FROM DE-CARCERATION TO E-CARCERATION? CURRENT REALITIES AND CHALLENGES WITH ELECTRONIC MONITORING IN FRANCE, THE UNITED STATES AND BRAZIL

Reynaldo Ortiz-Minaya[1]

Daniel Danglades[2]

João Vitor Freitas Duarte Abreu[3]

ABSTRACT

Since the early 1970s, the United States has experienced a punitive cycle of "tough on crime" legislation that produced a prison population exceeding two million by 2009, prompting states to turn to electronic monitoring (EM) as a cost-saving alternative. By December 2015, electronically supervised populations had grown nearly 140 percent in a decade, reaching close to half a million by 2022 and raising fundamental questions about whether EM reduces criminal-legal entanglement or instead reconstructs incarceration in technological form. In France, EM has evolved since its 1997 introduction from a localized experiment into a nationally embedded sanction central to sentence adjustment and probation, including recent proximity-based applications. While policymakers frame EM as a tool to reduce imprisonment, concerns persist regarding net-widening, proportionality, privacy, and human rights. Brazil offers a third trajectory, adopting EM primarily as a pragmatic response to chronic prison overcrowding and limited probation capacity. Under the National Council of Justice' initiative, EM has expanded across states in pretrial, sentence progression, and parole contexts, alleviating systemic pressure but facing fragmented implementation and weak rehabilitative framing that risk undermining legitimacy and expanding penal control. This study provides a comparative analysis of EM in the United States, France, and Brazil to examine the structural similarities and divergences shaping its use across the world-economy. By situating these national trajectories within a global context, the article interrogates whether EM functions as a humane and legitimate supervisory tool or an unchecked extension of penal control, concluding that its legitimacy depends less on the device itself than on the justice philosophy underlying its deployment.

KEYWORDS: Electronic Monitoring, Prison Overcrowding, Penality, Net Widening, Comparative Analysis.

[1] PhD (2014) and MA (2005) in Sociology from the State University of New York at Binghamton. BA (1998) in Sociology and Latin American Studies from Drew University, Madison, NJ. Director of Criminology & Assistant Professor in the Department of Sociology & Criminology at Howard University. ORCID: https://orcid.org/0000-0003-0616-931X

[2] Deputy Head of the European and International Relations Unit of the French Prison and Probation Service in Paris (Direction de l'administration pénitentiaire, Ministère de la justice). ORCID: https://orcid.org/0009-0001-5776-842X

[3] PhD candidate and Master in Sociology and Law at Fluminense Federal University (UFF), graduate in Public and Social Security from UFF, researcher at the Research Group on Sociology of Law (NSD) and the Institute for Comparative Studies in Conflict Administration (INCT-InEAC). ORCID: https://orcid.org/0000-0002-7161-4347

DA DESENCARCERIZAÇÃO PARA A E-CARCERIZAÇÃO? REALIDADES E DESAFIOS ATUAIS DA MONITORAÇÃO ELETRÔNICA NA FRANÇA, NOS ESTADOS UNIDOS E NO BRASIL

Reynaldo Ortiz-Minaya
Daniel Danglades
João Vitor Freitas Duarte Abreu

RESUMO

Desde o início da década de 1970, os Estados Unidos vêm atravessando um ciclo punitivo de legislações “tolerância zero” que produziu, em 2009, uma população prisional superior a dois milhões de pessoas, levando os estados a recorrerem à monitoração eletrônica (ME) como alternativa de redução de custos. Em dezembro de 2015, a população sob supervisão eletrônica havia crescido quase 140% em uma década, alcançando cerca de meio milhão em 2022 e levantando questões fundamentais sobre se a ME de fato reduz o envolvimento com o sistema de justiça criminal ou, ao contrário, reconstrói o encarceramento em forma tecnológica. Na França, a ME evoluiu desde sua introdução, em 1997, de um experimento localizado para uma sanção incorporada nacionalmente, centrada na adaptação de penas e na execução da medida de liberdade vigiada, incluindo aplicações recentes baseadas em proximidade. Embora formuladores de políticas apresentem a ME como instrumento para reduzir o encarceramento, persistem preocupações quanto ao alargamento da malha penal (net-widening), proporcionalidade, privacidade e direitos humanos. O Brasil oferece uma terceira trajetória, adotando a ME principalmente como resposta pragmática à crônica superlotação prisional e à limitada capacidade de execução penal em meio aberto. Sob a iniciativa do Conselho Nacional de Justiça (CNJ), a ME se expandiu pelos estados nos contextos de prisão provisória, progressão de regime e livramento condicional, aliviando pressões sistêmicas, mas enfrentando uma implementação fragmentada e um enquadramento frágil em termos de reintegração social, o que pode comprometer sua legitimidade e expandir o controle penal. Este estudo apresenta uma análise comparativa da ME nos Estados Unidos, na França e no Brasil para examinar as semelhanças estruturais e as divergências que moldam seu uso. Ao situar essas trajetórias nacionais em um contexto global, o artigo questiona se a ME funciona como um instrumento de supervisão humano legítimo ou como uma expansão descontrolada do poder punitivo, concluindo que sua legitimidade depende menos do dispositivo em si do que da filosofia de justiça que orienta sua implementação.

PALAVRAS-CHAVE: Monitoração eletrônica; Política Penal; Alargamento da Malha Penal; Superlotação prisional;

1 INTRODUCTION

Over the past decades, the usage of electronic monitoring (EM)[4] across the world stage has moved from a marginal experiment to a core instrument of criminal justice and migration control albeit to varying degrees. Often framed as a humane and cost-effective alternative to imprisonment, EM is now used in pretrial supervision, sentence enforcement, parole, probation, immigration related cases, and victim protection. This expansion raises a central question: does EM contribute to de-carceration, or does it instead relocate confinement into homes, neighborhoods, and digital infrastructures, producing a new form of "e-carceration"?

The trajectories of the United States, France, and Brazil show that the same technology can serve very different penal philosophies. By 2022, nearly 500,000 people were under EM supervision in the United States (Zhang et al., 2024); whereas of March 2025, approximately 18,620 individuals were subject to active EM measures in France (Direction de l'Administration pénitentiaire, 2025); and in Brazil, more than 120,000 people were being monitored by 2025 (Senappen, 2025). In the United States, EM has developed alongside mass incarceration and is largely experienced as punitive, fee-based, and surveillance-heavy, reinforcing existing inequalities. In France, EM has been progressively integrated into a probation continuum, including proximity-based devices for domestic violence cases, and is framed in terms of sentence adjustment and reintegration, even as net-widening concerns persist. Brazil offers a third path, where EM has been adopted as a pragmatic response to chronic overcrowding and a constitutional crisis in the prison system, under conditions of fragmented governance, infrastructural deficits, and deep social inequality.

This article contributes to the existing literature by offering a theoretically guided comparative analysis that moves beyond descriptive accounts of national systems to identify the institutional conditions that shape whether EM produces decarceration or, conversely, extends carceral control. By comparing three contrasting models—punitive expansion (United States), reintegrative probation (France), and crisis-driven implementation (Brazil)—the analysis clarifies how differences in institutional architecture, judicial oversight, and social support structures produce divergent outcomes from a shared technological tool and underlying ideology.

[4] The wide array of electronic monitoring modalities include but are not limited to ankle bracelets; ankle monitors; alcohol monitoring devices such as SCRAM bracelets; ignition-interlock systems for DUI offenders; smartphone-based monitoring apps; electronic house-arrest systems; geofencing to enforce restricted or exclusion zones; and mobile-phone verification systems for lower-risk supervision.

The study proceeds as follows: Section 2 presents the methodology; Sections 3, 4, and 5 examine the United States, France, and Brazil, each structured around two common dimensions—institutional design and implementation, and analytical dynamics (expansion, control, and inequality); Section 6 develops the comparative analysis, organized around four axes (penal philosophy, institutional architecture, net-widening dynamics, and social inequality effects); and Section 7 concludes. We argue that EM is not a neutral technology: its contribution to de-carceration or e-carceration depends less on the device itself than on the justice philosophy, institutional safeguards, and social support frameworks within which it is deployed. The following section outlines the methodological approach and analytical framework guiding this comparison, before proceeding to the national case analyses and cross-national discussion.

METHODOLOGY

This analysis adopts a comparative socio-legal approach to examine the development, expansion, and social implications of electronic monitoring (EM) across three national contexts: the United States, France, and Brazil. The unit of analysis is the institutional configuration of electronic monitoring systems within each national penal framework. Rather than constituting classical case studies in the tradition of Yin (2018), which would require primary data collection, controlled units of analysis, and replication logic, this research is better described as a theoretically guided, secondary-source comparative analysis. We follow the framework outlined by Machado (2019), which recognizes empirical legal research based on documentary, administrative, and secondary sources as a legitimate and rigorous methodological form, provided that the choices governing source selection, analytical strategy, and interpretive limits are made explicit.

The three countries were selected through a logic of purposive maximum variation sampling (Yin, 2018), designed to capture the full range of institutional and philosophical variation in how EM is deployed across the world-economy. The United States represents the country of origin of mass electronic monitoring and the paradigmatic case of a punitive, market-driven, and surveillance-heavy deployment model. France represents the European reintegrative tradition, in which EM has been embedded within judicial oversight and probation practice since its introduction in 1997, shaped by Council of Europe normative standards emphasizing proportionality and dignity. Brazil represents a third trajectory characteristic of the Global South: the adoption of EM as a pragmatic, crisis-driven response to chronic prison

overcrowding within a context of deep social inequality, fragmented federalism, and limited probation infrastructure. Together, the three cases allow for a structured comparison along the axis of penal philosophy, from punitive surveillance capitalism (US) to welfare penality (France) to crisis-management statecraft (Brazil) and enable theoretical generalization about the conditions under which EM contributes to de-carceration or instead reproduces and extends carceral control.

The examination draws on three complementary layers of material. First, we analyze legal and policy frameworks, including primary legislation, administrative circulars, and official guidelines in each country. Second, we use secondary quantitative data drawn from official administrative statistics and institutional reports: the Vera Institute of Justice (2024) and U.S. Bureau of Justice Statistics for the United States; the Direction de l'Administration pénitentiaire and the Cour des comptes (2025) for France; and the Secretaria Nacional de Políticas Penais (Senappen, 2025) and the Brazilian Forum on Public Security for Brazil. Third, we conduct a targeted review of empirical and socio-legal scholarship on EM and its social effects.

We acknowledge several limitations. Administrative statistics across the three countries are produced by different institutional actors, measure different units, and are subject to varying degrees of underreporting and definitional inconsistency. This problem is most acute in Brazil, where state-level data submitted to SISDEPEN are of uneven quality, as illustrated by the discrepancy between São Paulo state's official submission (758 persons) and the figure reported by the state court (7,209). In the United States, the decentralized structure of EM programs means that no national census exists, and the Vera Institute' estimate (Zhang et al., 2024) represents the most comprehensive available approximation. French administrative data from the DAP are comparatively more uniform, though they focus primarily on post-sentencing EM. In all three contexts, data on the racial socioeconomic, and gender characteristics of monitored populations are limited.

The comparative analysis is organized around four key axes: (i) penal philosophy, which refers to the rationale behind using electronic monitoring (EM) as a form of justice; (ii) institutional architecture, which examines the level of judicial oversight, the integration with probation services, and the overall regulatory coherence; (iii) net-widening dynamics which assess whether EM leads to an increase in the number of people under supervision, rather than simply replacing custodial sentences; and (iv) social inequality effects, measured by how much EM reproduces or exacerbates existing racial, class, or spatial disparities. The analysis starts inductively within each national case and then moves to cross-case inferences in the comparative section, following an analytic rather than a statistical generalization approach

(Yin, 2018; Machado, 2019). Inferences are drawn through a structured, qualitative comparison across these four analytical axes. A fifth analytical lens, cutting across and summarising the four axes, is drawn from Nellis's (2018) distinction between 'clean' and 'dirty' electronic monitoring. Clean EM, in Nellis's formulation, is bounded, predictable, and embedded in a rehabilitative framework: duration is limited, technological intrusiveness is modest, and professional oversight accompanies the device. Dirty EM is expansive, surveillance-heavy, and decoupled from any reintegrative purpose: GPS tracking extends into workplaces and social networks, fees and technical violations routinely produce reincarceration, and commercial incentives drive adoption. This distinction is used here as an integrating frame applied consistently across all three national cases and the comparative analysis, enabling a summary characterisation of each trajectory that complements the more granular four-axis comparison.

2 US CASE: ORIGINS AND LEGISLATIVE EXPANSION OF ELECTRONIC MONITORING (EM), 1970-2025

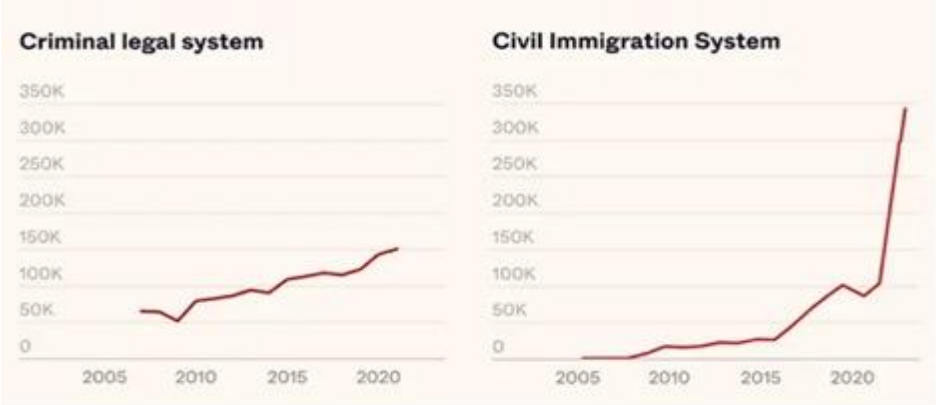
INSTITUTIONAL DESIGN AND IMPLEMENTATION

Beginning in the 1970's, the United States underwent a wide-ranging reconfiguration of its punishment regime, marked by the rapid growth of what eventually becomes coined as "mass incarceration" (Alexander 2010; Garland 1991; Mauer 1992, 1999; Wacquant 2001). Thus, at the peak of its height in 2008, the nation experienced over 2.3 million persons incarcerated (Beckett 2018; Pettit and Gutierrez 2018). Such an explosion of jail and prison populations across the country were fueled by shifts in political rhetoric, racialized anxieties, and neoliberal governance in ways that both fused and anchored the increase of state surveillance and control across and between a wide array of social structures and institutions. In due time and as local, state, and federal governments began to struggle with prison overcrowding and rising supervisions costs, EM surfaces as a preferred alternative to 'brick and mortar' confinement in the United States. In such regard and over time, electronic monitoring emerges and becomes widely touted as a fiscally attractive substitute to incarceration instead of a fundamentally different penal philosophy. Supporters staunchly maintain that such tools help reduce jail populations and help lower tax expenditures. Opponents, however, argue conversely that such modalities actually create new financial burdens, expand state surveillance (Schenwar, Law, and Alexander 2021), and disproportionately impact marginalized communities (Kilgore 2022a).

At first, such technologies—ranging from GPS ankle bracelets to biometric smartphone apps—were implemented in probation and parole processes. However, over time and currently they are being increasingly integrated into pretrial supervision, parole, immigration enforcement, Driving Under the Influence (DUI), and sex-offense registrants as well as being deployed against targeted communities. Thus, in function, this monitoring is being couched between community supervision and custody, while yet being typically posed by US policymakers as 'accountability' and 'public safety'— not reintegration. However, instead of decreasing confinement, EM, in hybrid function, has arisen as a corresponding technology that has expanded carceral power beyond prison walls and into the spaces of communities under attack and — more specifically into the everyday lives of those under supervision (Aviram 2015; Peterson 2021). Understanding the rise of EM therefore requires situating it within the long arc of U.S. carceral expansion and the ideological climate that enabled its adoption and continues to flame its increase. Furthermore, Kilgore (2022b), among others, illustrates how EM serves as a tool of expanded criminalization, as stored data is increasingly used to block access to employment, housing, education, and favorable immigration outcomes.

Between 2005 and 2021, the use of EM in the United States expanded dramatically, with the number of individuals entangled to these technologies growing nearly fivefold and approaching a tenfold increase by 2022 (Vera 2024). By 2022, nearly 500,000 people were subjected to such digital supervision. Of greater detail and importance is the way in which such an explosion of usage has occurred across both the criminal legal system and the immigration enforcement system, each of which adopts such technologies for different purposes. In the criminal legal system, EM is employed as conditions for pretrial release, probation, or parole, whereas in the case of immigration related affairs, said technological apparatuses function as a fused and hybrid instrument of civil supervision and de-facto treatment akin to criminalization. As Graph 1 below demonstrates, by November 2022, U.S. Immigration and Customs Enforcement (ICE) alone was electronically monitoring more than 340,000 persons through its Intensive Supervision Appearance Program (ISAP).

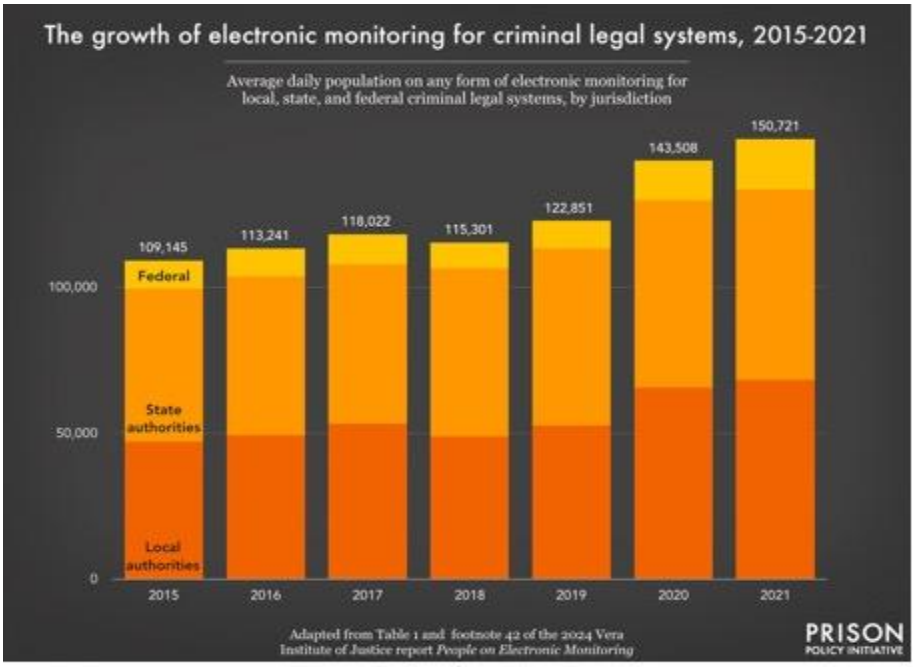
Graph 1: EM in Criminal Legal and Civil Immigration in 2022



Source: Vera Institute of Justice (2024).

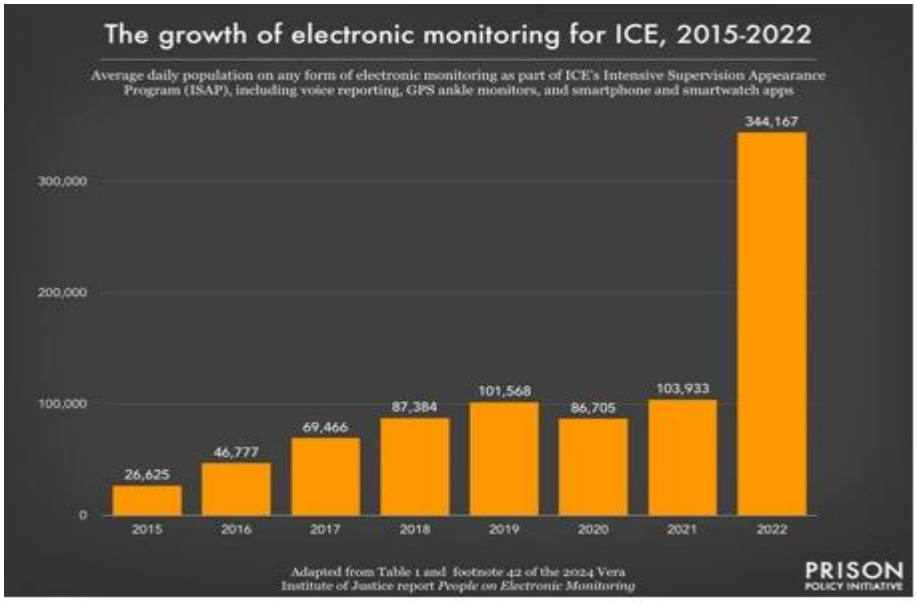
Even more alarming, as Zhang et al. (2024) demonstrate is the fact that such skyrocketing expansion occurs while both jail and prison incarceration rates decrease by approximately 16% over roughly the same 2015-2022 period. Whereas, for the period in question, 2015-2021, there is a 38.09 % increase of EM in criminal legal cases, more appalling is the increase from 26,625 to 344,167 in immigration-related cases— as demonstrated in Graph 2 and Graph 3. Representing an almost twelvefold rise and with a shocking 1,192 % surge within a seven-year explosion, much more critical academic, legislative, political, and grassroots attention is needed in this realm. In such regard, and as Zhang et al. (2024) rightfully contend, such data suggest that there is a dual structural process of substitution and expansion of the carceral state as EM is not merely decreasing rates of incarceration and actually serving to design a new level of control (Balakrishnan 2024; Kilgore 2019).

Graph 2: Increase of EM in Criminal Legal System, 2015-2021



Source: Vera Institute of Justice (2024).

Graph 3: Increase of EM in Immigration Matters, 2015-2021



Source: Vera Institute of Justice (2024).

A major challenge is the absence of centralized national reporting on EM. While the yearly census released by the Bureau of Justice Statistics on incarcerated populations

provides quantified data that unveil the structural inequalities of the criminal justice [military] complex, the widely de-centralized and fragmented structure of EM data operates in a nebulous nature and creates serious difficulties for analysis and oversight. “In fact, only a handful of the nation’s more than 2000 county and state EM programs have produced a single report or evaluation” (Kilgore 2022-B). In such vein, EM is massively increasing across the country within a “data shadow” compared to the relatively well-tracked prison population (Zhang et al, 2024). In addition, the proprietary nature of the technologies being employed in these operations escalate the challenges that would otherwise, after careful analysis, unveil the racial and socio-economic particularities of those being monitored and much less be able to indicate respective data for those that are re-incarcerated for breaking EM rules (Kilgore 2022-B; Citizens for Juvenile Justice 2025; Zhang 2024; Carson 2023; Kilgore 2022; Jones 2014; Kilgore 2015; DeMichele 2009; Payne 2000).

ANALYTICAL DYNAMICS: EXPANSION, CONTROL, AND INEQUALITY

The harshest effects of EM appear in its day-to-day operation across criminal proceedings. Overall national EM use (pretrial + post-conviction + immigration) has exploded: the Vera Institute’s national census estimates 254,700 adults on EM in 2021 (Zhang et al. 2024). The Shriver Center on Poverty Law (2022) reports that hundreds of thousands of people who are simply accused and not yet found guilty of offenses are placed on pre-trial EM (Wilson 2022). In such hearings, EM is being employed as a substitute for, or even at times, as an addition to cash bail. Yet data indicates how the use of EM in bail reform contexts is quite flawed and misleading given the way it is being presented as an ‘alternative’ to confinement yet actually imposes further juridical restrictions on the defendant, i.e., curfew, geographic constraints, initiating and recurring operating fees, as well as other requisites (Jackson Wilson, 2022). Case studies indicate Los Angeles County pretrial EM grew from 24 persons in 2015 to 1284 in 2021, otherwise marking a 5,250% escalation in just six years (Virani 2021). In similar fashion, from 2017 to 2021, San Francisco experienced a dramatic rise in pretrial EM usage, from 75 to 1,650, amounting to a 2,100 percent increase (Skog & Lacoe 2022). On the national level, well over 400, 000 persons remain jailed pretrial daily in US society (Carson & Kluckow 2023).

Pretrial EM creates major legal and practical problems. At the rule of law level, defendants are subjected to punishment before conviction as pretrial EM undermines the presumption of innocence as well as the fact that records indicate that Black and Brown

defendants are disproportionately placed on EM (Balakrishan 2024). Additionally, the personal invasion and interference with daily life is exemplified by individuals reporting essential movement approvals (Jackson Wilson 2022), while technical violations in the form of GPS glitches, late check-ins, or battery issues often lead to reincarceration (The Bail Project 2022). Moreover, as EM often costs hundreds to over $1,000 per month (ibid), records indicate minute improvements in court appearance or re-arrest rates —otherwise revealing the limited effectiveness of its usage (Advancing Pretrial & Policy Research, 2023; James et al, 2022; Skog & Lacoe 2022).

In post-conviction settings, monitored individuals are usually already under community supervision. Thus, electronic monitoring further intensifies monitoring rather than replacing incarceration. In greater analysis, the racialized and classed patterns of supervision are in fact consistent and structurally continuous with larger systemic trends in US penological history even if, as previously mentioned, EM tabulated-data on markers of race and class are limited and highly fragmented. Similar to the operation in pre-trial EM, “a numerous and persistent flow of technical violations—such as missed check-ins, GPS interruptions, curfew deviations, or battery-related alerts—more often than not creates conditions for people on pretrial release to be re-incarcerated without any new crime or offense being committed” (MDRC 2023).

Across the nation, electronic monitoring has expanded even more dramatically in immigration-related proceedings than in the criminal legal context, fusing criminal and immigration law and transforming civil immigration supervision into a punitive, surveillance-driven regime. In 2004, the Intensive Supervision Appearance Program (ISAP) was created as a small pilot program to serve as a civil “alternative to detention” (ATD) for undocumented persons navigating U.S. immigration proceedings (American Immigration Council 2023). It began with roughly 200 participants and by 2015, enrollment had grown to 26,625 persons (U.S. Government Accountability Office 2022). By 2018, ISAP III reached 87,384 participants (U.S. Government Accountability Office 2022), and by 2021 total enrollment reached 124,999 (American Immigration Council 2023), reflecting a sustained pattern of rapid expansion. According to the Vera Institute’s national EM census, by late 2022, ICE placed over 340,000 migrants on electronic monitoring, marking a 169,900% increase since 2004 (Zhang et al., 2024).[5]

[5] See also, American Immigration Council 2023; TRAC Immigration, 2022-B.

This not only clearly illustrates the program's relentless scaling and fusion with federal immigration enforcement practices (American Immigration Council 2023) but also demonstrates how what supposedly began as a narrowly conceived initiative rapidly ballooned into one of the most draconian and unrestrained federal surveillance programs in the US civil legal sector. Furthermore, the project has now been transformed into a massive apparatus of digital surveillance that now rivals— and more repeatedly surpasses the scale of physical immigration detention in the United States.

The wide coalition of the American Bar Association (ABA), advocacy organizations as well as clinical and legal scholars have often reported that for migrants and undocumented persons who find themselves entangled in such web, Immigration-Related Electronic Monitoring (IR-EM) becomes often a form of "digital detention" that otherwise imposes, like in the case of pretrial-EM and to a certain extent in the context of post-release EM, various and compounding levels of stigma, fear and heavy surveillance, despite these persons not being convicted of crimes (ABA 2024; BID 2022; Cleveland and Rosenblum 2020; Freedom for Immigrants 2022; Hernández 2019; Human Rights Watch 2023; Ingram 2021; IDC 2024; Just Futures Law and Mijente 2021; López 2022; PICUM 2022; Sherman-Stokes 2024; Silverman 2021; Wessler 2020).

Once again, revealing structural continuities with the complementary variant of mass incarceration within US penal history, there has been particular financial infrastructures set in place that serve to facilitate the operation of these digital processes ever more bringing in the private sector into federal and state functions. Available procurement records demonstrate that BI Incorporated—the primary private contractor responsible for implementing ICE's EM programs beginning in 2004—saw a substantial surge in federal funding, with contract values rising from the tens of millions of dollars to the hundreds of millions of dollars by the mid-2020s (Congress 2025; GovConWire 2025; GovTribe 2025; Investing.com 2025; Redden 2017). Over the years, the magnitude of that contract increased exponentially, and by 2020, the ISAP contract granted to BI contained a value of roughly US$ 2.2 billion for a five-year period (GovConWire. "BI Wins ICE ISAP V IDIQ Contract Award." GovConWire, 2025). As 2025 comes to close, BI remains ICE's main contractor for supervising and surveillance under the latest iteration of the ISAP V contract, otherwise making it quite clear its continuation and expansion (GovConWire. "BI Secures ICE Intensive Supervision Appearance Program V IDIQ Contract." GovConWire, 2 Oct. 2025.).

In such regard, as ICE has expanded the ATD program, the volume of people detained has also expanded. This illustrates that EM is not replacing detention but quite conversely

creating new layers of control for individuals that would otherwise previously have been free in their communities pending their cases (TRAC 2024). IR-EM shifts carceral control from physical detention to bodies and devices. As a result, properly dissecting the current operation and proliferation of EM across all sectors will serve as an indispensable part in properly foreseeing the future of criminal justice reform in the United States.

3 FRANCE CASE: JUDICIAL OVERSIGHT, EMBEDDED IN PROBATION CONTINUITY

France's approach to EM aligns with European principles of proportionality, dignity, and reintegration, as expressed in the Council of Europe´s *Recommendation CM/Rec (2014) on electronic monitoring* (Council of Europe). Unlike other jurisdictions where EM began as privatized or experimental projects (Nellis, 2014; Beyens & Kaminski, 2013), France integrated it directly into probation law from the outset (Lévy & Pitoun, 2007). This integration ensures judicial oversight and establishes it within a framework of continuous care and control. The French case study traces the historical development and transformation of EM, particularly focusing on the creation of détention à domicile sous surveillance électronique (DDSE) as an independent penalty.

INSTITUTIONAL DESIGN AND IMPLEMENTATION

EM was officially introduced in France by Law No. 97-1159 on December 19, 1997 (*Journal officiel de la République française, 20 Décembre 1997).*[6] It was originally designed to adjust custodial sentences of one year or less. This initiative was part of a larger set of penal reforms aimed at reducing prison overcrowding and expanding alternatives to incarceration ((Kensey, A., Lévy, R. & Benaouda, A., 2010). From its inception, EM was embedded within probation practices, reflecting a commitment to judicial oversight and proportionality (Kaluszynski, 2006; Lévy & Pitoun, 2007). The origins of probation in France date back to 1946 when conditional release was first institutionalized. Over the following decades, probation expanded to include suspended sentences and community sanctions. Within this evolution, EM transitioned from a cautious innovation to a structured instrument of

[6] Law No. 97-1159 of December 19, 1997 establishing electronic monitoring as a method for executing custodial sentences – Légifrance.

sentence management, firmly established in the penal code and in accordance with Council of Europe standards that emphasize dignity, proportionality, and reintegration.

Importantly, until 2019, EM in France is not a standalone punishment but rather a method for adjusting sentences. It can be applied through early release, or sentence reduction, with the *juge de l'application des peines* (JAP), Sentence Enforcement Judge, playing a vital role in ensuring that decisions are individualized and proportionate. This judicial grounding reinforces the legitimacy of EM and positions it within a continuum of custodial care and community supervision.

Empirical studies from the early stages of implementation showed that EM was often applied to individuals with relatively stable social circumstances, such as employment and family ties, as well as to those serving short custodial sentences. The recidivism rates for these individuals were lower than those observed among similar prison populations (Kensey, A., Lévy, R. & Benaouda, A., 2010). These findings highlight EM's potential as a more effective alternative to incarceration, while also pointing out the selective nature of its application.

Over the years, a series of legislative reforms have significantly expanded the scope and function of EM within the French penal system. In 2002, EM was first extended to include judicial control through Law no. 2002-1138, passed on September 9, 2002 (*Journal officiel de la République française*, 10 September 2002), marking its initial integration beyond custodial measures. In 2004, sentencing courts were granted the authority to impose EM directly from the outset, including in the context of plea bargaining (Law no. 2004-204, known as "Perben II," enacted on March 9, 2004, *Journal officiel de la République française,* 10 March 2004). This step firmly embedded EM into judicial practice.

The reform of 2009 further broadened the application of EM, allowing it to be used for sentences of up to two years or up to one year for cases involving legal recidivism. It also extended the use of EM to rehabilitation projects beyond employment (Law no. 2009-1436, enacted on November 24, 2009, *Journal officiel de la République française,* 25 November 2009). Additionally, this reform introduced "surveillance électronique de fin de peine" (SEFiP), aimed at managing the final stages of custody under EM.

However, by 2014, SEFiP was abolished and replaced by "libération sous contrainte" (LSC), a form of early release from custody that could be executed under EM supervision (Law no. 2014-896, enacted on August 15, 2014, *Journal officiel de la République française,* 16 August 2014). This change reflected a shift toward mechanisms of conditional liberty rather than extending custodial sentences. The most significant development occurred in 2019 when

a reform established "détention à domicile sous surveillance électronique" (DDSE) as a standalone penalty (Law no. 2019-222, enacted on March 23, 2019, *Journal officiel de la République française*, 24 March 2019). DDSE, which ranges from fifteen days to six months, was positioned second in the sentencing hierarchy after imprisonment, thereby consolidating EM's role as a central penal sanction rather than merely an adjunct to custody.

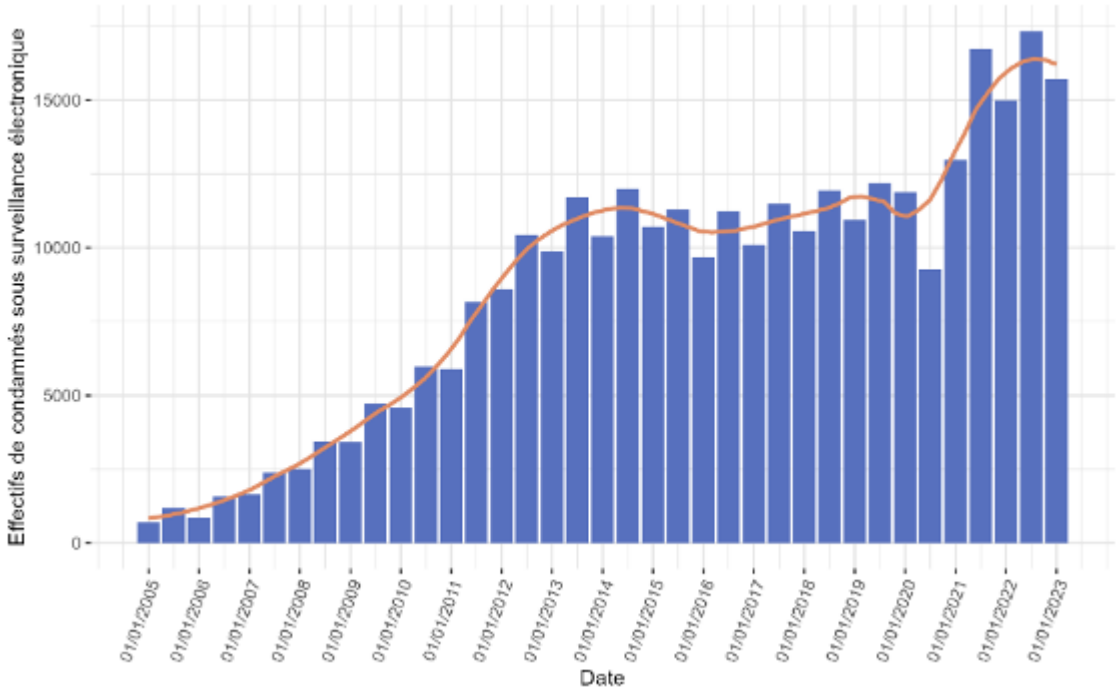
This progression illustrates France's deliberate movement away from short custodial sentences, which are often disintegrative and associated with high recidivism rates, toward sanctions designed to promote reintegration and ensure continuity of probation care. As a result, EM has evolved from a technical adjunct into a cornerstone of penal policy, reflecting a broader shift toward community-based alternatives that balance control with rehabilitation.

Importantly, in France, EM is recognized for its value for both minors and adults. By anchoring individuals in social networks and facilitating pathways to reintegration, it serves as a form of support and a protective factor against entering delinquent pathways, regardless of age.

These developments illustrate how EM in France has transformed from a supplementary measure for custodial sentences into a multi-purpose tool. It encompasses offender management, victim protection, and pretrial supervision, all while remaining firmly embedded within a judicially supervised probation framework.

As of March 1, 2025, there were 16,720 individuals under EM as part of their home detention (*détention à domicile sous surveillance électronique*, DDSE). This number represents a 55% increase from 10,760 individuals in May 2013. This long-term growth is illustrated in Graph 4, which shows the consistent rise in EM from 2005 to 2023. By August 2025, data from the Direction de l'Administration pénitentiaire (DAP) indicated there were 18,620 active fixed EM measures, including 561 pre-trial placements (ARSE/ARSEM), 657 DDSE sentences, 16,362 sentence adjustments, and 1,040 early releases *(libération sous contrainte*).

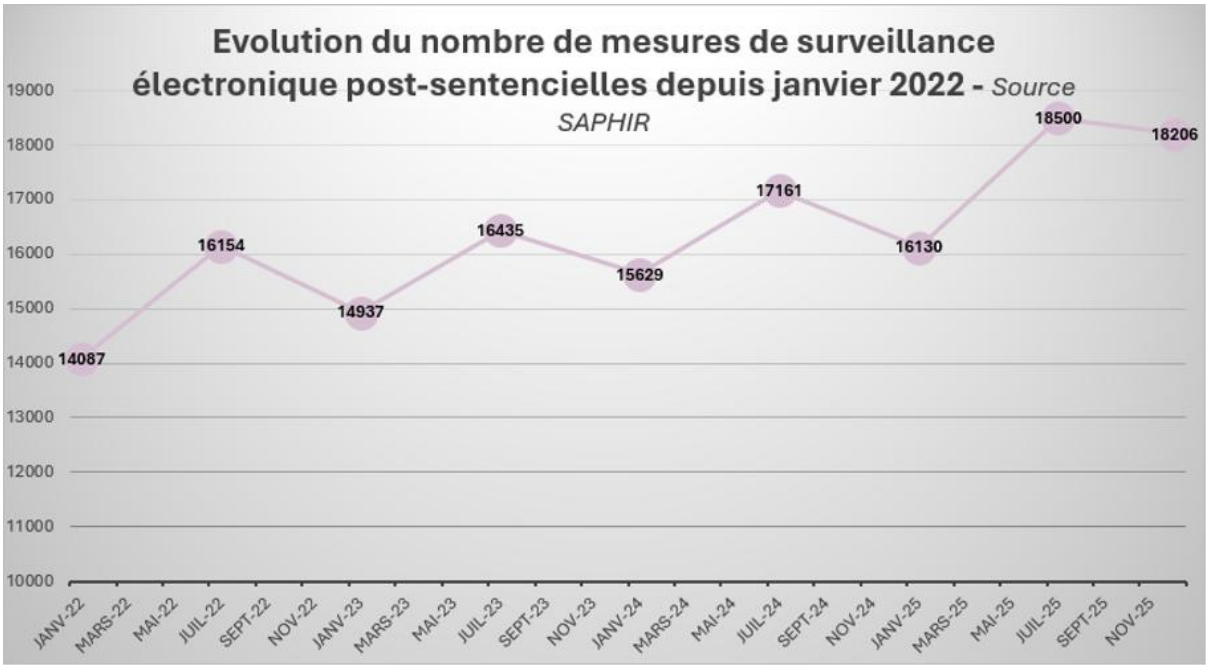
Graph 4 – Long term trend (2005–2023)



Source: Direction de l'Administration pénitentiaire (2025).

The significant increase in recent years is captured in Graph 5, which traces the evolution of EM measures from 2022 to November 2025. EM now accounts for more than 80% of all sentence adjustments, making it the most common form of community-based sanction.

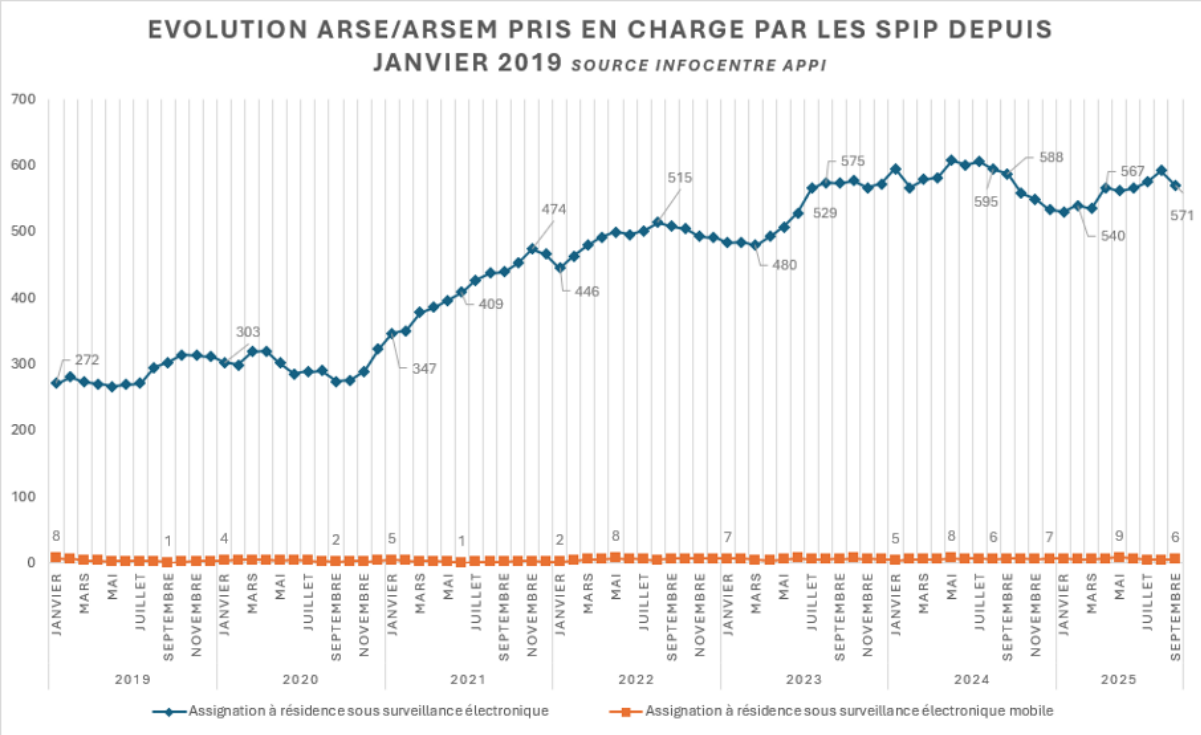
Graph 5 – Recent trend (2022–November 2025)



Source: Direction de l'Administration pénitentiaire (2025).

A longitudinal study of the first 580 individuals placed under EM found that five years after placement, re-conviction rates were significantly lower than for those sentenced to imprisonment. EM ranked second only to community service in terms of effectiveness (Kensey, Lévy & Benaouda, 2010). Participants who were monitored electronically were more likely to be employed, live in stable family environments, and have higher levels of education compared to short-term prisoners. These findings highlight EM's rehabilitative potential, even as recent reforms have expanded its application across all stages of the penal process, raising concerns about net-widening and the potential dilution of its identity as a targeted alternative to custody. The specific increase in pre-trial EM placements since 2019 is illustrated in Graph 6, which emphasizes the extension of monitoring beyond just sentence adjustments.

Graph 6 – Pre trial EM trend (January 2019–2025)



Source: Direction de l'Administration pénitentiaire (2025).

Applying the "tightness" framework proposed by Hucklesby, Beyens, and Boone (2021), France's EM regime can be described as structured yet moderate. The duration is limited, with statutory maximums rarely exceeding twelve months, providing more certainty compared to the indefinite monitoring seen in Brazil or the US. The scope remains narrow, primarily relying on radio-frequency curfews confined to the household, unlike GPS systems that extend monitoring to workplaces and social networks. The depth of monitoring is moderate, with curfews averaging ten to twelve hours per day, intentionally designed to avoid disrupting employment or education. The burden of compliance is alleviated by institutional support: probation services offer assistance, breach policies are predictable, and radio-frequency devices are less intrusive than GPS tags.

ANALYTICAL DYNAMICS: EXPANSION, CONTROL, AND INEQUALITY

The increase in the use of EM in France highlights the net-widening paradox. As discussed at the Council of Europe´s Conference of Directors of Prison and Probation Services in Sofia in 2024 , reforms aimed at reducing incarceration have unintentionally

expanded the scope of penal supervision.[7] The rapid rise of the newly dominant form of sentence adjustment, Home Detention Under EM (DDSE), has led to greater caseloads and increased oversight from the justice system over people's private lives. This raises important questions about individual autonomy, privacy, and proportionality. While EM can facilitate reintegration and continuity of care, it also poses the risk of extending penal control. This tension mirrors the surveillance-heavy model seen in the United States and the overcrowding-driven approach adopted in Brazil.

The expansion of EM in France presents interconnected challenges across technical, legal, and societal dimensions. On the operational front, the increasing number of placements has put pressure on probation services, necessitating new strategies for managing caseloads and coordination. The effectiveness of EM relies not only on dependable technology but also on collaboration among probation services, courts, and private providers. This raises questions about accountability and interoperability, concerns that have been amplified since EM became a standalone penalty under the 2019 reform (Law No. 2019-222, 23 March 2019). The *Cour des comptes* (2025) has underscored issues such as inadequate monitoring, delays in implementation, and limited support for reintegration. It noted that only a small percentage of DDSE placements lead to job or housing referrals, while recidivism rates remain close to those for individuals serving community service sentences.

Legally, the designation of *détention à domicile sous surveillance électronique* (DDSE) as an independent sanction has not clarified whether it is regarded as a custodial sentence served at home or as a community measure similar to probation. Its connection to conditional release mechanisms, such as libération sous contrainte (Law No. 2014-896, 15 August 2014), remains ambiguous, revealing the need for jurisprudential guidance. This lack of clarity stands in contrast to the reforms in Sweden in 1997, where EM was explicitly defined as a substitute for short prison sentences. Research by Grenet, Grönqvist & Niknami (2023) shows that EM in Sweden has successfully reduced incarceration rates, lowered recidivism, and strengthened offenders' ties to the labor market, yielding measurable benefits for families and children. France's ambiguous framework risks undermining similar opportunities for reintegration.

From a societal perspective, EM has broadened into new areas. The introduction of anti-approach bracelets for domestic violence cases (Law No. 2020-936, 30 July 2020) reframes monitoring as a means of victim protection, while its application in juvenile justice (Ordinance No. 2019-950, 11 September 2019; in force since 2021) raises concerns about

[7] Département des politiques sociales et des partenariats - DPSP.

proportionality and developmental impact. These developments showcase the versatility of EM but also ignite debates about the expansion of surveillance and its normalization. The Cour des comptes warns that, without stronger pathways for reintegration, EM risks becoming merely a management tool to alleviate prison overcrowding rather than a true alternative focused on rehabilitation.

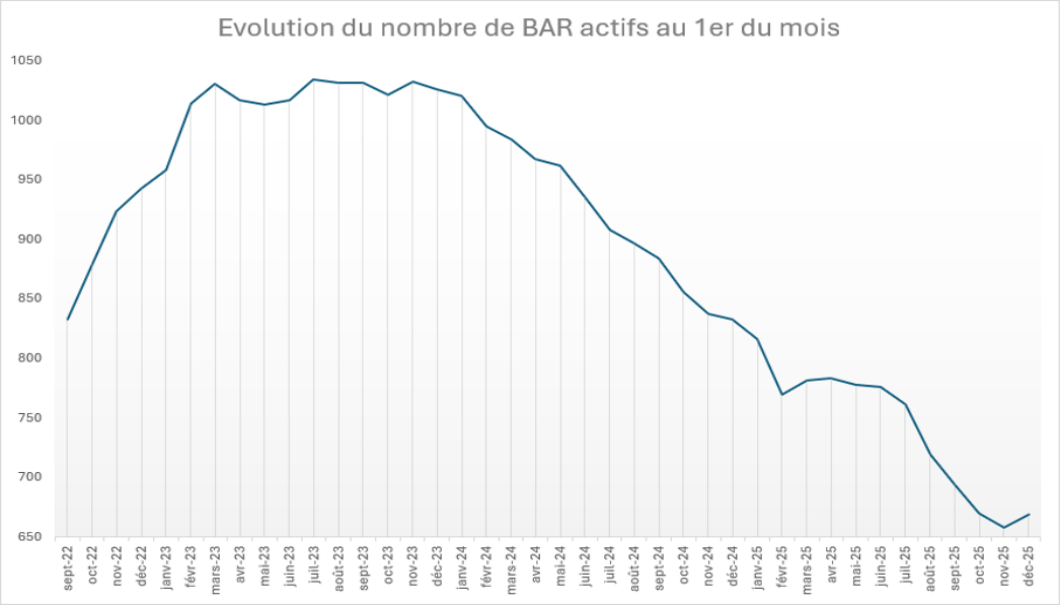
Eletronic Monitoring in France embodies a paradox: it provides flexibility and innovation but also strains probation services, creates legal ambiguities, and embeds surveillance within new social contexts. Evidence from Sweden illustrates that EM can yield significant social benefits when clearly defined and adequately supported, while France's current trajectory highlights the risk of veering toward punitive expansion unless reintegration and proportionality remain priorities.

The anti-approach bracelet (Bracelet Anti-Rapprochement, BAR), introduced in France in 2019, represents a significant innovation in EM. Unlike traditional EM, which restricts offenders to their residences, this bracelet establishes exclusion zones around victims, turning proximity into a monitored variable and redefining supervision as the management of relational distance.

The implementation of BAR in France was discussed at the *13th CEP EM Conference in Cascais (2024).*[8] Comparisons with Portugal revealed differing outcomes: Portugal reported a decrease in reoffending, while France experienced an increase in domestic violence cases despite the expansion of EM. France's trajectory followed a typical policy cycle as illustrated by graph 7, marked by rapid growth in 2022–2023, followed by a recalibration period in 2024–2025, resulting in more selective and better-supported applications. This evolution reflects the maturation of electronic distancing tools, balancing victim protection with operational feasibility. However, it also highlights the limitations of rapid deployment without sustained reintegration strategies.

Graph 7 – Anti-approach bracelet trend (September 2022– December 2025)

[8] CEP-13th-Electronic-Monitoring-conference-report-2024.pdf



Source: Direction de l'Administration pénitentiaire (2025).

The *Council of Europe's 2023* study positions BAR within the framework of the *Istanbul Convention*, underscoring that EM in interpersonal violence cases should be viewed as part of a broader victim protection strategy.[9] Courts can impose this measure to enforce protection orders when contact bans are insufficient, but concerns remain regarding proportionality, privacy, frequent alerts, and the burden placed on victims. The study emphasizes that technological safeguards alone are inadequate; psychoeducational support for offenders, multi-agency cooperation, and victim-centered services are crucial for ensuring the legitimacy and effectiveness of the measures.

In summary, France's experience with BAR illustrates both the potential and vulnerabilities of electronic distancing in interpersonal violence cases. It can serve as a relational safeguard and a clear commitment to victim protection. However, without stronger integration into prevention and reintegration frameworks, it risks becoming merely a technical solution that increases the burden on victims and probation services rather than serving as a transformative tool for justice.

[9] Council of Europe. (2023). Electronic monitoring in interpersonal violence cases: Standards, principles and state practice. Strasbourg: Council of Europe. Retrieved from https://rm.coe.int/electronic-monitoring-arm-fra-publication-eng/1680ace74b

As Froment and Kaluszynski (2010) argue, EM is not merely a technical device but part of a broader reconfiguration of punishment practices. France's approach to EM reflects a broader European philosophy of probation. EM is viewed not just as a method of surveillance but as a means to connect custody and community. It is integrated within a framework of continuous care and control, which emphasizes accountability while also supporting reintegration into society. France's experience plays a significant role in shaping European standards advocated by the CEP and the Council of Europe, reinforcing the notion that technology should enhance humane supervision rather than replace it. Its innovations, especially DDSE and proximity-based monitoring, show how technology can be deployed for both reintegration and victim protection. However, this rapid expansion also raises questions of proportionality, autonomy, and legitimacy.

4 BRAZIL: PRAGMATIC RESPONSE TO OVERCROWDING WITH CHALLENGES OF INEQUALITY AND INFRASTRUCTURE

In Brazil, EM has been implemented mainly as a practical solution to the persistent issue of prison overcrowding. However, people monitored and law-enforcement institutions are facing societal inequalities, infrastructural deficiencies, and a lack of integration with social support systems. This section examines the Brazilian case from three angles: (1) the fragmentation of the policy across states; (2) the available data on the number of people monitored in each state; (3) the implications of these arrangements for monitored people and for law-enforcement institutions. We combine different types of material such as administrative data from the National Secretariat for Penal Policies (Secretaria Nacional de Políticas Penais – Senappen), and reports produced by institutions within the judicial branch, such as the National Council of Justice (CNJ).

INSTITUTIONAL DESIGN AND IMPLEMENTATION

Brazil's federal framework on EM was introduced by federal law in 2010 for people serving sentences in the semi-open regime. In the following year, its use was also authorized as a pretrial measure. From that point on, each state developed its own model of EM with ankle bracelets producing significant variation across the country in design and implementation.

In recent years, Brazil has seen a rapid expansion of EM. According to the National Secretariat for Penal Policies, more than 120,000 people were being monitored in 2025. Most of them (about 70%) are serving sentences in the progression phase and approximately 30% are in pretrial detention (Senappen 2025). Within the field of pretrial measure, domestic violence cases account for a large share of monitored people. In these cases, both the alleged aggressor and the victim are monitored. The aggressor typically wears an ankle bracelet, while the victim carries a handheld “panic button” device that, when activated, triggers an alert to the police.

This rapid expansion occurred in a significant political context. In 2015, in the face of countless cases of extreme violence and homicides in the prison system linked to fights between criminal gangs, the Brazilian Supreme Court (*Supremo Tribunal Federal, STF*) declared the entire prison system to be in an unconstitutional state of affairs in ADPF 347 (*Arguição de Descumprimento de Preceito Fundamental*). As an interim measure, the STF ordered state courts of justice to adopt measures to address prison overcrowding. The first measure was the implementation of custody hearings (*audiência de custódia*), a type of judicial hearing designed to prevent abuse by law-enforcement authorities and to protect individual constitutional guarantees (Abreu, 2019). However, the meaning and practice of this new type of hearing were quickly reshaped by judges and judicial professionals, shifting from a focus on constitutional guarantees to a managerial tool for administering prison occupancy ((Abreu, 2025; Abreu & Geraldo, 2019)). In 2023, the STF closed this case, and state courts, together with state governments, were required to draw up action plans under the *Pena Justa* program, coordinated by the National Council of Justice (CNJ) and the federal government through the Ministry of Justice.

The fifteen years between the first federal legislation in 2010 and the current phase of expansion under the unconstitutional state of affairs represent a period of continuous policy readjustment without the kind of broad public, legislative, or academic deliberation that would be expected of an instrument affecting more than 120,000 people. The trajectory of the national policy can be understood in three phases, each shaped by a distinct crisis rather than by a coherent reform agenda.

The first phase (2010-2014) was one of legislative authorization and state-level improvisation. The 2010 federal law created the legal basis for EM in semi-open sentence progression, and the 2011 extension to pretrial supervision expanded its reach before any systematic evaluation of the first phase had been conducted. Oliveira and Azevedo (2011), writing at the very beginning of this phase, already noted the tensions between federal law and

pre-existing state statutes, the risk of net-widening among persons already living in the community, and the contractual fragility of the leasing model. These warnings went largely unheeded in the policy process, which continued to authorize expansion as states faced growing pressure from overcrowded prison systems.

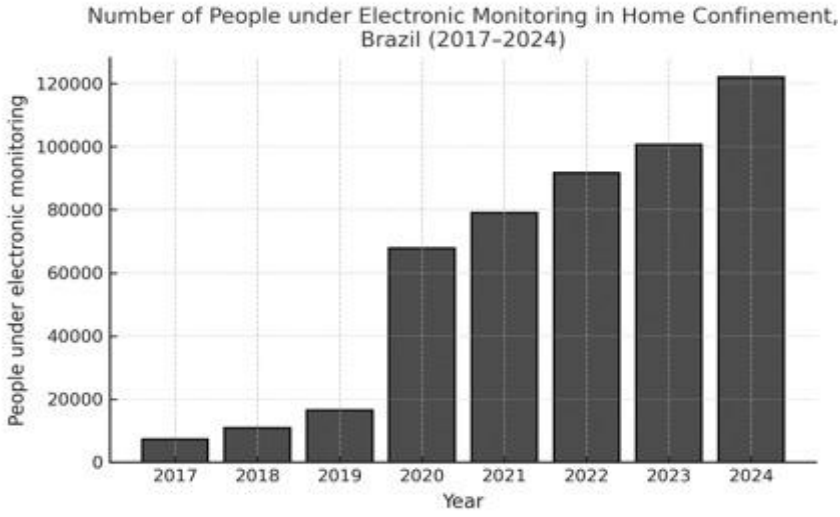
The second phase (2015-2019) was defined by the constitutional crisis triggered by the Supreme Court's declaration in ADPF 347 and the subsequent use of EM as a crisis management instrument. The custody hearing (audiencia de custódia), introduced as part of the same reform package, was in principle designed to protect individual constitutional guarantees against unlawful detention. As Abreu (2019) demonstrate, however, the hearing was rapidly repurposed by judicial and administrative actors into a tool for managing aggregate prison population flows rather than protecting individual rights -- a dynamic that mirrors the Brazilian trajectory of EM more broadly. The Fazendo Justiça initiative, launched by the CNJ in partnership with UNDP, attempted to introduce a national model for monitoring centers specifying staffing ratios, multidisciplinary composition, and case management protocols (CNJ & UNDP, 2021). However, adherence has remained limited: as of 2025, only 39 of 161 monitoring centers (24.2%) operate in conformity with the national model, and none of the centers in seven states - including São Paulo - meets the recommended management standards (Senappen, 2025; Assad, 2025).

The third and current phase (2020-present) has been shaped by two overlapping forces: the COVID-19 pandemic and the consolidation of Fazendo Justiça as the dominant federal policy framework. The pandemic produced a rapid expansion of EM as the CNJ issued guidelines prioritizing early release and sentence progression for persons in overcrowded, understaffed, or interdicted facilities, with home confinement under EM as the primary mechanism. This emergency logic accelerated adoption without resolving the underlying structural deficits. The result is a national policy that has been continuously readjusted to manage successive crises rather than designed around a stable penological rationale, and that has expanded dramatically in scale while remaining structurally thin in its capacity to support the reintegration outcomes it formally espouses. The empirical dimensions of this dynamic at state level are documented in Souza (2022), Maciel (2025), and Souza (2019), whose findings are consistent with this broader characterization of the national trajectory.

ANALYTICS DYNAMICS – EXPANSION AND INEQUALITY

EM is often presented as an alternative to incarceration, but its use has always been surrounded by serious concerns. Since 2015, policymakers and practitioners have expressed their arguments about the risk of an uncontrolled expansion of EM (Pimenta 2015). The Graph 8 below shows the evolution of EM in Brazil between 2017 and 2024. Note that between 2019 and 2020, the Covid-19 pandemic was the main factor in explaining how quickly EM grew in Brazil during this period.

Graph 8 – Number of people under EM in Home Confinement – 2017 -2024



Source: Senappen (2025).

Oliveira and Azevedo (2011) analyze the initial steps following the approval of the federal law regulating EM. Initially, the law authorized the use of electronic ankle bracelets in specific situations; later, its scope was extended to people accused of crimes as a pretrial measure. The authors also highlight tensions between the federal law and state-level statutes, some of which predated it and provided for different situations in which ankle monitors could be used. In their view, one of the main effects of the measure was to expand penal control over individuals who were already living in the community. By contrast, from the federal government's perspective, the law was framed as a decarceration policy based on the use of EM. According to one respected lawyer, the measure represented both progress and regression in penal policy. From an administrative standpoint, these divergent conceptions of the device resulted in precarious contractual arrangements, with states such as São Paulo and the Federal District facing shortages of devices, waiting lists, and periods in which monitoring

services were entirely interrupted because the devices were rented rather than purchased (Oliveira and Azevedo 2011). Consequently, states have frequently faced the risk of service interruption due to payment disputes or delays, a problem repeatedly reported in the press.

Pimenta, Lacerda and Doneda (2019) highlight the social dimensions of the use of electronic ankle bracelets and how users of these devices are reduced to “criminals” through processes of stigma (Goffman 2009) and labeling (Becker 1997). In their analysis, the actors involved in the implementation of EM describe the technology and the dynamics of incident management, especially in the absence of a national regulatory framework and clearly defined scope, as constituting new forms of criminalization that operate like a centripetal force, pulling monitored individuals back into prison.

From this perspective, Campello (2019) examines how the effects of this supposed technological rationality are inscribed on the bodies of those who are monitored. Drawing on interviews conducted between 2015 and 2016, therefore before the current phase of massive expansion, the author identifies a deterritorialization of penal control. Although promoted for its “decarcerating potential”, EM, for Campello, produces a double movement of expanding penal control into the “natural environment”. In his formulation, we move from the body in prison to the prison in the body. According to one of the interviewees: *“I go out onto the street, but I am still imprisoned. It feels like I have a guard by my side all the time, watching me everywhere.” (Campello 2019).*

Recent empirical scholarship on electronic monitoring in Brazil has identified two recurring features that help explain its institutional dynamics. First, there is consistent evidence of net-widening, as electronic monitoring often extends penal supervision to individuals who would not necessarily be subjected to imprisonment (Souza, 2019). Second, its practical meaning is largely shaped by criminal justice actors themselves, who tend to incorporate it into routine decision-making as a pragmatic management tool rather than as a clearly bounded alternative to custody (Souza, 2022).

In this context, electronic monitoring operates less as a strictly defined legal alternative and more as a flexible mechanism within the broader administration of penal flows. Recent ethnographic research further reinforces this interpretation by showing that its effects are produced through situated practices, institutional interactions, and everyday forms of control, rather than solely through formal legal design (Maciel, 2025). Taken together, these findings suggest that the Brazilian model is characterized by an ambivalent dynamic in which electronic monitoring simultaneously responds to pressures for decarceration and contributes to the expansion of penal control.

Throughout Brazil, electronic monitoring equipment is funded by public authorities. At least three domestic companies hold leasing contracts to supply devices to nearly all federative units. In addition to providing the devices, these companies operate their own monitoring centers, while the state agencies that contract them access the technology through their own monitoring interfaces. Silva et al. (2023), however, show that between 2017 and 2022, in a context of economic crisis and under the banner of reducing public expenditure, bills were introduced at both federal and state levels to transfer the cost of the equipment to the monitored person. Over this period, the authors identified legislative proposals in 26 Brazilian states, every state except Tocantins (ibid). They question the claim that electronic monitoring is too costly for the state by comparing these expenditures to the higher costs of imprisonment. On this basis, they argue that charging monitored individuals is unjustified and undermines processes of social reintegration. Nevertheless, these arguments have not been particularly persuasive among policymakers. In 2024, another bill, sponsored by right-wing senator Cleitinho, proposed transferring the costs of electronic monitoring to monitored individuals. This bill is still pending in the National Congress.

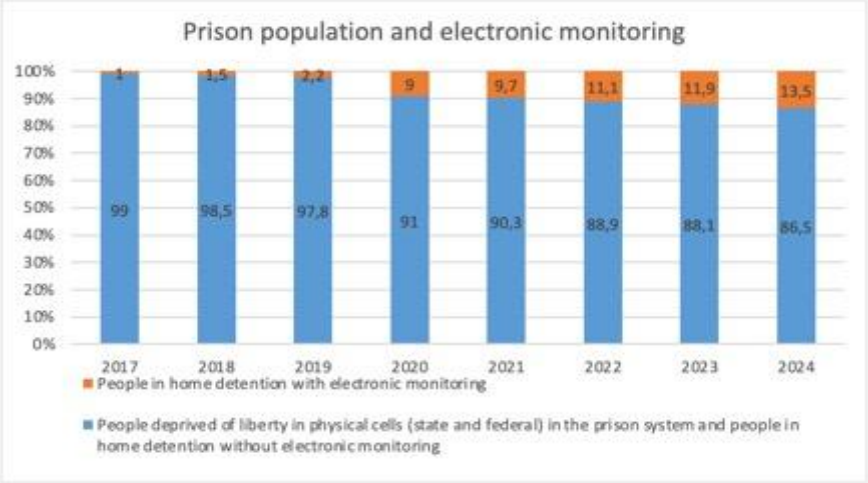
The data used in this section are drawn from the National Secretariat for Penal Policies' report for the first semester of 2025, which is based on information submitted every six months to the National Prison Department Information System (SISDEPEN) by the prison administrations of the states, the Federal District, and the Federal Prison System. As of 30 June 2025, the report consolidates data on the number of people in home detention under EM, disaggregated by federative unit, sex, procedural status (pretrial or convicted), and sentence enforcement regime, as well as on the number of EM devices available in each state. In addition, we use the annual report produced by the Brazilian Forum on Public Security as a complementary source.

All states submitted data, but data quality remains a problem. São Paulo, for example, reported monitoring only 758 people. However, according to the São Paulo state court's website, the number is much higher: 7,209, including 5,587 people monitored while still in the prison system. Another hypothesis is that increased accommodation capacity in the state prison system has allowed more people to progress to the semi-open regime. In most states, however, overcrowding has in practice turned the semi-open regime into a hybrid arrangement combined with EM. For critics, especially politicians and legal actors who defend tough-on-crime approaches, such as extending prison terms and increasing maximum sentences, this hybrid arrangement is a symptom of impunity. For authors who defend due process and

pathways to resocialization, it also undermines the very idea of sentence progression as a gradual route to social reintegration (Azevedo 2025).

The first problem is that each state uses different methods to count the same phenomenon. After these brief observations, data from the Brazilian Forum on Public Security show that the expansion of EM means it now accounts for 13.5% of all people deprived of liberty, including those in house arrest with and without electronic monitoring.

Graph 9 - Distribution of the prison population in physical cells and under electronic monitoring, Brazil, 2017–2024.

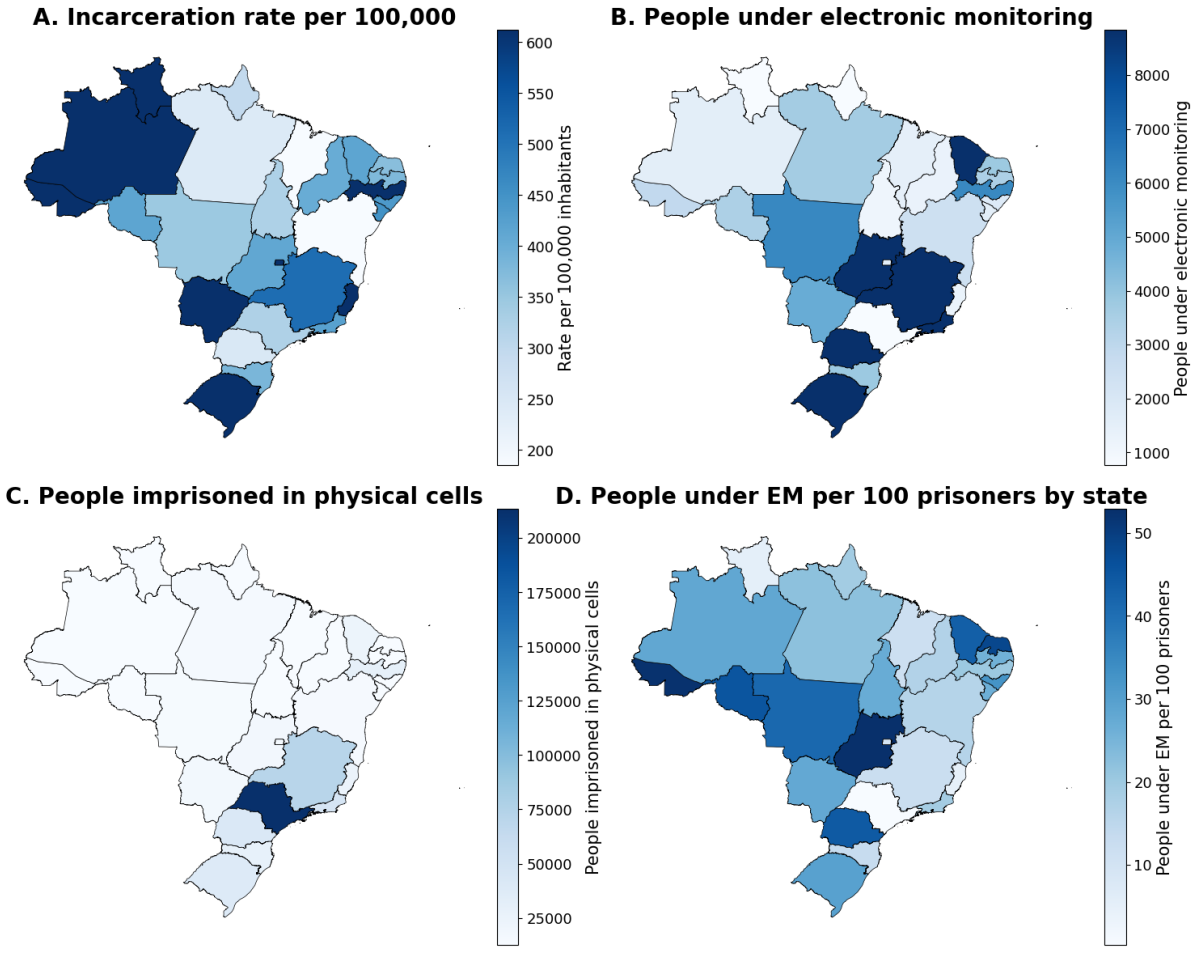


Source: Anuário Brasileiro de Segurança Pública, FBSP (2025).

According to the National Secretariat for Penal Policies, there are 161 electronic monitoring centers across the country. However, only 39 centers (24.2%) follow the national public policy model. On average, there is just one professional for every 674 monitored people. The multidisciplinary teams responsible for this work total only 184 professionals nationwide. In some states, there is no multidisciplinary team at all, and electronic monitoring is handled exclusively by prison police officers. A structure that fully complies with the national model would require roughly ten times more professionals than are currently available. (Assad 2025). According to the first monitoring report submitted to the Brazilian Supreme Court under the Pena Justa plan, none of the monitoring centers operates in accordance with the recommended management model in the following states: Bahia, Paraíba, Mato Grosso, Rondônia, Rio Grande do Sul, São Paulo, and Sergipe.

When we look at each state, it is difficult to identify any clear correlation between the use of electronic monitoring, the number of people imprisoned, the incarceration rate per 100,000 inhabitants, and the ratio of monitored people to those held in cells. The maps below present these indicators from four complementary perspectives: (A) incarceration rate per 100,000 inhabitants; (B) total number of people under electronic monitoring; (C) total number of people imprisoned in physical cells; and (D) the ratio of people under electronic monitoring per 100 people in physical cells.

Graph 10 – Incarceration and Electronic Monitoring Across Brazilian States, 2025



Source: Senappen (2025). Adapted by authors.

However, we cannot affirm any direct correlations. Some findings, though, are worth highlighting. The only state with no deficit of accommodation, Maranhão, ranks only 21st in the absolute use of EM, with 1,489 people monitored in June 2025, and it has the second-lowest incarceration rate per 100,000 inhabitants. The trajectory of the state of Maranhão warrants

closer scrutiny. After the 2013 Pedrinhas prison massacre, in which 60 people were killed and one disappeared, the state government and judiciary adopted measures to tighten oversight, including a CNJ-backed Central Prison Allocation Unit *(Central de Regulação de Vagas)*. Although Maranhão is the only state reporting a surplus of prison beds, facility-level data reveal a more uneven picture. In 2025, the Superior Court of Justice (STJ) ordered the federalization of the investigation into the killings amid allegations of involvement by state police officers, and Brazil now faces proceedings before the Inter-American Commission on Human Rights (IACHR) as a result.

Maps A and C show a strong concentration of people in the São Paulo prison system. São Paulo is the richest state by GDP and the most populous. However, when we look at the incarceration rate per 100,000 inhabitants, there are 20 states ahead of São Paulo, notably the three Amazonian states (Acre, Roraima, and Amazonas), Mato Grosso do Sul (MS)—which shares a border with Bolivia and Paraguay and is a well-known route for informal and illegal markets—and the Federal District.

On the other hand, in Maps B and D, we can see that the absolute number of people under EM is concentrated in the southern and southeastern states, with exceptions such as Ceará (CE) and Goiás (GO). However, when we look at how important electronic monitoring is within these states, there are at least seven states with more than 40 monitored people for every 100 people in the prison system. In these places, EM functions as a parallel prison system, given its significant weight in the overall penal population and in the way governors and prison administrators manage incarceration.

In 2020, with the Covid-19 pandemic, Brazil's National Council of Justice (CNJ) issued guidelines for adopting measures to accelerate sentence progression, such as early release from closed and semi-open regimes, with priority given to people held in overcrowded units, facilities without health teams, interdicted prisons, or establishments with conditions that favored contagion, as well as the granting of home confinement linked to the execution of the sentence.

In parallel, the Federal Supreme Court (STF) tightened its oversight of prison occupancy levels, seeking to prevent new crises arising from violent episodes in prison facilities. In this context, in each state the CNJ began to work together with state courts to reduce overcrowding, whether through the creation of new prison places or through the use of early release measures. This created a scenario that contributed to the expansion of EM.

Taken together, the three phases of Brazil's national EM policy reveal a pattern that Pimenta (2015) anticipated early: expansion driven by crisis management rather than penal

philosophy, in the absence of the institutional infrastructure that would allow EM to function as a genuine alternative to incarceration. Brazil's 161 monitoring centers, staffed at one-tenth the level the national model requires, with only 24.2% operating in conformity with national standards, supervise a population of over 120,000 people with virtually no referral capacity for the employment, housing, or social support services that reintegration requires. In seven states that include the country's most populous, not a single monitoring center meets the recommended management model. The result is a system that has succeeded in relocating bodies from physical cells to electronic supervision — reducing measured incarceration rates and relieving short-term pressure on prison infrastructure — but that has not produced the conditions under which relocation becomes genuine decarceration. As Campello (2019) argues, the monitored person does not leave the prison so much as carry it: the prison in the body rather than the body in prison. What distinguishes Brazil from the United States in this regard is not the absence of punitive intent — Brazil's EM policy was not designed to punish — but the absence of the institutional architecture that would translate a formally reintegrative intent into a materially reintegrative reality. It is this structural gap, more than any deliberate policy choice, that places Brazil in the intermediate position between France's institutionally supported proportionality and the United States' explicitly punitive surveillance model.

THE BRAZILIAN IMPLEMENTATION MODEL: AN INTERMEDIATE TRAJECTORY

Brazil's EM model occupies a structural position between the two poles represented by France and the United States, and understanding this intermediate character requires examining how implementation was designed, or more accurately, how it was not designed — at the national level. Unlike France, where EM was introduced as a coherent legislative instrument embedded from the outset in a probation framework, and unlike the United States, where a mature private-sector infrastructure drove adoption across thousands of jurisdictions, Brazil's model emerged incrementally, reactively, and in the absence of a unified national architecture.

The federal law of 2010 (Law No. 12,258/2010) established the legal basis for EM in sentence progression contexts, and its 2011 extension to pretrial supervision created the formal framework within which states were expected to operate. However, the law deliberately left implementation to state governments, producing a federalized patchwork in which each of Brazil's 26 states and the Federal District developed its own operational model. Some states adopted GPS-based systems capable of real-time location tracking; others relied on radio-

frequency devices that verify presence at a designated address but cannot track movement — the same technology predominantly used in France, though deployed without France's accompanying judicial oversight structure. Several states shifted between technologies as contracts changed. The result is not a national EM system but 27 parallel systems of varying technological sophistication, staffing capacity, and legal interpretation, operating under a shared federal law whose provisions are applied inconsistently (Oliveira; Azevedo, 2011; Pimenta, 2015).

This structural fragmentation produces three distinct implementation problems that the national model has never fully resolved. The first is technological inconsistency: the choice between GPS and radio-frequency monitoring is not merely technical but penological, since GPS systems extend surveillance to workplaces, social networks, and movement patterns in ways that RF devices do not, making the intensity of penal control a function of which state a person happens to be monitored in rather than the nature of their offence or sentence. The second is contractual instability: because devices are leased rather than owned, states are dependent on the continued solvency and performance of private contractors, producing the service interruptions and waiting lists documented since the earliest years of implementation (Oliveira; Azevedo, 2011). The third is staffing precarity: the national model specifies that monitoring centers should be staffed by multidisciplinary teams including social workers, psychologists, and legal advisors capable of accompanying monitored persons toward reintegration. In practice, as of 2025, there is one professional per 674 monitored individuals nationwide, and in several states monitoring is handled exclusively by prison police officers with no social support function (Assad, 2025; Senappen, 2025).

Brazil's intermediate character lies precisely in this gap between aspiration and implementation. The legal framework gestures toward a reintegrative philosophy — sentence progression, semi-open regime, individualized monitoring plans — but the institutional infrastructure required to give that philosophy operational content was never built at scale. The device was deployed; the support system was not. This structural gap is not incidental but reflects a broader pattern in Brazilian penal governance in which the formal law is progressive and the material conditions of implementation are persistently precarious (Pimenta, Lacerda;Doneda, 2019; Campello, 2019).

5 COMPARATIVE INSIGHTS: ELECTRONIC MONITORING ACROSS THE CONTINENTS

EM reflects divergent justice philosophies in the United States, France, and Brazil, yet across all three contexts it has expanded as a response to prison overcrowding, system strain, and political pressure to reduce reliance on incarceration. Despite this shared framing, EM often produces net-widening effects, extending penal control to individuals who might not otherwise have been incarcerated. While publicly presented as a humane or cost-effective alternative to confinement, EM frequently multiplies forms of surveillance and supervision, operating as an additional layer of coercive governance rather than a clear substitute for imprisonment. Across all three countries, the reliance on private-sector technologies further raises unresolved concerns about accountability, data protection, and the incentives driving expansion. The comparative analysis that follows is structured around four axes established in the methodology: penal philosophy, institutional architecture, net-widening dynamics, and social inequality effects — axes that allow structured cross-national inference while preserving the contextual specificity of each case.

In the United States, EM is embedded within a punitive, surveillance-heavy penal landscape shaped by the historical trajectory of mass incarceration and racialized control. Pretrial EM has surged dramatically as demonstrated by Los Angeles County's increase from 24 to 1,284 monitored individuals between 2015 and 2021, yet these expansions routinely reproduce existing inequalities. Strict curfews, GPS malfunctions, escalating fees, and technical violations lead to reincarceration without new criminal conduct, functioning as digital detention that undermines the presumption of innocence. These dynamics underscore the urgent need for centralized, transparent data reporting and robust civilian oversight to counterbalance decentralized EM practices and mitigate the harms resulting from technological overreach. As developed further below, France's reintegrative trajectory is not simply a product of different values but of different institutions — a pre-existing probation apparatus, individualized judicial oversight, and a supranational normative framework that together constrained the punitive uses to which EM might otherwise have been put. France offers a contrasting model grounded in judicial oversight, proportionality, and reintegration. EM is incorporated into probation practices through structured legal frameworks, with mechanisms such as home detention under electronic monitoring (DDSE) and the Anti-Approach Bracelet (BAR) supporting either rehabilitation or victim protection. However, even with strong legal scaffolding, France faces its own net-widening risks, as EM is increasingly used when lighter sanctions might suffice. Still, France's comparatively moderate and predictable model—rooted in radio-frequency curfews rather than GPS tracking, demonstrates how institutional design can constrain surveillance pressures.

Brazil's trajectory is analytically distinct and central to understanding global EM expansion. EM there emerged as a pragmatic response to chronic prison overcrowding, aggravated by constitutional crises, infrastructural deficiencies, and acute social inequality. The Fazenda Justiça initiative accelerated adoption across states, particularly in pretrial and sentence-progression contexts, but without parallel investment in reintegration or probation systems. In states such as São Paulo, EM relieved immediate pressures on physical prisons yet has effectively created a "parallel prison system," where technological confinement substitutes for meaningful decarceration strategies. Moreover, Brazil's federal fragmentation produces unequal and often unstable implementation: some states rely heavily on GPS, others on radio frequency, and many face shortages of devices, staff, or stable contracting arrangements. While historically state-funded, ongoing legislative attempts to shift costs onto monitored individuals echo austerity politics and risk deepening exclusion.

The contrast between France and Brazil is analytically the most instructive of the three pairings, precisely because it resists easy explanation. Both countries introduced EM partly as a response to prison overcrowding — France explicitly positioned its 1997 legislation within a broader set of penal reforms aimed at reducing custodial sentences (Kensey, Lévy &; Benaouda, 2010), just as Brazil's federal framework from 2010 onward was driven by the same systemic pressure, intensified by the STF's 2015 declaration of an unconstitutional state of affairs in the prison system (ADPF 347). Yet the two trajectories diverged sharply. France produced a bounded, judicially supervised, reintegration-oriented model; Brazil produced a fragmented, managerially driven, infrastructure-poor one. The divergence cannot be attributed to the initial motivation — overcrowding — which was shared. It must instead, be explained by four structural differences that preceded and conditioned EM's adoption in each country.

The first and most consequential is the presence or absence of a consolidated probation infrastructure at the moment of EM's introduction. In France, EM was introduced into a penal system that had operated a formal probation apparatus since 1946, with juges de l'application des peines (JAPs) exercising individualized, judicially supervised sentence management as a matter of institutional routine (Lévy; Pitoun, 2007; Kaluszynski, 2006). EM was therefore not a stand-alone innovation but an extension of an existing supervisory continuum. Each placement required a JAP decision, ensuring that EM was applied proportionately and accompanied by a social support plan. In Brazil, no equivalent infrastructure existed. The absence of a functioning meio aberto (community supervision) system at scale meant that EM arrived not as an extension of an existing alternative but as a substitute for institutional capacity that had never been built. The result is a structurally thin

model: monitoring centers staffed at a ratio of one professional per 674 monitored individuals, multidisciplinary teams totaling only 184 professionals nationwide, and no referral pathways to employment or housing (Assad, 2025; Senappen, 2025).

The second structural difference is the role of judicial control at the individual case level. In France, every EM placement involves active judicial oversight: the JAP reviews the placement, sets its conditions, and can modify or revoke it. This institutional check both limits net-widening (a judge must affirmatively authorize each placement) and anchors EM within a proportionality logic. In Brazil, the Supreme Court's intervention in ADPF 347 and the subsequent CNJ programs created indirectly a top-down mandate to expand EM across states as a population management tool, without building equivalent individualized oversight mechanisms. As Abreu (2019) show, even the custody hearing — designed to protect individual guarantees — was rapidly reshaped into a managerial instrument for administering prison occupancy rather than a rights-protective check. Judicial involvement in Brazil thus operates at the system level, managing aggregate flows, rather than at the case level, protecting individual rights.

The third factor is the normative framework within which EM is embedded. France's adoption of EM occurred within an active supranational normative environment — the Council of Europe's Recommendation CM/Rec(2014)4, the CEP's professional standards, and a European comparative network of probation practitioners that continuously benchmarks French practice against proportionality and dignity norms (Council of Europe, 2014; Nellis, 2014). These external reference points produced normative discipline: French policymakers understood EM as a tool that had to be justified in terms of reintegration outcomes, not merely prison population reduction. Brazil operates in the absence of a comparable supranational normative constraint, and the dominant policy discourse frames EM in terms of crisis management and cost reduction rather than rights or rehabilitation (Pimenta, 2015; Silva et al., 2023).

The fourth difference is the political economy of EM adoption. In France, EM was developed and administered within the public sector, with private contractors playing a limited technical role and the Direction de l'Administration pénitentiaire retaining operational authority. In Brazil, EM was built from the outset on a leasing model in which private domestic companies supply devices, operate monitoring centers, and hold contracts of varying stability with state governments — producing the service interruptions, waiting lists, and contractual precarity documented by Oliveira and Azevedo (2011). A public-sector anchored model creates institutional ownership and accountability; a leasing-dependent model creates incentives for

expansion without corresponding investment in the social infrastructure that determines whether EM serves reintegration or merely substitutes one form of confinement for another. Taken together, these four structural conditions — probation infrastructure, individualized judicial oversight, supranational normative anchoring, and public-sector ownership — explain why the same initial problem produced such divergent outcomes. EM's contribution to de-carceration or e-carceration is not determined by the device, nor by the political intention behind its adoption, but by the institutional architecture into which it is inserted.

Viewed through Nellis's (2018) "clean" and "dirty" EM distinction, these national divergences sharpen further. France approximates a "clean" model—bounded, predictable, and integrated into a rehabilitative framework whereas the United States exemplifies "dirty" EM, marked by pervasive GPS tracking, biometric surveillance, and proposals for technological incarceration. Brazil occupies a complex middle space: EM is expanding rapidly, uses hybrid technologies, and often operates under inconsistent rules and indefinite durations, reflecting a penal system grappling with instability and crisis rather than coherent reform.

Across these contexts, the legitimacy and lived experience of EM depend less on the devices themselves than on the penal philosophies, institutional safeguards, and material capacities shaping their implementation. The United States warns of the dangers of punitive technological governance; France illustrates the importance and fragility of reintegrative judicial oversight; and Brazil reveals how EM can proliferate in the absence of adequate infrastructure, becoming a managerial tool for overcrowding rather than a pathway to social reintegration. Together, these cases demonstrate that EM must be evaluated by its ability to meaningfully reduce confinement and advance justice rather than by its technological sophistication or sheer scale of deployment. In short, EM expands where it increases not only expansion but the logic of responsibilized, digital penal governance–replicating national inequalities through technologically mediated control.

6 CONCLUSION

EM has evolved significantly over the past five decades, moving from its experimental beginnings in the 1970s to its widespread implementation across various jurisdictions by 2025. Initially designed as a means of de-carceration, EM was expected to reduce reliance on imprisonment and encourage community-based alternatives. However, comparative evidence from France, the United States, and Brazil shows that this promise has only been partially fulfilled. In many cases, EM has resulted in what is known as net-widening, extending penal

supervision to individuals who might otherwise have received probation, fines, or unconditional release. This situation highlights the need to explore not only the technology itself but also the institutional frameworks within which it operates.
The French case demonstrates that EM, particularly through the system of *détention à domicile sous surveillance électronique* (DDSE), has been integrated into the judicial framework of probation, emphasizing reintegration and proportionality. However, its expansion has blurred the lines between custodial and community sanctions, raising important questions about identity and legitimacy. In the United States, EM has become a punitive extension of custody, marked by intensive surveillance and frequent instances of net-widening. In Brazil, it has been used pragmatically to address overcrowding, often without sufficient legal protections. These different trajectories reflect varying levels of surveillance intensity: ranging from high-control punitive models to moderate reintegration-focused systems, and pragmatic crisis management approaches. Despite these differences, the legitimacy of EM remains debated, as its ability to achieve meaningful de-carceration is uncertain.

The legitimacy crisis is further complicated by EM's connection to social inequality. Fees, technological demands, and curfew restrictions disproportionately impact marginalized communities, embedding surveillance within their daily lives and extending penal control into private spaces. This trend points to a broader global movement toward digital carcerality, where punishment is enacted through devices, data, and geofencing, normalizing surveillance as a common aspect of justice. Such developments threaten to transform EM from a humane alternative into a technological extension of punitive power.

The comparative analysis presented here emphasizes the importance of assessing EM not by the number of devices utilized but by its actual effectiveness in reducing imprisonment while upholding dignity, proportionality, and equality. Without clear safeguards, EM risks becoming a tool for expansion rather than reduction. With appropriate measures, it could serve as a genuinely humane alternative, integrated into probation continuity and reintegration strategies.

This article offers a diagnostic overview of EM's historical development, legal frameworks, operational practices, and comparative realities in France, the United States, and Brazil between 1970 and 2025. In a forthcoming second article, we will transition from diagnosis to prescription, providing policy recommendations and analyzing the political economy at a global scale. This next step will investigate how regulation, procurement, and international standards can prevent digital carcerality from becoming entrenched, while instead grounding justice reform in the principles of rights, reintegration, and proportionality. By directly

addressing the paradoxes of EM and its legitimacy crisis, we can ensure that electronic monitoring contributes to a penal future characterized not by the expansion of control, but by continuity, dignity, and hope.

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Reynaldo Ortiz-Minaya: PhD (2014) and MA (2005) in Sociology from the State University of New York at Binghamton. BA (1998) in Sociology and Latin American Studies from Drew University, Madison, NJ. Director of Criminology & Assistant Professor in the Department of

Sociology & Criminology at Howard University. He is also a U.S. Fulbright Specialist & Scholar, researching the relationship between forms of confinement (penal in particular) and the accumulation of profits under varying economic systems.

Daniel Danglades: Daniel Danglades is Deputy Head of the European and International Relations Unit of the French Prison and Probation Service in Paris (Direction de l'administration pénitentiaire, Ministère de la justice). With two decades of experience, he has worked as a correctional and probation officer, international liaison officer, and now serves on the board of the Confederation of European Probation (CEP) as Vice President. He is a member of several CEP expert groups, chairs the CEP/EuroPris group on Foreign Nationals in prison and on probation and the CEP expert group on electronic monitoring, and is a scientific expert for the Council of Europe.

João Vitor Freitas Duarte Abreu: PhD candidate and Master in Sociology and Law at Fluminense Federal University (UFF), graduate in Public and Social Security from UFF, researcher at the Research Group on Sociology of Law (NSD) and the Institute for Comparative Studies in Conflict Administration (INCT-InEAC), and research fellow at the Oswaldo Cruz Foundation (Fiocruz) in a project with the National Secretariat for Drug Policy.

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