ELECTRONIC MONITORING OF PEOPLE

Informative Brochure for the Justice System

SERIES FAZENDO JUSTIÇA | COLLECTION ELECTRONIC MONITORING

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COLLECTION ALTERNATIVES TO IMPRISONMENT

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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 ("Justice Present").

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 important 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 work carried out in a collaborative way, which seeks to focus on the causes instead of insisting on 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.

The informative brochure on electronic monitoring of people integrate didactic material with essential information for the parts who, directly or indirectly, work on the subject. Considering the extent of topics covered by the electronic monitoring, the informative brochures, in addition to being based on the "Management Model for the Electronic Monitoring of People", synthesize specificities based on the duties and attributions of the institutions involved in the monitoring services in the following publications: Informative Brochure for the Justice System; Informative Brochure for Public Security Agencies; and Informative Brochure for the Social Protection Policy Network. These institutional and organizational tools are essential to promote the implementation of a national policy for electronic monitoring of people that is capable of integrating institutions in the qualification of services, considering the legality, the preservation of the fundamental guarantees of life and human dignity of the monitored people.

José Antonio Dias Toffoli

President of the Supreme Court and the National Council of Justice

ABSTRACT

This informative brochure is intended to guide agents in the Judiciary, Public Prosecutor's Office, Public Defender's Office and advocacy about electronic monitoring services in Brazil. The basis of the proposal is the Management Model for the Electronic Monitoring of People, published in 2017, through a partnership between the National Penitentiary Department (DEPEN) and the United Nations Development Programme (UNDP) — laws and regulations subsequent to publication of the Model referred to are also considered. Information is shared about the functioning of the services, the principles involved, with emphasis on workflows, procedures and parameters established between the Electronic Monitoring Center and the justice system agents. One of the presuppositions of the product is the necessary construction of interaction flows and instances between the institutions that make up the penal system in all its phases, which involves, for example, the Executive Branch, the Court of Justice, the Public Defender's Office, and the Public Prosecutor's Office. The effective and qualified provision of electronic monitoring services, at all stages, can be guaranteed through articulation, common understanding and methodologies and strategies alignment between the highlighted institutions. It is envisaged, according to the presuppositions of the national policy of electronic monitoring of people, to socialize such perspectives with the referred institutions with a focus on decarceration and the guarantee of the constitutional rights of the monitored people.

1. INTRODUCTION

The main objective of this product is to offer specific material aimed at guiding the agents of the Judiciary, Public Prosecutor's Office, Public Defender's Office and advocacy on electronic monitoring services. In addition to bringing legal aspects, the material, considering the specific attributions and functions of the aforementioned agents in the application of electronic monitoring, shares fundamental elements of the Management Model for the Electronic Monitoring of People about the operation of services, bringing up concepts and principles. According to this principled basis, practical dimensions are equally explained, with emphasis on the workflows, procedures and parameters established in the Model for the execution of services in the Electronic Monitoring Centers.

Although the Justice System agents, according to their duties and attributions, are not directly responsible for the operational part of the monitoring services, we consider it is relevant to share such aspects, with a view to a more effective and qualified services provision. It is important that each of the agents dealing with electronic monitoring direct or indirectly, know the most essential elements of the services in their various phases, as we are dealing with an activity with multiple subjects, knowledge and stages that are necessarily related. Electronic monitoring cannot ignore these facets. The application of monitoring services must be built on the basis of inter-institutional and plural dialogues, including the multiple dimensions of the people monitored.

It is essential that the justice system agents understand the functioning, the possibilities and the limits of the services performed by the Electronic Monitoring Centers. This, in turn, favors instances of dialogue between the Judiciary and the Executive Branch with the goal of making the application of monitoring and its conditions more effective. The multidisciplinary teams' work must be considered as one of the most essential aspects in this interaction, mainly due to the relevance of the technical support provided to the judges for reassessments and alterations during the monitoring measure.

Therefore, we take into account the national policy paths, already consolidated in the

Management Model, and also the experiences of the Monitoring Centers spread throughout the country. And we propose a dialogue with judges, defenders, prosecutors and lawyers based on such repertoires so that the monitoring is able to achieve more and more effectiveness, based on perspectives of decarceration and guarantee of the constitutional rights of the monitored people. Based on this, we expect local alignments in this direction.

From a national point of view, there is an important advance in this horizon, based on the Technical Cooperation Agreement Nº. 39/2018 (Brasil, 2018a) celebrated between the National Council of Justice, the National Council of the Public Prosecutor's Office, and the Ministry of Public Security, whose goal is precisely to establish improvements in the criminal enforcement and criminal justice system, qualifying information management, development and the integration between computerized systems, as well as the improvement in the implementation of alternative penal policies and electronic monitoring. This type of intervention takes into account common understandings and dialogues, enabling more concrete actions to contain the number of pre-trial detainees, to qualify the "entrance door" to the criminal justice system, and to reduce the prison population.

2
Electronic monitoring: legal and technological challenges and possibilities

By Marco Aurélio Farias da Silva
(Public Prosecutor of the State of Pernambuco)

The legal institute of electronic monitoring has not yet exhausted its objective in the face of application cases in the criminal procedural legislation and criminal enforcement in Brazil, being necessary to advance in its implementation. To offer a contribution in this matter, some challenges and legal and technological possibilities were chosen for its application, all in line with the constitutional system in force and the technologies currently made available and already accessible in the national territory.

Therefore, the legal frameworks involved will be presented, highlighting a trace of the legal culture created, namely in the criminal procedure area in the 20th century, which is still reflected in the decisions of some Brazilian Courts of Justice, even if in conflict with other Courts. After this brief presentation, a recent judgment of the Superior Court of Justice (STJ) will be compared with a Binding Precedent of the Supreme Court (STF), in order to identify how the Courts are still following some of the lessons disseminated be-

fore the advent of Brazil's Federal Constitution of 1988 (Brasil, 1988), when it comes to a situation not foreseen in the legislation. Finally, some we will offer some suggestions and highlight the reasons for the discussion and further studies on the possibilities of using electronic monitoring.

The main legal landmarks on application of the deprivation of liberty penalty are Brazil's Criminal Code, established by Decree-Law Nº. 2,848/1940 (Brasil, 1940) and the Criminal Procedure Code (CPP), by Decree-Law Nº. 3,689/1941 (Brasil, 1941). The CPP demarcated a face of the Brazilian legal culture which is the use of the deprivation of liberty as a rule for the resolution of criminal conflicts, following the inquisitorial model and, even with the constitutional advances towards the implementation of an accusatory and resocializing penal system, which requires interdisciplinary activities for the social inclusion process, it remains difficult for the vast majority of defendants to respond freely to a lawsuit for the commission of a crime punishable by imprisonment.

This situation can be considered as a reflection of the legal culture implemented through the CPP, especially because its institutes were developed by excellent scholars with great acceptance in our Courts and, even in the face of the evolution of legal institutes, as well as the fact that the technologies made available to the Administration of Justice are not yet being used satisfactorily, past lessons tend to guide the attitudes of today's legal practitioners.

This judicial reality can be evidenced through the jurisprudence of the Brazilian Courts, but on this occasion a recent judgment of the STJ will be used. The STJ is the guardian of the law, therefore its decisions reveal how the Principle of Dignity of the Human Person can be seen (Brasil, 1988, art. 1, III) and also how the forensic practice accepts, in this case, the STF Binding Precedent Nº 56 (Brasil, 2016a) which indicates a path for the preservation and defense of rights against mass incarceration and prison overcrowding, as it is a violation of rights caused by the lack of performance of the Public Administration, which should not be endured by the population in deprivation of liberty.

Therefore, this is a situation caused by the Executive Branch, as the responsible for the national penitentiary policy, in line with the disagreements in judicial decisions, which results in an overpopulation and overcrowding in prisons in Brazil. All of this happens despite all efforts to reduce the number of people in situation of deprivation of liberty, however, the resocialization actions do not achieve the expected success, so the custodial sentence, whether pre or post trial, becomes problematic: what are the legal and technological limits for the application of electronic monitoring in Brazil?

There is no single and final answer; however, electronic monitoring began to gain strength from the perspective of reducing prison overpopulation and overcrowding before the amendment of art. 319 of the CPP (Brasil, 1941) and the change in the system of temporary release and house arrest provided for in Federal Law Nº. 7,210/1984, Criminal Enforcement Law (Brasil, 1984). The primary idea has always been an alternative to imprisonment with social and productive inclusion.

With the enactment of Federal Law Nº. 12,258/2010 (Brasil, 2010, art. 144-B), it became possible to use electronic monitoring in the

custodial sentence enforcement, with the use of electronic ankle bracelets, especially in monitoring temporary departures and house arrest. Subsequently, with Federal Law Nº. 12,403/2011 (Brasil, 2011a), it was possible to apply this same modality of electronic monitoring as a pre-trial non-custodial measure and an alternative to pre-trial detention, including application for protection of women in situation of domestic and family violence. However, mechanisms were not instituted to create opportunities for the social and productive inclusion of people submitted to this legal institute, such lack of institutional support may not contribute to curbing criminal recidivism.

These two possibilities of electronic monitoring application in full revolution 4.0, which presents new technologies such as: blockchain, in combination with other technologies, such as the internet of things, artificial intelligence, big data, drones, etc. (IHU, 2017), shows that Justice Administration has not yet realized that there are other technological paradigms to be used in favor of the legal order, whose objective is to make the application of criminal law efficient, in addition to the electronic ankle bracelet.

In fact, electronic monitoring as it has been applied may represent very little to the parties involved, or rather, the person deprived of liberty and their family, the Penitentiary Administration, as well as society in general, either due to technologies put available to all involved, either through financial expenditure without a minimum of consistent responses to the social and productive inclusion process.

Practically the use of this technology may have played a single aspect, namely, surveillance by surveillance and nothing else and, at most, the use of reports produced by the computerized system to clarify the authorship of a crime by where the user of electronic monitoring passed or the finding that he/she did not comply with the conditions imposed to be a beneficiary of the judicial measure in question.

Now, the use of electronic monitoring can be extended to several technologies in addition to the one used today and, considering these possibilities, one can question the very technology used for the current electronic ankle bracelet.

It is also important to note that the use of other technologies can reduce the operating cost of current electronic ankle bracelets and, more importantly, develop a work dynamic or management of social and productive inclusion with the public that uses this system and their respective families, as everything is managed using computerized systems.

Some few advances have been seen, but the use of alternative measures is usually mitigated in court, as exemplified in the sentence below, when a less onerous regime or house arrest was not applied, to keep someone in prison without the necessary conditions to receive other people due to overcrowding (Brasil, 2018b):

CRIMINAL PROCEDURE. INTERLOCUTORY APPEAL AGAINST A STJ JUSTICE'S INDIVIDUAL DECISION ON A SPECIAL APPEAL. CONVICT SENTENCED TO INITTIALY SERVE THE SENTENCE IN SEMI-OPEN CONDITIONS. PRISON ORDER — DECREETED AFTER AN UNAPPEALABLE SENTENCE — NOT FULFILLED. CRIMINAL ENFORCEMENT NOT STARTED. EVADED APPEAL. ALLEGATION THAT IT MAY NOT BE POSSIBLE FOR THE OFFENDER TO SERVE THE SENTENCE IN SEMI-OPEN CONDITIONS DUE TO THE LACK OF VACANCY. REQUEST FOR COMPLIANCE UNDER OPEN CONDITIONS OR HOUSE ARREST. IMPOSSIBILITY. INTERLOCUTORY APPEAL DENIED.

1. *In accordance with STF'S Binding Precedent Statement Nº. 56, this Superior Court (STJ) has admitted the temporary inclusion of individuals being re-educated in house arrest, if there is no vacancy in the criminal establishment appropriate to the most burdensome regime that was imposed in the conviction sentence.*

2. *In this case, the appellant was sentenced to inittialy comply with his reprimand in semi-open conditions, having been issued an arrest warrant in his disfavor on September 25th, 2017, after the final sentence. The inmate, however, refrained from serving the sentence, which is why he does not have the right to serve the sentence in house arrest, under the allegation that there would be no vacancy in a prison unit. Precedents.*

3. *"The arguments of overcrowding and precarious conditions of the sheltered house do not allow, by themselves, the granting of the claimed benefit" (Brasil, 2013).*

4. *Interlocutory appeal denied. (Brasil, 2018b).*

Preliminarily, we can note the procedural culture formed from the already revoked art. 594 of the CPP which demanded the arrest of the accused person to appeal. The preparation of several articles, books and judgments publication, at the time of this article validity were transfer-

red to the practice of criminal procedure and penal enforcement and, as a result of the inertia of this thought, the right of those who do not go to prison as before is not guaranteed (at a preventive level).

The decision above only considers essential the non-enforcement of the arrest warrant, to the detriment of the conditions of the penal unit as provided for in the Binding Precedent Nº 56 of the STF, which states: "The lack of adequate penal establishment does not authorize the maintenance of the convict in a more serious prison regime, and in this case, the parameters set in RE Nº 641,320/RS should be noted" (Brasil, 2016a). Therefore, it is unreasonable to expect a violation of the right to preserve it, as the judicial system can and should also act preventively.

In order to complement the provisions of the Binding Precedent Nº 56 of the STF, the parameters that were set are the following:

> *When someone shall serve a sentence in closed conditions, if there is no vacancy in an establishment appropriate to its conditions. Violation of the principles of individualization of punishment (art. 5, XLVI) and of legality (art. 5, XXXIX). The lack of an adequate penal establishment does not authorize the maintenance of the convict in a more serious prison condition. Criminal enforcement judges may assess establishments intended for semi-open and open conditions, to qualify as suitable for such prison conditions. Establishments that do not qualify as an "agricultural, industrial colony" (semi-open conditions) or "sheltered house or suitable establishment" (open conditions) are acceptable (art. 33). However, prisoners from semi-open and open conditions shall not be accommodated with prisoners from closed conditions. If there is a shortage of vacancies, the following must be determined: (i) the early departure of the convict from the current prison condition with a lack of vacancies; (ii) the electronically monitored liberty of the convict who leaves early or is placed under house arrest for lack of vacancies; (iii) the fulfillment of restrictive sentences of law and/or study to the convict who progresses to open conditions. Until the proposed alternative measures are structured, house arrest for the convict may be deferred (Brasil, 2016a).*

Item 3 of the judgment issued by the preclared STJ agency reveals the dynamic imposed by the CPP in determining a prison culture, even when the factual circumstances attest against the Constitutional Principle of Dignity of the Human Person (Brasil, 1988, art. 1, III), which requi-

res the recognition of the subject of law in any situation that the person is found; however, there is still not a strong enough practice to break the doctrine prior to the Federal Constitution of 1988 and admit, for example, the application of electronic monitoring.

However, STF's guidance (Brasil, 2016a) is clear in the sense that if there are no vacancies, the authorities must apply early exit measures, electronic monitoring or house arrest, etc. And, in the case above, the Binding Precedent Nº 56 (Brasil, 2016a) was no longer observed by the STJ (Brasil, 2018b), when it applied the following jurisprudential precedent: "The arguments of overcrowding and precarious conditions of the sheltered house do not allow, by themselves, the granting of the claimed benefit".

Regarding the case in dispute, even if the appeal was not granted, there would still be a need for a *habeas corpus ex officio* (Brasil, 1941, art. 654) for those who were, for example, longer in the prison unit, until the prison population was at least adequate to the number of vacancies, with appropriate referrals to the authorities responsible for public policies related to social rights, as the irregularity was presented to the court and the judicial decision is silent in this regard.

Based on these observations, must be pointed out that the crime phenomenon has several dimensions, so any solution must be interdisciplinary, or rather, electronic monitoring must be accompanied by other State interventions, especially public policies on social inclusion, health, education and work/employment, etc., as a way of responding to the penal model of a Democratic State of Law. This is because the legal operator often insists on not accepting interdisciplinarity for the resolution of a social conflict that requires something more than a legal typicality.

In good time, the STF expanded the legal possibilities for the application of electronic monitoring as a way to balance rights, duties and guarantees of individual and collective protection, suggesting that those of a preventive nature be included. It is not about exempting someone from serving their sentence, but ensuring compliance in according to constitutional principles and, it would not be wrong to say that, in the face of other situations not provided for by law or in a binding precedent, and to implement the system of constitutional rights and guarantees, new legal hypotheses for the use of electronic monitoring can and should be undertaken.

In the same vein, considering the current society of control, the form of electronic monitoring must be increased so that other technologies can be used from the perspective of electronic controls and not just the ankle bracelet, such as bracelets, monitored places by cameras, etc. In other words, the technology has already been made available, but it has not yet managed to be seen and understood by the majority of Public Managers in the penitentiary area, which is why studies on the subject continue to be essential for the development of social and productive inclusion process from the application of a custodial sentence.

2.1. Pre-trial non-custodial measures

As explained previously, Federal Law Nº. 12,403/2011 changed the Code of Criminal Procedure, admitting monitoring as a pre-trial non-custodial measure. Monitoring is no longer restricted to criminal enforcement and is now provided for as an alternative measure to prison for those indicted (in the course of the police investigation) or accused (during the criminal proceedings), with a view to avoiding their pre-trial detention in the course of the process, that is, before the final and unappealable criminal sentence.

Pre-trial non-custodial measures may be applied individually or cumulatively. It is noted that electronic monitoring is the last option listed in the aforementioned legal provision. This indicates that electronic monitoring should be applied in a subsidiary and residual way to other legally provided modalities, as an instrument to contain incarceration and reduce the high number of pre-trial detainees (Brasil, 2015a). In other words, monitoring is indicated only when another less burdensome pre-trial measure does not apply, as an alternative to prison and not as an alternative to liberty. Federal Law Nº. 12,403/2011 presents nine different pre-trial non-custodial measures:

I — periodic appearance in court, within the period and under the conditions set by the judge, to inform and justify activities;

II — prohibition of access or attendance to certain places when, due to circumstances related to the fact, the accused or defendant must remain away from these places to avoid the risk of new infractions;

III — prohibition to maintain contact with a specific person when, due to circumstances related to the fact, the accused or defendant must remain distant;

IV — prohibition to leave the District when the stay is convenient or necessary for investigation or instruction;

V — home reclusion at night and on days off when the investigated or accused person has a fixed residence and work;

VI — suspension of the exercise of public function or activity of an economic or financial nature when there is just fear of its use for the practice of criminal offences;

VII — pre-trial detention of the defendant in the event of crimes committed with violence or serious threat, when the experts conclude that they are non-imputable or semi-imputable (art. 26 of the Criminal Code) and there is a risk of repetition;

VIII — bail, in the infractions that admit it, to ensure attendance at the proceedings, avoid obstruction of its progress or in case of unjustified resistance to the court order;

IX — electronic monitoring.

(Brasil, 2011a).

2.2. Restraining orders and electronic monitoring

Federal Law Nº. 11,340/2006, commonly known as Lei Maria da Penha (Maria da Penha Law), creates mechanisms to curb domestic and family violence against women, under the terms of 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. The law also provides for the creation of Courts of Domestic and Family Violence against Women, as well as amending the Criminal Procedure Code, the Criminal Code and the Criminal Enforcement Law.

Its art. 5 defines as domestic and family violence against women any action or omission based on gender that causes her death, injury, physical, sexual or psychological suffering, and moral or property damage, within the scope of the domestic, family unit, and in any intimate affection relationship, in which the aggressor lives or has lived with the attacked.

The law also establishes that these relationships 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, the following stand out: the non-direction of cases to the Special Criminal Courts, removing this violence from the list of crimes with less offensive potential; admission to *in flagrante delicto* arrest for cases of domestic and family violence against women; and the prohibition of applying the delivery of food parcels as a penalty, thus requiring the initiation of a police investigation.

The application of restraining orders aims to guarantee the quick protection of women, based on anticipatory mechanisms, that is, precautionary ones. They can be embraced by the judge at any procedural stage, from the opening of the police inquiry to the judicial stage and are intended to ensure the protection of women and other family members in situation of violence, in addition to ensuring the criminal process effectiveness. Restraining orders can be applied individually or cumulatively.

These are restraining orders, among others:

I — suspension of the possession or restriction of carrying weapons, with communication to the competent agency, pursuant to Federal Law Nº. 10,826/2003 (Brasil, 2003a);

II — removal from home, residence or place of coexistence with the victim;

III — prohibition of certain conducts, including: a) approaching the victim, her family members and witnesses, establishing the minimum distance limit between them and the aggressor; b) contact with the victim, her family members and witnesses by any means of communication; c) going to certain places in order to preserve the victim's physical and psychological integrity;

IV — restriction or suspension of visits to dependent children, heard the multidisciplinary care team or similar service;

V — providing provisional or temporary alimony.

(Brasil, 2006, art. 22).

Electronic monitoring when applied cumulatively with restraining orders aims to expand the protection of women in situation of domestic and family violence. The individual monitoring device – anklet – used by the perpetrator of violence allows to follow his geolocation in real time through information systems. To this end, exclusion areas that should not be accessed by the monitored person are created, such as the woman's home or other places prohibited by the measure to preserve her physical and psychological integrity.

The follow-up of the monitored person makes it possible to detect a possible approach to the exclusion areas legally delimited through indications in the monitoring system, as well as other incidents of area violation. The Electronic Monitoring Center has mechanisms to identify such approaches and the incidents themselves, as well as means to deal with them in order to ensure compliance with the removal measure and, equally, ensure the protection of the woman.

It is important to emphasize that the restraining orders applied with electronic monitoring can be complied without using the portable tracking unit (PTU). Even when the PTUs are not available or when the woman does not wish to use them, the exclusion areas are informed by the judge and applied in the Center system, which is sufficient for the responsible team to monitor the measure and handle eventual violation incidents.

The PTU, when available in monitoring services, should not be compulsory for women at any stage of the process. Refusal to use it cannot lead to punishment or sanctions because the Maria da Penha Law, the Pre-trial Measures Law and/or the Monitoring Law do not oblige her to use the device so that her rights and social protection are guaranteed. When the need for monitoring in the fulfillment of restraining orders is identified, the measure must be applied by the judge and followed-up by the Monitoring Center, regardless of whether the woman uses the PTU or not.

Electronic monitoring, despite helping to protect women in situation of domestic violence, is not capable of solving gender violence, an issue that is not only related to the use of force, but to the position of women in the social structure. The penal route is insufficient to manage relational conflicts. The State's inability to solve this problem is evident because acts of violence are configured in a large number of cases based on unresolved conflicts of lesser offensive potential. Conflicts become recurrent and aggravated by the State's inability to guarantee adequate spaces for their administration, resulting in a growing number of violent acts against women.

The indiscriminate application of monitoring can increase these rates because the surveillance of the male perpetrator of violence does not mean, in fact, the resolution of conflicts. Therefore, it is necessary to guarantee the follow-up of the perpetrators and of women in situation of domestic violence, with specific referrals to the social protection network and the women's protection network, respectively. That is, to prioritize practices capable of giving rise, among other things, to the liability of the author and autonomy/empowerment of women.

3 Recent data on the electronic monitoring policy

According to Infopen (Brasil, 2017a) which brings data from June 2016, Brazil is the third country in the world with the highest number of prisoners – 726,712 people[1]. The country has only fewer prisoners than the United States[2] (2,145,100 prisoners) and China (1,649,804 prisoners). Infopen also shows that 40% of those incarcerated are made up of pre-trial detainees. The aforementioned report still indicates that, of the total universe of prisoners in Brazil, 55% are

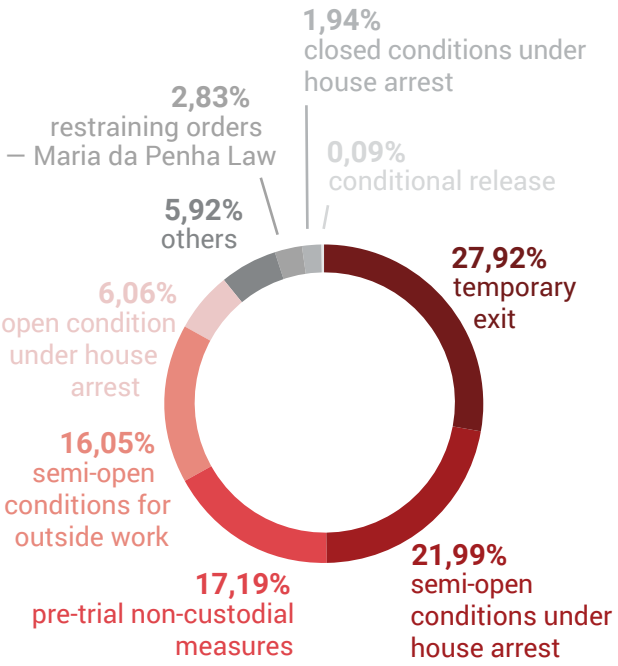
[1] Infopen data for June 2016 indicates that drug trafficking-related crimes are the highest incidence that brings people to prisons, with 28% of the total prison population. Thefts and robberies add up to 37%. Homicide represents 11% of the crimes that led to the arrest.

[2] In the case of the United States, efforts to reduce mass incarceration can be noted, which has not occurred in Brazil.

between 18 and 29 years old. In addition, 64% of the prison population is made up of black people. As for education, 75% of the Brazilian prison population did not reach high school and less than 1% of prisoners have a degree. In relation to vacancies, the document finds that 89% of the prison population are in units with a deficit of vacancies, regardless of the prison conditions, and 78% of the penal establishments hold more inmates than the number of available vacancies. Comparing Infopen data from December 2014 (Brasil, 2015b) with those from June 2016, there is an increase in the deficit of vacancies from 250,318 to 336,491 vacancies in the country. The rate of prisoners per group of 100,000 inhabitants has risen in the same period from 306.22 to 353 individuals.

According to the Diagnosis of the Electronic Monitoring Policy (Pimenta, 2018), in 2017 there were 51,515 people monitored in Brazil (89% men and 11% women, a similar pattern found in the actual criminal enforcement). At that time, there were electronic monitoring centers implemented in 25 states, and in 13 entities there were additional structures to the Electronic Monitoring Center, comprising first service stations in the Forums, installation and maintenance sites, etc. The chart below shows the percentage of use of electronic monitoring in the country according to regimes or measures applied in the year 2017. It is considered here, as in the following table, the universe of 51,250 people monitored, as the State of Santa Catarina did not inform the modalities of use of the 265 people monitored in 2017.

3.1. How to use the electronic monitoring policy



Source: Brasil, 2017a.

In the year 2017, according to data from the diagnosis (Pimenta, 2018), 73.96% of people monitored are in penal enforcement: temporary exit (27.92%); semi-open conditions under house arrest (21.99%); semi-open conditions for outside work (16.05%); open conditions under house arrest (6.06%); closed conditions under house arrest (1.94%); conditional release (0.09%). The various pre-trial non-custodial measures (17.19%) and restraining orders (2.83%), which together add up to only 20.02%, may raise hypotheses that indicate the possibility of an alternative to incarceration. However, electronic monitoring in these cases can also only serve as a tool for the expansion of criminal control.

So far, it is difficult to assess whether monitoring has been used as an alternative to prison or as an alternative to liberty. In any case, it is possible to notice, in light of the prison information, some contours taken by the monitoring services. An initial reading of the latest Infopen (Brasil, 2017a), which brings the national survey of prison information from June 2016, compared to Infopen data from June 2014 (Brasil, 2015b)[3], reveals a considerable increase in the prison population.

In June 2014, there were 607,731 people deprived of liberty in Brazil. The number reached 726,712 in June 2016, with the incarceration of over 118,981 people. The imprisonment rate[4] also increased from 299.7 (June 2014) to 352.6 (June 2016) people deprived of liberty for every 100,000 inhabitants.

According to Infopen of June 2016, Brazil now occupies the 3rd place in the *ranking* of countries with the largest prison population, contrary to international trends focused on decarceration, use of alternatives to imprisonment and qualification of the entrance door of the prison system. The increase in the prison population reveals that the design of penal services is not aimed at guaranteeing international commitments assumed by Brazil, such as, for example, a 10% reduction in the prison population by 2019[5].

The possibilities of answers before considering the primary criminalization of conducts do not reach reasonable levels to curb the number of pre-trial detainees in the country. In June 2016, 40% of people arrested in Brazil had not yet faced trial nor had been convicted[6], a serious fact that violates the Federal Constitution itself. In this regard, the UN High Commission, in renewing the charge made to Brazil in this area, highlights the high number of pre-trial detainees and suggests the qualified use of pre-trial non-custodial measures, which include electronic monitoring.

In these terms, monitoring can greatly reduce the number of pre-trial prisoners, qualifying the entrance door into the prison system and generating decarceration. In addition, the UN High Commissioner's report highlights the need for Brazil to promote alternative measures to prison, such as: alternatives to imprisonment, house arrest and electronic monitoring.

[3] Infopen data from June 2014 was used as a reference in the preparation of the first. national monitoring diagnosis. Thus, in methodological terms, comparisons involving Infopen numbers will be restricted to Infopen data of June 2014 and Infopen of June 2016 that presents the latest penitentiary information

[4] The imprisonment rate indicates the number of people imprisoned for every 100,000 inhabitants. This measure is used to allow the comparison between places with different population sizes and to neutralize the impact of population growth, enabling comparison in the medium and long term.

[5] The announcement of the agreement with the UN was made, in Geneva, during a closed meeting between the Special Secretariat for Human Rights and Brazilian and international NGOs in 2017. The goal of reducing the number of prisoners is also included in the Ministry of Justice's multi-year planning for 2016-2019 (Brasil, 2017b).

[6] This data has practically not changed, considering the Infopen surveys used here: in the June 2014 survey, this population represented 41% of the total number of people deprived of liberty. In June 2016, 40% of the prison population was made up of pre-trial detainees.

Data indicate that the potential of monitoring to contain the number of pre-trial detainees has not materialized. The application of electronic monitoring in the criminal investigation phase represents 20.02% of services – pre-trial measure (17.19%) and restraining order (2.83%). This picture is still of little significance for the containment of mass incarceration. In absolute numbers, there are 8,810 people monitored in compliance with pre-trial non-custodial measures and 1,452 people monitored in compliance with restraining orders, together they add up to 10,262 people monitored during the investigation phase of the criminal proceedings. This total indicates the low impact of electronic monitoring services in reducing the number of pre-trial prisoners in the country, which, in June 2016, reached 292,450 people in a universe of 726,712 people deprived of liberty. It should be noted that, despite the rate of pre-trial detainees remaining practically unchanged between June 2014 (41%) and June 2016 (40%), the absolute number of people provisionally detained increased in this interval with the addition of 42,782 pre-trial detainees.

In 2015 there were 18,172 people monitored. In 2017, the number reached 51,515. In the span of two years, the universe of monitored people was increased almost three times, with an increase of 33,343 monitored people. It is possible to notice, based on the aforementioned national surveys, that monitoring has not been used to slow down incarceration rates or reduce the entry of people into the prison system, even with the growing public investments in the electronic monitoring policy in several Brazilian states.

This picture points out, among other things, a conservative tendency in the conduct of the electronic monitoring policy, applied as a control tool in penal enforcement, even in cases that have a questioned legal provision, such as, for example, semi-open conditions in outside work and conditional release, corresponding to 16.05% and 0.09% of services. Despite these indicators having decreased between 2015 (19.89% and 0.17%) and 2017, the absolute numbers indicate a large increase in people monitored in these situations (2015 – 3,425 and 29 people monitored in the semi-open conditions for outside work and on conditional release; 2017 – 8,228 and 48 people monitored in the modalities respectively mentioned). In addition, the number of states where it was possible to identify the two situations that have a questioned legal provision increased from 8 to 10 in the case of applied monitoring having been semi-open for outside work and from 1 to 2 in the case of monitoring applied in situation of parole.

The tables below show the number of people monitored by state in 2017, specifying the prison conditions or measures to which they are subject. The universe of 51,250 people is considered here, as in the chart shown above, as Santa Catarina did not inform the modalities of use of the 265 people monitored in 2017. The State of Amapá is not included in the table as it does not have monitoring services implemented in 2017. The State of São Paulo, in turn, is not part of the analysis due to the suspension of services in 2017. Lastly, the State of Roraima did not report these data because the monitoring services were implemented in December 2017.

3.2. Number of people monitored by state, according to prison conditions and measures

	Temporary exit	Semi-open conditions under house arrest	Pre-trial non-custodial measures	Semi-open conditions for outside work	Open conditions under house arrest	Others	Restraining orders – Maria da Penha Law	Closed conditions under house arrest	Conditional release	Total
Acre	61	640	17	0	0	0	53	144	0	915
Alagoas	0	0	262	0	300	0	13	0	0	575
Amazonas	0	49	82	11	17	452	0	12	0	623
Amapá	-	-	-	-	-	-	-	-	-	0
Bahia	0	0	2	0	0	0	0	0	0	2[7]
Ceará	201	642	1,607	313	0	0	118	0	0	2,881
Distrito Federal	0	7	36	0	6	0	0	0	0	49
Espírito Santos	1	106	0	0	0	21	0	20	0	148
Goiás	0	279	671	77	393	30	128	2	39	1,619
Maranhão	0	148	867	0	25	1,264	15	0	0	2,319
Minas Gerais	0	0	992	0	421	0	238	0	0	1,651
Mato Grosso do Sul	0	0	3	0	47	0	0	28	0	78
Mato Grosso	0	1,957	595	203	172	0	67	71	0	3,065

[7] According to information provided by the state of Bahia, despite the structure available for electronic monitoring services, court decisions applying monitoring at the state level began to appear only after the publication of Provision Nº. 2/2018 of the Judicial Administrative Department of the Court of Justice of Bahia, regulating electronic monitoring within the State Judiciary Power on February 7, 2018. Thus, the initial milestone of services in Bahia came from a decision of the Supreme Federal Court, in an inquiry, which determined the electronic monitoring of two people in 2017. The activation of the monitoring equipment took place on November 16th, 2017. The first uninstallation of the equipment was carried out on November 29th, 2017 and the second on February 4th, 2018, in compliance with the court decision.

	Temporary exit	Semi-open conditions under house arrest	Pre-trial non-custodial measures	Semi-open conditions for outside work	Open conditions under house arrest	Others	Restraining orders – Maria da Penha Law	Closed conditions under house arrest	Conditional relase	Total
Pará	0	0	366	0	272	0	0	4	0	642
Paraíba	0	0	300	0	0	0	0	0	0	300
Pernambuco	13,949	290	602	1,291	70	1,028	507	200	9	17,946
Piauí	0	12	304	0	0	0	21	3	0	340
Paraná	94	0	1,201	4,431	0	0	86	477	0	6,289
Rio de Janeiro	0	0	37	0	1,360	55	0	0	0	1,452
Rio Grande do Norte	0	0	13	559	0	2	0	12	0	586
Rondônia	0	1,059	261	1,232	21	0	39	14	0	2,626
Roraima	-	-	-	-	-	-	-	-	-	0
Rio Grande do Sul	0	5,043	103	0	0	0	0	0	0	5,146
Samta Catarina	-	-	-	-	-	-	-	-	-	0
Sergipe	0	8	419	3	2	179	123	5	0	739
São Paulo	-	-	-	-	-	-	-	-	-	0
Tocantins	4	1,032	70	108	0	1	44	0	0	1,259
Total	**14,310**	**11,272**	**8,810**	**8,228**	**3,106**	**3,032**	**1,452**	**992**	**48**	**51,250**

Source: Brasil, 2017a.

3.3. How much does electronic monitoring cost?

According to the Electronic Monitoring Policy diagnosis (Pimenta, 2018), the average monthly "anklet" rental cost per person is BRL 267.92 and the median BRL 230.00. It is important to emphasize that the informed cost involves the monthly payment of the equipment per person monitored to the companies, which includes installation and maintenance procedures for the "anklet" and the information system. That is, it does not cover the full cost of monitoring services. The composition of the cost of electronic monitoring services, as indicated by the managers, must include calculations that consider, at a minimum, the following expenses: remuneration of civil servants and various employees; social and labor charges; rental of property for Center; water, energy and telephone taxes and bills; building maintenance; permanent material; consumables; vehicle; vehicle maintenance; instruction and continuous training of civil servants and other employees.

According to the aforementioned document, some defenses about the expansion of monitoring services are usually based on the idea of reducing costs in a simplistic and wrong way. In this logic, it is customary to consider only the monthly amount paid for each "anklet" installed, as opposed to the monthly amount related to the custody service of a person deprived of liberty. To achieve methodological validity and serve as a reliable parameter for planning penal services as a public policy, the comparison must necessarily consider all the elements associated with the cost of both services. Logically, the electronic monitoring service is not structured exclusively on the installation of an "anklet" and surveillance of the people monitored through the information system. It is not possible to state, therefore, that monitoring services are cheaper than prisons without measuring other essential costs for their implementation (servers and other employees, physical facilities, etc.). And, even though monitoring may suggest a saving in resources compared to the costs of the prison system, this may imply a duplication of expenses.

4
What horizons do we want to reach in electronic monitoring?

The high number of pre-trial detainees and the low use of electronic monitoring in cases of pre-trial measures indicate that there is room to be occupied by monitoring as a substitute for the deprivation of liberty of non-convicted people. And, despite the electronic monitoring potential for decarceration, what we observed is the significant use of services with a view to expanding criminal control, which primarily acts as a prison management mechanism and does not reduce incarceration. Criminal control is expanded, since, according to the hypotheses provided for in Brazilian legislation, the monitoring of prisoners on temporary release or under house

arrest does not promote decarceration. The use of monitoring services in cases of pre-trial non-custodial measure requires an analysis of who will be effectively monitored: the pre-trial prisoner or the defendant who was already facing the prosecution in freedom.

The electronic monitoring of people arises and expands as a policy guided by a social imaginary built and reinforced around the validity of repressive practices and the intensification of the punitive power. Recognizing electronic monitoring as an instrument of criminal control aimed at the surveillance of individuals and the fact that the use of "anklets", as a rule, causes physical and psychological damage, limits social integration and does not create a sense of responsibility, it is necessary to move in other directions. The goal is, based on these fundamental findings, to look at the potential of electronic monitoring in the decarceration and containment of the number of pre-trial detainees, without this implying in ignoring or denying the rights of monitored people provided for in the Criminal Enforcement Law (Brasil, 1984)) and in other legal documents.

Between 2015 and 2016, the Management Model for the Electronic Monitoring of People (Brasil, 2020a) was produced with the aim of guiding the national policy course of electronic monitoring induced by DEPEN and, equally, qualifying the monitoring services. Apparatus and languages specific to public policies are activated in the Model which, in addition to presenting a robust theoretical effort aligned with in-depth empirical research, proposes, according to a critical view of the culture of incarceration and resurgence of the penal control and punitive power, concepts, principles, guidelines, rules, methodologies and work instruments. The proposal is an effort directed towards the implementation of electronic monitoring services in a systemic, coherent manner, with tangible goals and results, effectively directed towards the decarceration and reduction of the number of people provisionally imprisoned in the country.

Inducing the electronic monitoring policy in accordance with the assumptions and methodologies presented in the above-mentioned Model implies placing the subject on public agendas, which requires the creation of consensus even before directing technical and financial subsidies for its operationalization. It is necessary to offer and socialize a common repertoire to the parts that, directly or indirectly, are involved in electronic monitoring services.

Electronic monitoring is understood as:

the mechanisms of restriction of freedom and intervention in conflicts and violence, other than incarceration, within the scope of criminal policies, carried out by technical means that allow for an accurate and uninterrupted indication of the geolocation of the people monitored for indirect control and surveillance, oriented towards decarceration (Brasil, 2020a).

The concept, in addition to situating electronic monitoring of people in criminal policy, pointing out aspects such as control and surveillance, has a propositional dimension, namely: the capacity to contain incarceration and reduce the high number of pre-trial detainees. Thus, monitoring should not be used only as a mechanism for prison management and control, being indicated, on a case-by-case basis, only when another less severe pre-trial measure does not apply, as an alternative to prison and not as an alternative to liberty.

The National Penitentiary Department, as well as the National Council of Justice, in Protocol I of Resolution Nº 213/2015, as will be detailed in the following pages, conceives monitoring as an exceptional measure, recommending that the application of alternatives to imprisonment be evaluated before the monitoring. This order is also the same in the list of pre-trial non-custodial measures (Law Nº 12,403/2011) and is not proposed randomly but based on theoretical and practical repertoires that show the fact that monitoring does not promote self-liability of the monitored person, nor does it give rise to the restoration of relations and the promotion of a culture of peace. In other words, the monitoring services are not oriented towards self-reflective and community involvement processes, unlike what happens in the methodologies applied to the different types of alternatives to imprisonment already developed in the country[8].

In cases of electronic monitoring application during criminal enforcement, how it has been happening in most Brazilian states, it is essential to guarantee all the legally foreseen rights to the monitored person, which can, in turn, minimize the accentuated vulnerabilities that mark the Brazilian prison population. With this, we emphasize that the person serving a sentence with electronic monitoring must continue to have the rights provided for in the Criminal Enforcement Law (Brasil, 1984), as stated, for example, in the articles:

Art. 10:

Assistance to prisoners and detainees is the duty of the State, aiming to prevent crime and guide the return to coexistence in society.

Art. 11
The assistance will be:

I — material;

II — to health;

III — legal;

IV — educational;

V — social;

VI — religious.

Art. 40:

All authorities must respect the physical and moral integrity of convicts and pre-trial detainees.

[8] For more information on penal alternatives, see the Management Model for Penal Alternatives (Brasil, 2020b).

Art. 41
The prisoner's rights are:

I — sufficient food and clothing;

II — assignment of work and its remuneration;

III — Social Security;

IV — constitution of annuity;

V — proportionality in the distribution of time for work, rest and recreation;

VI — exercise of previous professional, intellectual, artistic and sporting activities, as long as they are compatible with the sentence;

VII — material, health, legal, educational, social and religious assistance;

VIII — protection against any form of sensationalism;

IX — personal and private interview with a lawyer;

X — visit by spouse, partner, relatives and friends on certain days;

XI — nominal call;

XII — equality of treatment, except for the requirements of the individualization of punishment;

XIII — special audience with the director of the establishment;

XIV — representation and petition to any authority, in defense of rights;

XV — contact with the outside world through written correspondence, reading and other means of information that do not compromise morale and good customs;

XVI — certificate of sentence to be served, issued annually, under the responsibility of the competent judicial authority — included by Federal Law N° 10,713/2003 (Brasil, 2003b).

It is the State's obligation to ensure these rights to people monitored while serving their sentence. Thus, for example, the right to semi-open conditions cannot be simply converted into house arrest with monitoring without, at the very least, guaranteeing the rights expressed in law with the mere justification of lack of vacancies or even decarceration. The State needs to guarantee access to public policies that have already been instituted, and this applies to all people monitored, both the investigation phase and when serving the sentence. It is necessary, therefore, to ensure that the conditions applied do not constitute an aggravation of the sentence and that they are analyzed individually, situation that has been happening increasingly in several states.

It is essential, therefore, to consolidate the monitoring policy in an affirmative and systemic way, according to the principle common to every democratic order, that is, the guarantee and strengthening of human rights (fundamental, political, economic, social, cultural, etc.) in the protection and development of life. This also im-

plies the subsidiary and residual application of electronic monitoring due to other legally provided modalities. That is, it should always be thought of as an exceptional measure, indicated only when there is no other less burdensome pre-trial measure, as an alternative to prison and not as an alternative to liberty, as an instrument to contain incarceration and reduce the high number of pre-trial detainees. And, when applied while serving the sentence, all legally provided rights must be guaranteed to the person being monitored, as they cannot be willing to maintain or accentuate any vulnerability, nor to violate rights[9].

We also aim to use monitoring with caution, strictness from a legal and methodological point of view in all its stages, so that its application can actually affect decarceration and reduction of the number of pre-trial detainees in Brazil, in a way that this does not result in an increase in the vulnerabilities of the people monitored and restriction of foreseen rights.

We are facing a challenge that inherently carries a paradigm shift. Changing paradigms in monitoring services implies recognizing that we are dealing with a public policy, a penal policy, that is, distinct from the public security policy due to its distinct subjects and objects. The main subject of criminal policy – this extends to electronic monitoring – is the individual, the person in custody, the person being monitored (regardless of the measure's nature and the procedural stage). Hence, the need to establish principles aimed at guaranteeing the fundamental rights of monitored people, as well as the development of practices and routine flows in this direction.

Based on this initial understanding and in order to strengthen the commitment of the national policy of electronic monitoring to decarceration, minimal criminal intervention, the promotion of human rights, social justice and even the protection of sensitive personal data of people monitored, it is worth pointing out the principles that shape these horizons[10]:

[9] Several monitored people who were followed up during the production of this diagnosis had their sentence aggravated due to the conditions applied in a homogeneous way for all individuals and often based on non-objective criteria. For example, a person monitored while serving a sentence in semi-open conditions under house arrest was not allowed to leave the house under any circumstances, disregarding the fact that he or she was undergoing hemodialysis. This restriction notably aggravated the execution of the sentence, including putting this person's life at risk. It is noteworthy that, while waiting for a hearing to justify the "punishment", they remained imprisoned in closed conditions unit for 30 days. The application of electronic monitoring in a non-judicious manner and based on the analysis of concrete cases can be faced based on the principles, guidelines, rules and methodologies proposed in the Management Model for the Electronic Monitoring of People (Brasil, 2020a).

[10] The principles are organized in these 4 groups mentioned, totaling 37 principles for electronic monitoring services. The description of each of the principles can be fully accessed, as well as the guidelines and rules, in the Management Model for the Electronic Monitoring of People (Brasil, 2020a).

Decarceration and minimum criminal intervention

1 — Non-contingent response,

2 — Wide prevention,

3 — Subsidiarity and minimal criminal intervention,

4 — Observance of the principle of legality,

5 — Presumption of innocence,

6 — Suitability,

7 — Need,

8 — Social adequacy,

9 — Legal adequacy,

10 — Provisionality,

11 — Proportionality,

12 — Personal imputation,

13 — Responsibility for the fact,

14 — Instrumentality and simplicity of acts and forms,

15 — Limits of discretionary power,

16 — Separation of competences,

17 — Economy.

Promotion of human rights and social justice

18 — Dignity and freedom,

19 — Less damage,

20 — Normality,

21 — Of people electronically monitored as subjects of their processes,

22 — Recognition and respect for differences,

23 — Women's policies.

Personal data protection

24 — The sensitive nature of personal data in electronic monitoring,

25 — Privacy,

26 — Purpose limitation,

27 — Minimum information,

28 — Transparency,

29 — Availability,

30 — Integrity,

31 — Confidentiality,

32 — Authenticity,

33 — Of Security and Prevention.

Integrated action between Federative Entities, justice system and community for decarceration

34 — Interinstitutionality,

35 — Interactivity or social participation,

36 — Interdisciplinarity,

37 — Professionalization of electronic monitoring services and their management structures.

5 Technical Cooperation Agreement signed between the National Council of Justice, the National Council of the Public Prosecutor's Office and the Ministry of Public Security

Among the inter-institutional efforts aimed at qualifying the electronic monitoring services, in 2015, the Technical Cooperation Agreement Nº 5/2015 (Brasil, 2015c) signed between the National Council of Justice and the Ministry of Justice, with the purpose of composing and structuring the guidelines and the promotion of the electronic monitoring policy, in line with respect for fundamental rights. The Management Model for the electronic monitoring of people was developed in this direction, part of the work plan of the aforementioned Agreement. The Management Model and the actions implemented for its socialization and adherence, in turn, gave rise to the design of other inter-institutional actions.

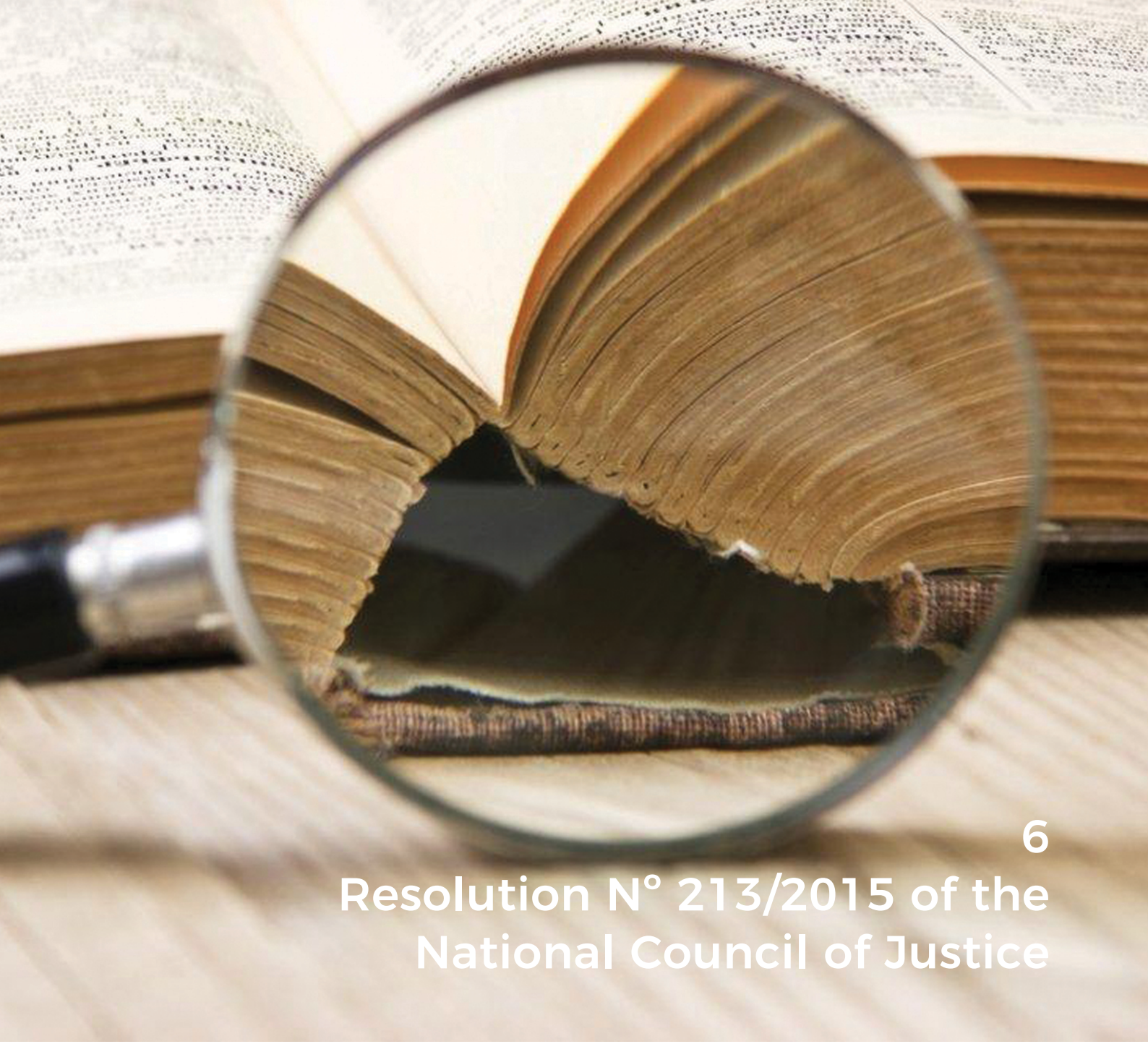
In 2018, based on common understandings between the National Council of Justice, the National Council of the Public Prosecutor's Office and the Ministry of Public Security regarding electronic monitoring and alternative to imprisonment policies, these institutions signed the Technical Cooperation Agreement Nº 39/2018 (Brasil, 2018a). This instrument emphasizes the purpose of establishing improvements in the criminal enforcement and criminal justice system, especially in the qualification of information management and in the development and integration among computerized systems, as well as in the improvement of the implementation of alternatives to imprisonment and electronic monitoring policies. Thus, a series of actions are listed to qualify penal policy in Brazil, in which monitoring is provided for as an exceptional measure, with priority being given to the application of alternatives to imprisonment:

a) *To encourage the application of pre-trial non-custodial measures and the respective referral of the public to the Integrated Centers for Alternatives to Imprisonment, as a priority option, replacing electronic monitoring of people and deprivation of liberty, in addition to prioritize the allocation of pecuniary penalties for the promotion and strengthening of projects and services related to the alternative to imprisonment policies.*

b) *To induce the application of electronic monitoring in a subsidiary and residual way to other legally provided modalities, as an instrument to contain incarceration and reduce the high number of pre-trial detainees (Brasil, 2018a).*

The National Penitentiary Department, as well as the National Council of Justice, in Protocol I of Resolution Nº 213/2015, as will be detailed in the following pages, conceives monitoring as an exceptional measure, recommending that the application of alternatives to imprisonment be evaluated before the monitoring. This order is also the same in the list of pre-trial measures (Law Nº 12,403/2011) and is not proposed randomly, but based on theoretical and practical repertoires that show the fact that monitoring does not promote self-liability of the monitored person, nor does it give rise to the restoration of relations and the promotion of a culture of peace. In other words, the monitoring services are not oriented towards self-reflective and community engagement processes, unlike what happens in the methodologies applied to the different types of alternatives to imprisonment already developed in the country[11].

[11] For more information on penal alternatives, see the Management Model for Penal Alternatives (Brasil, 2020b).



6
Resolution N° 213/2015 of the National Council of Justice

In applying the measures, the guidance and guidelines of the National Council of Justice (CNJ) must be observed, in order to ensure the legal foundations and purposes of the pre-trial monitoring measure. Regarding the procedures for the application and monitoring of various precautionary measures of the prison, which include electronic monitoring, CNJ Resolution Nº 213/2015 determines that the following principles must be adopted:

I

Legality:

The application and follow-up of pre-trial non-custodial measures must adhere to the hypotheses provided for in the legislation, and it is not possible to apply restrictive measures that go beyond legality.

II

Subsidiarity and minimal criminal intervention:

It is necessary to limit criminal intervention to a minimum and ensure that the use of prisons is a residual resource in the penal system, favoring other responses to social problems and conflicts. Criminal interventions must be limited to the most serious violations of human rights and be restricted to the minimum necessary to stop the violation, considering the social costs involved in the application of pre-trial detention or custodial pre-trial measures.

III

Presumption of innocence:

The presumption of innocence must guarantee people the right to freedom, defense and due legal process, and pre-trial detention, as well as pre-trial non-custodial measures, must be applied on a residual basis. The granting of provisional liberty with or without pre-trial non-custodial measures is a right, not a benefit, and the presumption of innocence of the defendant should always be considered. Thus, the rule should be the granting of provisional freedom without the application of pre-trial non-custodial measures, safeguarding this right, especially in relation to segments of the population that are more vulnerable to criminalizing processes and with less access to justice.

IV

Dignity and freedom:

The application and monitoring of pre-trial non-custodial measures must prioritize the dignity and freedom of people. This freedom presupposes active participation of the parties in the construction of measures, guaranteeing individualization, repair, restoration of relationships and fair measure for all involved.

V

Individuation, respect for individual history and potential recognition:

In the application and follow-up of the various pre-trial non-custodial measures, individual history must be respected, promoting solutions that positively compromise the parties, observing the individuals' personal potential, removing the measures of a sense of mere retribution for past acts, incompatible with the presumption of constitutionally assured innocence. It is necessary to promote emancipatory meanings for the people involved, contributing to the construction of a culture of peace and to the reduction of the various forms of violence.

VI

Respect and promotion of diversities:

In the application and follow-up of the various pre-trial non-custodial measures, the Judiciary and the programs to support the execution must guarantee respect for generational, social, ethnic/racial, gender/sexuality, origin and nationality, income and social class, religion, belief, diversities among others.

VII

Liability:

The various pre-trial non-custodial measures must promote liability with autonomy and freedom of the individuals involved in them. 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 translate into feasibility and meaning for the involved.

VIII

Provisional nature:

The application and follow-up of pre-trial non-custodial measures must respect the provisional nature of the measures, considering the desocializing impact that the restrictions imply. The criminal process slowness may mean an indeterminate or unjustifiably prolonged time of measure, which violates reasonableness and the principle of the minimum penalty. In this sense, the pre-trial non-custodial measures must always be applied with the determination of the end of the measure, in addition to ensuring the periodic re-evaluation of the restrictive measures applied.

IX

Normality:

The application and follow-up of the various pre-trial non-custodial measures must be delineated based on each concrete situation, in accordance with individual rights and history of the people to be fulfilled. Thus, such measures should strive not to interfere or to do so in a less impactful way in the daily routines and relationships of the people involved, being limited to the minimum necessary for the protection intended by the measure, at the risk of deepening the marginalizing and criminalizing processes of people subject to the measures.

X

Non-criminalization of poverty:

The situation of social vulnerability of people taken to the detention control hearing cannot be a selective criteria in their disfavor in considering the conversion of *in flagrante* arrest into pre-trial detention. Especially in the case of homeless people, the convenience for criminal prosecution or the difficulty of summoning them to appear in procedural acts is not a circumstance capable of justifying procedural arrest or pre-trial measure, and the social referrals of non-mandatory form, should be garanteed, whenever necessary, preserving the individuals' freedom and autonomy.

Also according to the aforementioned Resolution, the following elements must be considered by the Justice System at the detention control hearings, in accordance with Protocol I of Resolution Nº 213/2015 of the National Council of Justice:

I

From the presentation of motivation for its decision pursuant to art. 310 of the CPP, safeguarding the presumption of innocence principle, it will be up to the judge to grant provisional freedom or impose, in a reasoned manner, the application of pre-trial non-custodial measures, only when necessary, justifying the reason for its non-application when understood by the decree of pre-trial detention;

II

To guarantee the right to medical and psychosocial care that may be necessary, safeguarding the voluntary nature of these services, by referring them to the Integrated Centers for Alternatives to Imprisonment or similar agencies, avoiding the application of pre-trial measures for the treatment or compulsory hospitalization of people in conflict with the law fined *in flagrante delicto* with a mental disorder, including chemical dependency, according to the provisions of art. 4 of Law Nº 10,216/2001(Brasil, 2001) and in art. 319, item VII, of the Law-Decree Nº 3,689/1941 (Brasil, 1941).

III

To articulate, at the local level, the adequate procedures for the referral of people in compliance with pre-trial non-custodial measures to the Integrated Centers for Alternatives to Imprisonment or similar agencies, as well as the procedures for welcoming offenders, monitoring the measures applied and referrals to public policies for social inclusion. In the Districts where the aforementioned Centers do not exist, the psychosocial team of the court responsible for the detention control hearings will seek to integrate the fined person into wide networks with the state and municipal governments, seeking to ensure social inclusion on a non-mandatory basis, from the specifics of each case.

IV

To articulate, at the local level, the adequate procedures for the referral of people in compliance with the pre-trial non-custodial measures provided for in art. 319, item IX, of the Code of Criminal Procedure, for the Centers of Electronic Monitoring of People, as well as the procedures for welcoming the people monitored, supervising of the measures applied and referrals to policies of social inclusion.

The National Council of Justice specifically indicates procedures for the application and follow-up of pre-trial non-custodial measures in the form of electronic monitoring. The Council, in order to ensure the legal foundations and purposes of the pre-trial electronic monitoring measure, recommends that the following guidance and guidelines set out in Protocol I of CNJ Resolution Nº 213/2015 be especially considered:

I — **Effective alternative to pre-trial detention:**

The application of electronic monitoring will be exceptional, and should be used as an alternative to pre-trial detention and not as an additional element of control for defendants who, under the circumstances established in court, would already respond to the process in freedom. Thus, electronic monitoring, as a pre-trial non-custodial measures, should be applied exclusively to people accused of willful crimes punishable by a maximum prison sentence of more than four years or convicted of another intentional crime, in a final and unappealable sentence, subject to the provisions of item I of the caput of art. 64 of the Brazilian Criminal Code, as well as people in compliance with restraining orders accused of crimes involving domestic and family violence against women, children, adolescents, elderly, sick or people with disabilities, always exceptionally, when another less burdensome pre-trial non-custodial measure does not apply.

II — **Necessity and adequacy:**

Electronic Monitoring can only be applied as a pre-trial non-custodial measure when the need for electronic surveillance of the prosecuted or investigated person is verified and justified, after demonstrating the inapplicability of the granting of provisional freedom, with or without bail, and the insufficiency or inadequacy of other pre-trial non-custodial measures, always considering the presumption of innocence. Likewise, monitoring should only be applied when the adequacy of the measure with the situation of the person prosecuted or investigated is verified, as well as objective aspects related to the criminal process, especially regarding the disproportionality of application of the electronic monitoring measure in cases in which deprivation of freedom will not be applied at the end of the process, in case of conviction.

III — **Provisionality:**

Considering the seriousness and breadth of the restrictions that electronic monitoring imposes on people subject to the measure, its application should pay special attention to its provisional nature, ensuring the periodic reassessment of its need and adequacy. Electronic monitoring measures applied for an indefinite period or for excessively long periods (example: six months) are not allowed. Regular compliance with the conditions imposed by the court should be considered as an element for the review of the applied electronic monitoring, revealing the need for the excessive control it imposes, which may be replaced by less burdensome measures that favor the self-liability of the fined person in the fulfillment of established obligations, as well as their effective social inclusion.

IV — **Less damage:**

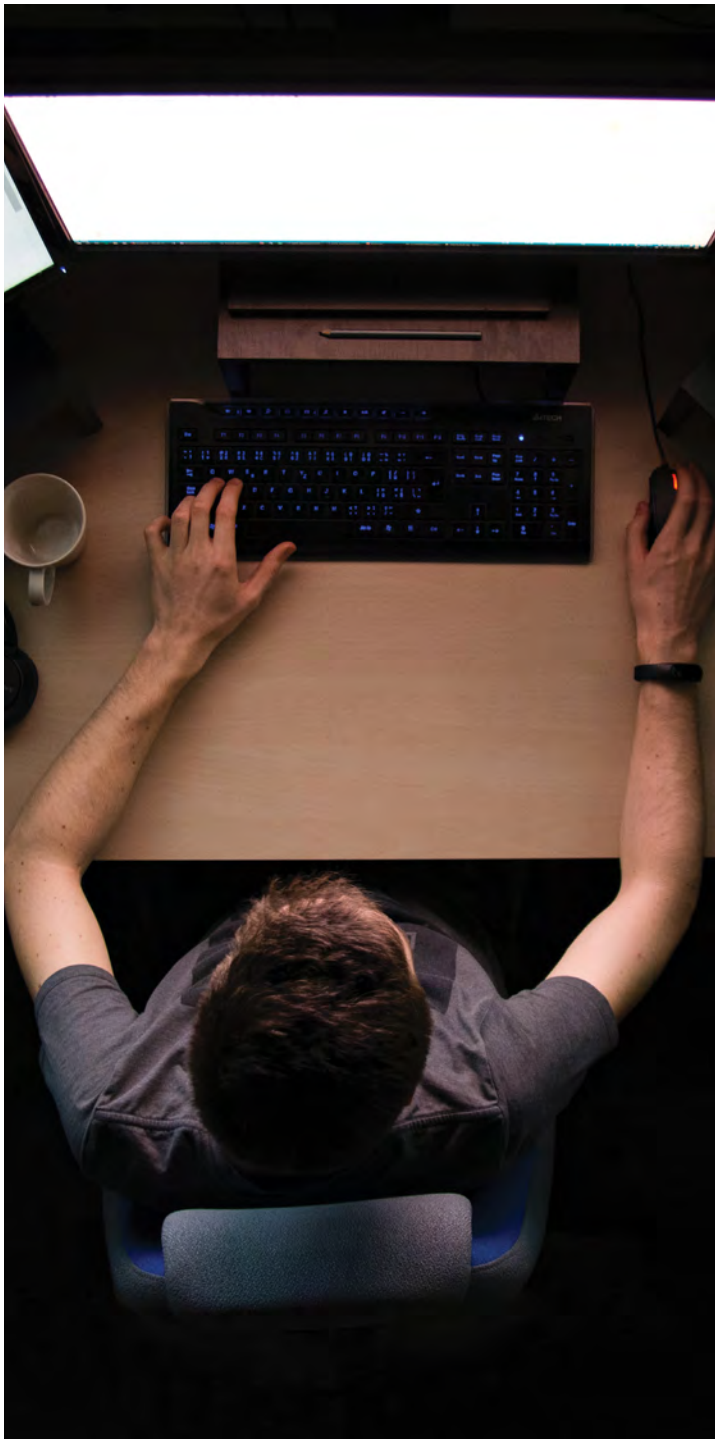
The application and follow-up of electronic monitoring measures must be oriented towards minimizing physical and psychological damage caused to people monitored electronically. Fostering the adoption of workflows, procedures, methodologies and technologies that are less harmful to the person being monitored should be sought, minimizing stigmatization and the constraints caused by the use of the device.

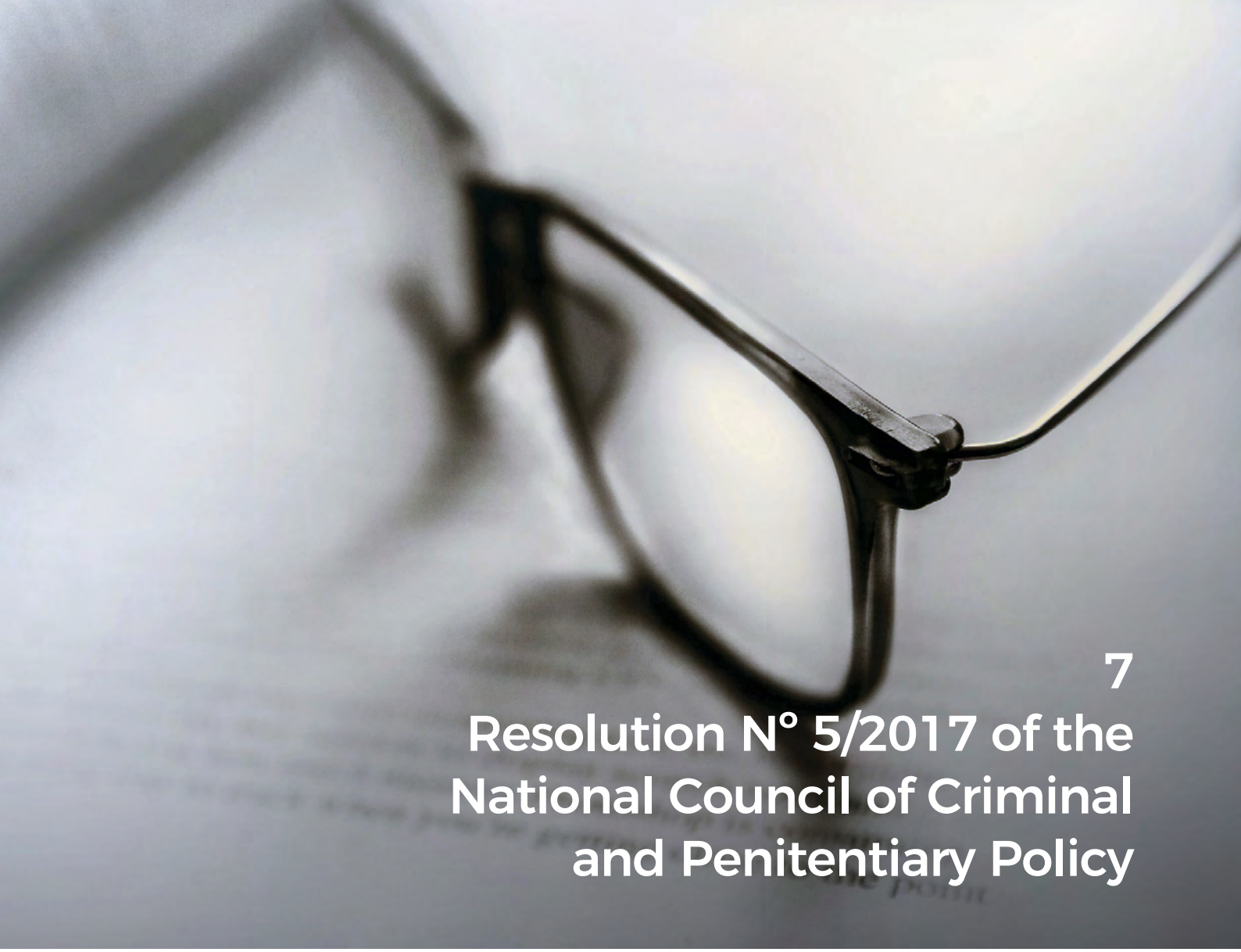
V — **Normality:**

The application and follow-up of electronic monitoring as pre-trial non-custodial measures should seek to reduce the impact caused by the restrictions imposed and by the use of the device, limited to the minimum necessary for the protection intended by the measure, under risk of deepening the processes of marginalization and criminalization of people subjected to the measures. The maximum approximation of the routine of the monitored person should be sought in relation to the routine of people not submitted to electronic monitoring, thus favoring social inclusion. It is essential that the inclusion and exclusion areas and other restrictions imposed, such as any time limitations, be determined in a modest way, paying attention to the individual characteristics of the people monitored and their needs to carry out daily activities from the most diverse dimensions (education, work, health, culture, leisure, sport, religion, family and community life, among others).

Detention control hearings must ensure that the pre-trial detention is not usurped by a possible intention to anticipate a possible penalty, and must only be used "when it is not appropriate to replace it by another pre-trial measure" (Brasil, 1941, art. 282). Furthermore, the aforementioned Resolution indicates that the application of monitoring must be residual, preventing its exponential growth:

> *The application of electronic monitoring will be exceptional and should be used as an alternative to pre-trial detention and not as an additional element of control for the assessed parties who, due to the circumstances established in court, would already respond to the process in freedom. Thus, electronic monitoring, as a pre-trial non-custodial measure, should be applied exclusively to people accused of willful crimes punishable by a maximum prison sentence of more than four years or convicted of another intentional crime, in final and unappealable sentence, except for the provisions of item I of the caput of art. 64 of the Brazilian Criminal Code, as well as people in compliance with restraining orders accused of crimes involving domestic and family violence against women, children, adolescents, elderly, sick or people with disabilities, always exceptionally, when another less severe pre-trial measure measure does not apply (Brasil, 2015a).*





7
Resolution N° 5/2017 of the National Council of Criminal and Penitentiary Policy

Resolution Nº 5/2017 (Brasil, 2017c) of the National Council for Criminal and Penitentiary Policy (CNPCP) provides for the policy of implementing electronic monitoring in the context of restraining orders, investigative procedures, criminal proceedings for criminal knowledge and enforcement. There are relevant elements and details brought in the Resolution, especially if we consider the brevity of the contents listed in the Brazilian laws that deal with monitoring. This Resolution considers, in addition to the current legislation on the subject, Resolution Nº. 213/2015 of the National Council of Justice and various materials that make up the Management Model for the Electronic Monitoring of People (Brasil,

2020a) that were published at the time of writing, such as: the Report on the implementation of Electronic Monitoring Policy in the country (Pimenta, 2015) and the Guidelines for the Processing and Protection of Data in Electronic Monitoring of People (Pimenta, 2016).

The content is capable of guiding the application and execution of electronic monitoring, dialoguing with the purposes of this diagnosis and, consequently, of the Management Model (Brasil, 2020a) that guides the monitoring policy. Monitoring is considered to have a decarcerating potential; it could effectively replace the deprivation of liberty, notably when applied as a precautionary measure other than imprisonment, pursuant to the terms of art. 319, IX, of the Code of Criminal Procedure (Item IX added by Federal Law Nº 12,403/2011). It also adds that, even with provision for the use of electronic monitoring equipment as a pre-trial non-custodial measure, its use in this circumstance should only occur in cases of strict necessity, exceptionally, given the perspective of provisional freedom without the said restriction, or application of a pre-trial measure other than the less burdensome imprisonment.

In addition to indicating caution in the application of monitoring, favoring other less burdensome measures, by specifying the application of the measure in the context of restraining orders and in the criminal prosecution, the Resolution emphasizes that, based on the presumption of innocence, principle and expression of the Democratic State of Law, people must be guaranteed the right to freedom, defense and due legal process, with pre-trial detention, as well as the application of pre-trial non-custodial measures being applied on a residual basis. The exceptionality in the application of monitoring in the case of pre-trial measures is highlighted, stressing that their need must be verified and substantiated by demonstrating the inapplicability of the granting of provisional freedom, with or without bail, and the insufficiency or inadequacy of other pre-trial measures.

Art. 17:

Electronic monitoring, as a pre-trial non-custodial measure, should be applied exclusively:

I — To people accused of intentional crimes punishable by a maximum penalty of deprivation of liberty exceeding four years or convicted of another intentional crime, in a final and unappealable sentence, subject to the provisions of item I of the caput of art. 64 of the Brazilian Penal Code (Brasil, 1940);

II — To ensure compliance with restraining orders in crimes involving domestic and family violence against women, children, adolescents, the elderly, the sick or people with disabilities.

Sole paragraph – In the case of item II, monitoring can only be applied when there is non-compliance with a previously applied restraining order, except in cases where the seriousness of the violence justifies its immediate application.

The CNPCP Resolution Nº 5/2017 indicates 12 principles[12] that should govern the application and follow-up of electronic monitoring, both in the investigation phase and when serving the sentence:

I — Principle of legality, whereby the electronic monitoring measure may not be applied in a case not provided for in the legislation that implies an aggravation of the procedural condition or of serving the sentence of the person subject to the measure, nor determine additional restrictions not provided for in the legislation to the people monitored;

II — Subsidiarity and minimal criminal intervention, whereby both imprisonment and electronic monitoring must be understood as exceptional measures, restricted to the most serious violations of human rights and the minimum necessary to stop the violation, favoring whenever possible, the application of less severe measures;

III — Presumption of innocence, whereby the application of the pre-trial measure cannot assume the sense of punishment, and full defense and due legal process must be guaranteed before sanctions application;

IV — Dignity, whereby the measure application cannot lead to degrading forms of compliance or disrespect for fundamental rights;

V — Necessity, whereby the measure can only be applied when the electronic surveillance of the person is considered essential, based on the assessment in the concrete case, demonstrating the insufficiency of less serious measures for the intended judicial protection;

VI — Social adequacy, whereby the person's full conditions capacity and compliance must be assessed, considering schedules and other elements related to social/family, work, health, religious belief, study conditions among others;

VII — Legal adequacy, whereby electronic monitoring should not be applied as a pre-trial measure in cases in which possible future convictions will not entail the fulfillment of a custodial sentence;

VIII —Provisionality, whereby the measures must last for a reasonable period when applied in the knowledge phase, and must be revoked whenever they prove inadequate or unnecessary.

IX — Individualization of punishment, whereby the particularities of each person to serve must be considered, with recognition of individual histories and potentials;

X — Normality, whereby the restrictions imposed on the measures must adhere to the minimum possible and necessary for the protection of the judicial provision, ensuring the least possible damage to the normal routine of the person monitored electronically;

[12] The principles listed in CNPCP Resolution Nº 5/2017 and their meanings are also worked out in the Management Model for the Electronic Monitoring of People (Brasil, 2020a).

XI — Data protection, whereby data collected in electronic monitoring services are considered sensitive personal data, due to their potential for harm and discrimination, and must receive adequate processing and protection; and

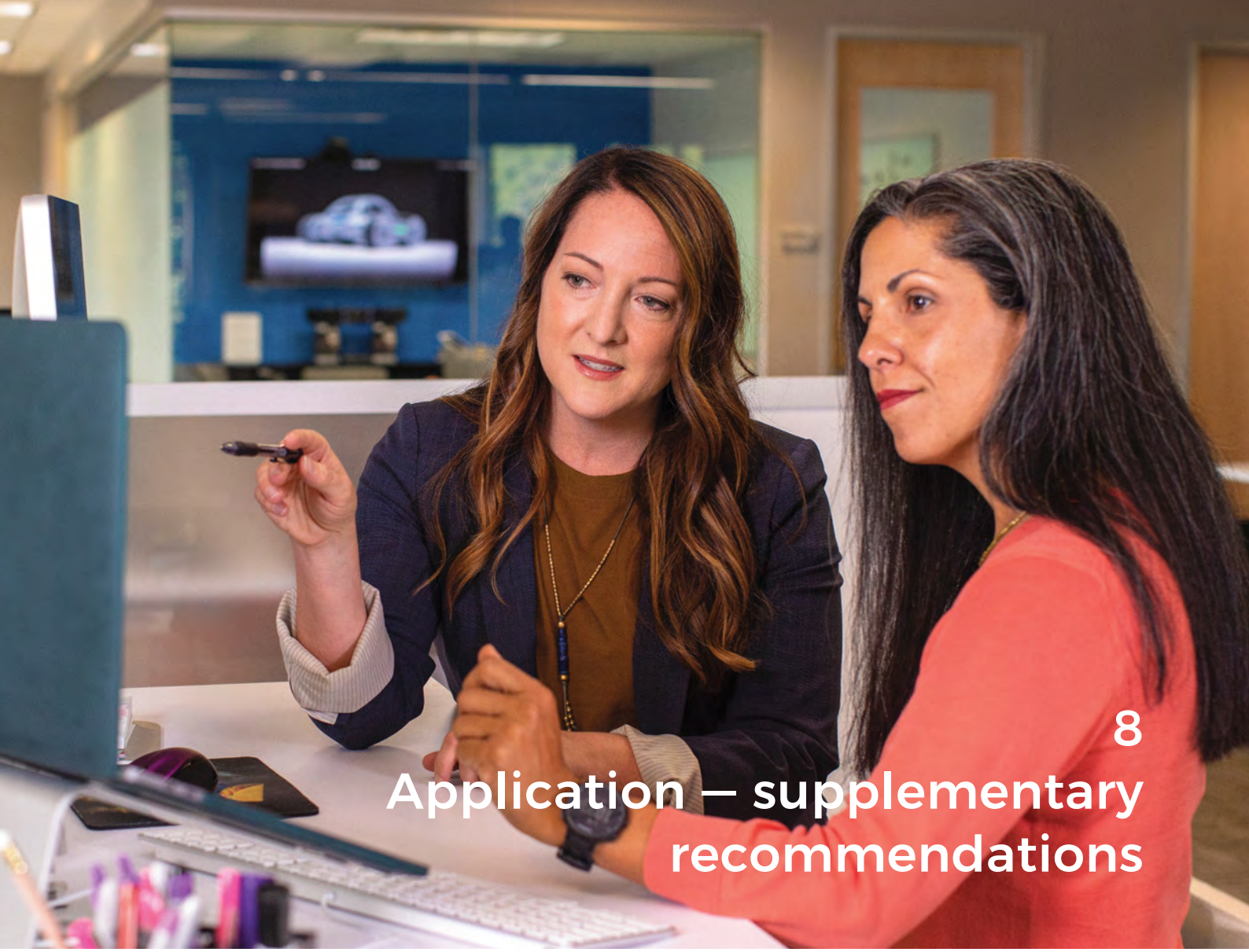
XII — Less damage, whereby electronic monitoring services should seek to minimize physical, psychological and social damage caused by the use of the device and the restrictions imposed by the measures.

Although the document does not specify the definition of the inclusion or exclusion areas, it mentions that such parameters must be defined in observance of the normality and least harm principles, avoiding, as much as possible, increasing social vulnerabilities or affecting social, work, study relations, access to health services and other public services. Chapter V, on the other hand, deepens, to some extent, the issue of data protection by providing for their sensitivity. Art. 23 points out that personal data related to electronic monitoring should be considered sensitive personal data by nature, as they inherently present harmful and discriminatory potential not only to the person being monitored, but also to women in situations of domestic and family violence, as well as family members, friends, neighbors and acquaintances who have their personal data linked to the electronic monitoring system. So, as the National Council of Justice recommends in Resolution Nº 213/2015, Resolution Nº 5/2017 of the National Council for Criminal and Penitentiary Policy emphasizes restrictions in terms of access and sharing of data:

Art. 24:

Access to data and information of the monitored person will be restricted to expressly authorized servers who need to know them by virtue of their attributions.

Any requests for information on people monitored, for the purposes of criminal investigation, must be formally requested to due judicial authority.



8
Application — supplementary recommendations

In addition to the elements indicated above, it is recommended that judges and other actors of the justice system observe the following guidelines complementary to Resolution Nº 213/2015 of the National Council of Justice and Resolution Nº 5/2017 of the National Council of Criminal and Penitentiary Policy:

I

To apply electronic monitoring as a pre-trial measure only on a residual basis and when this is assessed as necessary, considering the fundamental rights of the people involved and when other pre-trial non-custodial measures prove to be insufficient;

II

The public defender or appointed lawyer will always be responsible for first requesting prison release without conditions and, only in a subsidiary manner, the freedom conditioned to a pre-trial measure, reserving the application of electronic monitoring as a last resource;

III

To take into account the operational capacity of the Electronic Monitoring Centers, which involves the amount of available equipment and personnel for proper monitoring of the measure;

IV

To avoid excessive pre-trial measures applied cumulatively with electronic monitoring, creating excessive restrictions, which implies greater difficulty in complying with the measures;

V

To apply electronic monitoring considering the qualified listening of the person by a multidisciplinary team, examining the need for the measure in accordance with the context of the verified facts and the objective and subjective conditions of compliance;

VI

To avoid over-dimensioning the exclusion area and under-dimensioning the inclusion area, especially to minimize restrictions on the routines of work, study, health treatments and sociability of the monitored people;

VII

To consider a determined period in the application of the electronic monitoring measure, of a maximum of 90 days, with a single extension allowed, by reasoned decision, for a maximum term of the same period;

VIII

To re-evaluate the application of the electronic monitoring measure, over the determined period, when the report prepared by the Electronic Monitoring Center multidisciplinary team informs the need for replacement by a less onerous measure or its maintenance;

IX

To guarantee the right to information by people in compliance with electronic monitoring measure, regarding the procedural situation, the conditions of compliance with the measure, the start and end dates of the measure, the periods foreseen for the measure's reevaluation, the services and assistance offered;

X

To ensure that the data collected during electronic monitoring are not shared with third parties, except in the case of judicial authorization in cases where the person being monitored appears as suspect or indicted in specific police inquiries, depending on the harmful and discriminatory potential in the processing of these data, applying the same to family members, friends, neighbors, and acquaintances, as well as women in situations of domestic and family violence who may have their data collected and processed at any time by the Electronic Monitoring Center;

XI

To evaluate notifications and official letters sent by the Electronic Monitoring Centers involving incidents in the measure's fulfillment in order to ensure the maintenance or restoration of the measure in freedom, adopting, when necessary, the justification hearing to renegotiate the measure with the customer;

XII

To foster social inclusion of the person monitored in a non-mandatory manner, according to specificities, through the articulation of the Judiciary and the Electronic Monitoring Center with other public policies, such as work, education, health and social service, promoting articulation in broad networks with state and municipal governments;

XIII

To avoid monitoring application in cases where the eventual supervening of the conviction does not lead to the application of a custodial sentence;

XIV

To avoid the application of electronic monitoring, when the measure proves to be inadequate in view of conditions or circumstances related to the situation of the person being prosecuted or investigated, especially for socially vulnerable groups such as homeless people; people with drug use disorder; the elderly; people responsible for dependents; people with mental/psychiatric disorders; people who live, work, study or undergo health treatment in places without or with an unstable GPS and/or cell phone signal, giving priority, in these cases, to the application of other pre-trial non-custodial measures more appropriate to the situation of the people in specific cases, as well as the optional referral to the social protection network;

XV

To consider the peculiarities of groups that have historically suffered discrimination and prejudice such as black people, the LGBTI+ population, indigenous populations, foreigners, etc.;

XVI

To not impose additional conditions that are not provided for in the legislation for compliance with the electronic monitoring measure, such as attendance at courses, medical treatment, attendance at churches, institutionalization in shelters, among others;

XVII

To foster the use of technologies that are less harmful to the monitored person, minimizing physical, psychological and social harm, stigmatization and embarrassment caused by the use of the device;

XVIII

To ensure maintenance and access to work, education, health, culture, sports, leisure, community and/or religious sociability spaces, when applying and following-up the electronic monitoring measure;

XIX

To attend spaces for the formulation, implementation and evaluation of the electronic monitoring policy with a focus on decarceration and on the promotion of human rights;

XX

To facilitate projects and interdisciplinary interventions with civil society, aiming to eradicate violence, processes of marginalization and criminalization of monitored people, spreading democratic practices of prevention and management of conflicts.

In the specific case of restraining orders, especially when the Portable Tracking Unit (PTU) is available in the electronic monitoring services it is recommended that judges and other agents of the Judiciary also observe the following guidelines:

I

Initially consider the application of restraining orders or other pre-trial measures without electronic monitoring;

II

To take into account the operational capacity of the Electronic Monitoring Centers in the application of monitoring, which involves the amount of individual monitoring device (anklet) and portable tracking unit available, as well as the personnel for proper monitoring of the measure;

III

To apply electronic monitoring as a pre-trial measure in the case of restraining orders only on a residual basis and when this is assessed as necessary for the protection of women in situation of domestic and family violence, considering fundamental rights of the people involved and when other protective measures or other pre-trial non-custodial measures prove to be insufficient;

IV

Avoid oversizing the exclusion area in case of restraining orders with the application of electronic monitoring, considering the maximum radius of 300 meters when delimiting these, except in exceptional circumstances where the specific case reveals the need for larger areas, to enable better follow-up and prioritize the handling of incidents that involve, in fact, a real approximation between the woman and the perpetrator of violence, distinguishing more precisely incidents and eventual displacements;

V

To guarantee women in situations of domestic and family violence a space for qualified listening by professionals from the multidisciplinary team of the Electronic Monitoring Center, so that they can freely choose to use the portable tracking unit according to the information received about protective measures, the use and function of the PTU, that is, to create dynamic areas of exclusion from the geographical approximation between the perpetrator of violence and the woman;

VI

To not impose the use of the PTU on women in situations of domestic and family violence as a condition for the application or follow-up of the measure, providing the possibility of monitoring the protective measure only from judicially determined exclusion areas;

VII

To not apply punishments to women in situations of domestic and family violence who choose to interrupt the use of the PTU during the measures, ensuring the continuity of restraining orders with electronic monitoring from the perpetrator of violence;

VIII

To ensure referrals aimed at the social inclusion of women in situations of domestic and family violence on a non-mandatory basis, according to specificities, based on the integration and articulation of the justice system with the protection network for women and other social inclusion networks with state and municipal governments, such as public policies aimed at access to work, education, health and social care;

IX

To participate in the spaces of elaboration of the electronic monitoring policy, in order to facilitate projects and interdisciplinary interventions with civil society, aiming to eradicate gender violence, values and practices associated with the punitive paradigm, as well as to spread democratic prevention and conflict management practices.

9 Decarceration of women and electronic monitoring

The following topic is extremely relevant, as despite the greater representation of gender in the prison system being male, June 2016 data from Infopen (Brasil, 2017a) indicate that the growth of the female prison population is approximately three times greater than that of the male population, at least in the last 15 years. The penal strictness against women has been greatly exacerbated in recent times, even reaching these women's children. In other words, together with female imprisonment, the number of children and adolescents who are under the web of penal and punitive power grows.

The following recommendations are based on the Child and Adolescent Statute (ECA), Federal Law Nº 8,069/1990 (Brasil, 1990), which provides for the full protection of children and adolescents. In the Legal Framework for Early Childhood, Federal Law Nº 13,257/2016 (Brasil, 2016b) provides for public policies for early childhood, establishing principles and guidelines for the formulation and implementation of public policies for early childhood, taking into account the specificity and the relevance of the first years of life in child development and in the development of the human being.

In addition, the Decree Nº. 9,370/2018 (Brasil, 2018c) grants special pardon and commutation of sentences to imprisoned women; and the Bangkok Rules, also called the United Nations

Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (UN, 2010), proposes a differentiated look at gender specificities in female incarceration, both in the field of criminal execution, as well as in prioritizing non-custodial measures, preventing the entry of women into the prison system.

Finally, the Interministerial Ordinance Nº 210/2014 (Brasil, 2014), institutes the National Policy for Attention to Women in Situation of Deprivation of Liberty and Released from the Prison System (PNAMPE); the collective Habeas Corpus Nº 143,641, São Paulo (Brasil, 2018c), with regard to women subjected to pre-trial detention in the national penitentiary system, who are pregnant, during postpartum or who are mothers with children up to 12 years old under their responsibility (the decision informs the replacement of the pre-trial detention of these women by house arrest); and the Joint Resolution Nº 1/2018 (Brasil, 2018d) of the National Council for Criminal and Penitentiary Policy (CNPCP) and the National Council for Social Assistance (CNAS) which qualifies the social assistance service to the families of incarcerated people and those released from the Penitentiary System in the Unified System of Social Assistance (SUAS).

Also, according to the Management Model (Brasil, 2020a) principles, specifically those that relate to the recognition and respect for differences and policies for women, we emphasize the duty of public authorities in ensuring rights and policies for women, according to gender specificities. Taking into account laws and other relevant regulations, especially in the case of pregnant women, postpartum women or mothers with children up to 12 years old and/or disabled children under their responsibility, we recommend that house arrest should be applied without electronic monitoring, as the use of the anklet:

a) Hinders the routine of pregnant women who necessarily need medical follow-up during prenatal care, leaving the residence for inaccurate time intervals due to the demands of the public health service;

b) Violates or hinders continued access to rights that must be guaranteed to children, due to restrictions imposed on mothers;

c) Enables new processes of criminalization of mothers who, due to their restrictions, may be prevented from assuming all their responsibilities and duties with the children;

d) Violates the right to health, as the lack of studies capable of measuring the physical and psychological damage[13] caused by electronic monitoring puts the integrity of women and children at risk;

e) Creates embarrassment and stigmatizes women and the children;

f) Hinders health treatment and care related to mental disorders and terminal illnesses.

[13] Since 2015 I have followed people monitored electronically. Many suffer irreparable physical and psychological damage. It is not uncommon for people to get burned with the anklet, received electrical discharges and/or have abrasions or injuries due to the use of the device.

That said, we recommend that electronic monitoring is not applied to women in general. In the case of pregnant woman, postpartum woman or mother with children up to 12 years old under their responsibility that are in pre-trial detention, we recommend house arrest without electronic monitoring, due to the damage that the anklet is capable of causing to mothers and children. It is essential to pay attention to the importance of family life and the restoration of social bonds, avoiding the unnecessary use of electronic monitoring when it is possible to apply other measures and even house arrest.

The application of electronic monitoring in these cases, in addition to being recommended on a subsidiary basis, should only occur in exceptional cases. Electronic monitoring services must be guided by the rights of the monitored person, regardless of any attribute of their social identity, to be treated with respect and consideration, facing any action resulting from value judgments. This becomes even more essential when dealing with pregnant women, postpartum women or mothers with children up to 12 years old under their responsibility. In other words, in addition to the State's obligation to guarantee women's rights in all their specificities, children's rights must also be ensured, including all types of protection. It is the obligation of public authorities to ensure that these children are not, for example, stigmatized and criminalized. Thus, the electronic anklet should, above all, be avoided for mothers who are under house arrest, but also at any stage of the investigation or when serving the sentence, being recommended other possibilities provided for in Brazilian laws and regulations.

The criminal control characteristic of electronic monitoring, in view of the possibilities of criminal responses that already exist, is thus considered as an excess. The monitoring applied in these cases works as an instrument to deny women's rights, accentuating the historical vulnerabilities to which they are exposed, in addition to systematically violating children's rights. The monitoring applied in these situations disregards the principle of individualization of punishment because it affects the children, surpassing the person in compliance with the monitoring measure. Discriminatory and harmful treatment are imputed to the monitored mothers and, obviously, to the children, implying routines marked by constant penal or vexatious character. It is notorious, due to the social imaginary built around prison and, in turn, electronic monitoring, that children are object of exclusion and discrimination in different social spaces: neighborhoods, day care centers, schools, hospitals, squares, parks, etc. These dynamics, of course, have the potential to be perpetuated in adolescence and adulthood, causing a systematic production and reproduction of vulnerabilities and criminalization, even contributing to the feedback of the selective criminal system.

To face the reproduction of these structures, which in Brazil are gaining even more vigor, due to the differentiated access to rights that should be universal, contrary to the Constitution's foundations, it is urgent to guarantee the rights and protection of pregnant women, of postpartum women or mothers with children up to 12 years old under their responsibility and, consequently, of children. We also recommend that:

a) The use of handcuffs or any other means of restraint should not be allowed during childbirth, postpartum, and any movement related to these procedures, which necessarily includes the electronic anklet, as monitoring can serve as a mechanism to enhance cases of obstetric violence;

b) The use of handcuffs or any other means of restraint, including electronic anklets, should not be allowed for women with mental health disorders, terminal illnesses or who are under any type of health treatment.

Considering the legal possibilities and criminal responses that already exist, electronic monitoring should not be applied to women provisionally imprisoned when pregnant, during postpartum or mothers with children up to 12 years old under their responsibility. Still considering the same list of legal possibilities, we do not recommend electronic monitoring for women in these conditions that are serving a sentence on the same grounds as listed above.

On the other hand, if monitoring is applied to pregnant women, postpartum women or mothers with children up to 12 years old under their responsibility and who are serving a sentence, it is essential that, based on the principle of individualization of punishment, specific conditions are applied based on studies and reports prepared by multidisciplinary teams (social worker and psychologist, at least). Thus, the conditions imposed by monitoring cannot accentuate vulnerabilities and create new criminalizing processes related, for example, to the duty of support, custody and education of children.

Regardless of whether these women are electronically monitored, it is necessary to emphasize the State's obligation to ensure their assistance through the Unified Social Assistance System (SUAS) network, in addition to the Unified System of Health (SUS) itself. Thus, the conditions applied (with or without electronic monitoring) need to be clearly recorded to enable – rather than prevent or create obstacles – such assistance, which, in turn, should result in effective social protection, with clear and effective referrals and guidelines.

10
Partnership – justice system and Electronic Monitoring Center

Electronic monitoring must be consolidated through integrated action between federative entities, the justice system and society through interinstitutional and interdisciplinary action, eradicating gender violence, values and practices historically based on punitiveness and social discrimination. The goal is to implement the monitoring policy in an affirmative and systemic way, according to the principle common to every democratic order, that is, 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 multidisciplinary teams' work,enabling referrals to the social protection network in a non-mandatory manner.

For the structuring of electronic monitoring services in the states, the State Executive Branch must sign a technical cooperation agreement with the criminal justice system, considering the Judicial Branch, the Public Prosecutor's Office and the Public Defender's Office, with a view to an effective service according to the law and related regulations and the methodology presented here. It is noteworthy that the responsibility for the administration, execution and control of electronic monitoring rests with the penitentiary management agents of the State Executive Branch.

This cooperation should unfold into effective integration of this network, consolidating the methodology proposed here, ensuring compliance and follow-up of electronic monitoring measures, which includes demands arising from detention control hearings. People submitted to electronic monitoring, individually or cumulatively, in compliance with pre-trial non-custodial measures or restraining orders must be referred to the Electronic Monitoring Center. However, it is recommended that the first attendance, the installation of individual monitoring device and the registration in the monitoring system be carried out at the Forum, avoiding coercive conduction or escort to the Center. The same initial procedure is suggested for women in situations of domestic violence, that is, first attendance and, when applicable, registration in the system and delivery of the portable tracking unit. Therefore, it is necessary to grant adequate space for the implementation of an Electronic Monitoring Center Post on the Forum's premises, mobilizing collaborative efforts between the State Executive Branch and the Judicial Branch.

Work in general and first attendance at the Electronic Monitoring Center necessarily depend on a minimum team, made available by the Center. In any case, the collaborative work of the multidisciplinary teams of the Courts and the Monitoring Center is recommended. Other activities, such as reception and referrals, must 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, handling of incidents, etc. That said, all hearings, including detention control hearings, which imply compliance with an electronic monitoring measure must necessarily carry out, in writing, the referral of the person under monitoring to the Center. The court decision's copy must provide personal data; the nature; all conditions for compliance with the measure (limits of inclusion and exclusion areas, circulation and collection times, conditions, authorizations and various prohibitions); start and end dates for compliance with the measure; as well as the Center address, the date and time of the first attendance.

The ongoing dialogue between these parts is capable of improving electronic monitoring services. That said, it is recommended that this cooperation involves the establishment of agreements and protocols between the Center and the Judges, especially involving the handling of incidents and reassessment of the measure, which should consider workflows and procedures foreseen in this manual. In addition, interdisciplinary projects and interventions with civil society should be encouraged with a view to eradicating gender violence, values and practices associated with the punitive paradigm, minimizing stigmas associated with people monitored electronically, mobilizing conducts based on human rights, on the protection and development of life for all individuals and spread democratic practices of conflicts' prevention and management.

It is especially suggested that this cooperation be able to:

a) Ensuring the completeness of services for all people in compliance with electronic monitoring measures, including the male author of domestic and family violence, from reception, non-mandatory referrals to the social protection network and follow-up until the end of the measure;

b) Guaranteeing women in situation of domestic and family violence a space for qualified listening by professionals from the multidisciplinary team of the Electronic Monitoring Center, so that they can freely choose to use the Portable Tracking Unit (PTU) according to information received about the restraining orders, the use and the function of the PTU, that is, to create dynamic areas of exclusion based on the geographical approximation between the perpetrator of violence and the woman;

c) Ensuring that the first attendance and delivery of the PTU for women in situation of domestic violence take place in an adequate space on the Forum's premises to avoid unnecessary or forced appearances at the Electronic Monitoring Center;

d) Making an effort to schedule the reception on the day following the hearing, at the Electronic Monitoring Center for services and assistance offered by issuing an official letter informing the Center's address, the date and time for the service;

e) Not requiring the presence of women in situation of domestic and family violence at the Electronic Monitoring Center, except in the case of women who choose to use the PTU and need repairs or replacement of the device, avoiding re-victimization processes;

f) Enabling the measure's reassessment by the judge to be carried out collaboratively based on evidence related to compliance and adequacy of the measure, according to the evaluation report prepared by the multidisciplinary team of the Electronic Monitoring Center;

g)

Motivating the founding of agreements between the Judges and the Centers with the goal of adjusting the measure;

h)

Promoting standards of incidents's reports with judges based on reasonableness, allowing the multidisciplinary team to work with terms for adjusting the measure;

i)

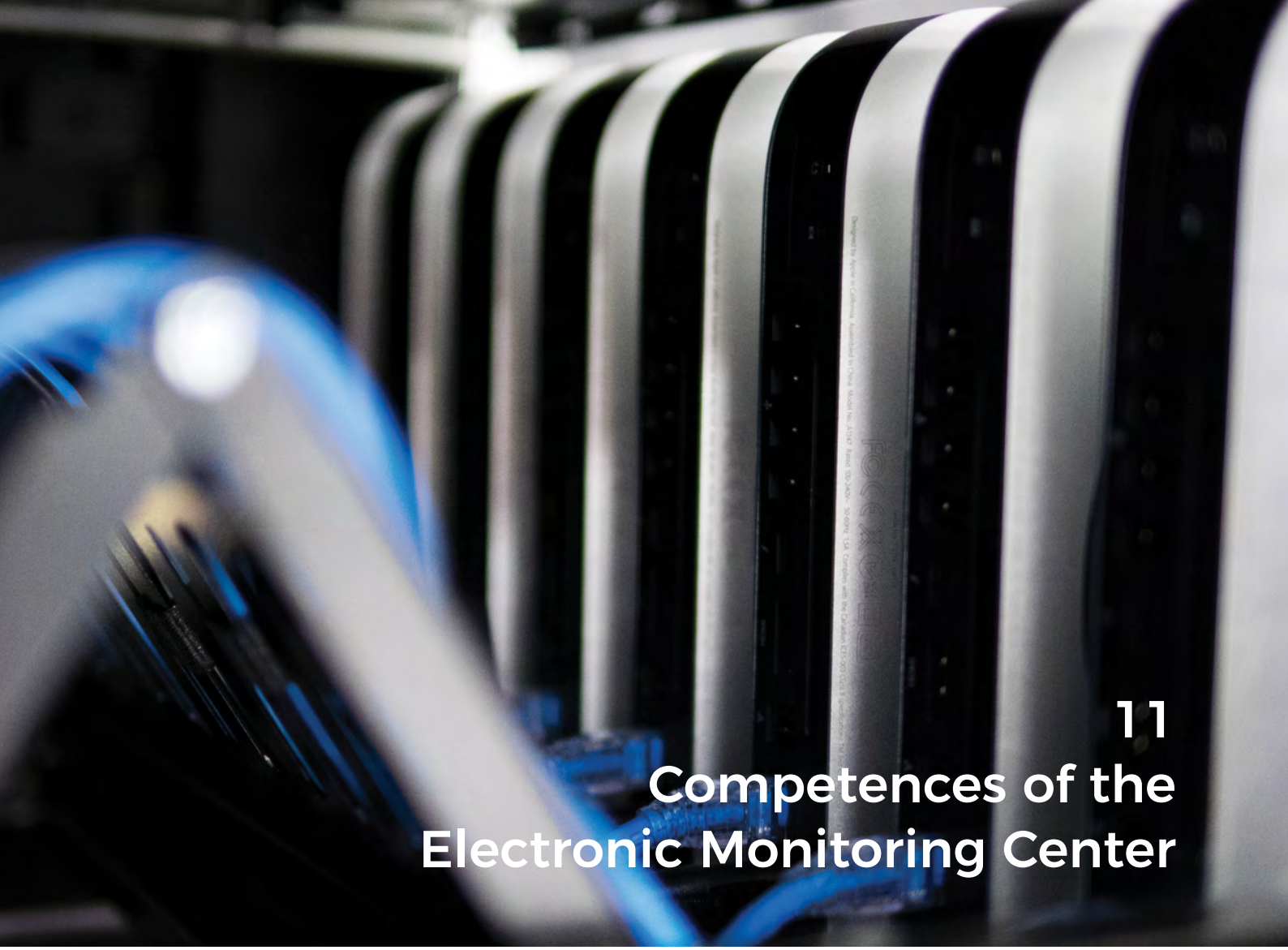
Ensuring that the individual monitoring device is removed immediately at the end of the period stipulated in the court decision;

j)

Carrying out communication campaigns aimed at informing the population about: character, goal, effectiveness and need for the monitoring measure applied in as a pre-trial non-custodial measure, aiming at social inclusion of the people monitored and reduction of gender violence and punitive practices;

k)

Facilitating interdisciplinary projects and interventions with civil society, aiming to eradicate violence, processes of marginalization and criminalization of monitored people, spreading democratic practices of conflicts' prevention and management.



11
Competences of the Electronic Monitoring Center

The work carried out at the Centers must prioritize the physical, moral and social integrity of the monitored person. Priority should be given to the use of increasingly lighter individual monitoring equipment; anatomically comfortable; sized to ensure discretion, ergonomics and portability; with anti-allergenic characteristics and without posing any type of health risk, especially due to its continuous use; resistant to aquatic submersion, mechanical impact, heat and cold, considering changes and climatic conditions in Brazil. It is also indicated the adoption of equipment with technical specifications that maximize the use of the battery, reducing recharging procedures. It must also be ensured that the devices allow recharging without limitation of the monitored person's locomotion, from portable battery recharging devices.

Centers must also handle the incidents based on this document, activating, in a subsidiary way, public security institutions when handling strict incidents. Attendance of the monitored person at the Center must be minimal, with referrals to the protection network only being carried out when demanded, without being obligatory. In this sense, confidentiality and secrecy are mandatory at any stage of the services, ensuring protection and processing of personal data collected, due to its potential harmful and discriminatory use.

Protocol I of Resolution Nº 213/2015 of the CNJ highlights that the performance of the Electronic Monitoring Centers should consider the following procedures:

I — Ensuring reception and follow-up by multidisciplinary teams responsible for articulating the network of protection and social inclusion services provided by public authorities and for monitoring compliance with the measures established in court, based on individual interaction with the people monitored.

II — Ensuring the priority of compliance, maintenance and restoration of the measure in freedom, including violation incidents cases, preferably adopting awareness and care measures by a psychosocial team, judicial authority calling should be subsidiary and exceptional, after exhausting all the measures adopted by the technical team responsible for the people under monitoring.

III — Focusing on adequate standards use of security, confidentiality, protection and of the data of the people being monitored, respecting the data processing in accordance with the collection purpose. In this sense, it should be considered that the data collected during the execution of the electronic monitoring measures have a specific purpose, related to the monitoring of the conditions established by law. The information of the people monitored cannot be shared with third parties outside the process of investigation 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 inquiry 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 — Trying to integrate into broad service and social assistance networks for the non-mandatory inclusion of the fined people based on the judge's indications, the specifics of each case and the social demands presented directly by the fined people, with emphasis on the following areas or others that prove necessary:

a) emergency demands such as food, clothing, housing, transportation, among others;

b) work, income and professional qualification;

c) legal aid;

d) development, production, cultural training and dissemination, especially for young people.

V — Carrying out necessary referrals to the Health Care Network of the Unified Health System (SUS) and the social assistance network of the Unified Social Assistance System (SUAS), in addition to other policies and programs offered by the government, being the service and follow-up of the fined person results, indicated in the court decision, regularly communicated to Court to which the notice of *in flagrante delicto* arrest is distributed after the end of the detention control hearing routine.

The National Council for Criminal and Penitentiary Policy defines the following powers regarding the Electronic Monitoring Centers:

I — To ensure dignified and non-discriminatory treatment of people monitored electronically and women in situations of domestic and family violence, when they choose to use the Portable Tracking Unit, especially considering the presumption of innocence;

II — To guide the monitored person in fulfilling their obligations, using monitoring equipment and referring them to social protection services;

III — To refrain from imposing liens or penalties on women in situation of domestic and family violence who do not use the geolocation device properly, limiting their actions to guidance on the correct use of the device;

IV — To provide technical support service to the monitored person through telephone contact or face-to-face service, uninterruptedly, capable of clarifying doubts, resolving any incidents with a view to adequate maintenance of the measure;

V — To verify compliance with legal duties and conditions specified in the court decision authorizing electronic monitoring, with the imposition of referrals or other measures not expressed in court being prohibited;

VI — To ensure the priority of compliance, maintenance and restoration of the measure, including in cases of incidents, preferably adopting measures adjustment procedures, as well as actions of awareness and care by a psychosocial team;

VII — To forward a detailed report on the person being monitored to the competent judge at the established frequency or, at any time, when determined by the latter or when circumstances so require, including in cases of non-compliance with the measure, when exhausted the procedures for its restoration;

VIII — To refrain from directly calling police agencies, except in cases of violation of the exclusion area in restraining orders, when the situation reveals a risk of violence against women and it is not possible to restore compliance with the measure in other ways, or in other emergency hypotheses, which must be communicated to the court that determined the measure at the first opportunity that this becomes possible;

IX — To refrain from providing information to third parties regarding the location and other data of the people monitored, including at the request of women in situations of domestic and family violence, limiting themselves, in this case, to emergency information in non-compliance with restraining order cases;

X — To strive for the use of adequate standards of security, confidentiality, protection and of the data of the people under monitoring, respecting the data processing in accordance with the purpose of the collection and conditions expressed in the court decision, pursuant to the this resolution.

In addition to the elements indicated above, complementary guidelines to the CNJ and CNPCP Resolutions must guide the electronic monitoring services.

The Electronic Monitoring Center is responsible for:

a)

Following-up the electronic monitoring measure, observing and following all the conditions expressed in the court decision, such as:

- term with start and end date;
- boundaries of inclusion and exclusion areas;
- circulation and collection times;
- permissions and general conditions.

b)

Ensuring the maintenance of the electronic monitoring measure through the handling of incidents with a trained technical team and a multidisciplinary team, working together in order to avoid calling the public security institutions, the last resource to be used in the handling of incidents involving restraining orders and only when all preliminary measures have already been taken to handle the incidents;

c)

Privileging the maintenance of the electronic monitoring measure in freedom, avoiding the early and often unnecessary arrest of monitored people whose incidents must be remedied based on the protocols of the Management Model (Brasil, 2020a);

d)

Ensuring that police calls are always subsidized and guided by the protocols, recognizing the effectiveness and need for police intervention in the handling of specific incidents demanded by the Center;

e)

Avoiding excessive calling of public security institutions, considering, above all, the great demand of police forces in events of another nature and due to the Center and its teams responsibility in monitoring the measure and protocol treatment of incidents;

f)

Ensuring that the Electronic Monitoring Centers function as a place to provide services to the person being monitored, regardless of the type of measure and procedural stage, as it is a qualified care service to the public served, which presents great social vulnerabilitiy;

g)

Ensuring that the Center is a welcoming environment, so that the public served feels encouraged to attend for the service, providing the creation of bonds that are essential, both for full compliance with the measure, and for adherence to social referrals;

h)

Ensuring the purpose of the electronic monitoring service, that is, the care and follow-up of the person being monitored to enable the formation/restoration of bonds and the adequate fulfillment of the measure;

i)

Making referrals to the social services networks of the Union, states and municipalities, and civil society organizations, based on the specificities of each case, respecting the voluntary nature of these services;

j)

Monitoring compliance with the electronic monitoring measure through indirect contact with the person, avoiding unnecessary and excessive attendance at the Center;

k)

Dealing with incidents according to the present methodology, considering agreements with the Judiciary capable of admitting the measure's adjustment by the Center, when necessary;

l)

Considering secondary interference factors in the handling of incidents, such as:

- failures or defects in the monitoring device;
- reduced reception or instability in cell phone signals;
- varied interferences in the mechanisms of the global positioning system (GPS);
- elements related to geography, type of vegetation cover, buildings architecture, climatic variations, etc.;
- the existence of locations without a signal or with unstable GPS and/or cell phones, especially in the case of people who reside, work, study, undergo health treatment or participate in religious/spiritual activities in these specific locations;

m)

Following-up the restraining orders applied, welcoming and referring women using the PTU to the women's protection network, always on a voluntary basis, based on the specificities of each case, aiming at reversing social vulnerabilities;

n)

Scheduling 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 the PTU;

o)

Scheduling procedures and referrals on different days and times for the people being monitored and for women in situations of domestic violence, avoiding possible embarrassment and possible non-compliance with restraining orders;

p)

Providing essential structures, before, during and after any type of assistance/procedure, such as: male and female restrooms; waiting room with a 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 consistent with local weather conditions; cleaning services;

q)

Participating in broad social assistance and care networks, for the realization of fundamental rights and the inclusion of people, with emphasis on the following areas:

- food;
- clothing;
- housing;
- transport;
- health/mental health;
- health care for people with drug use disorders;
- work, income and professional qualification;
- education;
- family and community life;
- legal aid.

r)

Ensuring full understanding, by the monitored person, about the electronic monitoring measure, according to the determinations expressed in the court decision;

s)

Ensuring understanding about the proper use of individual electronic monitoring device and the PTU, aiming to minimize violation incidents and physical, psychological and social damage to the monitored people;

t) Maintaining structures for any maintenance and/or exchange of individual electronic monitoring equipment procedures;

u) Submitting periodic reports on the measure follow-up, as agreed with the Judiciary, for reassessment of the electronic monitoring measure;

v) Guaranteeing the right to information by people in compliance with electronic monitoring measure, regarding the procedural situation, the conditions of compliance with the measure, the start and end dates of the measure, the periods foreseen for the measure's re-evaluation, the services and assistance offered;

w) Attesting that the monitoring system is structured so as to preserve the confidentiality of all sensitive personal data and ensuring the management of data and quantitative and qualitative information, following the guidelines established in the principles, guidelines and rules of the Management Model (Brasil, 2020a);

x) Promoting respect for generational, social, ethnic/racial, gender/sexual, origin and nationality, income and social class, religion, belief diversities, among others, regarding referrals and compliance with the electronic monitoring measure;

y) Containing any type of discrimination or degrading treatment at any stage of electronic monitoring services during and after compliance with the judicial measure.

12
Follow-up of people monitored by the Electronic Monitoring Center

I – Awareness and eferral by the Judiciary to attendance at the Center

It will be up to the judge, prosecutor and/or public defender to inform and guide the person to be monitored electronically at the hearing or when making the decision that determines the measure, regarding attendance at the Electronic Monitoring Center for initial care aimed at compliance with the measure and referrals (reception). Electronic monitoring, when decreed by the judge, necessarily implies the person's attendance at 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 on the Forum's premises.

The initial visit to the Center favors access to other services, as well as specialized care for the person being monitored. The monitoring services must strive to maintain the judicial measure, also considering the person's emergency demands and the need for social inclusion in public policies, as well as adequate guidance and support for the person being monitored.

II – First attendance

First attendance involves installing the device, registering in the system, scheduling the reception at the Center and, if necessary, emergency referrals can be made. These procedures, especially installation of the individual electronic monitoring device, must occur soon after the hearing that gave rise to the application of the electronic monitoring measure, preferably on the Forum's premises, in a reserved and appropriate place for this purpose, based on a partnership established between the State Executive Branch and the Judicial Branch, as mentioned before. This procedure is essential to avoid coercive conduct or escort of people submitted to electronic monitoring to the Center for installation of the device.

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's Technical Operations Sector and at least one professional from the Analysis and Monitoring Sector (social worker, lawyer and psychologist). This procedure includes the delivery of equipment (charger, portable battery, etc.) and the signature of two copies of the document Individual Electronic Monitoring Device Use Agreement by the person being monitored and at least one of the professionals responsible for this step, one of the copies is given to the person being monitored and the other is kept at the Center.

The person being monitored 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 those being monitored, which includes prohibitions, limits and various permissions. At this stage, the monitored person may optionally inform personal data of family members, friends, neighbors or acquaintances to enable the handling of any incidents, limited to providing 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. To this end, the document Personal Data Processing and Protection Agreement in the Services for Electronic Monitoring of People must be signed, with one copy delivered to the person being monitored and the other kept at the Center. The signature of the agreement is optional and can be carried out by a witness, in case of eventual denial.

In addition to providing instructions about the device, at this stage of the services, the professional from the Social Monitoring and Incident Analysis Sector must ensure the person's understanding of the conditions and restrictions imposed by the measure. Then, this same professional

should guide and sensitize the person to attend the Center for reception, scheduling the procedure for the day following the hearing. The monitored person's routine must be preserved, preventing work, educational activities, among others, from being interrupted.

III – Reception

Reception must take place on the day following the hearing that decided for the application of the electronic monitoring measure, in order to enable physical/mental rest and adequate food, essential to ensure complete reception. Attendance at the Center, even if it is mandatory to comply with the measure, must not involve threat, embarrassment or escort.

The reception is carried out by the multidisciplinary team and must be a listening space in which the following factors will be assessed: physical, social and psychological situation, understanding of the criminal procedural context or the imposed measure, place of residence, demands for inclusion in specific programs or treatments. This information must be included in a reception 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 any incidents, especially those caused by the person being monitored living, working, studying, undergoing health care, participating in religious/spiritual activities or other activities in places without or with unstable GPS signal and/or cell phone, which may lead to a request for 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 reception, it is also possible for the multidisciplinary team to identify aspects of different orders that may indicate the inadequacy of electronic monitoring for that individual, considering their actual capacity to comply with the measure. In these cases, the Analysis and Monitoring 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 result in an aggravation for the person nor should it replace the electronic monitoring by pre-trial detention.

A comprehensive view of the person should be sought, such as: their emotional state, their social conditions and interpersonal and family relationships, aspects that contribute to building a relationship and routine capable of guiding compliance with the electronic monitoring. The people monitored have several legal doubts and resistance to complying with the measure; therefore, the reception must be a space for listening and not just for guidance on the measure and equipment. The monitored person's perception of the ability to be heard by the team can create bonds capable of contributing to the measure's fulfillment. It is possible to schedule specific appointments and out of court order, as long as there is demand and consensus with the person.

At this moment, the multidisciplinary team must answer questions about compliance with the measure and inform the how the follow-up of the monitored person works, including the production of reports for the judge to reevaluate the measure. It is noteworthy that the instructions

regarding the use of the device can be resumed at this stage, being a joint responsibility of the multidisciplinary team and technical operations professionals, aiming at a full understanding of the conditions imposed by the measure and the device. Additional information from the reception should not be object of the monitoring system, as they have different purposes. Such information may be registered and kept in the Center's information system provided that it has security and access levels capable of restricting it to specific professionals, as provided for in the Guidelines for the Processing and Protection of Data in the Electronic Monitoring of People (Pimenta, 2016).

IV – Case studies

It is recommended that case studies be carried out at the Electronic Monitoring Center at an established frequency, seeking an interdisciplinary perspective and defining appropriate follow-up strategies, approaches and referrals. Teams will be able to invite network partners, in addition to representatives of the Criminal Justice System and Public Security Institutions, to discuss cases that require assistance, referrals, knowledge and specific guidance.

Networks must have specific meetings and it is essential that the Center is represented in these routines, enhancing the strengthening of such spaces, bonds and articulations.

V – Referrals

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

The team at the Electronic Monitoring Center must verify, from the moment of reception, whether the application of electronic monitoring considered the person's full capacity and conditions of compliance, such as schedules and other elements related to social/familiar conditions, aspects related to work, health, religious belief, study, among others. If incompatibilities and disabling factors for full compliance with the electronic monitoring measure are perceived, the multidisciplinary team must prepare a report, requesting the judge to readjust specific conditions or even replace the measure with 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 person being monitored.

It should be noted that this procedure should not result in an aggravation for the person, and should not, in this case, lead to the replacement of the electronic monitoring measure by pre-trial detention.

b) **To expand access to fundamental rights:**

These referrals are carried out by the multidisciplinary team according to the demands presented by the person being monitored. It is noteworthy that, for social inclusion in the protection network or in cases where there is a need for treatment, it is important, in addition to protocol guidelines in this regard, that such referrals are not made as a court order, but from awareness of the person by the responsible team. Any move towards social inclusion can only occur with the person's consent; they should never be imposed. As already mentioned, a large part of the public that arrives at the Center has social vulnerabilities, and referrals to the partner network are aimed at minimizing these vulnerabilities.

After any referral to social inclusion services, the multidisciplinary team must monitor the progress: whether the person has accessed the service or not; the reasons why they did or refused to do so, as well as understanding how it was received.

VI – Return visits/Routine care

The monitored person will be instructed to return to the Center, preferably at a scheduled time, under the following circumstances:

- if there are technical problems in the electronic monitoring device, for possible repairs and replacements, aiming at maintaining the judicial measure, according to the specific cases and seeking to avoid aggravation of the criminal situation;
- periodic assessment of the multidisciplinary team (social assistant, lawyer and psychologist) to guide the judge in the reassessment of the electronic monitoring measure, with voluntary attendance;
- within the deadline for the removal and return of the electronic monitoring device;
- if there are social demands, with voluntary attendance.

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

Periodic assessment of the multidisciplinary team (social worker, lawyer and psychologist)

In this case, attendance is voluntary. The absence, therefore, cannot give rise to sanctions or punishments, nor does it constitute an incident or non-compliance. The multidisciplinary team must, from the first attendance and reception, sensitize the person being monitored to go to the Center for the periodic evaluation of the multidisciplinary team (social worker, lawyer and psychologist). It should be noted that this activity is relevant to attesting compliance with the Judge, but also requesting changes and adjustments required by the person monitored and/or identified as necessary by the multidisciplinary team and even enabling the replacement of monitoring by a less burdensome measure.

The team will, therefore, be able to make contact by phone for three days in a row with the person being monitored to reschedule the procedure, remembering the relevance of the procedure, without, however, coercing them to go to the Center.

Referrals

In this case, attendance is voluntary. The absence, therefore, cannot give rise to any type of charge or be mentioned in a report with the goal of penalizing the person.

VII – Incident handling

Incidents

Are any situation that interferes with the regular compliance with the electronic monitoring measure according to the procedures presented in this manual, not necessarily involving communication to the judge.

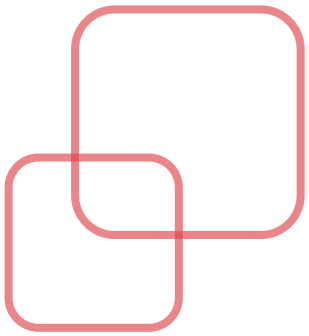
Electronic monitoring incidents can occur because of one or more factors cumulatively, including miscellaneous human failures, but also **secondary interfering factors** such as glitches or defects in the monitoring equipment; reduced coverage or instability in cell phone signals; varied interferences in the mechanisms of the global positioning system (GPS); elements related to geography, type of vegetation, buildings architecture, climatic variations, etc. Thus, the recurrence of some incidents may be related to secondary interference factors, especially when the monitored person resides, works, studies, undergoes health treatments or participates in religious/spiritual activities in locations without or with an unstable GPS signal and/or cell phone.

Incident handling

Incidents demand different responses, aimed at maintaining the measure and implying the **solution of the incident or the adjustment of compliance with the measure**. Handling of incidents requires the collaboration of sectors in an interdisciplinary way, considering the factors already listed. As the monitoring measure foresees communication equipment, components and technology susceptible to various failures and interruptions, as mentioned above, 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, third parties may not be contacted, whose personal data have not been optionally informed by the person being monitored.

Incident solution

Incident treated with or without the need to adjust compliance with the measure, resuming the normal course of follow-up, without sending notification to the judge.



Measure compliance adjustment

Is a procedure that results from the non-resolution of the incident, creating communication and recording of the unresolved incident with the Social Monitoring and Incident Analysis Sector and/or Technical Operations Sector. These sectors must, through telephone or face-to-face contact with the person being monitored, understand and analyze the causes related to the incident, alerting and renegotiating the measure in accordance with the conditions stipulated in court, in order to prevent its non-compliance by sending notification to the judge. Thus, if the measure is re-established, the incident is solved and the measure is complied with normally, with no need for adjustment.

Non-compliance

Is an exceptional situation, which occurs when there is no solution to the incident with or without adjustment of compliance with the measure, in accordance with the protocols provided for in this manual. In this case, the judge shall be notified.

Attendance at the Center

The handling of certain incidents requires the presence of the person being monitored at the Center. Appointments should preferably be scheduled, avoiding interrupting work, study, health care, religion, leisure and other daily activities routines.

Some common incident cases are highlighted below.

Incidents
Inability or refusal to sign terms.
Non-attendance of the person on scheduled dates or in emergency situations for: - technical repairs to the electronic monitoring device and replacements, aiming at maintaining the judicial measure; - periodic assessment of a multidisciplinary team (social worker, lawyer and psychologist); - removal and return of electronic monitoring equipment at the end of the measure; - referrals.
Violation of inclusion and/or exclusion areas.
Motion detection without GPS signal and/or loss of cell signal.
Equipment communication failure or false geolocation detection.
Battery incidents - partial discharge or low battery level; - full battery discharge.
Failure to observe hours and/or restrictions to specific locations.
Damage to the device, breakage/violation of the fastening strip or the casing of the electronic monitoring equipment.

VIII – Incident handling in cases of restraining orders

The procedures above must 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 a different response to ensure the protection of women in situations of domestic and family violence.

It is necessary to indicate specific responses for some incidents because electronic monitoring applied cumulatively with restraining orders, aims, in addition to monitoring the male perpetrator of violence against women, to expand the protection of women in situations of domestic and family violence, in accordance with specifics and needs of the concrete case previously analyzed, resulting in greater agility of the teams. In this way, the immediate protection of women is sought, emphasizing that the treatment of certain incidents may involve calling the police in a preventive manner, according to a need diagnosed by the Electronic Monitoring Center or when the woman herself in situation of domestic violence demands this type of intervention.

The systematic and interdisciplinary follow-up carried out by the responsible teams is the main instrument to guide the preventive action of the police in dealing with specific incidents. Prevention and collaborative work by public security institutions, in the case of electronic monitoring, must always occur from specific incidents identified by the Monitoring Center according to the protocols provided for here. The follow-up of the people monitored, including those who comply with restraining order, is the Center's duty and responsibility. Police institutions' intervention must be demanded by the Center's professionals in the handling of specific incidents with the goal of guaranteeing the protection of women in situation of domestic and family violence or when the woman herself demands it. In other words, prevention with police action is meaningless if there is no specific incident with a demand from the Center, responsible for following up on people monitored.

The police action lends itself to checking the incident reported by the Center, preventively ensuring women's protection. Police intervention should therefore not be based on repression. Furthermore, incidents and non-compliance with monitoring measures do not constitute a crime, so they should not mobilize the detention of the monitored person. The crime situation can be configured when the monitored man carries out new forms of violence against the woman.

The importance of ensuring measure maintenance-focused treatments is once again underlined. That said, calling the police does not necessarily imply non-compliance and notification to the judge. The Center is responsible for analyzing cases individually, observing concrete situations that imply responses aimed at maintaining the normal course, reestablishing or non-compliance with the measure.

IX – Measure compliance adjustment

Incidents must be dealt with in a collaborative way between the sectors, in order to maintain the applied measure. The measure compliance adjustment occurs when the handling of specific incidents by the Monitoring Sector and/or Technical Operations Sector creates communication and recording of the unresolved incident with the Social Monitoring and Incident Analysis Sector. However, if the measure is re-established, the incident is resolved and compliance with the measure proceeds normally, with no need for adjustment.

If the team notices the absence of objective conditions to comply with the measure, the measure's monitoring report must include such information. If necessary, the team should also ask the judge for a justification hearing, aiming to hold the person accountable for compliance and return to the measure's normal course.

The adjustment of compliance with the measure should be carried out preferably by telephone. However, the multidisciplinary team, depending on the case, may request the in-person adjustment based on different limits. Contact must focus on making the person aware of the fulfillment of the monitoring measure in accor-

dance with the conditions stipulated by the court. It cannot give rise to any type of repression, punishment or coercion of the monitored person. The multidisciplinary team must understand the causes of the incident, analyzing possible secondary interference factors. If the person being monitored requires face-to-face assistance, it must be scheduled in accordance with his/her routine.

It is recommended that the third incident not resolved by monitored person entails the adjustment of compliance with the measure in person. This procedure must be scheduled as a priority so as not to interrupt work, study, health treatments routines, etc. The third measure compliance adjustment procedure should also focus on sensitizing the person and renegotiating the measure with the signature of a specific agreement to be joined in the process. On that occasion, the monitored person must also be alerted about the possibility of notifying the judge in the event of any unresolved incident from that moment onwards.

Thus, after these phases have been overcome, in the event of an unsolved incident, it will be up to the Center to communicate the fact to Court, that is, the non-compliance. The unsolved incident exclusively creates communication with the process, and the Center does not have any other action, except in specific incidents with restraining orders.

X – Non-compliance incidents

Non-compliance incidents are unresolved incidents that necessarily create notification to the judge. Non-compliance with the electronic monitoring measure applied as a pre-trial non-custodial measure shall create a record 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 above.

Non-compliances involving those who comply with restraining orders may involve the immediate action 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 at any treatment stage.

XI – Relationship with the criminal justice system

The Electronic Monitoring Center should build agile and quick flows 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 rate. Information on compliance with the measures must 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 less burdensome measure or its maintenance, case by case. It is noteworthy that the aforementioned team may, whenever necessary, forward reports and requests to the judges aiming at replacing the monitoring by another measure and changes related to the conditions imposed, according to the eventual objective incapacity of compliance by certain people.

Maintenance of the imposed measure requires continuous dialogue between the Center

and the Judiciary, considering concrete cases, in order to do not worsen the criminal situation. This implies the commitment of these agents in the construction and application of flows to improve services. The adjustment of compliance with the measure is recommended because it foresees the action of the multidisciplinary team to raise awareness and renegotiate the measure in the case of specific incidents, in accordance with the protocols defined above. In order to maintain the measure, it is also indicated that pre-trial detention is not decreed by the judge in the event of any type of non-compliance informed by the Center. It is recommended that the case be analyzed 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 agile and quick flows with the Public Security Institutions. Constant awareness, training and methodological improvement necessary for the theme should be sought with public security agents, especially those who work in specialized patrols such as the Maria da Penha Patrol, in Specialized Police Stations for Assistance to Women (DEAMs), among others. In this regard, the National Public Security Secretariat (SENASP) is responsible for initial and continuing education actions aimed at improving policies designed to combat domestic and family violence.

The handling of specific incidents requires continuous dialogue between the Center and the public security institutions, always considering concrete cases and according to the need perceived by the Center's teams. This relationship can prevent the worsening of the criminal situation and increase the efficiency of public security agents' work, since the use of police forces should be reserved for more serious cases, based on the identification of the Centers' teams, according to protocols consolidated in this document. This strategy aims not to saturate the capacity of police institutions' action due to their broad demands and to increase the effectiveness of their action in the face of concrete situations identified as a priority by the Center.

XIII – Information management

It is essential that all procedures of the Electronic Monitoring Center are computerized and periodically updated by the team. For that, it is recommended the adequate management of information in accordance with the Guidelines for Data Processing and Protection in the Electronic Monitoring of People (Pimenta, 2016).

13 Multiprofessional Teams — an essential step towards service credibility

DEPEN recognizes that the work developed by the multidisciplinary team in the scope of the Monitoring Centers is essential and that it needs to be assimilated throughout the country, as it qualifies the services, the public's dialogue with the service operators, it favors necessary adjustments for proper compliance with the judicial measure, in addition to promoting public access to existing social protection policies. It should be noted that the need for this team in monitoring services is also provided for in Decree N º7,627/2011 (Brasil, 2011b), Resolution Nº 213/2015 of the CNJ (Brasil, 2015a) and Resolution Nº 5/2017 of the CNPCP (Brasil, 2017c).

The electronic monitoring policy is innovative and presents a series of challenges. In order for it to be minimally aligned with the principles of legality, human dignity and decarceration, it is necessary to make use of instruments capable of helping and promoting its effectiveness in operational terms. This, in turn, goes against the achievement of more tangible results towards the aforementioned principles.

In this same direction, the inclusion of multidisciplinary teams, composed of professionals from psychology, social service, law, among other fields of the human sciences, in the action scope of the Monitoring Centers is one of the main innovations proposed by the Management Model for the electronic monitoring of people. These teams' work needs to be assimilated by all states, since it qualifies the monitoring services and the handling of incidents, the dialogue between the public and the service operators, it favors the necessary adjustments for the proper compliance with the judicial measure, in addition to promoting public access to existing social protection policies.

Inducing this innovation proposed by DEPEN necessarily implies placing the issue on public agendas, which requires the targeting of technical and financial subsidies for its operationalization. This contracting has been taking place through several modalities that involve resources from the state itself and/or from DEPEN. As this is a recent and relevant demand in the monitoring policy, it is necessary to think and design more consistent ways to ensure the work of the multiprofessional teams in electronic monitoring services, also considering the reality in many states regarding the limits imposed by the Fiscal Responsibility Law.

From the practical work in this field, on-site visits to various Centers distributed throughout the country, formal and informal interviews with representatives of the Judiciary, Executive Branch, Public Prosecutor's Office, Public Defender's Office, Brazilian Bar Association, Police and Civil Society Organizations, it is recognized that the "anklet" by itself (without the monitoring of multidisciplinary teams) does not offer reasonable levels of credibility about the efficiency of the electronic monitoring measure. The types of violations that could be avoided or treated in a more adequate way with the technical support of these professionals, assisting in the flows, guidance and qualified dialogue with the people monitored, as well as the procedures that the services require, are not rare.

Such teams must be composed, at a minimum, of social workers, lawyers and psychologists, having as reference the Management Model and the standard project used as an agreement instrument for financing electronic monitoring services in the states by DEPEN. The documents highlight the extreme importance of these professionals for monitoring services, especially in the handling of various incidents, in the preparation of reports that offer technical support for the Judicial Branch to assess the possible need for adjustments in compliance with the measure, in the referral of people monitored for the social protection network and actions related to accountability for compliance with the electronic monitoring measure.

Hiring these teams is also considered essential in Decree Nº. 7.627/2011, which regulates the electronic monitoring of people. The Decree emphasizes the need for multidisciplinary pro-

grams and teams to monitor the measure, provide assistance and social inclusion of the person being monitored, providing full compliance and also to minimize discriminatory, abusive and harmful actions during the services, as well as to ensure maintenance and access to work, education, health, social ties to the monitored people.

In this same perspective, the National Council of Justice (CNJ), through Resolution Nº 213/2015, indicates how healthy is the work of multidisciplinary teams for the services of electronic monitoring of people. The CNJ emphasizes the need to guarantee instances of the measure's execution, which implies methodologies and qualified teams capable of allowing an adequate follow-up to the fulfillment of electronic monitoring. This can be seen as an effort to reduce damage caused by the criminal control proper to monitoring, strongly based on punitive and retributive perspectives that mark the criminal field as a whole.

Managers and various workers who work at the Centers commonly agree on the importance of effective multidisciplinary follow-up of the monitored person. The report on the implementation of the electronic monitoring of people policy in Brasil (Pimenta, 2015) points out that, without these professionals — psychologist, social worker, lawyer — the violation rate grows. The document reveals that this team works to allow greater adherence to the rules that electronic monitoring implies, as they contribute to the treatment of incidents and act in a preventive manner, in an effort to socialize, explaining and elucidating in a technical way the rules, the changes resulting from the use of the device and other associated conditions. The teams do not intend to assist only in the technical dimension of electronic monitoring, as electronic monitoring equipment usually causes physical and psychological damage that, due to the principle of less harm, should be avoided[14].

The importance of hiring multidisciplinary teams to work in electronic monitoring services, as highlighted, is expressed in Decree Nº. 7,627/2011, Resolution Nº 213/2015 of the CNJ, in the standard project used as an agreement instrument for funding electronic monitoring services in the States by DEPEN, in the Management Model published by DEPEN and UNDP (Brasil, 2020a), in the practical experience of professionals working at the end of the services, between transversal regulations to the subject and the international documents. Recognition of this type of work as an essential element in electronic monitoring of people emphasizes the State's responsibility to develop increasingly effective services, but also to guarantee the inclusion of monitored people in public social protection policies. That is, practices aimed at social promotion must structurally integrate the electronic monitoring policy, composing the methodological routine of the technical teams, the stages of evaluation and improvement of services.

The Management Model indicates that the teams' work enables the construction and strengthening of the partner social network of electronic monitoring services, composed of several public and private non-profit entities, which work

[14] The technologies on the market are "robust", heavy, little anatomical, causing injuries to those being monitored. These, in turn, usually 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 the "client" of this policy (the monitored), but the State. (BRASIL, 2020a)

in partnership with the Center for the inclusion in social demands: health, education, income and work, housing, programs and projects, etc. This includes, in the case of women in situation of domestic violence, referrals to institutions and programs that are part of the Women's Protection Network. The mapping and articulation of this network by the Center makes it possible to enhance referrals for access to rights and, consequently, to reduce social vulnerabilities of people monitored electronically. The partner network plays an important role in electronic monitoring services, as it has the capacity to meet social demands and expand the objective and subjective conditions of the person monitored in compliance with the measure. That said, it must be in line with the principles of the electronic monitoring policy and able to follow-up the person referred. The social protection network, regardless of the partnership, must welcome and meet the specific social demands of the people referred, considering the institutional mission, universality and availability of services.

Therefore, electronic monitoring must be consolidated through integrated action between federative entities, the justice system and society through interinstitutional and interdisciplinary action, eradicating gender violence, values and practices historically based on punitiveness and in social discrimination. The goal is to consolidate the monitoring policy in an affirmative and systemic way, according to the principle common to all democratic order, that is, the guarantee and strengthening of human rights (fundamental, political, economic, social, cultural, etc.) in the protection and development of life. Hence, the extreme relevance of the multidisciplinary teams' work in terms of their goals and competences presented below is highlighted once again, in accordance with the Management Model for the Electronic Monitoring of People (Brasil, 2020a):

- To carry out the reception of the person in compliance with an electronic monitoring measure, explaining and clarifying obligations, duties and rights;

- To carry out the reception of women in situation of domestic and family violence who make use of the Portable Tracking Unit – present recommendations regarding the use of the device, to gather and analyze relevant information about it, with regard to psychosocial and legal aspects;

- To collect and analyze relevant information about the monitored individual with regard to psychosocial and legal aspects;

- To identify whether the monitored person resides, works, studies, receives health care, participates in religious/spiritual activities or develops other activities, interacting with the sectors responsible for monitoring and technical operations for better adequacy of the measure and eventual treatment of incidents;

- To make referrals to the social protection network, as needed and in accordance with the monitored person;

- To carry out the psychosocial and legal follow-up of the person being monitored;

- To analyze incidents referred by the sectors responsible for monitoring and technical operations, aiming at better execution of the judicial measure;

- To defer to the sector responsible for monitoring, when necessary, sub-notifications in the monitoring system so that the coordination or supervision can trigger the police in cases of specific incidents;

- To prepare measure monitoring reports, evaluating psychosocial and legal elements, providing subsidies for the reassessment of the measure by the judge;

- To propose, in writing, to the judge in the case, the replacement of the monitoring measure by another less burdensome one, when the monitoring proves to be inappropriate for the individual, according to psychosocial and legal factors analyzed as impediments to compliance;

- To inform the administrative sector of any conditions and restrictions to be observed when scheduling specific cases, preventing possible non-compliance and unnecessary interruptions in the routine;

- To schedule appointments in order to follow the court decision and preserve the people monitored routines, observing days and hours of work, study, health treatment;

- To hold periodic meetings to assess specific cases, improve services and develop external activities;

- To conduct case studies regularly;

- To participate in periodic action alignment meetings, among other topics;

- To actively seek partnerships with the social protection network, public institutions, non-governmental organizations and the business sector to ensure and expand services and referrals for social inclusion, 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, cultural development, production, training and dissemination;

- To follow protocols and routing flows with network institutions and other partners;

- To carry out follow-up visits to entities that receive the person monitored in programs and actions for social inclusion;

- To keep regular contact by phone, email and other possible means with the social protection network, entities and institutions;

- To actively participate in commissions, councils and other spaces of the network, ensuring representation in these spaces;

- To establish wide networks with local and federal policies and programs to support the referral of the public to the Electronic Monitoring Center;

- To promote network meetings for dissemination, improvement and alignment, expansion of partnerships, awareness and training of institutions involved in electronic monitoring services;

- To collaborate with communication campaigns for information and awareness of civil society regarding electronic monitoring;

- To participate in events, seminars and meetings with the network, the justice system, civil society and other partners.

It is important to underline some restrictions regarding the multidisciplinary team's work in electronic monitoring services, further helping to delimit the competences of these professionals in this field (Brasil, 2020a):

- The lawyer should not assume the attributions of a public defender, but should act in the guidance/information to the public on compliance with the electronic monitoring measure, especially the conditionalities added to the measure; legal assistance to the coordination in the elaboration of technical cooperation agreements, contracts, agreements, models of legal instruments, as well as all legal parts of the electronic monitoring policy. This professional should be responsible for the contact with legal departments of government secretariats and other institutions with which the electronic monitoring policy should establish partnerships. If the person assisted, at any time, demands the judicialization of the case, this must be referred to the Public Defender's Office;

- Psychologists should not assume clinical assignment and should not issue psychological reports. If such specific services are needed, the referral to the specialized network and follow-up regarding the procedures must be carried out;

- None of the professionals in the multidisciplinary team should directly contact the public security institutions, but rather the Judiciary, which, in turn, will analyze the need to contact the police institutions or summon the person to a justification hearing, resumption or replacement of the measure;

- Social referrals and/or activities not determined in court cannot be carried out in a mandatory or coercive way. Conditions and/or restrictions that are not duly indicated in the court decision cannot be created or established;

- Periodic return visits cannot be imposed on services, but the importance of the return is indicated for the preparation of a report to the judge for the measure's periodic reassessment;

- The professionals of the multidisciplinary team cannot apply sanctions or punishments to the person being monitored and/or women in situation of domestic violence who choose not to return to the care offered by the team;

- It must not be allowed the entry or stay of strangers or third parties in the sector where the team operates when unauthorized.

As previously mentioned, the Management Model is a proposal subject to local adaptations and improvements, considering, among other aspects, the plurality of arrangements conferred on the electronic monitoring policy in the Federative Units of Brazil. The product presented here carries these same recommendations and flexibilities, as it is a way of proposing and divulging guidelines about the processes of hiring multi-professional teams to work in the services of electronic monitoring of people. Taking into account local specificities, adjustments can and should be made in order to meet the demands of the states looking for the qualification of electronic monitoring services.

14
Partner Network

During compliance with the electronic monitoring measure, the inclusion of people monitored 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 electronic monitoring policy, integrating the methodological routine of the technical teams and stages of evaluation and improvement.

The partner social network of electronic monitoring services is made up of several public and private non-profit entities, which work in partnership with the Center for inclusion in social demands: health, education, income and work, housing, programs and projects, etc. This includes, in the case of women in situation of domestic violence, referrals to institutions and programs that are part of the Women's Protection Network.

The mapping and articulation of this network by the Center makes it possible to enhance the referrals for access to rights and, consequently, to reduce the social vulnerabilities of people monitored electronically. The relationship of the Center's professionals with the network must be continuous, aiming at better capacity and sensitivity to issues involving the execution of electronic monitoring services and social inclusion, through the following actions:

a) Follow-up visits to entities that receive the monitored person in programs and actions for social inclusion;

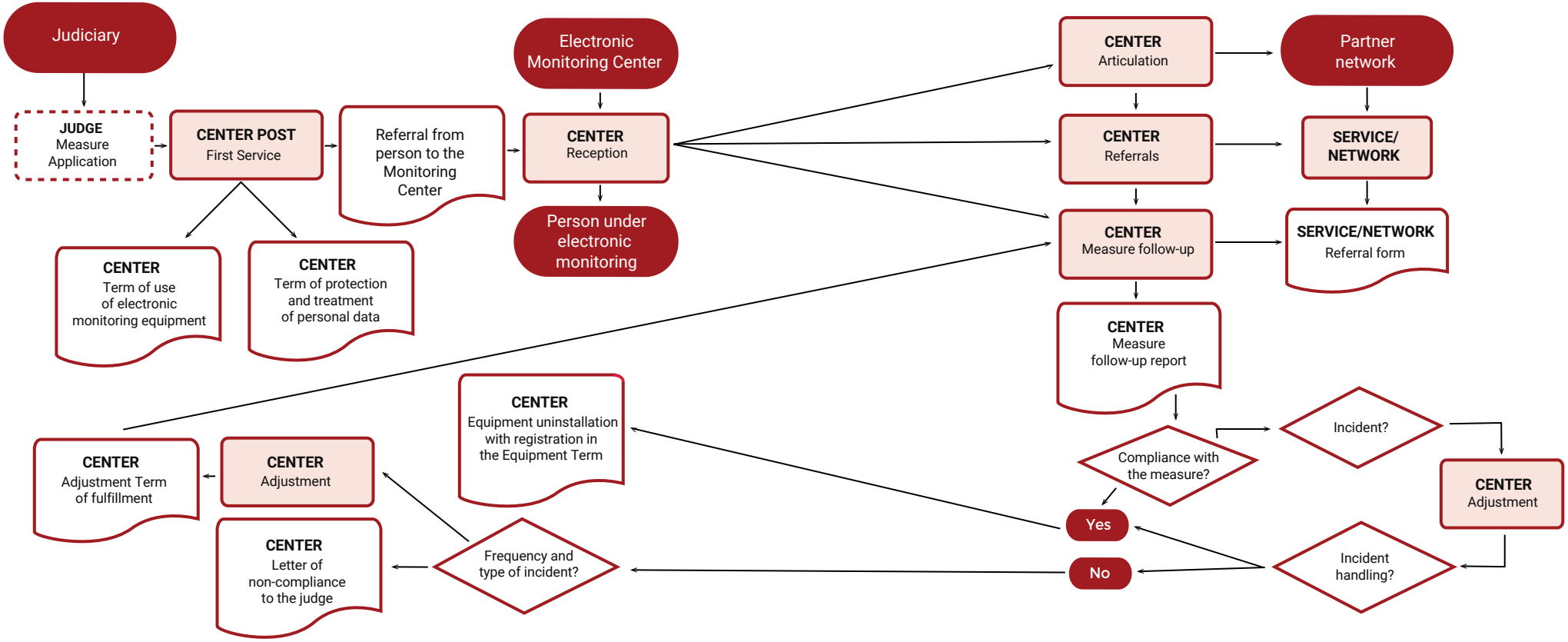
b) Periodic contacts by phone, email and other possible means;

c) Participation in events and other activities promoted by the network;

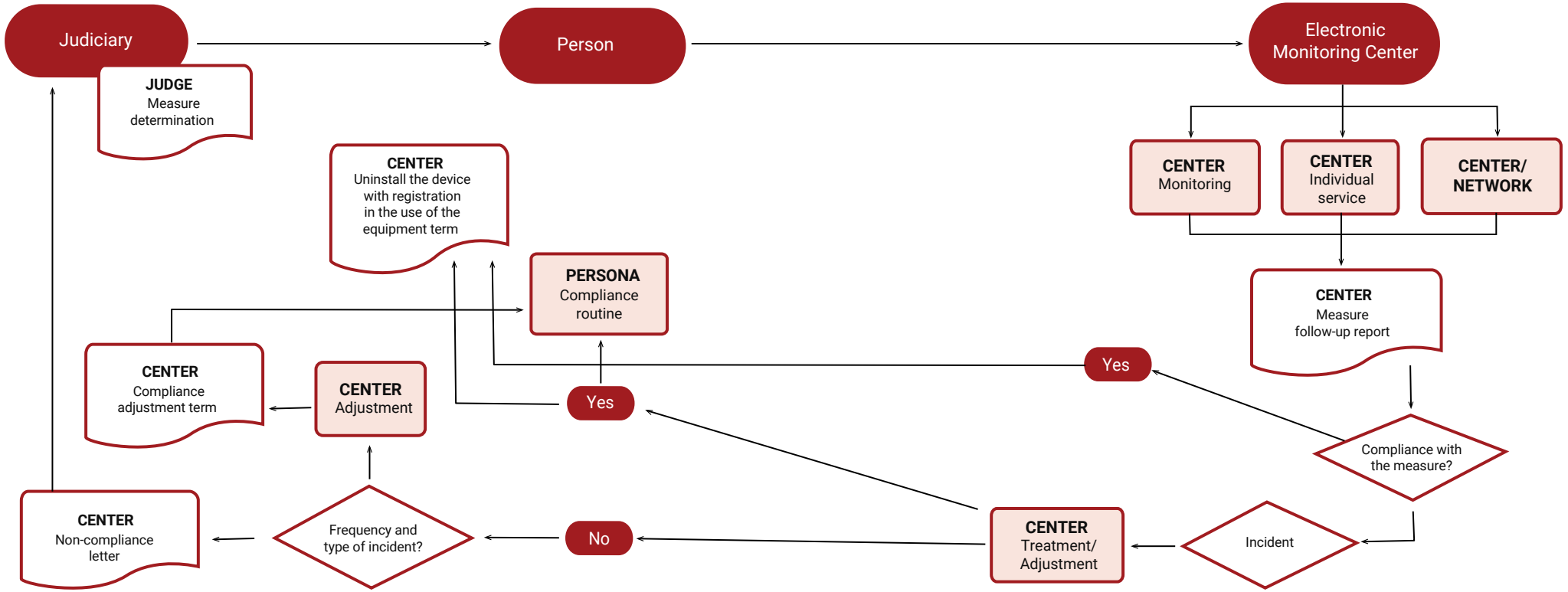
d) Seminars and meetings with the network, the justice system, civil society and the technical team.

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

15
General workflow of the Electronic Monitoring Center



16
General follow-up flowchart of the monitored person



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TECHNICAL DATA SHEET

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