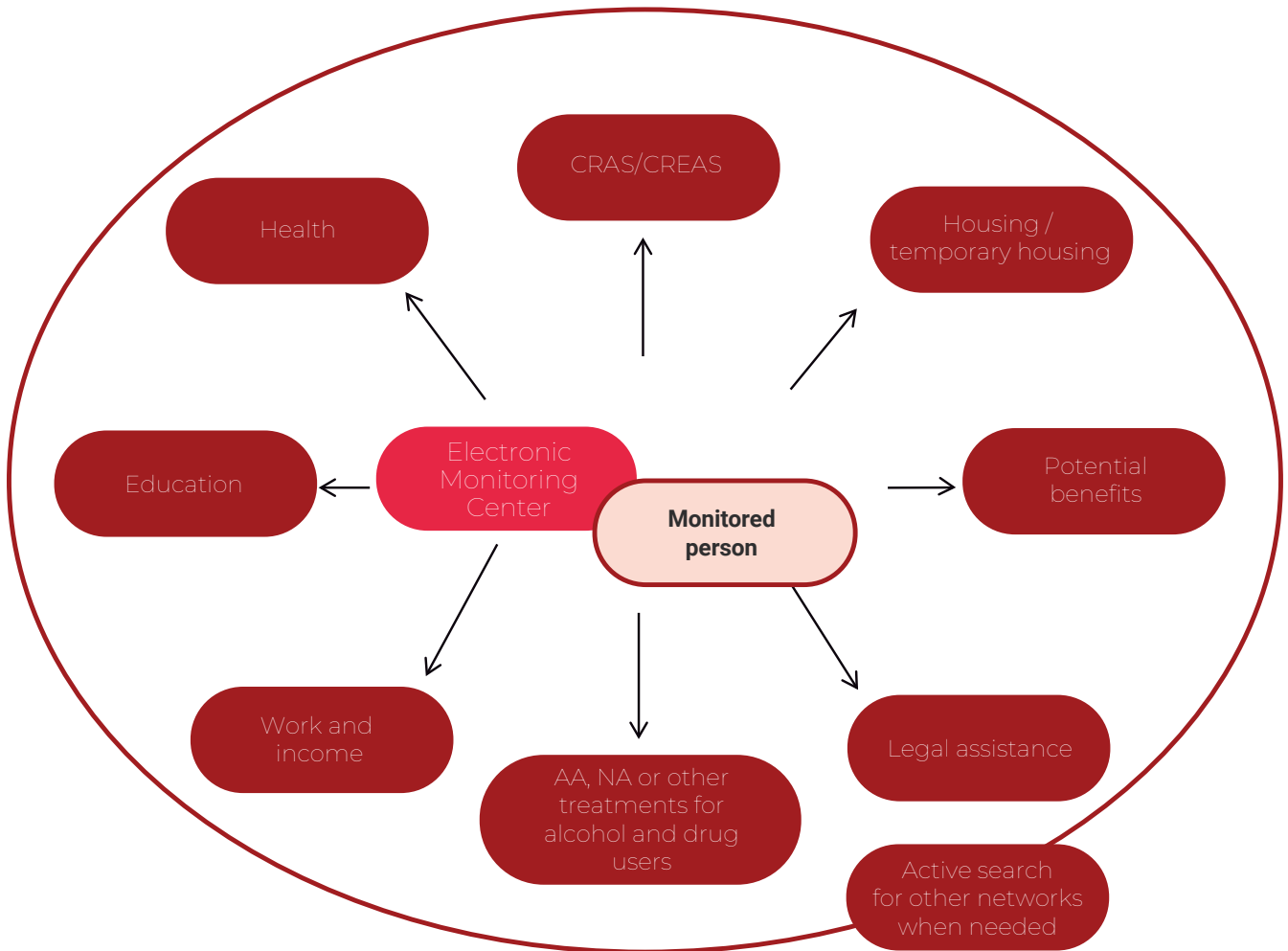




## Description of procedures

<b>First attendance</b>	<b>Description</b>	<b>Actors involved</b>	<b>Documents (attached)</b>
<b>4.1. Presentation to the institution</b>	The person is directed to attend the indicated institution according to the demand for inclusion.	Person and partner institution	F3- Referral form for social inclusion
<b>4.2. Inclusion of the person</b>	Initial care in the institution for inclusion of the person.	Partner person and institution	Partnership institution's own forms
<b>4.3. Service routine</b>	Routine care(s) related to social inclusion.	Person and partner institution	Partnership institution's own forms
<b>4.4. Return to the Center</b>	The return will be built with the person from the circumstances of each case.	Center, person	F2 – Measure follow-up form

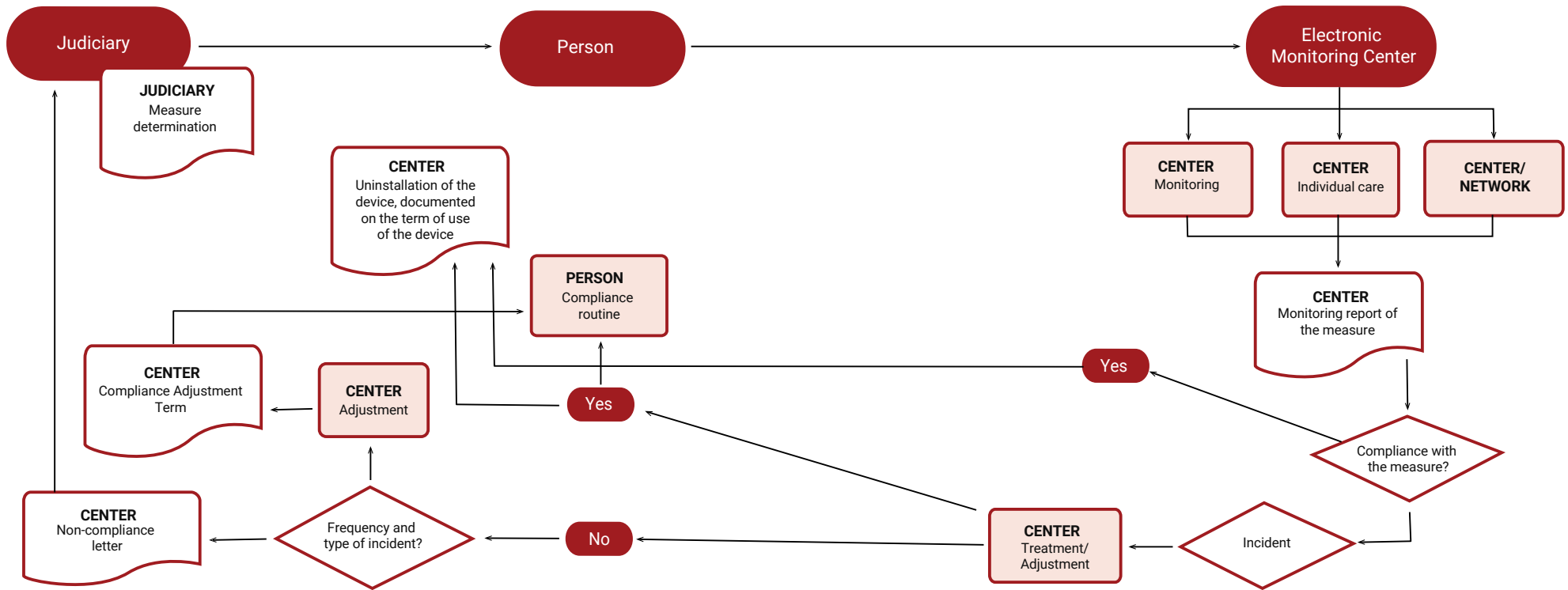
### 13.6. Social inclusion of the person monitored in the network



## Description of procedures

Inclusion	Description of services	Responsible	Document
<b>Coordination with health assistance</b>	<ul style="list-style-type: none"> <li>- Various health treatment services;</li> <li>- Basic health units;</li> <li>- Emergency units and hospitals in different neighborhoods;</li> <li>- Mental Health;</li> <li>- Chemical dependence;</li> <li>- CAPS-AD;</li> <li>- Aas;</li> <li>- Nas;</li> <li>- Other outpatient treatment services;</li> <li>- Therapeutic communities;</li> <li>- Others</li> </ul>	Center and services	F3 – Referral form for social inclusion  F4 – Entity registration form  F5 – Technical Cooperation Agreement
<b>Coordination with social assistance</b>	<ul style="list-style-type: none"> <li>- CRAS;</li> <li>- CREAS;</li> <li>- Policies to homeless people attention;</li> <li>- Shelters;</li> <li>- Hostel;</li> <li>- Assistance and social policies, and programs of the state and municipality;</li> <li>- Others</li> </ul>	Center and services	F3 F4 F5
<b>Coordination with housing policy</b>	<ul style="list-style-type: none"> <li>- State and municipal housing secretariats;</li> <li>- Others</li> </ul>		F3 F4 F5
<b>Legal assistance</b>	<ul style="list-style-type: none"> <li>- Public Defender's Office;</li> <li>- Public Prosecutor's Office;</li> <li>- Law schools.</li> </ul>	Center and services	F3 F4 F5
<b>Education</b>	<ul style="list-style-type: none"> <li>- Elementary school;</li> <li>- Nursery;</li> <li>- Youth and adult education;</li> <li>- Universities, extension projects and services offered.</li> </ul>	Center and services	F3 F4 F5
<b>Work and income</b>	<ul style="list-style-type: none"> <li>- Secretariats of State and municipality of Labor and Income;</li> <li>- University;</li> <li>- The "S System";</li> <li>- Various vocational courses;</li> <li>- Solidarity economy;</li> <li>- Micro-entrepreneurship.</li> </ul>	Center and services	F3 F4 F5

### 13.7. Follow-up of the monitored person



## Description of procedures

Follow-up	Description	Responsible	Document
<b>5.1. Monitoring</b>	Monitoring of measures 24 hours a day through the monitoring system, records in the system and incident handling.	Monitoring Sector.	
<b>5.2. Individual care</b>	Service performed by professionals of the Center's multidisciplinary team, separately, with pre-processing of standard form for follow-up, with guarantee of confidentiality of information. The purpose of the hearing is to gather information for the follow-up report sent to the judge for periodic reassessment of the measure.	Multidisciplinary team of the Center and person assisted.	F1- Welcoming form F2- Measure follow-up form F3- Referral form for social inclusion
<b>5.3. Case study</b>	Meetings between the professionals of the Center's Multidisciplinary team, ensuring an interdisciplinary look. It is recommended that it be weekly or biweekly.	Multidisciplinary team of the Center and other institutions and/or professional guest.	Meeting minutes notebook
<b>5.4. Compliance routine</b>	The monitored person must return to the Center: - if there are technical problems in the monitoring device, for eventual repairs and replacements; - periodic evaluation of the multidisciplinary team to guide the judge in the reassessment of the electronic monitoring measure; - within the final period of the measure, to return the electronic monitoring device; - if there are social demands, and in this case the attendance is voluntary.	Monitoring sector; Technical Operations Sector; Social Follow-up and Incident Analysis Sector (social worker, law graduate and psychologist); Administrative Sector Person in compliance with the electronic monitoring measure.	F1 – Welcoming form F2 – Measure follow-up form F3 – Referral form for social inclusion

<b>5.5. Incident handling</b>	Enforcement incidents are situations capable of interfering with regular compliance with the electronic monitoring measure. The incidents may indicate non-compliance with the conditions and prohibitions provided for in the court decision, malfunctioning detected in the monitoring system related to the individual monitoring device, among others. The most common incidents and appropriate procedures	All sectors of the Center are involved, directly or indirectly, according to the type of incident and treatment indicated, as already detailed in this Handbook.	F1 – Welcoming form F2 – Measure follow-up form
<b>5.6. Adjustment</b>	Individual assistance by the multidisciplinary team of the Center, seek to solve incidents, problems and readjust the compliance with the measure.	Multidisciplinary team of the Center and person served.	F1- Welcoming form F2- Measure follow-up form F3- Referral form for social inclusion F9- Term of commitment to the measure F10- Term of Compliance Adjustment F13 - Letter of non-compliance to the judge
<b>5.7. Completion</b>	Uninstalling the individual monitoring device at the end of the measure; Recording the return of the device and other materials in the term of use of the equipment;	Coordination; Supervision; Technical Operations Sector; Person in compliance with electronic monitoring measure.	F7 – term of use of individual electronic monitoring equipment  F14 – Letter of full compliance to the judge

## 14 WORKING INSTRUMENTS

The following are models of the routine documents for the procedures described in the methodologies and workflow..

Document code	Description
F1	Welcoming form
F2	Measure follow-up form
F3	Social inclusion referral form
F4	Entity registration form
F5	Technical cooperation agreement
F6	Term of treatment and protection of personal data in the electronic monitoring services
F7	Term of use of individual electronic monitoring device
F8	Term of use of portable tracking unit
F9	Term of commitment to the measure
F10	Term of compliance adjustment
F11	Letter of referral for welcoming at the Electronic Monitoring Center
F12	Letter of adjustment in compliance to the judge
F13	Letter of non-compliance to the judge
F14	Letter of full compliance to the judge

## F1. WELCOMING FORM

**Note: in cases of assistance for people monitored without restraining orders, disregard specific fields**

Registration form		
1. User identification		
Name:		
Nickname:		
Date of first attendance:		
Case number:		
Criminal offense that justified the measure:		
Measure applied:		
Court		
Date of commencement of the measure:		Date of end of the measure:
Date of registration:		Registration number:
Compliance conditions (restrictions/permissions):		
Conditions of compliance with restraining orders (restrictions/permissions):		
Addresses for delimitation of the exclusion area(s) according to the court decision		
Addresses for delimitation of the area(s) of inclusion according to court decision		
Full address of current residence:		
Phones:		
Reference person for contact in case of incidents		
1. Name	2. Name	3. Name
Relationship Type:	Relationship Type:	Relationship Type:
Phone:	Phone:	Phone:
Contact updates:		



2. Socio-demographic characterization	
Age:	Date Of Birth:
Gender: ( ) M ( ) F ( ) Other:	Naturalness:
Mother:	
Father:	
Documents available:	
CI:	CPF:
Work portfolio:	Elector title:
Marital Status: 1.( ) single 2.( ) married 3.( ) separate 4.( ) divorced 5.( ) widower 6.( ) stable union	
Color/racial or ethnic origin: 1.( ) White 2.( ) Black 3.( ) Brown 4.( ) Yellow 5.( ) Indigenous 6.( ) Others	
Religion/Belief:	
Currently studying: 1.( ) Yes 2.( ) No	Did any professional course:
Schedules:	1.( ) yes 2.( ) no
Which grade:	Which area:
Level of Education:	Have an interest in doing:
	1.( ) yes 2.( ) no
	Which area:
	Note:
When you stopped studying (year): _____ Last grade/period that concluded: _____	
Reasons that led to stopping studying:	
Presents difficulties of (reading, writing, understanding):	
Have desire/demand to return to study:	
Carries out any paid activity: 1.( ) Yes 2.( ) not which: _____	
Weekly working hours:	
Working days in the week:	
Occupational Situation:	
Do you have demand for work or courses? Which ones?	

### 3. Familiar Setup

Number of children:

Housing situation: 1.( ) own property paid off 2.( ) own property under financing 3.( ) rented

4.( ) assigned 5.( ) others

Accompanied by any program or public service (person or family)?

1.( ) yes 2.( ) no Which: \_\_\_\_\_

Receives any benefits?

1.( ) yes 2.( ) no Which: \_\_\_\_\_

Has children of school age out of school? 1.( ) yes 2.( ) no

Details:

Has family members with vulnerabilities and exposure to social risks?

Comments on the family group:

### 4. Health History

Presents any health problems?

1.( ) yes 2.( ) no Which: \_\_\_\_\_

Is under health treatment?

1.( ) yes 2.( ) no Which: \_\_\_\_\_

Does use any medication?

1.( ) yes 2.( ) no Which: \_\_\_\_\_

Person with disability:

1.( ) yes 2.( ) no Which: \_\_\_\_\_

Have or had already received psychological or psychiatric treatment?

1.( ) yes 2.( ) no Local:

Reason:

Hospitalization (general clinic / mental health / drugs):

Use of psychoactive substances:

Are you in demand for treatment? 1.( ) yes 2.( ) no

Comments:

**5. Descriptive analysis-reported social vulnerabilities/referral demand**

--

**6. Conditions or difficulties for compliance with the electronic monitoring measure**

--

Technician responsible for the service/reception:

Date and signature:

--	--

## F2. MEASURE FOLLOW-UP FORM

<b>Follow-up form in the Electronic Monitoring Center</b> (to be filed with the first attendance form and to assist in the preparation of the follow-up report for the judge)		
DATE	TECHNICIAN	EVOLUTION / DEMANDS / PERCEPTIONS

### F3. REFERRAL FORM FOR SOCIAL INCLUSION

Referral Letter for a Social Inclusion Institution	
_____, _____ of _____ of _____	
Letter n. ____/____	
Mr. Director,	
I hereby inform V. S. as that we are directing _____ _____, CI _____ for the following reception: _____ _____	
Information on the Referred Person	
Name: _____	
Doc. Id/CPF: _____	
Residential Address: _____	
Phone for contact: _____	
I make myself available for further clarification	
_____ Reference Technician Electronic Monitoring Center	
Hon. Mr./Mrs. Director (name of entity) _____ (local)	

## F4. ENTITY REGISTRATION FORM

Entity registration form	
Date of initial registration: _____,	
Entity name:	
CNPJ (company registration number):	
Area of activity:	
1.( ) Justice System 2.( ) Social assistance 3.( ) Health 4.( ) Education 5.( ) Housing/Habitation 6.( ) Legal aid	
5.( ) Specialized care for women in the context of violence 6.( ) Liability service for men 7.( ) Work and income 8.( ) Rights of children and adolescents 9.( ) Protection of the elderly	
10.( ) Others: _____	
Nature:	
1.( ) Federal Public 2.( ) State Public 3.( ) Municipal Public 4.( ) NGOs	
5.( ) Autarchy 6.( ) Particular 7.( ) Association/Council 8.( ) Church	
9.( ) Others: _____	
Nature:	
1.( ) Federal Public 2.( ) State Public 3.( ) Municipal Public 4.( ) NGOs	
5.( ) Autarchy 6.( ) Particular 7.( ) Association/Council 8.( ) Church	
9.( ) Others: _____	
Entity size:	
1.( ) Large (more than 300 users/month) 2.( ) Average (from 50 to 300 users/month) 3.( ) Small (up to 50 users/month)	
Full address:	
Phones:	
Opening hours:	
Contact reference person:	
Types of services provided:	

Profile of the people served:
Types of services available to people in electronic monitoring:
Limit of vacancies:
Transport of access to the entity Bus Lines: Subway: Others: Reference point:
Comments:
Technician responsible for the registration:

Evolution of the relationship with the entity		
DATE	TECHNICIAN	SUBJECT

## F5. TECHNICAL COOPERATION AGREEMENT WITH THE INSTITUTION

### Technical Cooperation Agreement

Technical cooperation between them \_\_\_\_\_ and \_\_\_\_\_  
for the purpose of referrals to social demands.

By this particular instrument, \_\_\_\_\_ (electronic monitoring services), in this act represented by \_\_\_\_\_, CI \_\_\_\_\_, based at and partner entity \_\_\_\_\_, CNPJ \_\_\_\_\_, based at \_\_\_\_\_, in this act represented by \_\_\_\_\_, CI \_\_\_\_\_ by mutual agreement conclude this Technical Cooperation Agreement, which shall be governed by the following clauses:

#### FIRST: The object

The objective of this cooperation consists of technical-institutional cooperation between the parties, with the purpose of including people according to the profile of the entity.

#### SECOND: Center assignments (or electronic monitoring services)

- 1) The Center should make prior contact with the institution, to evaluate if the service can be done, scheduling beforehand;
- 2) Refer the person with a referral term, specifying the demand;
- 3) The Center will be at the disposal of the partner institution to resolve doubts or contribute according to the specifics of each case.

#### THIRD: The tasks of the partner entity

- 1) The partner entity will indicate the name of the person responsible for the orientation and follow-up of the person, filling the registration form and other necessary documents for the inclusion of the referred person;
- 2) The partner entity, in the person of those responsible, will share with the Center relevant information about the reception of the person, assuming the responsibility of maintaining secrecy about them;
- 3) The partner entity will inform the technical team of incidents regarding the inclusion/reception and service of the person.

#### FOURTH: Execution

- 1) The partner entity will make the necessary follow-up with the person referred by the Center, committing to provide favorable conditions for good reception, guiding them when necessary;
- 2) The partner entity and the Center shall issue the acts necessary for the effective implementation of this cooperation.



FIFTH: Free activities

- 1) The reception of the person by the institution is free of charge, not implying any type of remuneration or payment by the institution with the person;
- 2) It is free of charge the relationship of the partner entity with the Center, not implying any type of remuneration or payment of any of the institutions for the development of the actions agreed in this term;
- 3) The partner entity can freely offer benefits to the person, if it sees fit, such as: food aid, snacks, transport, etc. but he has no obligation.

SIXTH: Deadline

This Agreement shall enter into force on the date of its signature for a period of 1 (one) year and may be automatically extended for the same period, in the interests of the parties.

EIGHTH: The forum

To resolve any doubts arising from this Agreement, the Court of \_\_\_\_\_ .

And, because they are in full agreement with the clauses and conditions stipulated above, they sign the present document in two copies of equal content and form, for all legal purposes, before two witnesses.

\_\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_  
Legal representative of the Center

\_\_\_\_\_  
Legal representative of the Entity

\_\_\_\_\_  
First witness

\_\_\_\_\_  
Second witness

## F6. TERM OF PROTECTION AND PROCESSING OF PERSONAL DATA IN THE ELECTRONIC MONITORING OF PEOPLE SERVICES

### Term of protection and processing of personal data in the electronic monitoring of people services

By this particular instrument, called "term of protection and processing of personal data in the electronic monitoring services of people", \_\_\_\_\_ (Electronic people monitoring center) of \_\_\_\_\_ (municipality and UF), with Registered office at \_\_\_\_\_, responsible for the execution of the electronic monitoring services and for the monitoring of the monitored people and / or women in situations of domestic and family violence who use the portable tracking unit during the monitoring measure applied to the perpetrator of violence cumulatively with the restraining orders, in this act represented by \_\_\_\_\_, CI \_\_\_\_\_, responsible for \_\_\_\_\_ the electronic monitoring services of people of the aforementioned Electronic Monitoring Center, considering:

i) Decree No. 7,627/2011 that regulates the electronic monitoring of people, presents grounds to be followed for the enforcement of Law No. 12,258/2010, as well as Law No. 12,403/2011 that amended the Code of Criminal Procedure, admitting electronic monitoring as a pre-trial non-custodial measure (article 319, paragraph IX), mainly the following articles:

Art. 3 the monitored person must receive a document stating, clearly and expressly, his rights and duties to which he will be subject, the period of surveillance and the procedures to be observed during the monitoring.

Art. 5 the electronic monitoring device must be used in order to respect the physical, moral and social integrity of the monitored person.

Art. 6 the monitoring system shall be structured in such a way as to preserve the confidentiality of the data and information of the monitored person.

Art. 7 access to the data and information of the monitored person will be restricted to the servers expressly authorized people who need to know them by virtue of their duties (Decree No. 7,627/2011).

ii) Resolution No. 213, of December 15, 2015, of the National Council of Justice, which regulates the presentation of all people arrested to the judicial authority in 24 hours, indicating procedures for the application and monitoring of pre-trial non-custodial measures to custodians, including monitoring to ensure the legal grounds and purposes of the measure, convening the Electronic Monitoring Centers, among other things:

III. Prioritize the adoption of adequate standards of security, secrecy, protection and use of the data of the people under monitoring, respected the processing of the data in accordance with the purpose of the activities. In this sense, it should be considered that the data collected during the enforcement of electronic monitoring measures have a specific purpose, related to the monitoring of the conditions established judicially. The information of the monitored people may not be shared with third parties unrelated to the criminal investigation or investigation process that justified the application of the measure. Access to data, including by public security institutions, may only be requested in the context of a specific police investigation in which the monitored person, duly identified, already appears as a suspect, being submitted to the judicial authority, which will analyze the specific case and grant, or not, the request (National Council of Justice, Resolution No. 213/2015, Protocol I),

iii) The United Nations Development Programme (UNDP Brazil) and the implementation of the electronic monitoring policy in Brazil – published in 2015 by the National Penitentiary Department of the Ministry of Justice;

iv) The United Nations Development Programme (UNDP Brazil) and the guidelines for the processing and protection of data in the electronic monitoring of people – published in 2016 by the National Penitentiary Department of the Ministry of Justice;

**it undertakes to protect and process all personal data from monitoring according to the guidelines for processing and protection of data in electronic monitoring of people – published in 2016 by the National Penitentiary Department of the Ministry of Justice.**

It is agreed that:

All the data generated and processed by the electronic monitoring services, by itself, are characterized as sensitive personal data, since, intrinsically, they present enormous discriminatory and harmful potential to their owners, individually and to a collective.

The database and information of the Electronic Monitoring Centers, computerized or not, are compiled and fed from the personal data of the monitored and the woman in a situation of domestic and family violence, that is, data related to the identified or identifiable natural person, including from identification numbers, location data or electronic identifiers.

The inadequate processing and protection of sensitive personal data is harmful not only to the person concerned, but also to women in situations of domestic and family violence, as well as to family, friends, neighbors, and acquaintances of these who have their personal data linked to the electronic monitoring system, partially or fully, directly or indirectly, resulting in administrative, civil and criminal liability because it can cause, among other things, moral:

Art. 186. The one who, by voluntary action or omission, negligence or recklessness, violates any right and cause harm to others, even if exclusively moral, commits an unlawful act (Brazil's Civil Code, Federal Law No. 10,406/2006).

Sensitive personal data from electronic monitoring services must not be used to harm, promote or intensify the criminalization of the monitored people, nor adversely affect their routine, socialization and access to fundamental rights such as work, health, education, among others. The same applies to women in situations of domestic violence or other people who have their personal data collected at any stage of the monitoring services.

As privacy and intimacy are fundamental rights that can be easily violated in the case of electronically monitored people, it is emphasized that geolocation personal data deserve special protection and processing because they have a high potential for harm, allowing excessive exposure of intimacy not stipulated in the judicial measure, which consists in abuse of power.

The protection of personal data is essential for the quality in the management of public policies and services and greater applicability of constitutional precepts that present guarantees as to the inviolability of privacy, private life, honor and image of people.

And, because the conditions and obligations stipulated above are fair and agreed, they sign this term with 2 (two) copies of equal content and form, for all legal purposes, before two witnesses.

\_\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_

Professional of the Center responsible for the service/welcoming

\_\_\_\_\_

Monitored person or woman in situation of domestic violence using the PTU

\_\_\_\_\_

Witness

## F7. TERM OF USE OF THE PERSONAL ELECTRONIC MONITORING DEVICE

### Term of use of the personal electronic monitoring device

I, \_\_\_\_\_, CI \_\_\_\_\_, declare that I am in compliance with electronic monitoring and \_\_\_\_\_ (restraining order, if any) in the period of \_\_\_\_/\_\_\_\_/\_\_\_\_, I was properly informed about the conditions foreseen judicially for the fulfillment of the measure and the care that I should have with the device intended for electronic monitoring, and I received from the Electronic Monitoring Center \_\_\_\_\_, of the state of \_\_\_\_\_, the materials / equipment listed below, for exclusive use as determined in court, I undertake to keep them in good working order and conservation to comply with the monitoring measure:

- 1) \_\_\_\_\_ (individual electronic monitoring device with identification number)
- 2) \_\_\_\_\_ (charger)
- 3) \_\_\_\_\_ (mobile battery)
- 4) \_\_\_\_\_ (other materials and equipment)

I am aware that I must keep the individual electronic monitoring device functioning in perfect conditions for compliance with the measure in accordance with what has been established in court, it is up to me:

- The proper use of the individual electronic monitoring device, in accordance with the guidelines received by the Electronic Monitoring Center.
  - Do not remove, under any pretext, individual electronic monitoring equipment.
  - Do not damage (destroy, burn, open, force or disable), misplace or lose any of the equipment provided for compliance with the measure.
  - Keep the individual electronic monitoring device always charged, avoiding partial discharge by low battery levels or full discharge.
  - Follow the guidelines of the Electronic Monitoring Center sent through messages, calls to the telephone(s) of informed contact(s), and face-to-face contact.
  - Return the individual electronic monitoring device and other materials/equipment to the Electronic Monitoring Center at the end of the measure term, in the operating and conserving conditions when received, presenting the present term for recording the return.
- Contact the Electronic Monitoring Center by the free phone number if problems and malfunctions are observed in the device.
- Keep up to date the personal data informed above to the Electronic Monitoring Center at the time of receipt of the device.

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Person in compliance with the electronic monitoring measure

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Center employee

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Witness (in case of inability to sign this term)

## F8. TERM OF USE OF THE PORTABLE TRACKING UNIT

### Term of use of individual electronic monitoring equipment

I, \_\_\_\_\_, CI \_\_\_\_\_, I declare to be under the protection of restraining orders, in the period of \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_. I was properly guided in relation to the monitoring services with the use of the portable tracking unit, opting optionally for its use, and the care I should have with the equipment intended to detect the approach between me and \_\_\_\_\_, in compliance with restraining orders cumulatively applied with electronic monitoring of people, and received from the Electronic Monitoring Center \_\_\_\_\_, of the state of \_\_\_\_\_, the materials/equipment listed below, for exclusive use as determined in court, I undertake to keep them in good working order and conservation to ensure restraining orders:

- 1) \_\_\_\_\_ (portable tracking unit with identification number)
- 2) \_\_\_\_\_ (charger)
- 3) \_\_\_\_\_ (other materials and equipment)

I am aware that I must keep the portable tracking unit working perfectly to ensure the maintenance of relational distance indicated in the restraining orders, according to what was established in court, it is up to me:

- The proper use of the portable tracking unit, in accordance with the guidelines received by the Electronic Monitoring Center.
  - Do not stop using the portable tracking unit under any pretext.
  - Do not damage (destroy, burn, open, force or disable), misplace or lose any of the device provided.
  - Keep the portable tracking unit always charged, avoiding partial discharge by low battery levels or full discharge.
  - Follow the guidelines of the Electronic Monitoring Center sent through messages, calls to the telephone(s) of informed contact(s) and/or face-to-face contact.
  - Return the portable tracking unit and other materials/equipment to the Monitoring Center Electronics at the end of the measurement or in case of interruption in use, operating conditions and conservation when receiving, presenting the present term for registration of the return.
- Contact the Electronic Monitoring Center by the free phone number if problems and malfunctions are observed in the device.
- Keep up to date the personal data informed to the Electronic Monitoring Center at the time of receipt of the device.

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Women in situations of domestic and family violence

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Center employee

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Witness (in case of inability to sign this term)



## F9. TERM OF COMMITMENT TO THE MEASURE

### Term of commitment to the measure

(to be attached to the case and to the report accompanying the measure sent to the judge)

I, \_\_\_\_\_, CI \_\_\_\_\_, I am in compliance with the pre-trial measure(s) \_\_\_\_\_ and I undertake to comply with it (s), in accordance with what was established in court. I declare that in the period of \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_ (last 30 days) I duly complied with the measure. It is up to me, for the time determined in court:

- 1) \_\_\_\_\_ (fill in with the electronic monitoring measure);
- 2) \_\_\_\_\_ (fill in with other measures and restraining orders, if any).

I am aware that I may be held judicially liable if I fail with the truth in this statement or fail to comply with the judicial determination.

Comments I want to make in this term, as to the difficulties or other considerations on the compliance, to be added to my case:

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Place and date:

Signature of the person

## F10. TERM OF COMPLIANCE ADJUSTMENT

### Term of compliance adjustment

(to be attached filed next to the person's folder if first act of fault or join the process if necessary)

I, \_\_\_\_\_, CI \_\_\_\_\_, I am in compliance with the pre-trial measure (s) \_\_\_\_\_ and I undertake to comply with it (s), in accordance with what was established in court. I affirm the commitment to resume compliance in accordance with what was established in the Electronic Monitoring Center, immediately communicating any incident or problem. The measure(s) I must comply with:

- 1) \_\_\_\_\_ (fill in with the electronic monitoring measure);
- 2) \_\_\_\_\_ (fill in with other measures and restraining orders, if any).

I am aware that I may be held judicially liable if I fail with the truth in this statement or fail to comply with the measure(s) expressed herein.

Comments I want to make in this term, as to the difficulties or other considerations on compliance, to be added to my case:

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Place and date:

Signature of the person

**FII. LETTER OF REFERRAL FOR WELCOMING  
AT THE ELECTRONIC MONITORING CENTER**

**Letter of Referral for Welcoming at the  
Electronic Monitoring Center**

\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ of \_\_\_\_\_

Letter n. \_\_\_\_/\_\_\_\_

I hereby inform you that we are referring \_\_\_\_\_  
\_\_\_\_\_, CI \_\_\_\_\_ for reception by the multidisciplinary team, at \_\_\_\_\_  
hours and minutes of the day \_\_\_\_/\_\_\_\_/\_\_\_\_, in the Electronic Monitoring Center, located at the following  
address \_\_\_\_\_.

**Information on the Referred Person**

Name: \_\_\_\_\_

Identity number: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Contact phone(s): \_\_\_\_\_

I make myself available for further clarification.

\_\_\_\_\_  
Electronic Monitoring Center Station

**F12. LETTER OF ADJUSTMENT IN COMPLIANCE WITH THE ELECTRONIC MONITORING MEASURE (TO THE JUDGE)**

**Letter of adjustment in compliance with the electronic monitoring measure (to the judge)**

**Date:** \_\_\_\_\_, \_\_\_\_\_

To  
The Court \_\_\_\_\_

I hereby inform you that \_\_\_\_\_  
CI \_\_\_\_\_ failed to comply with the following conditions imposed by the electronic monitoring measure on the date \_\_\_\_/\_\_\_\_/\_\_\_\_.

However, we made contact and he/she returned to the Center for individual attendance, committing to resume compliance fully. In the attendance, the reasons reported for the incident were: \_\_\_\_\_

We send, attached, a copy of the compliance adjustment term.

I make myself available for further clarification.

\_\_\_\_\_  
Reference technician in the Center:

Hon. Mr./Mrs.  
Judge of the Court

**F13. LETTER OF NON-COMPLIANCE WITH THE ELECTRONIC MONITORING MEASURE (TO THE JUDGE)**

**Letter of non-compliance with the electronic monitoring measure**

**Date:** \_\_\_\_\_, \_\_\_\_\_

To  
The Court \_\_\_\_\_

I hereby inform you that \_\_\_\_\_ CI failed to comply with the following conditions imposed by the electronic monitoring measure \_\_\_\_\_ on the date \_\_\_\_/\_\_\_\_/\_\_\_\_.

We could not resolve the incident \_\_\_\_\_ identified by the Center at \_\_\_\_h\_\_\_\_min of the day \_\_\_\_/\_\_\_\_/\_\_\_\_, resulting in non-compliance with the measure.

We request a justification hearing so that the measure can be rescheduled as soon as possible and followed by the Electronic Monitoring Center.

A copy of the compliance adjustment term is attached in case of recurring incidents.

I make myself available for further clarification.

\_\_\_\_\_  
Center Coordination/Supervision

Hon. Mr./Mrs.  
Judge of the Court  
\_\_\_\_\_

## F14. LETTER OF FULL COMPLIANCE WITH THE MEASURE (TO THE JUDGE)

Letter of full measure compliance	
Date: _____, _____	
To	
The Court	_____
I hereby inform you that _____ CI _____ has fully complied with the electronic monitoring measure and _____ (in case of restraining orders) determined in court, between the periods of ____/____/____ to ____/____/____.	
I make myself available for further clarification.	
_____	
Center Coordination/Supervision	
Hon. Mr./Mrs.	
Judge of the Court	
_____	

The educational processes are presented through course plans, which include the objectives, justifications and skills to be developed in each course prepared, as well as the learning plans, which

the present learning modules and curricular components for the development of skills. Subsequently, the teaching plans and lesson plans for each learning module may be presented, in order to preserve unity in the training processes that may be promoted by the National Penitentiary Department with the Electronic Monitoring Centers of people and other actors that participate in some stage of the services, directly or indirectly. In this sense, at some point, at least the social protection networks, the justice system and the State and Municipal Executive may be integrated in the training processes.

The plans aim to create and establish systematicity, normativity and guidelines for electronic monitoring services. The proposed courses are organized in such a way as to allow a systemic training, enabling the construction of specific training processes according to the skills and responsibilities of the various professionals working in the Electronic Monitoring Centers. The courses make up a training process that totals 284 hours, distributed in different learning modules.

It should be noted that there is no obligation for each participant to complete the total training of 284 hours. The basic skills to be developed from the different sectors existing in the Electronic Monitoring Centers, as pointed out by the methodology presented in the management model, underline the need for a common training repertoire. On the other hand, specificities of follow-up, thus as technical and technological dimensions of the monitoring system and its equipment score essential specific training for certain professionals according to their duties, responsibilities and competencies. That said, we highlight the two scopes of training:

**Scope I – the conceptual and operational parameters that characterize the management model for electronic monitoring of people, considering the following modules:**

- 1 – History of the prison system, alternatives to imprisonment and electronic monitoring of people;
- 2 – Principles and guidelines for electronic monitoring services;
- 3 – Principles, guidelines, and rules for data processing and protection in electronic monitoring of people;
- 4 – Management model – Electronic Monitoring Center, actors, skills and responsibilities, routines and service, network and social participation workflows..

The four modules of scope I constitute essential and indicated training for all public employees or hired employees of the Electronic Monitoring Center, regardless of the monitoring sector.

**Scope II – Training for follow-up the electronic monitoring measure, considering the following modules:**

- 5 – Transversal methodologies of electronic monitoring policy
  - 5.1 – Diversity;
  - 5.2 – Gender perspectives.

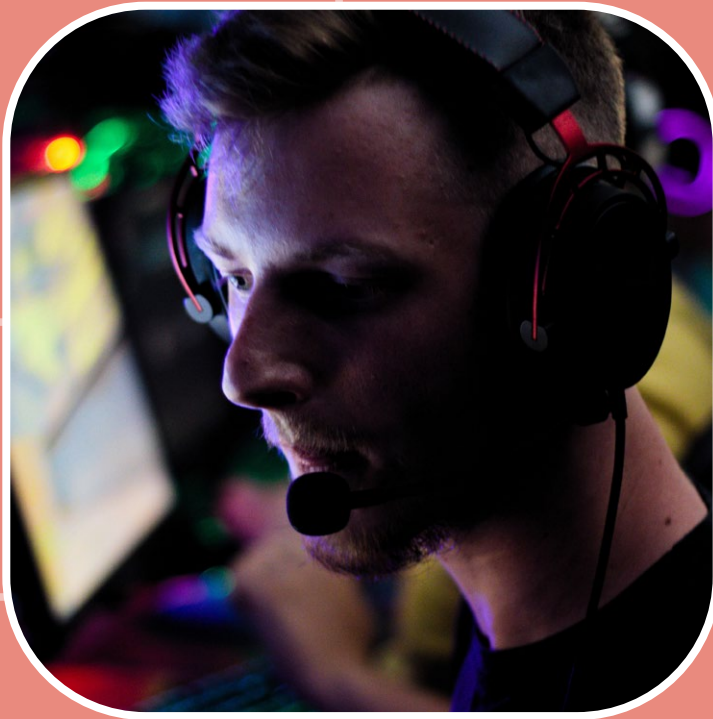
The two modules that make up the transversal methodologies of the electronic monitoring policy constitute complementary training indicated for all public servers and employees hired from the Electronic Monitoring Center, regardless of the monitoring sector.

- 6 – Monitoring of electronically monitored people
  - 6.1 – Processes of inclusion and individualization of the measure through sociograms and network theories;
  - 6.2 – Technical-operational aspects of electronic monitoring services (to be offered by the company).

Module 6.1 is especially recommended for professionals of the Social Follow-up and Incident Analysis Sector (social worker, law graduate, psychologist), according to their competencies indicated in the management model.

In scope II, the module “6.2) Technical-operational aspects of Electronic Monitoring Services” consists of specific and essential training for electronic monitoring services, due to its inherent technological nature, as already noted. It is understood that the professionals of technical operations and monitoring sectors should receive specific training provided by companies to deal appropriately with the information systems and equipment used by monitored people and women in situations of domestic and family violence.





**PART V**  
**EDUCATIONAL  
PROCESSES FOR  
ELECTRONIC  
MONITORING**

Professionals in these sectors, according to their specific skills and objectives<sup>63</sup> expressed in the management model, must necessarily receive the general training proposed here, in addition to the technical and operational training aimed at the monitoring system and equipment adopted. The companies hired by the electronic monitoring centers must ensure technical training observing the management model for electronic monitoring of people. It is recommended that the National Penitentiary Department supervise and, if necessary, direct this specific training process.

Each module is presented as a mini course and can be offered separately. Most modules are interrelated due to the guiding assumptions of monitoring services. These assumptions are, in turn, aligned with the products previously provided in this consultancy. Concepts, principles and guidelines of prison management models and alternatives to imprisonment are also considered in the following proposal.

The training process should account for training all professionals who work in the Electronic Monitoring Centers, regardless of functions, assignments and hierarchical issues. They must necessarily recognize the monitored person as a subject of rights who, being at liberty – even if supervised – must have not only obligations but rights and guarantees preserved. All Centers' professionals must understand that they are responsible for stimulating and supporting processes to eradicate gender-based violence, spreading democratic prevention practices and conflict management. All employees must daily act so that the application of the measure is not reversed in punishments, social discrimination and restrictions on fundamental rights related to health, education, legal assistance, work, income, and professional qualification, family and community coexistence. Everyone

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63 Monitoring sector: to identify possible incidents and non-compliance provided for in judicial decisions, carrying out the procedures and handling of incidents, on a case-by-case basis, as indicated in the management model; treat incidents according to the incident protocol provided for in this model in a collaborative manner with the Social Follow-up and Incident Analysis Sector and Technical Operations; urgently treat serious incidents involving violation of exclusion area in cases of restraining orders with the help of the Social Monitoring and Incident Analysis Sector; generate underreporting in the system so the coordination or supervision may to call the police in case of serious incidents with violation of the exclusion area of protective measures; following the "Guidelines for Processing and Protection of Data in Electronic Monitoring of People" (Brasil, 2016b) in all work routines.

Technical Operations Sector: install the individual monitoring device, checking identification documents with photo and data of the court decision to avoid possible installation in individuals not submitted to the measure; request the help of the Social Follow-up and Incident Analysis Sector in cases where the person to be monitored or the woman in a situation of violence do not possess personal photo identification documents at the time of installation of the equipment or delivery of the PTU; to carry out the procedures in a collaborative manner with the field of Social care and the Analysis of the Incident, particularly at the first-time installation of the equipment, and the delivery of the PTU for women in cases of domestic violence; to prioritize the adoption of safety standards for the installation, ensure that the device is set to the ankle of a person to cause physical harm to or allow any removal, after the installation of the equipment for the individual to be monitored, directly asking the person to the level of comfort that comes with the use of the equipment, and assessing the possible adjustments; inspect the equipment for monitoring, and portable tracking units data (when available on the services), performing maintenance and replacement procedures; the full operation of the monitoring equipment are repaired or replaced promptly with the person, or the woman who uses the PTU and, where appropriate, in collaboration with other sectors; check to see if the equipment has caused some of the damage to the body of the person, passing on the information to the Sector of Social care and the Analysis of the Incidents, for the development of the appraisal journal, to carry out consultations on the days and times that are different from the people being monitored, and the women in domestic violence situations, who have opted for the use of the PTU, where available, in the service of the monitor; following the "Guidelines for the Processing and Protection of the Data in the Electronic Monitoring of People" (Brasil, 2016b), in the routines of work, to participate in the regular alignment meetings with actors of different sectors.

should be engaged in the task of disseminating knowledge, sharing meanings with the various social segments to minimize processes of segregation and social isolation of the monitored person, factors that hinder compliance.

The training stages can be divided into periods, according to the availability of the trainers and the audience for which the training is intended, always considering a module as the smallest training unit.

The **Course Plans** and **Learning Plans** also aim to:

- Enable the adequacy of the various training processes for professionals involved in the application and enforcement of electronic monitoring measures in Brazil, considering the justice system, the Executive Branch and civil society, promote the incorporation of repertoires aimed at decarceration;
- Enable the elaboration of curricular framework to be incorporated by institutions such as: the National School of Criminal Services of the National Penitentiary Department, state schools of criminal services, schools of magistracy, colleges, universities and other educational institutions that deal directly or indirectly with the prison issue, courses offered by prosecutors and defenders;
- Encourage training processes in all regions, qualifying the work of the professionals of the support and protection networks, as well as the professionals who integrate the psychosocial teams acting in the Criminal Enforcement Courts, Penalty and Alternative Measures Courts, Special Criminal Courts, and detention control hearings;
- Promote the awareness of all who work in the criminal system, in all Federative Units and regions, seeking the formation and socialization of schemes and repertoires aimed at coping with mass incarceration and the promotion of equal human dignity in Brazil;
- Mobilize improvements in working conditions through protocols aimed at routine procedures and workflows.

The table below indicates the recommended minimum hourly load, according to scope, course and module:

## 15.1. COURSES OFFERED AND WORKLOAD

SCOPE	COURSE	MODULE	COURSE LOAD
Conceptual and operational parameters of the management model for electronic monitoring of people	Management model 144 hours	History of the prison system, alternatives to imprisonment and electronic monitoring of people	14 hours
		Principles and guidelines for electronic monitoring of people services	20 hours
		Principles, guidelines, and rules for data processing and protection in electronic monitoring of people	20 hours
		Management model - Electronic Monitoring Center - Actors, skills and responsibilities, routines, and service workflows - Networks and social participation	90 hours
Training for follow-up of electronic monitoring measure	Transversal methodologies of electronic monitoring policy  60 hours	Diversities	50 hours
		Gender Perspectives	30 hours
	Follow-up of electronically monitored people  60 hours	Processes of inclusion and individualization of the measure through sociograms and network theories	60 hours
<b>TOTAL</b>			<b>284 h</b>

## **SCOPE** **I**

## **CONCEPTUAL PARAMETERS OF THE MANAGEMENT MODEL**

### **Initial and Continuing Education Course Plan**

#### **MODALITY**

#### **GENERAL TRAINING**

#### **MANAGEMENT MODEL FOR ELECTRONIC MONITORING OF PEOPLE**

COURSE LOAD: 144 hours

#### **JUSTIFICATION**

The National Penitentiary Department has been developing initiatives in order to open up criminal policy in its various dimensions. Such initiatives aim to contain the mass incarceration that, notably, still sets the tone of criminal policy in Brazil.

Continuing this process, in mid-2015, the General Coordination of Alternatives to Imprisonment (CGAP) of the National Penitentiary Department (DEPEN), in partnership with the United Nations Development Programme (UNDP Brazil) carried out the hiring of specialized consultancy for the development of the Management Model for Electronic Monitoring of People. The model aggregates the history of the policy; principles and guidelines; description of the actors involved; guidelines regarding the use of technology; guidelines and rules regarding the processing and protection of data; training through educational processes for the different subjects who work in the field of monitoring; necessary resources (including the profile of servers and other employees), indicators and handbook of procedures.

The consultancy is essential to guide, improve and qualify the services in the Federative Units, especially considering the absence of standards and protocols in this field. The consultancy has the support of the Working Group (WG) for electronic monitoring established by DEPEN in February 2015.

The WG brings together experts, managers and technicians in the field of electronic monitoring from various regions of Brazil and aims to consolidate a space for continuous dialogue on the products developed in the consultancy. This contribution is amplified through the incorporation of researchers and other professionals, which broadens the qualitative and plural aspects of the management model.

The management model that has been developed since the beginning of the consultancy, in tune with the accumulations of the Working Group, are systematized in this educational plan. This training process considers the importance of contextualizing electronic monitoring from historical surveys and critical analysis; it involves the knowledge of the institutions that integrate the electronic monitoring services, their responsibilities and the structuring of the Electronic Monitoring of Center; it presents the training specificities for the follow-up of the people in compliance with electronic monitoring, indicating particularities of the measure in cases of pre-trial non-custodial measures and restraining orders; the integrated action between Federative Units, the justice system and society itself for decarceration, as well as considers the training directed to the field of diversities and also gender perspectives.

The course presented here is intended for the implementation, improvement, adequacy, leveling and systematicity of the management model that has been developed throughout the consultancy and together with the General Coordination of Alternatives to Imprisonment. This process necessarily involves the training of the servers of the different Federative Units and other hired employees who work at some stage of the monitoring services in all regions of Brazil.

## OBJECTIVES

This course of initial education and continuous training allows the participant to interact with the management model developed for this consultancy and encouraged by the General Coordination of Alternatives to Imprisonment of the National Penitentiary Department, with the objective of building the technical and operational requirements for the incarceration reduction, the application of electronic monitoring in a subsidiary way to other less burdensome measures provided for by law, the use of monitoring as a feature to indicate the number of pre-trial detainees, the application of the measure on the phase of criminal investigation; the contention of the punitive authority and criminal control, the appreciation of freedom and equal human dignity. Therefore, it is necessary to propose training for the methodology designed here, enabling the establishment of protocols capable of improving the working conditions of professionals and those of people electronically monitored. With this, it is possible to promote access to fundamental rights of people who have their trajectories crossed by the criminal system, making states and the Federal Government responsible for the defense and promotion of human rights, ensuring respect for dignity and the guarantee of freedom through actions and strategies to reduce incarceration rates.

## TARGET AUDIENCE

Public servers and hired employees of the Electronic Monitoring Centers; justice system officials working in the field of electronic monitoring; judges, prosecutors, and public defenders; managers of intersectoral public policies; representatives of organizations and civil society movements that interact with the electronic monitoring policy, other professionals, and interested people.

## SKILLS

Assimilate and apply, at the managerial and operational levels of the electronic monitoring policy, the concepts, principles and guidelines of the management model for electronic monitoring of the activities of the General Coordination of Alternatives to Imprisonment ensuring adequate monitoring of the measure, as provided by law, promoting access to public and social policies for the people monitored, according to the demands presented in each case, as well as other services regulated by the principle of freedom and equal human dignity.

The development of these skills will take place through the following professional actions: (learning objectives):

1. Identify, differentiate, and coordinate the various spheres and subjects that organize and compose the Electronic Monitoring Center, recognizing the multidimensional and inter-sectoral nature of the Centers;
2. Gain critical knowledge about electronic monitoring services, identifying the challenges to ensure the use of monitoring as an effective replacement for incarceration, promoting incarceration reduction;
3. Identify, differentiate and coordinate the appropriate methodologies for each case brought to the criminal system with a view to ensuring: the systematic reduction of incarceration and the reduction in the number of pre-trial detainees in the country;
4. Identify the actors and responsibilities for the proper development of the electronic monitoring policy, as well as the workflows, routines and procedures of the Management Model for Electronic Monitoring Services, through methodologies that privilege the monitored person as a subject of the policy and access to fundamental rights;
5. Operate with the various instances and institutions that make up the electronic monitoring policy in a dynamic and integrated way.

## LEARNING STRATEGIES

This course can be held in any space suitable for training processes, mainly focusing on ease of access, with a wide range of public transport for all people invited to join the training. It is also important that the space has the necessary tools for the development of the dynamics required in each of the modules.

The integral training of 284 hours can be divided into courses, which can still be subdivided by modules, in order to enable adequacy of the schedules to promote greater capillarity, opportunity and enjoyment by the participants.

The course can count on the participation of one or more facilitators. In addition, we recommend the involvement of experts in specific topics aimed at the presentation of experiences, dynamics, theories and own contents.

The learning strategies involve experiences in courses, group dynamics, collective construction exercises, dialogued exhibitions, text reading and movie exhibitions.

## FACILITIES, EQUIPMENT AND TEACHING MATERIALS

- Room with capacity for the invited audience;
- Audiovisual equipment (computer, projector, speakers);
- Other materials previously requested by the training facilitator.

## TEACHER PROFILE

- Professional with higher education;
  - Courses and experience in electronic monitoring of people;
  - Experience in mediation of learning processes with adult groups;
    - Mastery of all content presented in this educational or ongoing plan or Specific module to be delivered.

This professional must necessarily receive prior training about the Management Model for Electronic Monitoring of People of CGAP/DEPEN, should be aligned, professional and conceptually, with the principles and guidelines proposed in this model.

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## Learning Plan

### MODALITY

### GENERAL TRAINING

### MANAGEMENT MODEL FOR ELECTRONIC MONITORING OF PEOPLE

COURSE LOAD: 144 hours

#### SKILL

Assimilate and apply, at the managerial and operational levels of the electronic monitoring policy, the concepts, principles and guidelines of the Management Model for Electronic Monitoring of People of the General Coordination of Alternatives to Imprisonment (CGAP/DEPEN), ensuring adequate follow-up to the measure, as provided by law, promoting access to public and social policies for the people monitored, according to the demands presented in each case, as well as services regulated by the principle of freedom and equal human dignity.

#### MODULE 1

#### History of criminal policy, alternatives to imprisonment and electronic monitoring of people

**Learning objective:** To learn about the criminal system and its aspects, including electronic monitoring in a contextualized way from historical surveys, international analysis, and critical analyses, identifying the challenges to ensure the use of electronic monitoring as a subsidiary mechanism for the effective replacement of the prison, promoting decarceration and reduction in the number of pre-trial detainees.

Total time: 14 hours

LEARNING CONTENT	CURRICULUM COMPONENTS	MINIMUM REFERENCE MATERIAL	COURSE LOAD	TEACHER
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Sentence, penalties, and imprisonment	<ul style="list-style-type: none"> <li>- History of sentences and prisons</li> <li>- Sociology of punishment and dynamics of incarceration in Brazil today</li> </ul>	<ul style="list-style-type: none"> <li>- Maia, 2009</li> <li>- Depen, Melo</li> </ul>	2 hours	
Deprivation of liberty in Brazil: institutional and legal model	<ul style="list-style-type: none"> <li>- Role, assignments and action of the National Penitentiary Department</li> </ul>	<ul style="list-style-type: none"> <li>- Brazil, 1984</li> </ul>	1 hour	
The international scene and Mass Incarceration in Brazil	<ul style="list-style-type: none"> <li>- The Minimum Rules for the treatment of prisoners and the Mandela Rules</li> <li>- Incarceration in the world, the position of Brazil and international experiences of incarceration reduction</li> </ul>	<ul style="list-style-type: none"> <li>- ONU, 1955</li> <li>- ONU, 2015</li> <li>- Foucault, 1987</li> <li>- Depen, Melo</li> </ul>	2 hours	
The criminal system, the need for decarceration and the history of alternatives to imprisonment in Brazil	<ul style="list-style-type: none"> <li>- The criminal system in Brazil</li> <li>- Mass incarceration in Brazil</li> <li>- Alternatives to imprisonment policy history</li> </ul>	<ul style="list-style-type: none"> <li>- Legal history</li> <li>- Depen, Melo</li> <li>- Zaffaroni, 2004</li> <li>- Depen, Leite</li> </ul>	3 hours	
Electronic monitoring - characteristics, types, history, and context	<ul style="list-style-type: none"> <li>- Emergence of electronic monitoring</li> <li>- International experiences</li> </ul>	<ul style="list-style-type: none"> <li>- Legal history</li> <li>- Nellis, Beyens &amp; Kaminski, 2012</li> <li>- Depen, Pimenta</li> <li>- Bonta, Capretta &amp; Rooney, 2000</li> <li>- Levy, 2003</li> </ul>	3 hours	
Specificities of the national policy on electronic monitoring and addressing mass incarceration	<ul style="list-style-type: none"> <li>- Specifics of the national electronic monitoring policy</li> <li>- Detention control hearings and electronic monitoring</li> </ul>	<ul style="list-style-type: none"> <li>- Depen, Pimenta</li> <li>- CNJ, 2015</li> <li>- Depen, 2016b</li> </ul>	3 hours	

## MODULE 2: Principles and guidelines for electronic monitoring services

**Learning objective:** Know the principles and guidelines that govern the monitoring services according to the national electronic monitoring policy, in order to ensure: the systematic reduction of incarceration and pre-trial detention, offering services focused on the monitored person as the main subject of the monitoring policy considering access to services and public policies already implemented.

Total time: 20 hours

LEARNING CONTENT	CURRICULUM COMPONENTS	MINIMUM REFERENCE MATERIAL	COURSE LOAD	TEACHER
The importance of establishing principles and protecting them in the implementation of public policies	<ul style="list-style-type: none"> <li>- Protocols and public policies</li> <li>- Notions of equality and difference</li> <li>- Coordination between knowledge and practices</li> </ul>	<ul style="list-style-type: none"> <li>- Depen, 2016A</li> <li>- Kant de Lima, 2013</li> <li>- Carvalho, 1990</li> <li>- Cardoso de Oliveira, 2002</li> </ul>	2 hours	
Legality, subsidiarity and minimum penal intervention, presumption of innocence, dignity, necessity, social adequacy, legal adequacy, provisional nature, individualization of punishment, normality, data protection, lesser damage.	<ul style="list-style-type: none"> <li>- Concepts</li> <li>- Principles</li> <li>- Guidelines</li> <li>- Coordination between knowledge and practices</li> </ul>	- Depen, Pimenta	14 hours	
Integrated action between Federative Units, justice system, and community for decarceration	<ul style="list-style-type: none"> <li>- Concepts</li> <li>- Principles</li> <li>- Guidelines</li> <li>- Coordination (knowledge and practices) and</li> </ul>	- Depen, Pimenta	4 hours	

## MODULE 3: Principles, guidelines, and rules for data processing and protection in electronic monitoring of people

**Learning objective:** Understand the principles, guidelines and rules on the processing and protection of data relating to the electronic monitoring of people, especially the concept of sensitive personal data that present, in an inherent way, potential risks for discriminatory or harmful use for the monitored people and other individuals, individually or collectively.

Understand the function of the protection protocols for the members of the electronic monitoring network – not only the monitored people, but also companies, public institutions, corporations, employees and servers that work directly or indirectly at some stage of the electronic monitoring services.

Ensure that monitoring services are, at all times and at any stage, guided by the principles, guidelines, and rules for the processing and protection of data in the electronic monitoring of people.

Total time: 20 hours

LEARNING CONTENT	CURRICULUM COMPONENTS	MINIMUM REFERENCE MATERIAL	COURSE LOAD	TEACHER
Public policies in the "Network Society"	<ul style="list-style-type: none"> <li>- Information age, "Network Society"</li> <li>- Challenges and prospects – in legal and practical terms</li> </ul>	<ul style="list-style-type: none"> <li>- Depen, 2016A</li> <li>- Castells, 2005</li> <li>- Legal and regulatory frameworks</li> </ul>	2 hours	
Processing and protection of personal data	<ul style="list-style-type: none"> <li>- Personal information</li> <li>- Sensitive personal data</li> <li>- Protection of personal data in the international scene</li> </ul>	<ul style="list-style-type: none"> <li>- Depen, 2016A</li> <li>- Doneda, 2006</li> </ul>	4 hours	

<p>Coordinated action between Federative entities, justice system and community for decarceration</p>	<ul style="list-style-type: none"> <li>- Information security</li> <li>- Composition of sensitive personal data of the monitored people</li> <li>- Rules prior to the processing and protection of personal data of the monitored people</li> <li>- Rules by type of processing and protection of personal data of the monitored people</li> <li>- Data entry</li> <li>- Data handling</li> <li>- Data output</li> <li>- Provision to third parties by communication, inter-connection, transfer, dissemination, or extraction</li> <li>- Rules of physical and logical security, evaluation, or control of information</li> </ul>	<ul style="list-style-type: none"> <li>- Depen, 2016A</li> <li>- European Parliament and Council of the European Union, 2001, 2002, 2008, 2009</li> </ul>	<p>14 hours</p>	
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## MODULE 4: Management model

**Learning objective:** Identify the actors and responsibilities for the proper development of the electronic monitoring policy, as well as the workflows, routines and procedures of the management model for electronic monitoring, from a methodology capable of conferring uniformity to processes, actions and concepts about electronic monitoring services, considering the singularities of the person monitored from the work of multidisciplinary teams (social worker, law graduate, and psychologist) for compliance and maintenance of the measure, as well as social inclusion actions.

Operate with the various instances and institutions that make up the electronic monitoring policy in a dynamic and integrated way, ensuring protection for individuals of the electronic monitoring network – public or contracted employees, at any level, from the standardization of procedures to be adopted in the services established.

Total time: 90 hours



<b>LEARNING CONTENT</b>	<b>CURRICULUM COMPONENTS</b>	<b>MINIMUM REFERENCE MATERIAL</b>	<b>COURSE LOAD</b>	<b>TEACHER</b>
Responsibility	<ul style="list-style-type: none"> <li>- Justice system</li> <li>- Federative Units</li> <li>- Civil Society</li> </ul>	- Depen, Pimenta	10 hours	
Electronic Monitoring Center	- Actors, skills and responsibilities, routines and service flows	- Depen, Pimenta	50 hours	
Networks and social participation	<ul style="list-style-type: none"> <li>- Interdisciplinarity</li> <li>- Interactivity</li> <li>- Connectivity and network dynamics</li> <li>- Social participation</li> </ul>	<ul style="list-style-type: none"> <li>- Depen, Pimenta</li> <li>- Martinho, 2004.</li> </ul>	30 hours	

## SCOPE II

## TRAINING FOR FOLLOW-UP OF ELECTRONIC MONITORING MEASURE

### Initial and Continuing Education Course Plan

#### MODALITY

#### GENERAL TRAINING

#### DIVERSITIES

CHARGING TIME: 40 hours

#### JUSTIFICATION

Thinking about differences, their manifestations, and their transformations in different contexts – social, political, economic, and representational – is, increasingly, a point of inflexion for the understanding of contemporary social relations. From the 1960s, the social movements and cultural studies have given visibility to a multitude of ways, whose epistemological and cultural experiences had been hidden under the paradigm of the universal subject.

It is in the perspective of this multiplicity and in the visibility of diversity that the rights of those new subjects will be built, making the differences – of race, gender, sexuality, age, generation, beliefs and religions, among others – parameters for the constitution of new society contracts and new proposals for conflict management.

As a reproductive structure of social dynamics, the criminal universe has suffered the transformations and fragmentation of that supposed “universal subject”. Therefore, it becomes imperative to recognize the identities and voices that emerge from differences, ensuring that they have the same status of political and social equality, with a view to broadening their own conception and diversity.

This course is part of this purpose, seeking to ensure the right to recognition and equal dignity, allowing all monitored people access to rights, policies, and public services.

## OBJECTIVES

This course of initial education and continuous training allows the participant to get acquainted with the concept of equal dignity among the various actors that interact in the penal universe; this conception is supported by the understanding of the role of the social groups that are made up of a multiplicity of subjects, whose differences – economic, social, ethnic, racial, class, gender, sexual orientation, origin or nationality, beliefs or sexual orientation, religious, among others – are crucial for the establishment of political equality and rights, including, especially, the concept of equality through difference.

Training, therefore, is part of the set of actions that should be stimulated in the framework of the management model for electronic monitoring of people developed by the National Penitentiary Department, whose purpose is to give uniformity to processes, actions, and concepts about of electronic monitoring services, lacking systematicity and standardization. The singularities of the monitored person are considered from the work of multidisciplinary teams (social worker, law graduate, psychologist) for compliance and maintenance of the measure, as well as actions aimed at access to fundamental rights. The application of this methodology can avoid degrading forms of treatment, promote less harm to the compliant, protect the provisional nature of the measure, as well as the normality and privacy of the monitored person. The management model also has the capacity to act as a protection instrument for the individuals of the electronic monitoring network – public or contracted employees, at any level, from the standardization of procedures to be adopted in the established services. It recommends decarceration, the application of electronic monitoring in a subsidiary way to other less burdensome measures provided for by law; the use of monitoring as a resource to count the number of pre-trial prisoners; the application of the measure in the phase of criminal investigation; the containment of punitive power and criminal control; the valorization of freedom and equal human dignity.

## TARGET AUDIENCE

Public servers and hired employees of the Electronic Monitoring Centers; Justice system officials working in the field of electronic monitoring; judges, prosecutors and public defenders; managers of intersectoral public policies; representatives of organizations and civil society movements that interact with the electronic monitoring policy, other professionals and interested people.

## SKILLS

This course contributes to the development of the following skills:

1. Promote diversity policies and actions, recognizing differences and demands of specific groups in order to implement the concept of equal dignity for all subjects interacting in Electronic Monitoring Centers.

The development of this skill will take place through the following professional actions (learning objectives):

1. Understand the universalist framework of the notion of diversity, recognizing the principles of difference and equality as spheres of constitution of the social world;
2. Identify cultural, operational, and structural obstacles and limitations to implementation of diversity policies, producing diagnoses and improvement plans for these conditions;
3. Develop projects for the implementation or improvement of diversity policies, ensuring all monitored people access to rights, assistance, services, policies, and programs legally and institutionally established.

## LEARNING STRATEGIES

In addition to group dynamics, collective construction exercises, dialogued exhibitions, reading of texts, video displays, and simulations of situations typical of the routines of Electronic Monitoring Centers, this course should provide the learning of concepts and techniques of development of diagnostics, intervention plans and action projects, through the simulation of the development of these products and practical experimentation in learning environments. It should also provide for the development of operational planning and intervention tools, for use in processes of reorganization of practices and routines of electronic people monitoring services.

## FACILITIES, EQUIPMENT, AND TEACHING MATERIALS

- Classroom or room adapted for teaching activities;
- Audiovisual equipment (computer, projector, speakers);
- Blackboard and chalk or whiteboard and pens.

## TEACHER PROFILE

Professional of higher level, with experience in mediation of learning processes with groups of adults, knowledge about electronic monitoring services.

This professional should receive prior training on DEPEN's Management Model for Electronic Monitoring of People, should be aligned, professionally and conceptually, with the principles and guidelines proposed therein. It also requires knowledge in techniques of preparation of diagnostics and action projects. Finally, it is essential to have professional or research experience on the theme of diversity with sociological and anthropological contributions.

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## Learning Plan

### MODALITY

### GENERAL TRAINING

### DIVERSITIES

COURSE LOAD: 50 hours

### SKILL

Promote diversity policies and actions, recognizing the differences and demands of specific groups, in order to implement the concept of equal dignity for all subjects who interact in the Electronic Monitoring Centers.

**Learning objective:** Understand the universalist framework of the notion of diversity, recognizing the principles of difference and equality as spheres that make up the social world, distinguishing conceptions of equality through difference and equality through similarity. Identify obstacles and cultural, operational, and structural limitations for the implementation of diversity policies, producing diagnoses and plans to improve these conditions.

Develop projects for implementing or improving diversity policies, promoting for all monitored people rights, assistance, services, policies and programs legally and institutionally provided.

Total time: 50 hours

LEARNING CONTENT	CURRICULUM COMPONENTS	REFERENCE MATERIAL	COURSE LOAD	TEACHER
Concept of equal dignity	<ul style="list-style-type: none"><li>- Human rights and universal values</li><li>- Identity, difference and diversity</li><li>- Recognition and equal dignity</li><li>- Equality through difference and equality through similarity</li><li>- Human rights and criminal systems</li></ul>	<ul style="list-style-type: none"><li>- Depen, Melo</li><li>- Butler, 2011.</li><li>- Lima [et.al], 2014</li><li>- Miskolci, 2010.</li><li>- Taylor, 2009.</li><li>- Cardoso de Oliveira, 2002.</li><li>- Carvalho, 1987, 2001.</li></ul>	8 hours	



Identities and recognition: subaltern or more vulnerable groups	<ul style="list-style-type: none"> <li>- Policies for women</li> <li>- Gender and sexual orientation</li> <li>- Race and ethnicity</li> <li>- Origin and nationality</li> <li>- Beliefs and religions</li> </ul>	<ul style="list-style-type: none"> <li>- Depen, Melo</li> <li>- Depen, Leite</li> <li>- Brasil, 2014.</li> </ul>	8 hours	
The international scene and mass incarceration in Brazil	<ul style="list-style-type: none"> <li>- The Minimum Rules for the Treatment of Prisoners and the Mandela Rules</li> <li>- Incarceration in the world, the position of Brazil and international experiences of decarceration</li> </ul>	<ul style="list-style-type: none"> <li>- ONU, 1955</li> <li>- ONU, 2015</li> <li>- Foucault, 1987</li> <li>- Depen, Melo</li> </ul>	2 hours	
Situational diagnosis	<ul style="list-style-type: none"> <li>- How to identify assets and obstacles to the implementation of a new management model</li> <li>- Elaboration of a diagram of strengths and opportunities, weaknesses and threats</li> </ul>	<ul style="list-style-type: none"> <li>- Ashoka and McKinsey, 2001.</li> <li>- Cohen and Franco, 2002.</li> <li>- Marino, 2003.</li> </ul>	5 hours	
Institutional perspectives	<ul style="list-style-type: none"> <li>- Elaboration of future vision and strategic objectives for operational interventions</li> </ul>	<ul style="list-style-type: none"> <li>- Ashoka and McKinsey, 2001.</li> <li>- Cohen and Franco, 2002.</li> <li>- Marino, 2003.</li> </ul>	3 hours	
Mobilizing actors	<ul style="list-style-type: none"> <li>- Encouraging participation as a strategy to mobilize different actors</li> <li>- Processes of listening and collective construction</li> </ul>	<ul style="list-style-type: none"> <li>- Toro and Werneck, 1996.</li> </ul>	4 hours	

Flows and routines	<ul style="list-style-type: none"> <li>- Operational planning based on the promotion of rights and assistance-Preparation of flowcharts</li> <li>- Preparation of flowcharts</li> <li>- Design of routines and control scales</li> <li>- Circular chart models with focus on actions</li> </ul>	- Depen, 2015	10 hours	
Elaboration of institutional projects	<ul style="list-style-type: none"> <li>- Design concept</li> <li>- Description of the actors involved</li> <li>- Objectives and expected results</li> <li>- Strategies and implementation steps</li> <li>- Definition of teams</li> </ul>	<ul style="list-style-type: none"> <li>- Ashoka and McKinsey, 2001.</li> <li>- Marino, 2003.</li> <li>- Depen, Melo</li> <li>- Depen, Pimenta</li> </ul>	10 hours	
Communication	<ul style="list-style-type: none"> <li>- Forms and strategies for project communication</li> </ul>	- Ashoka and McKinsey, 2001.	2 hours	

## Initial and Continuing Education Course Plan

### MODALITY

### GENERAL TRAINING

#### GENDER PERSPECTIVES

COURSE LOAD: 30 hours

#### JUSTIFICATION

The prevalence of the gender paradigm unrelated to human rights but linked to oppressive patterns of the male universe notably contributes to trivialization and disqualification of domestic violence in various social spheres, including state institutions that were supposed to ensure equal rights for individuals. On the other hand, within this domain, Federal Law No. 11,340/2006, commonly known as the Maria da Penha Law, appears in Brazil, creating mechanisms to curb domestic and family violence against women, in accordance with paragraph 8 of art. 226 of Brazil's Federal Constitution, the Convention on the Elimination of All Forms of Discrimination Against Women and the Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women. This Law also establishes that these relationships are independent of sexual orientation, the which means the possibility of aggression being exercised between women in a homo-affective relationship.

It is important to emphasize that appealing to the criminal justice system still implies, for women in situations of domestic and family violence, the possibility of experiencing a whole culture of discrimination, humiliation, and stereotyping. Investing in retributive and punitive responses is often unable to offer adequate treatment to the conflicts and violence brought to the attention of the criminal system in a selective, stigmatizing way and based on asymmetries of class, gender, ethnicity, etc.

The electronic monitoring services, in addition to the individual monitoring device – anklet – can also count, when available, on the portable tracking unit (PTU). The PTU is a device that can be used by women in situations of domestic violence, when the perpetrator of violence is monitored. This surveillance system makes it possible to verify in real time the location of those who wear the PTU and those who use the “anklet” in a relational way, with a view to measuring more precisely the rapprochement between the author and the woman.

It should be considered that the use of PTU is not compulsory by women at any stage of the prosecution. The refusal to use it cannot generate penalties or sanctions for women in situations of

domestic and family violence, especially because the Maria da Penha Law, the Pre-trial Measures Law, nor the Electronic Monitoring Law do not oblige them to use this type of equipment so that their rights and social protection are accessed and guaranteed. Thus, when it is identified the need for the use of electronic monitoring as follow-up mechanism in compliance with restraining orders, the measure will be applied by the judge and followed-up by the Electronic Monitoring Center, whether the woman uses the PTU or not.

Although electronic monitoring helps the protection of women in situations of domestic violence, it is not able to solve gender-based violence, an issue that is not only related to the use of force, but also to the position of women in the social structure. The indiscriminate use of electronic monitoring can actually worsen conflicts and violence in the domestic and family environment. That is, electronic monitoring alone does not account for resolving relational conflicts because it is an instrument linked to criminal control and is therefore not effectively implicated in the conflict resolution that is at the root of violence. As it is a measure that imposes severe restrictions and punishments on the electronically monitored person, it can even motivate other forms and levels of violence. Certain conditions imposed without proper individualized analysis can also provoke or accentuate vulnerabilities, implying, for example, restrictions in health treatments, in the development of work, educational, and community activities, among others.

Therefore, the indiscriminate application of electronic monitoring contributes to the increase of these indices because the surveillance of the perpetrator of violence does not mean the resolution of conflicts. It is necessary to think about ways of managing conflicts beyond the arenas of control and punishment. The justice system should look at cases in an individualized way, promote the listening of the parties and better understanding of the relationships through the work carried out by a psychosocial team. This type of procedure makes it possible to understand the seriousness of each situation for each of the parties involved, guiding the appropriate measure application. It is also important to ensure the follow-up of the perpetrator and of women in situations of domestic violence, as well as referrals to the social protection network and practices capable of leading, among other things, to the liability of the perpetrator of violence, and autonomy and empowerment of women (services that already exist in the Integrated Centers for Alternatives to Imprisonment, for example).

Electronic monitoring, when applied cumulatively with restraining orders, requires practical and theoretical conceptions consistent with the international literature and other accumulations about gender. It is essential to think about conflicts related to domestic violence and relational, delimiting the locus and alignment of actions, mainly from continuous coordination with the women's protection network. This being said, it is essential the training of Electronic Monitoring Center operators through specific course to understand the phenomenon of violence against women. To this end, it is necessary to present a brief history on the sociological concept of violence itself, the category violence against women, theories, methodologies and experiences of liability services for men perpetrators of violence against women.

## OBJECTIVES

This initial and continuing training course allows the participant to make contact with the policy of addressing violence against women, as well as with theories, methodologies, techniques and experiences, considering workflows, work routines and partner networks, aiming to promote the rupture with violence against women, as well as the liability of men who perpetrate violence, holding states and the Federal Government responsible for the effective guarantee of criminal services, for the defense and promotion of human rights.

## TARGET AUDIENCE

Public servers and hired employees of the Electronic Monitoring Centers; justice system officials who work in the field of electronic monitoring or in the context of the Maria da Penha Law; judges, prosecutors and public defenders; managers of intersectoral public policies; representatives of organizations and civil society movements that interact with the electronic monitoring policy and with issues related to fighting gender violence, other professionals and interested people.

## SKILLS

This course contributes to the development of the following skill(s):

- Develop and implement, at the managerial and operational levels of the policy of electronic monitoring of people, methodologies for the development and monitoring of people in compliance with restraining orders with the application of electronic monitoring.

The development of these skills will take place through the following professional actions: (learning objectives):

1. Obtain critical knowledge about the policy of addressing violence against women, the history of the struggle to end violence against women, feminist theories and on masculinities, the Maria da Penha Law, the advances and challenges to its effectiveness, as well as the limits of a strictly criminal response to addressing violence against women;
2. Obtain knowledge of the theories, methodologies, and techniques for the monitoring of pre-trial measures and restraining orders established by law for men that commit violence against women, considering workflows, procedures, routines of work and actors involved;
3. Obtain knowledge of the theories and methodologies for the referral of men perpetrators of violence against women for reflective practice groups, always voluntarily and according to the availability of services.

## LEARNING STRATEGIES

In addition to group dynamics, collective construction exercises, dialogued exhibitions, text reading, video display and simulations of typical situations of electronic monitoring centers, this course should provide the simulation of typical everyday situations, through practical experimentation in learning environments.

## FACILITIES, EQUIPMENT AND TEACHING MATERIALS

- Room with capacity for the invited audience;
- Audiovisual equipment (computer, projector, speakers);
- Other materials previously requested by the training facilitator.

## TEACHER PROFILE

- Professional with higher education;
- Courses and experience in electronic monitoring content and practices;
- Courses and experience in gender-related content and practices;
- Experience in mediation of learning processes with adult groups and in sectoral gender policies;
- Mastery of all content presented in this educational or ongoing plan or specific module to be delivered.

This professional should receive prior training on the Management Model for Electronic Monitoring of People of CGAP/DEPEN, should be aligned, professionally and conceptually, with the principles and guidelines proposed in this model.

## BASIC BIBLIOGRAPHY

BRASIL, DEPEN – DEPARTAMENTO PENITENCIÁRIO NACIONAL E PNUD – PROGRAMA DE DESENVOLVIMENTO DAS NAÇÕES UNIDAS. “Diretrizes para Tratamento e Proteção de Dados na Monitoração Eletrônica de Pessoas”. PIMENTA, Izabella Lacerda. Brasília: Ministério da Justiça, Departamento Penitenciário Nacional & PNUD, 2016a.

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“Modelo de Gestão para Monitoração Eletrônica de Pessoas”. PIMENTA, Izabella Lacerda. (in press)

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“Modelo de Gestão para as Alternativas Penais”. LEITE, Fabiana de Lima. (in press)

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“Modelo de Gestão Prisional”. MELO, Felipe Athayde Lins de. (in press)

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## Learning Plan

### MODALITY

### GENERAL TRAINING

### GENDER PERSPECTIVES

COURSE LOAD: 30 hours

### SKILL

Develop and implement, at the managerial and operational levels of the policy of electronic monitoring of people, methodologies for the development and monitoring of people in compliance with restraining orders with the application of electronic monitoring.

#### Learning objectives:

Obtain critical knowledge about the policy of addressing violence against women; fight for the end of violence against women; feminist theories and masculinities; the Maria da Penha Law, the advances, and challenges to its effectiveness, as well as the limits of a strictly criminal response addressing violence against women;

Obtain knowledge of theories, methodologies, and techniques for the monitoring of pre-trial measures and restraining orders established by law for men perpetrators of violence against women, considering workflows, procedures, work routines and actors involved;

Ensure adequate monitoring of the perpetrator and women in situations of domestic violence, as well as referrals to the social protection network and practices capable of leading, among other things, liability of the perpetrator of violence, and autonomy and empowerment of women (services that already exist in the Integrated Centers for Alternatives to Imprisonment, for example).

Total time: 30 hours

LEARNING CONTENT	CURRICULUM COMPONENTS	REFERENCE MATERIAL	COURSE LOAD	TEACHER
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Gender	- History of confronting violence against women	- Depen, Leite - Complementary references	6 hours	
	- Feminist and masculinity theories	- Depen, Leite - Complementary references	6 hours	
	- Maria da Penha Law and protection network for women victims of violence	- Depen, Leite - Legal milestones - Complementary references	8 hours	
	- Pre-trial measures and restraining orders established by law for men who perpetrate violence against women	- Depen, Leite - Depen, Pimenta - Complementary references	8 hours	
	- Reflective practice groups	- Depen, Leite - Complementary references	4 hours	

## Initial and Continuing Education Course Plan

### MODALITY

### TRAINING OF ELECTRONIC MONITORING OPERATORS

#### PROCESSES OF INCLUSION AND INDIVIDUALIZATION OF THE ELECTRONIC MONITORING MEASURE THROUGH SOCIOGRAMS AND NETWORK THEORIES

COURSE LOAD: 60 hours

#### JUSTIFICATION

As legally established, electronic monitoring of people can be an instrument adopted as an alternative to incarceration or as a mechanism for prison management and control. This indicates practices that reinforce its use as a mechanism of sharp criminal control. It is driven both by the punitive paradigm that emphasizes the validity of repressive practices and by the paradigm of “network society” (Castells, 2009) that envisions processes of information communication at any level with high speed and reduced costs, mobilizing the growing fascination for surveillance and disciplinary control techniques based on microelectronics and technology.

This type of measure has multiple purposes and potentialities, often antagonistic. It can be used both in the criminal investigation phase and in the criminal enforcement phase, generating varied impacts on the lives of the monitored people. It is important to point out that electronic monitoring cannot be considered an alternative to imprisonment. The measure does not promote involvement, self-liability,

the restoration of social relations – principles of alternatives to imprisonment<sup>65</sup>. Nevertheless, electronic monitoring should be aimed at decarceration and the reduction of the number of pre-trial detainees.

The Management Model for Electronic Monitoring of people has numerous specificities due to the nature and high complexity of services that, with no doubt, demand professionals of the criminal field and different cross-cutting areas. Therefore, the services should be developed by multidisciplinary teams focused on the individual, ensuring social referrals and maintaining the freedom of the monitored person, never be based on repressing and punitive logics.

The effectiveness of the methodology requires its wide dissemination, aggregating all actors of the justice system, public security institutions, managers of the executive branch, institutions of civil society, technical teams, and social protection networks. From these strategies, it is essential that monitoring services promote the fundamental rights of monitored people, in order to enable access to existing services and public policies, identifying potentialities and demands of each subject, always in a voluntary way. The collective processes that make up the various spheres of socialization and sociability of each individual should be central to the services, aiming at the understanding of the trajectories and interactions of each individual with their social networks – in a broad way, in order to provide an adequate network of social protection that, assisting the persons since the beginning of the monitoring, allowing them to create new possibilities of social participation.

## OBJECTIVES

This course aims to develop with the managers, hired employees and other operators of the Electronic Monitoring Center, other bodies or institutions that interact with it, the skill, and the knowledge for the development, analysis and understanding of the tools for building sociability networks of the monitored people, allowing them to develop sociograms and, subsequently, individual development plans for each monitored person.

## TARGET AUDIENCE

Public servers and hired employees of the Electronic Monitoring Centers, justice system officials working in the field of electronic monitoring, judges, prosecutors and public defenders, managers of intersectoral public policies, representatives of organizations and civil society movements that interact with the electronic monitoring policy, other professionals and interested people.

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<sup>65</sup> The alternatives to imprisonment constitute “mechanisms of intervention in conflicts and violence, different from incarceration, in the criminal system level, oriented to the restoration of relations and promotion of the culture of peace, from accountability with dignity, autonomy and freedom”. For more information on alternatives to imprisonment, see “Concepts, Principles and Guidelines for the Alternatives to Imprisonment Policy” (Brasil, 2016a).

## SKILLS

This course contributes to the development of the following skills:

1. Carry out procedures to identify the trajectories and sociability networks of the monitored people, elaborating individual sociograms, in order to ensure the access to fundamental rights, services and public policies already established;
2. Elaborate individual development plans for the people monitored, analyzing, and understanding the individual sociograms, in order to ensure the adequate supply of services, programs and assistance.

The development of these skills will take place through the following professional actions (learning objectives):

1. Know the theoretical basis of the analysis of social networks, allowing to understand the tools for the elaboration of sociograms and the inclusion instrument adopted in the management model;
2. Understand the tools for the elaboration of sociograms, being possible to use the inclusion instrument adopted in the management model;
3. Conduct reception and interviews, identifying the social relationships that enroll each person monitored in their micro and macrosocial context;
4. Develop sociometric matrices of each subject, analyzing the intensity of their relations and the various social structures with which it interacts, identifying the transformations in the degree of intensity at different moments of the person's individual trajectory and recognizing the individual's conditioning and choice processes in front of the experiences and relationships;
5. Graphically represent the sociometric diagram, configuring the sociogram that will allow observing the degrees of intensity and the various social relations of each subject.

## LEARNING STRATEGIES

In addition to collective construction exercises, dialogued exhibitions, reading texts, displaying videos and simulations, this course should provide contact with programs and tools of construction and analysis of sociometric data, as well as carrying out training exercises and development of sociograms. Exercises to simulate interviews and everyday situations related to the management of electronic monitoring services should also be used, expanding the ability of the participants to deal with unusual situations that may occur at times of reception and interviews.

## FACILITIES, EQUIPMENT AND TEACHING MATERIALS

- Classroom or room adapted for teaching activities;
- Audiovisual equipment (computer, projector, speakers);
- Blackboard and chalk or whiteboard and pens;
- Computer room with internet access.

## STUDENT MATERIAL

To be developed.

## TEACHER PROFILE

Top level professional with knowledge in network theories, sociability, socialization processes, and sociograms.

## BASIC BIBLIOGRAPHY

BRASIL, DEPEN – DEPARTAMENTO PENITENCIÁRIO NACIONAL E PNUD – PROGRAMA DE DESENVOLVIMENTO DAS NAÇÕES UNIDAS. “Modelo de Gestão para Monitoração Eletrônica de Pessoas”. PIMENTA, Izabella Lacerda. (in press)

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## Learning Plan

### MODALITY

## TRAINING OF ELECTRONIC MONITORING OPERATORS

### PROCESSES OF INCLUSION AND INDIVIDUALIZATION OF THE ELECTRONIC MONITORING MEASURE THROUGH SOCIOGRAMS AND NETWORK THEORIES

COURSE LOAD: 60 hours

### SKILL

Perform procedures to identify the trajectories, socialization processes and sociability networks of the monitored people, elaborating individual sociograms in order to promote access to fundamental rights, services, and public policies already established.

**Learning objective:** Learn the theoretical basis of the analysis of social networks, allowing to understand the tools of elaboration of sociograms. Conduct interviews of the monitored people, identifying the social relationships that make up the trajectory of each subject. Develop sociometric matrices of each subject, analyzing the intensity of their relationships and the various social structures with which they interact, identifying the transformations in the degree of intensity at different moments of their trajectory individual and recognizing their processes of conditioning and choice in front of the relationships they experience. Graphically represent the sociometric matrix, configuring the sociogram that will allow to observe the degrees of intensity and the various social relations of each subject. Elaborate the individual development plan for the monitored people.

Total time: 60 hours

LEARNING MODULES	CURRICULUM COMPONENTS	REFERENCE MATERIAL	COURSE LOAD	TEACHER
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General conceptions of network theories	<ul style="list-style-type: none"> <li>- Social and personal networks</li> <li>- Networks and sociability</li> <li>- Socialization processes</li> <li>- Attributes and networks</li> </ul>	- Marques, 2010	6 hours	
Variations of networks	<ul style="list-style-type: none"> <li>- Types of networks</li> <li>- Types of sociability</li> <li>- Combinations between networks and sociability</li> </ul>	- Marques, 2010	6 hours	
Social networks, violence, segregation, and human rights	- Social networks in situations of segregation and poverty	- Marques, 2010	4 hours	
	- Social networks and public security	- Pavez (et. al), 2011	4 hours	
	- Social networks and human rights	- Galdeano, 2012	4 hours	
Simulations	- Interview instrument	- Interview instrument	8 hours	
Simulations	- Sociograms	- UCINET	8 hours	
Simulations	- PID Instrument	- PID Instrument	10 hours	

## **15** CLOSING REMARKS

The Management Model for Electronic Monitoring of People consolidates a set of collective efforts in order to guide and establish propositions for electronic monitoring services with a focus on the monitored person, the promotion of decarceration and coping with gender violence. To this end, the relational dimension of conflicts should be considered, especially through pre-trial non-custodial measures and restraining orders, looking at the protection of women in situations of domestic and family violence with a focus on care, as well as the follow-up of the perpetrator of violence. The application methodologies, follow-up of the measure, other procedures and workflows were designed with a focus on the monitored person's fundamental rights, passing through actors directly and indirectly related to the services.

The systematization sought here through protocols reaches all stages of monitoring services. In addition to analyzing the historical, theoretical, discursive, legal and technological context of monitoring aspects such as the definition of roles of the different actors, work processes, description of procedures, workflows, description of routines and work instruments are considered. The consolidation of services increasingly in line with the fundamental rights of the monitored people aims to contain punitive and merely repressive practices that still insist on remaining in the fields of criminal justice and public security. In this direction, the follow-up and referral – always voluntary – of the monitored person to the social protection networks is indispensable in order to ensure fundamental rights, minimize negative impacts arising from the application of the measure, as well as reduce social vulnerabilities.

The basic assumptions of the Management Model for Electronic Monitoring of People, in addition to promoting decarceration and coping with gender-based violence, consider both the rights and protection of women in situations of domestic and family violence, as well as the monitored person, regardless of the nature of the measure. Also, they intend to guarantee fundamental rights through monitoring, which means that the management model brings the need to rethink and restructure the monitoring services beyond the dimension of pure control and surveillance inherent to the measure.

The need to establish and maintain dialogues and collective constructions with various actors is essential to consolidate this proposal, as well as improve it, raising demands, notes, experiences, national and international regulations. In this direction, it becomes more plausible to build consensus and create national parameters about monitoring without, however, disregarding local specificities and dilemmas.

This being said, it is relevant to underline some strategies for the implementation of the Management Model for Electronic Monitoring of People.

### **I. Agreement with Federative Units and criminal policy bodies**

DEPEN plays an important role in inducing criminal policies and coordinating Federative Units and bodies involved in such policies. The mechanisms of agreement and the criteria to finance the

electronic monitoring services can contribute to the gradual development and implementation of the model, in parallel with the development of technical support mechanisms, evaluation and monitoring of the implementation process itself. We also highlight the need for planning and organizational restructuring, including workflows and routines; training courses for all teams at the Centers and other actors involved directly or indirectly; monitoring of actions; mobilization of civil society; coordination with the justice system and public security institutions with a view to promoting strategies for decarceration and guaranteeing the fundamental rights of monitored people; institutionalization of information management mechanisms and production of indicators.

## II. Test-implementation in Electronic Monitoring Centers

It is recommended to select Electronic Monitoring Centers for the implementation of the model, which can enable adaptation and improvement of this methodology. The strategies to be adopted include: selection of pilot centers and elaboration of an action plan; coordination and institutionalization of intersectoral arrangements to guarantee the policies and assistance provided for the implementation and monitoring of the measure; conducting training processes for managers, teams and network partners, as well as actors of the justice system and public safety institutions; monitoring the implementation process.

## III. Dissemination of the management model through training processes

The dissemination of the management model and the socialization regarding the proposed methodologies can be carried out through the offer of training courses for managers and servers, as well as actors of the network, the justice system and public security institutions. In the meantime, it is mainly up to the National School of Criminal Services to organize and offer the courses, having as an initial basis the teaching and learning plans presented here.

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## TECHNICAL PRODUCTS

Publications edited in the Fazendo Justiça and Justiça Presente series

### CRIMINAL PROPORTIONALITY (AXIS 1)

#### Penal Alternatives Collection

- Manual de Gestão para as Alternativas Penais
- Guia de Formação em Alternativas Penais I – Postulados, Princípios e Diretrizes para a Política de Alternativas Penais no Brasil
- Guia de Formação em Alternativas Penais II – Justiça Restaurativa
- Guia de Formação em Alternativas Penais III – Medidas Cautelares Diversas da Prisão
- Guia de Formação em Alternativas Penais IV – Transação Penal, Penas Restritivas de Direito, Suspensão Condicional do Processo e Suspensão Condicional da Pena Privativa de Liberdade
- Guia de Formação em Alternativas Penais V – Medidas Protetivas de Urgência e Demais Ações de Responsabilização para Homens Autores de Violências Contra as Mulheres
- Diagnóstico sobre as Varas Especializadas em Alternativas Penais no Brasil
- Levantamento Nacional Sobre a Atuação dos Serviços de Alternativas Penais no Contexto da Covid-19

#### Electronic Monitoring Collection

- Modelo de Gestão para Monitoração Eletrônica de Pessoas
- Monitoração Eletrônica de Pessoas: Informativo para os Órgãos de Segurança Pública
- Monitoração Eletrônica de Pessoas: Informativo para a Rede de Políticas de Proteção Social
- Monitoração Eletrônica de Pessoas: Informativo para o Sistema de Justiça
- Monitoração Eletrônica Criminal: evidências e leituras sobre a política no Brasil
- Sumário Executivo Monitoração Eletrônica Criminal: evidências e leituras sobre a política no Brasil

#### Collection Strengthening of the Detention Control Hearings

- Manual sobre Tomada de Decisão na Audiência de Custódia: Parâmetros Gerais (sumários executivos em português / inglês / espanhol)
- Manual sobre Tomada de Decisão na Audiência de Custódia: Parâmetros para Crimes e Perfis Específicos
- Manual de Proteção Social na Audiência de Custódia: Parâmetros para o Serviço de Atendimento à Pessoa Custodiada (sumários executivos em português / inglês / espanhol)
- Manual de Prevenção e Combate à Tortura e Maus Tratos na Audiência de Custódia (sumários executivos em português / inglês / espanhol)
- Manual sobre Algemas e outros Instrumentos de Contenção em Audiências Judiciais: Orientações práticas para implementação da Súmula Vinculante n. 11 do STF pela magistratura e Tribunais (Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings) (Sumários executivos – português / inglês / espanhol)
- Caderno de Dados I – Dados Gerais sobre a Prisão em Flagrante durante a Pandemia de Covid-19
- Cadernos de Dados II – Covid-19: Análise do Auto de Prisão em Flagrante e Ações Institucionais Preventivas
- Manual de Arquitetura Judiciária para a Audiência de Custódia

### **Central Collection of Vacancy Regulation**

- Central de Regulação de Vagas: Manual para a Gestão da Lotação Prisional
- Folder Central de Regulação de Vagas

### **Informational Materials**

- Cartilha Audiência de Custódia: Informações Importantes para a Pessoa Presa e Familiares
- Relatório Audiência de Custódia: 6 Anos

### **UNODC: Criminal Justice Manuals – Portuguese Translations**

- Manual de Princípios Básicos e Práticas Promissoras sobre Alternativas à Prisão
- Manual sobre Programas de Justiça Restaurativa

## **JUVENIL JUSTICE SYSTEM (AXIS 2)**

- Caderno I – Diretrizes e Bases do Programa – Guia para Programa de Acompanhamento a Adolescentes Pós-cumprimento de Medida Socioeducativa de Restrição e Privação de Liberdade
- CADERNO II – Governança e Arquitetura Institucional – Guia para Programa de acompanhamento a adolescentes pós-cumprimento de medida socioeducativa de restrição e privação de liberdade
- CADERNO III – Orientações e Abordagens Metodológicas – Guia para Programa de acompanhamento a adolescentes pós-cumprimento de medida socioeducativa de restrição e privação de liberdade
- Reentradas e Reiteraões Infracionais: Um Olhar sobre os Sistemas Socioeducativo e Prisional Brasileiros
- Manual sobre Audiências Concentradas para Reavaliação das Medidas Socioeducativas de Semiliberdade e Internação
- Manual Resolução CNJ367/2021 – A Central de Vagas do Sistema Estadual de Atendimento Socioeducativo
- Manual para Incidência da Temática do Tráfico de Drogas como uma das Piores Formas de Trabalho Infantil
- Manual Recomendação nº 87/2021 – Atendimento inicial e integrado a adolescente a quem se atribua a prática de ato infracional
- Manual para Incidência da Temática do Tráfico de Drogas como uma das Piores Formas de Trabalho Infantil
- Manual Resolução CNJ 77/2009 – Inspeções Judiciais em unidades de atendimento socioeducativo
- Manual de Orientação Técnica para Preenchimento do Cadastro Nacional de Inspeção em Unidades e Programas Socioeducativos

## **CITIZENSHIP (AXIS 3)**

### **Political Collection for Ex Inmates**

- Política Nacional de Atenção às Pessoas Egressas do Sistema Prisional
- Caderno de Gestão dos Escritórios Sociais I: Guia para Aplicação da Metodologia de Mobilização de Pessoas Pré-Egressas
- Caderno de Gestão dos Escritórios Sociais II: Metodologia para Singularização do Atendimento a Pessoas em Privação de Liberdade e Egressas do Sistema Prisional

- Caderno de Gestão dos Escritórios Sociais III: Manual de Gestão e Funcionamento dos Escritórios Sociais
- Começar de Novo e Escritório Social: Estratégia de Convergência
- Guia para monitoramento dos Escritórios Sociais

#### **Prison Policy Collection**

- Modelo de Gestão da Política Prisional – Caderno I: Fundamentos Conceituais e Princiopiológicos
- Modelo de Gestão da Política Prisional – Caderno II: Arquitetura Organizacional e Funcionalidades
- Modelo de Gestão da Política Prisional – Caderno III: Competências e Práticas Específicas de Administração Penitenciária
- Diagnóstico de Arranjos Institucionais e Proposta de Protocolos para Execução de Políticas Públicas em Prisões
- Os Conselhos da Comunidade no Brasil

#### **SYSTEMS AND CIVIL IDENTIFICATION (AXIS 4)**

- Manual de instalação e configuração do software para coleta de biometrias – versão 12.0
- Manual de Identificação Civil e Coleta Biométrica
- Manual de Identificação Civil e Coleta Biométrica nas Unidades Prisionais
- Folder Documento Já!
- Guia On-line com Documentação Técnica e de Manuseio do SEEU

#### **MANAGEMENT AND CROSS-CUTTING THEMES (AXIS 5)**

- Manual Resolução nº 287/2019 – Procedimentos Relativos a Pessoas Indígenas Acusadas, Rés, Condenadas ou Privadas de Liberdade
- Relatório Mutirão Carcerário Eletrônico – 1ª Edição Espírito Santo
- Relatório de Monitoramento da Covid-19 e da Recomendação 62/CNJ nos Sistemas Penitenciário e de Medidas Socioeducativas I
- Relatório de Monitoramento da Covid-19 e da Recomendação 62/CNJ nos Sistemas Penitenciário e de Medidas Socioeducativas II
- Manual Resolução nº 348/2020 – Procedimentos relativos a pessoas LGBTI acusadas, rés, condenadas ou privadas de liberdade
- Relatório Calculando Custos Prisionais – Panorama Nacional e Avanços Necessários
- Manual Resolução nº 369/2021 – Substituição da privação de liberdade de gestantes, mães, pais e responsáveis por crianças e pessoas com deficiência
- Projeto Rede Justiça Restaurativa – Possibilidades e práticas nos sistemas criminal e socioeducativo
- Pessoas migrantes nos sistemas penal e socioeducativo: orientações para a implementação da Resolução CNJ nº 405/2021
- Comitês de Políticas Penais – Guia prático para implantação
- Diálogos Polícias e Judiciário – Diligências investigativas que demandam autorização judicial
- Diálogos Polícias e Judiciário – Incidências do Poder Judiciário na responsabilização de autores de crimes de homicídio: possibilidades de aprimoramento



- Diálogos Polícias e Judiciário – Participação de profissionais de segurança pública em audiências judiciais na condição de testemunhas
- Diálogos Polícias e Judiciário – Perícia Criminal para Magistrados
- Diálogos Polícias e Judiciário – Folder Alternativas Penais: medidas cautelares diversas da prisão
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- Diálogos Polícias e Judiciário – Folder A Lei Maria da Penha e as medidas protetivas de urgência
- Diálogos Polícias e Judiciário – Folder Monitoração Eletrônica
- Pessoas LGBTI no Sistema Penal – Cartilha para implementação da Resolução CNJ 348/2020
- Pessoas LGBTI no Sistema Socioeducativo – Cartilha para implementação da Resolução CNJ 348/2020



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