Pushing Back on Electronic Monitoring for Young People

2026 Edition



Center for Racial and Economic Justice



EAST BAY COMMUNITY LAW CENTER

Acknowledgements

This guide was made possible by the contributions and expertise of the following people and organizations: ACLU (Julia Boland, Elisa Epstein, and Allison Frankel), East Bay Community Law Center (Haleh Jeddi, Kaya McRuer, Whitney Rubenstein, Cancion Sotorosen), The Public Defender Service for the District of Columbia (Maya Chaudhuri, Clare Kruger, Elias Graca, Teressa Hamsher, Brittany Mobley), The Center for Racial and Economic Justice at UC Law SF (Thalia Gonzalez, Marilyn Aguilar-Portillo) Juvenile Law Center, Louisiana Center for Children's Rights and the Alameda County Public Defender's Office, as well as Chaz Arnett, James Kilgore and Kate Weisburd.

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Key Takeaways

1. **EM is not a true alternative to incarceration**
For many young people, monitoring is not an actual alternative to incarceration, but a sanction that is frequently imposed in addition to detention (such as a condition of pretrial release or probation), and it often leads to further incarceration (even if brief) for technical violations.

2. **EM is incompatible with adolescent development**
Electronic monitoring is incompatible with adolescent development and is an especially poor fit for youth with disabilities. Simply because one day on a monitor may be less restrictive than one day of incarceration does not justify its use.

3. **EM rules set young people up to fail**
Monitoring, along with the associated rules and restrictions, sets youth up to fail. Excessive, detailed, and complex rules and restrictions are not correlated with better case outcomes and instead undermine young people's education, mental and physical health, employment, and family relations.

4. **EM undermines privacy, dignity, and autonomy**
The privacy and dignity of young people is paramount, both as a legal matter and with respect to adolescent development. Constant surveillance undermines autonomy and independence, both key aspects of healthy adolescent development. Moreover, the geolocation data collected by monitors is highly sensitive and should not be shared absent a judicial warrant.

5. **If imposed, EM must be tailored and time-limited**
To the extent courts continue to impose electronic monitoring on young people, the restrictions, rules and conditions should be individually tailored to be no more burdensome than necessary, and the amount of time a young person is on a monitor should be limited.

INTRODUCTION

The use of electronic ankle monitoring ("EM") is expanding in the juvenile criminal legal system, as are the problems young people face when ordered to wear a monitor. Young people on monitors are often caught in a cycle of monitoring, spending time in detention for a technical violation, and then more months on a monitor as a consequence of the violation.[1] Monitoring itself, the attendant rules and conditions, the stigma and frequent detention for violations are all harmful to youth, particularly youth with disabilities.[2] Although monitoring is imposed at different stages of the juvenile court process (sometimes as a condition of pretrial release or probation), the problems associated with monitoring are the same. EM, like incarceration, is especially harmful for young people at all stages of the juvenile court process.

This report aims to help juvenile defenders and youth advocates push back against the use of monitoring in the first instance and, if monitoring is imposed, to argue for less harmful rules and conditions.[3]

I. ELECTRONIC MONITORING IS INCOMPATIBLE WITH ADOLESCENT DEVELOPMENT

The unique attributes of adolescent development make electronic monitoring an especially poor fit for young people. It is well settled that young people have "reduced culpability, blameworthiness, and a capacity for reform distinct from adult offenders."[4] In the last twenty years, the Supreme Court has frequently cited the unique attributes of adolescent development for striking down especially harsh punishments, including the death penalty, for young people.[5] The same reasoning applies to any punishment or probation term, including EM.[6]

Even though monitoring may be less restrictive and onerous than incarceration, wearing the device and the attendant rules set youth up to fail, ultimately resulting in incarceration not for a new substantive offense, but a technical violation.[7] The struggles young people faced while on electronic monitors recently led California lawmakers to pass a statute limiting the use of electronic monitoring in juvenile courts.[8] The law – the first of its kind in the country - prohibits young people from staying on monitors for long periods of time, requires 30 day review hearings, provides that time on a monitor count as custody credit, and prohibits monitors that contain microphones or speakers. The Legislative Counsel Digest that accompanies the new law reflects the reasoning behind the bill:

> Electronic monitors are often visible, and most have audio functions that emanate buzzes, beeps, or verbal commands. These visual and auditory indicators undermine the otherwise confidential nature of juvenile court by identifying the wearer as system-involved. The public nature of electronic monitoring causes feelings of shame, stigmatization, and anxiety, and may discourage young people on monitors from engaging in school, employment, counseling, and other prosocial activities.[9]

This reasoning reflects the overall concern that monitoring is an especially poor fit for young people.

a. Electronic monitoring requirements are confusing, excessive, and difficult for young people to understand

Young people often have trouble complying with the confusing, excessive, and strict rules associated with EM. Being subject to EM involves much more than simply wearing a monitor. In most places, young people and adults on EM cannot leave their house without prior approval and must abide by dozens of rules, including detailed requirements to charge the monitoring device, often for several hours a day.[10] The EM terms governing youth are often copied verbatim from adult terms.[11] These rules govern every minutia of daily life.[12]

Young people on EM generally must comply with two sets of complex and difficult to understand rules: the terms of probation (or pretrial release) and separate terms related to monitoring. Complying with all of these rules is challenging for anyone, especially young people.[13] Often, both sets of rules are written at least at the eleventh- to twelfth grade, or even college, reading level according to the Flesch-Kincaid Reading Level scale, and some terms are even beyond comprehension for the average university graduate.[14] This means that most EM terms are inaccessible even for an average adult.[15]

The sheer number of rules is also challenging. It is common for young people to have to comply with dozens of individual terms – more than the average for adults on probation.[16] Some California counties, for example, assign up to fifty-six rules that youth on EM must follow.[17] For comparison, the National Council of Juvenile and Family Court Judges (NCJFCJ) recommends at most four probation terms for young people.[18] As noted by the California legislature, "Ample research demonstrates that more restrictions and surveillance for persons under court supervision lead to worse case outcomes."[19]

Comprehending, much less complying, with all the rules (both those governing probation and EM) is daunting for young people. Just charging requirements alone is difficult. In many counties in California, for example, young people are required to charge their monitor for several hours a day, often at the same time every day.[20] In Washington D.C., the failure to keep the device charged is a misdemeanor.[21] As detailed below, this strict charging requirement is incompatible with adolescent neuroscience research.

Practice Suggestions:

- Straight release, or release with other forms of support should be used instead of electronic monitoring. Young people should not be subject to electronic monitoring because of the challenge of complying with highly technical and difficult to comprehend rules.
- To the extent young people are placed on monitors, the rules must be limited and simplified. There should be significantly fewer rules, and they should be written for easy comprehension and compliance.

b. Young people's reduced impulse control and a decreased ability to consider future consequences make rule compliance difficult

Normal adolescent development makes compliance with these rules challenging for a few reasons. First, young people tend to "overestimate their understanding of a situation, underestimate the probability of negative outcomes, and make judgments based on incorrect or incomplete information."[22] Recent research shows that their increased risk-taking and lowered impulse control also comes from differential development of different brain systems, not simply from an underdeveloped prefrontal cortex.[23] Specifically, the part of the brain associated with pleasure-seeking develops faster than the part of the brain that regulates self-control, despite both brain systems developing continuously throughout childhood and adolescence.[24] Young people also have a decreased ability to understand the link between their present actions and future consequences.[25] As a result, young people are more susceptible than adults to violating probation terms and EM terms, especially when there is an immediate incentive to do something and the consequences are unclear or far in the future.[26]

Second, adolescent brain development impacts the ways in which young people process their emotions. Young people in general tend to act more impulsively and have less capacity for emotional regulation. Contrary to popular belief, this is not because young people are just "more emotional" than adults. Instead, the two distinct systems of the brain that handle cognition and emotional regulation are less likely to activate at the same time. Essentially, adolescents' brains are still learning to coordinate their cognition with their emotional regulation.[27] Because these two brain systems are less coordinated, when young people find themselves in emotionally charged situations, their decisions are more likely to come from basic emotional circuits than from cognitive circuits.[28]

Third, emotional control develops more slowly than other forms of self-control. Of young people under the age of twenty-five, adolescent boys in particular struggle the most with suppressing responses to emotional stimuli.[29] Small probation term infractions can cause emotional responses in adolescents, and because of their impulsivity in emotional situations, they can let a small infraction snowball into a much larger one. For example, if a young person forgets to charge their monitor, they might cut the monitor off entirely instead of notifying their probation officer of the mistake. As a result of their brain development, adolescents—and particularly boys—are both less able to regulate their emotions and more impulsive when emotional.

Fourth and finally, young people on monitors may also violate the terms because of negative peer pressure, a phenomenon rooted in adolescent neuroscience.[30] Young people's ability to think about the consequences of their actions is further diminished when peers are around.[31] Most adolescent risk-taking behavior, including delinquency, occurs in the presence of peers. Adolescents commit most crimes—even the most serious crimes like rape or homicide—in pairs or groups.[32] Adolescent susceptibility to peer influence is related to the same brain system development that causes poor impulse control. Adolescents' reward- and pleasure-seeking brain pathways are more activated when peers are around than when the adolescents are alone, further exacerbating their already-poor impulse control.[33] In short, and as noted by the California Legislature, "[i]ntensive surveillance, which often leads to reincarceration for technical violations, undermines the rehabilitative goals of juvenile court."[34]

Practice Suggestions:

- Key aspects of adolescent development, including emotional regulation, impulse control and peer pressure, are incompatible with compliance with EM.
- Non-compliance with monitoring rules may not reflect willful defiance but instead typical realities of adolescent development, such as peer pressure, and still developing impulse control.

c. Monitoring requirements fail to account for the lived reality of many young people

Many of the EM rules, such as complicated pre-approval processes to leave a designated home address, or the strict charging requirements, are incompatible with how many young people live.[35] In particular, young people may not have reliable access to electricity to charge a device for two hours a day.[36] This is especially true for young people experiencing housing instability, who – like adults – may have restricted access to electrical outlets.[37] In Washington, D.C., for example, more youth are unhoused than adults.[38] For people who may not know where they will sleep from one day or week to the next, being on a monitor is all but impossible. It is hard to plan ahead and to have regular and reliable access to an electrical outlet to charge the monitor, or regular and reliable access to a phone to call the monitoring agents.

Additionally, young people's family structures may be such that they stay in different houses, which complicates house arrest and requirements for getting approval to travel between houses, schools, jobs or other family commitments. As a general matter, EM rules do not accommodate family structures that involve multigenerational caregiving arrangements that include family members who live in separate homes. Conversely, monitoring fails to account for living situations that may involve strained relationships or physical or mental abuse. Likewise, young people may find it especially challenging to always remain indoors if they are living in small houses, or homes with many people.

Monitoring requirements also make it difficult for young people to get to school, jobs or other services. In particular, EM terms sometimes require that young people identify a form of transportation and require written authorization in order for youth to change their transportation.[39] This limitation makes it more difficult for some families to find transportation, especially for those who do not have consistent, predictable access to a single vehicle.[40] Because attending school, or certain services are often a condition of probation, young people are in an impossible bind: they must choose between complying with probation conditions via a prohibited mode of transportation or miss school or services entirely, either way violating the terms of probation and EM.

Practice Suggestions:

- Rules and requirements should be individually tailored to account for the specific living and family situation of a young person.
- Young people should not be found "non-compliant" because of factors beyond their control, such as not having easy access to reliable electricity, irregular transportation or moving between caregiver homes.

d. Monitoring stigmatizes young people, undermining school and employment

Monitoring is stigmatizing and undermines the confidential nature of juvenile court. The stigma also interferes with school and employment.[41] As observed by the California Legislature:

> Electronic monitors are often visible, and most have audio functions that emanate buzzes, beeps, or verbal commands. These visual and auditory indicators undermine the otherwise confidential nature of juvenile court by identifying the wearer as system-involved. The public nature of electronic monitoring causes feelings of shame, stigmatization, and anxiety, and may discourage young people on monitors from engaging in school, employment, counseling, and other prosocial activities.[42]

Adolescents are particularly vulnerable to stigmatization because of their heightened awareness of perception and increased sensitivity to negative perception as compared to adults.[43] As the Massachusetts Supreme Court observed of adults, "[w]hen a judge orders GPS tracking, a 'modern-day scarlet letter' is physically tethered to the individual, reminding the public that the person has been charged with or convicted of a crime."[44]

Stigma at school is particularly problematic because nearly all probation agreements include some variation of a "go to school" requirement,[45] or even in some cases a "do your homework" requirement.[46] Failing to meet these requirements can be grounds for a probation officer to flag a technical violation, which may result in an extension of probation or even incarceration.[47]

Stigma also impacts employment.[48] Young people on EM consistently report issues with finding employers willing to hire them because of their monitors.[49] Employers are reluctant to hire people with criminal records, but the EM stigma affects even people who have not yet had a trial.[50] In addition to the social stigma, maintaining a job is difficult because of the limitations EM places on individuals' movement, as well as the strict charging requirements, and the device's visibility and audibility.[51] Additionally, certain categories of jobs become off-limits for individuals on EM. For example, job sites with poor GPS signals like warehouses and rural areas, jobs with delivery services, and jobs with unpredictable or overtime hours are particularly difficult for people on EM to retain.[52]

In addition to the difficulties of obtaining new jobs, individuals on EM also have difficulty maintaining their existing jobs.[53] Probation officers can interrupt their jobs at any time to check in, to clarify a location error, or to approve or disapprove of work-related travel.[54] Employees might need to charge their devices during work hours.[55] EM can further disrupt employment if a violation results in incarceration, which necessarily removes people from their jobs. Even brief stays in jail, prison, or juvenile detention can result in chronic unemployment.[56]

Practice Suggestions:

- The decision to place a young person on a monitor should account for the significant stigma associated with monitoring and the degree to which monitoring requirements undermine education and employment.
- Rules and requirements should be individually tailored to each young person in order to accommodate education and employment related needs.

e. Electronic monitors prevent young people from engaging in prosocial activities

Wearing a monitor, and complying with the various rules, makes it especially difficult for young people to engage in prosocial activities, which are critical to their social-emotional development. EM rules often restrict youth to home and school, making extracurricular participation challenging, if not impossible. Even when courts permit young people on EM to participate in extracurricular activities (such as sports), the monitor itself deters extracurricular participation. For example, strict EM terms prohibiting certain footwear, physical contact, and submersion in water can prevent young people from participating in sports entirely.[57] The social stigma of a visible ankle monitor can also prevent participation in prosocial activities where the monitor might be more visible because of a required uniform or the need to wear shorts. This may lead to a young person avoiding practice or games because of the stigma.

Limiting young people's ability to participate in prosocial activities is detrimental to their development. Among other reasons, participation in extracurricular activities encourages young people to develop bonds with a peer group with shared pro-social interests, mitigating some of the effects of negative peer pressure.[58] It is well settled that young people are less likely to commit crimes when they have strong social bonds and engage in prosocial behavior.[59] Sports and after-school clubs, for example, can reduce negative peer pressure from a young person's existing peer group.[60]

Finally, some jurisdictions require young people to obtain pre-approval to participate or attend anything other than school. This process often involves multiple steps, including getting permission from a probation officer and then altering a separate agency or official that oversees the monitoring.[61] These steps take time and sometimes young people may never hear back from a probation officer, or they skip a step and are found to be in violation of the terms.This pre-approval process deters young people from asking to participate in pro social activities and even if they do ask, they may be denied.

Practice Suggestions:

- Prosocial activities should be presumptively approved such that young people are encouraged to participate and need not wait on permission.
- The decision to place a young person on EM should account for any activities, jobs or services they are involved in, and the rules should be modified to accommodate such participation.

f. The unpredictability of technical violations, as well as problems with the technology itself, leads youth to distrust the legal system writ large.

Young people also struggle with the uncertainty related to violations and the prospect of reincarceration.[62] Because probation officers have broad discretion about what counts as a violation and whether to enforce violations, young people are often left to speculate about when or if they will be detained for a violation.[63] Probation officers may choose not to report, punish, or even warn an adolescent about a single violation, but then may go on to report a later violation of the same term without warning. Moreover, when people request permission to leave their house, for example, probation officers have discretion to evaluate whether they even believe that the requests are legitimate.[64]

The monitors themselves are also often not reliable, and there are increasing reports of defective monitors.[65] For example, devices that rely on GPS to track someone's location tend to be less accurate and reliable if the wearer is near (or in) buildings, trees, or bridges, or if there is inclement weather.[66] Likewise, there are increasing reports of problems such as loss of service, battery malfunction, and false tampering alerts.[67] Yet when people report technical glitches or malfunctions with an EM device, they are often not believed.[68]

When enforcement is unpredictable, and the monitors themselves are unreliable or faulty, young people perceive legal actors and the legal system to be illegitimate, which in turn affects the way they interact with authority figures.[69]

Practice Suggestions:

- EM hardware should be regularly evaluated for defects, malfunctions and reliability.
- Agencies overseeing EM, as well as third-party monitoring vendors, must share any evaluations, reports or testing related to malfunctions, defects and reliability.

g. The constant surveillance inherent in monitoring raises significant dignity and privacy concerns

Constant surveillance raises privacy concerns both as a legal matter and with respect to adolescent development. A key aspect of adolescent development is gaining a sense of autonomy and independence. When a young person knows their location is tracked 24/7, their sense of independence is undermined, creates distrust in the legal system and undermines the rehabilitative goals of juvenile court.

As a legal matter, electronic monitoring is also a Fourth Amendment search.[70] Although there is a lack of uniformity among courts on this issue, at least two state supreme courts have struck down electronic monitoring as unreasonable searches under the Fourth Amendment.[71] In those cases, the courts found that the significant privacy intrusions of electronic monitors outweighed the government interest in tracking people.[72]

The ability to track, collect and analyze young people's location data raise significant privacy concerns.[73] Location data "hold for many Americans the 'privacies of life."[74] As Justice Sonia Sotomayor explained, extensive use of GPS surveillance of location data "generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations."[75] This surveillance, in turn, disrupts "the relationship between citizen and government in a way that is inimical to democratic society."[76] Although young people on probation, like adults, have limited privacy interests as a matter of law, the "permissible degree" of state "impingement upon [the] privacy" of individuals under supervision is "not unlimited."[77]

In light of these concerns, geolocation data collected by electronic monitors should be strictly protected. A young person's geolocation data should be destroyed at regular intervals and not shared with law enforcement absent a judicial warrant.

Practice Suggestions:

- The privacy harms of monitoring should be accounted for in decisions to place young people on monitors.
- Geolocation data should be protected, ultimately destroyed and not shared with law enforcement absent a warrant.

h. Electronic monitoring is often deferred incarceration, not an alternative to incarceration.

The common assumption that EM is preferable to incarceration tends to hide the reality that young people are often subject to both EM and incarceration – not one or the other.[78] For the reasons discussed infra, EM often results in young people being detained or reincarcerated for technical violations that often have nothing to do with public safety —like missing curfew or forgetting to charge their device.[79] Frequent incarceration, even if brief, is particularly harmful to a young person's long-term physical and mental development. Incarcerations is traumatizing for young people,[80] and impacts their physical and mental health throughout their entire lives. Youth who are incarcerated before the age of 25 have higher rates of disabilities, depression, and suicidality continuing into adulthood than people who were never incarcerated as youth.[81] Even short stints of incarceration based on EM or probation violations have a long-term effect on a young person's physical and mental health.[82]

To the extent young people are placed on monitors, the number of days on a monitor should be limited and frequently reviewed by courts, as is now required in California.[83]

Practice Suggestions:

- Young people should not be detained for technical violations.
- The amount of time people are on monitors should be significantly limited and consistently re-evaluated by the courts.

II. MONITORING IS ESPECIALLY INCOMPATIBLE FOR YOUNG PEOPLE WITH DISABILITIES.

EM is a particularly bad fit for young people with disabilities who face unique barriers to compliance. People with mental, physical, intellectual, and developmental disabilities are overrepresented in the criminal legal system.[84] Prevalence studies have found that over 65% of young people involved in the criminal legal system meet the criteria for disability, a rate three times higher than the general population.[85] Common disabilities among young people in the criminal legal system include learning disabilities, intellectual and developmental disabilities, attention-deficit/hyperactivity disorder (ADHD), post-traumatic stress disorder (PTSD), and mental health diagnoses including depression and anxiety, and other emotional and behavioral disorders.[86]

Although EM is ostensibly designed to help young people reenter their communities, EM is onerous, especially for young people with disabilities who face heightened barriers to complying with EM requirements because of enhanced difficulties understanding and complying with the rules, as explained below.[87] Although EM is sometimes thought of as a more humane solution, the reality, particularly for young people with disabilities, is that monitoring does not achieve stated public safety goals and often results in the incarceration that they intended to prevent.

Young people with disabilities arguably should not be placed on EM at all. As noted by the California Legislature, the "restrictions and rules that accompany electronic monitoring often set youth up to fail, especially those with disabilities or cognitive impairments."[88]

However, to the extent that they are, stakeholders must consider reasonable accommodations and modifications to ensure that the young people are still able to manage and participate in EM with some level of success.

a. Federal disability law provides legal protections for young people with disabilities.

Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Rehabilitation Act) prohibit discrimination against people with disabilities.[89] Title II of the ADA applies to state and local public entities, which include authorities that administer electronic monitoring programs, such as courts, parole boards, probation departments, and pre-trial services agencies. The Rehabilitation Act applies to federal executive agencies and entities that receive federal funding.[90] Since courts largely interpret the statutes interchangeably, this guide focuses on the ADA.[91]

Discrimination under the ADA includes denying an equal opportunity or benefit based on a person's disability. This could look like using eligibility criteria that screens out people with disabilities, failing to effectively communicate with people who have disabilities by providing necessary auxiliary aids and services[92], providing services in such a way that qualified individuals with disabilities are not afforded an "equal opportunity to obtain the same result … as that provided to others,"[93] and failures to make "reasonable modifications" (often called "reasonable accommodations") to "policies, practices, or procedures" that "are necessary to avoid discrimination on the basis of disability" unless "the modifications would fundamentally alter the nature of the service, program, or activity."[94] [95] This guide focuses on failure to provide reasonable accommodations.

In the context of EM, judges and probation officers must make reasonable accommodations to allow young people with disabilities an equal opportunity to participate in these programs and comply with requirements. Some courts have held that entities must proactively make reasonable accommodations to policies and practices, even absent a specific request.[96] However, in reality, authorities often fail to assess whether people on EM have disabilities that require program modifications, and they often do not provide the accommodations necessary for people to succeed.[97] As a result, many people with disabilities are denied an equal opportunity to successfully complete EM programs, despite being entitled to this right under federal law.

Reasonable accommodations are not a one-size-fits-all approach which means that agencies cannot simply impose a categorical ban on certain types of proposed accommodations. Instead, whether a proposed accommodation is "reasonable" involves a "fact-specific, case-by-case inquiry."[98] The public entity may argue that an accommodation is unreasonable, and therefore decline to provide one, only if it would "fundamentally alter the nature of the service, program, or activity."[99] Overall, the focus is on whether the proposed accommodation "would be so at odds with the purposes behind the [entity's program, service, or activity] that it would be a fundamental and unreasonable change."[100] To determine whether an accommodation is reasonable or a fundamental alteration, courts must "engage in an individualized inquiry" considering factors such as "the effectiveness of the modification in light of the nature of the disability in question and the cost to the organization that would implement it."[101] Additionally, budgetary constraints alone are insufficient to establish a fundamental alteration defense.[102]

Practice Suggestions:

- An individualized inquiry into a young person's disability status should be made prior to the decision to place a youth on EM.
- Key stakeholders, judges, probation officers, defense attorneys, families, should collaborate around disability related EM accommodations that are individually tailored to each young person.

b. Disability Discrimination

Young people with disabilities are entitled to reasonable accommodations throughout the juvenile court process, including EM, however, this is rarely happening in court proceedings. Youth who are denied reasonable accommodations, may have grounds for a claim on the basis of disability discrimination. To state a disability-discrimination claim, a person must generally show that: 1) they are a qualified individual with a disability, 2) the alleged discrimination was done by a covered entity, and 3) the discrimination was done on the basis of the affected individual's disability.[103]

A particular disability diagnosis is not required for someone to be covered by the ADA. The ADA defines "disability" broadly as "a physical or mental impairment that substantially limits one or more major life activities," "a record of such impairment," or "being regarded as having such an impairment."[104] The ADA intentionally defines disability broadly to ensure "expansive coverage to the maximum extent permitted by the terms of the ADA" and thus "[t]he question of whether an individual meets the definition of 'disability' . . . should not demand extensive analysis."[105] Under the ADA, some conditions should virtually always be considered disabilities, including deafness, intellectual disabilities, and autism.[106] One exception is that currently using illegal drugs is not a protected disability when they act on the basis of the illegal use of drugs. It would not be disability discrimination for a public entity to, for example, deny someone services because of current illegal drug use. However, people in recovery from substance use disorder (SUD) or wrongly regarded as having a substance use disorder are protected.[107] Many people with SUD also have other co-occurring disabilities and would thus be covered under the ADA when entities discriminate based on those disabilities.[108]

Young people with disabilities do not need to wait until they have suffered a downstream consequence, such as punishment for violating their EM terms, to experience discrimination based on an entity's failure to accommodate. Instead, people suffer discrimination where "they face 'obstacles' . . . 'that impede[] their access to a government benefit or program,'" which would include being required "to participate in the Government's supervision programs without reasonable accommodations."[109] In other words, the inability to effectively participate in legal proceedings, including supervision or EM terms, is disability discrimination in itself--even if people do not suffer other consequences such as sanctions or revocation proceedings.[110]

Many failure-to-accommodate cases do not address causation, and federal courts have formulated the standard differently.[111] Some jurisdictions apply a stricter causation standard to claims under the Rehabilitation Act (which prohibits discrimination "solely by reason of" one's disability) than to ADA claims (which prohibits discrimination "on the basis of" one's disability).[112] Causation is generally satisfied where a plaintiff "does not claim that he required and/or was denied a reasonable accommodation for any reason other than his disability."[113]

c. Common disabilities and their symptoms can make compliance with EM more difficult without a reasonable accommodation.

When considering the impact of EM on youth with disabilities, as well as reasonable accommodations, compounding barriers created by co-occurring disabilities must be contemplated.[114] Disability-specific barriers are summarized in Appendix A.

Challenges Related to Complex Rules

The need to adhere to multiple complicated sets of rules can be particularly difficult for young people with disabilities.[115] Young people with learning disabilities and other developmental disabilities may have limited reading comprehension and may struggle with abstract reasoning, making it challenging to understand or remember their many requirements.[116]

Practice Suggestions:

- EM rules should be tailored to reasonably accommodate a young person's appropriate reading level and/or communicated in a manner that they can fully understand (i.e., visual calendars with icons to represent important dates or drawing a stick figure walking through the door of a house with a clock above the house showing 8pm and a darkening sky to represent an 8pm curfew).
- EM rules should be presented to youth both verbally and in writing, and probation officers should check for understanding.

The Harm of No Prosocial Activities

The inability to fully engage in prosocial activities,[117] may exacerbate underlying mental health conditions like anxiety or depression. Additionally, the stigma of being forced to wear visible EM devices while at school can further isolate young people from their peers and worsen their mental health, which is especially a problem for youth with disabilities. For young people with ADHD, for example, spending long periods of time on home confinement can exacerbate symptoms, increasing restlessness and agitation, and preventing engagement in healthy movement-related activities, which are often essential for emotional regulation. Movement restrictions may also interfere with necessary medical appointments, including doctors' appointments for people with chronic illnesses and medication for addiction treatment (MAT) programs for young people with substance use disorders, if the healthcare facility is outside of the limited area where they are permitted to travel. Medical appointments, including MAT for substance use disorder, should be treated as an approved reason for young people to leave home, and accommodations should be made to allow them to attend supportive programs and socialize with their peers. Other reasonable carveouts can be created to increase movement and access to programming that do not fundamentally alter the purpose of EM. Young people with disabilities often must travel to get adequate education and support services as well, and movement restrictions make this more difficult.

Practice Suggestion:

- Judges should affirmatively inquire about the specific disability related needs of each young person, including, but not limited to movement related needs, appointments, and pro-social engagements.

Challenges Complying with Approval Process & Check-Ins

Young people with disabilities may struggle to provide advance notice and get approval for all changes to their schedule, which many EM programs mandate. For example, for young people with ADHD, advance planning requires a level of organization and executive functioning that can be extremely difficult. Those who struggle with depression or anxiety may find the logistics of planning challenging. Feelings of overwhelm and avoidance may make it harder for young people with mental health conditions to communicate schedule changes to authorities in advance. Furthermore, young people with learning disabilities, intellectual disabilities, or other developmental disabilities may struggle with communication and with the abstract reasoning involved in advance planning.

Additionally, young people with disabilities may have trouble remembering or adhering to the regular check-in schedules that some EM programs require. For example, young people with developmental disabilities may miss meetings because they do not understand or recall the check-in schedule. Those with a variety of mental health issues may avoid meetings due to extreme anxiety about interacting with authorities. Young people with PTSD may have a heightened sensitivity to authority figures, causing them to react to feedback during check-ins with defensiveness or avoidance. People with mobility difficulties can face difficulties physically getting to meeting locations.

Practice Suggestions:

- Notice requirements should be flexible, including shorter windows of notice for schedule changes, such as 24 hours instead of a full week, or allowing notice within a reasonable timeframe after the schedule change where advance notice is not feasible.
- Check-in requirements should also be flexible, including expanded check-in timeframes, and real-time reminders, such as text alters or calls from EM administrators to facilitate compliance.

Struggles Keeping Devices Charged

Young people with disabilities may struggle to charge their EM devices in accordance with program requirements. For example, young people with ADHD may have difficulty adhering to the schedule and sitting still while the device charges for multiple hours per day. Those with learning disabilities or developmental disabilities may have trouble understanding and remembering the daily charging timeframes. Additionally, wearing the EM device at all times—especially if it is a bulky ankle monitor—may worsen paranoid thoughts and/or be triggering for those with PTSD. The stress of constant surveillance may exacerbate other underlying mental health issues.

Practice Suggestions:

- To make these requirements more feasible, reasonable accommodations could include the use of devices or monitoring systems that do not require long, continuous daily charging periods.
- In some situations, check-in apps or phone calls may be possible as a less invasive alternative to wearing an EM device.

Unintentional Violations

Without reasonable accommodations, young people with disabilities may often violate EM requirements due to disability-related barriers. It is crucial for authorities to understand that these violations are not due to intentional noncompliance. Judges, probation and EM administrators must work with defense attorneys in each case to develop accommodations tailored to a young person's unique needs that will make it possible for them to wear a device. This is especially important because the stakes of incarceration are particularly high for young people with disabilities. Youth incarceration already causes long-term harm, and the experience of incarceration can exacerbate certain disabilities, including PTSD, depression, and anxiety. People also regularly lack access to adequate health care and needed medications while in jail, prison, or juvenile detention. Those with substance use disorders may experience withdrawal while incarcerated or turn to substances to cope with the trauma of incarceration post-release.[118] EM programs should avoid using incarceration as punishment for EM violations at all costs.

d. Accounting for Youth Without Diagnosed Disabilities.

Many youth with disabilities in the criminal legal system have not been diagnosed or have been misdiagnosed.[119] Even if a young person does have a diagnosis, their Individualized Education Program (IEP) or other disability-related documentation may not travel with them through the delinquency system, especially in a pre-adjudication setting. Further, a young person may not know their diagnosis or may not fully understand what it means in this context. In order to ascertain whether ADA arguments are available for a young person, defense attorneys will need to gather specific information about their client. Attorneys should keep in mind that disabilities may not be immediately apparent, and symptoms of a disability may change or worsen[120] as the young person engages with the criminal legal system, which can be particularly triggering for individuals with anxiety and other disabilities.

Defense attorneys should ask their client in a simple and non-judgmental way if they know if they have a disability. If a young person doesn't know if they do, defense attorneys should ask follow-up questions to both determine if a diagnosis exists and also to determine if the young person has received disability-related assistance without a diagnosis. For example, an attorney can ask if a young person has received extra support in school to complete tasks or understand instructions. An attorney should also consult with adults who know the young person well, such as family members, social workers, medical providers, and teachers. Attorneys should also review the youth's school and disciplinary records. If a young person or adult does not know if they have a diagnosis or believes they don't have a disability, attorneys may ask their client or adults questions related to disability symptoms. For example, attorneys can ask if the young person has trouble concentrating in school, has difficulty understanding directions or rules, or feels anxious or sad.

Once an attorney has established if their client has a disability or disability-symptoms, they should consult with clients about what kinds of accommodations would be most effective to support them if they are placed on EM. While the goal is to avoid EM entirely, in some cases that may not be possible. In those instances, providing clients with some agency to advocate for the accommodation(s) that they feel are best suited for them is important. Defense attorneys should brainstorm possible accommodations with their clients and recognize that they may not know what accommodations will work best for them or have any prior experience considering accommodations. Attorneys should raise clients' accommodation needs as early as possible. They can do so by filing motions for accommodations and engaging in informal advocacy with prosecutors recommending EM or authorities administering EM.

Appendix A: Common Disability-Related Barriers to Complying with EM Requirements

Note: This chart includes common symptoms of Attention Deficit/Hyperactivity Disorder (ADHD), Learning Disabilities, Depression, Substance Use Disorder, Intellectual and Developmental Disabilities, Post-Traumatic Stress Disorder (PTSD), and Anxiety Disorders. This is not an exhaustive list of disabilities or disability-related barriers. Advocates should communicate with their clients about their specific disabilities, barriers, and accommodation needs.

Common EM Requirements → **Person with: ↓**	**Comply with extensive, complex rules**	**Provide advance notice and obtain approval for schedule changes**	**Regular check-ins with program administrators**	**Keep device charged and secured to body**	**Restrict movement to specific destinations and/or timeframes**
Attention Deficit/Hyperactivity Disorder (ADHD)	May find it more difficult to stay organized/focused and adhere to structure, making compliance with complex rules more challenging.	May find it challenging to stay organized and communicate in advance, making it difficult to provide required notice.	May find it challenging to remember and adhere to check-in schedule, resulting in missed meetings. May find it difficult to focus during meetings, which can lead to the misperception they are not paying attention.	May find it difficult to sit still during charging sessions and/or remember to charge (often multiple times per day), leading to dead batteries.	
Learning Disabilities (e.g., dyslexia, dyscalculia)	May have limited reading comprehension, abstract reasoning, or executive functioning abilities, making it difficult to understand, remember, or follow requirements.	May have difficulties with planning and organizing, making it difficult to provide required notice.	May experience difficulties planning to get to meetings and communicating with authority figures during meetings.	May experience difficulty understanding or remembering charging requirements and timeframes.	

Common EM Requirements → Person with: ↓	Comply with extensive, complex rules	Provide advance notice and obtain approval for schedule changes	Regular check-ins with program administrators	Keep device charged and secured to body	Restrict movement to specific destinations and/or timeframes
Depression	May be overwhelmed by requirements and therefore not follow all rules. May have medication-related side effects that impair memory, attention, or motivation—making it difficult to remember and/or follow rules.	May find it difficult to plan ahead or proactively manage logistics due to feelings of avoidance and/or overwhelm, which could lead to failures to provide required notice.	May experience a lack of physical energy or motivation, leading to missed meetings, inability to participate in programming, or the perception that they are disinterested.	May experience intensified stress due to constant surveillance via EM, which can exacerbate worry and feelings of despair. These exacerbated symptoms may make compliance with other requirements more challenging.	May experience further loneliness, despair, anxiety, and withdrawal due to limited ability to spend time with peers and participate in specific activities as a result of movement restrictions. These exacerbated symptoms may make compliance with other requirements more challenging.
Substance Use Disorder	May experience cognitive impairments, including limited memory and retention, from past substance use that can make it difficult to follow complex rules.	May experience cognitive impairments, including limited memory and retention, from past substance use that can make it difficult to provide required notice.	May experience cognitive impairments, including limited memory and retention, from past substance use that can make it difficult to remember and get to meetings.	May experience cognitive impairments, including limited memory and retention, from past substance use that can make it difficult to understand or remember charging requirements, leading to dead batteries.	May require regular access to treatment programs—including medication assisted treatment providers—which may not be located in the assigned perimeter or available during the designated movement timeframe, resulting in barriers to accessing medical care or a violation for seeking out care.

Common EM Requirements → Person with: ↓	Comply with extensive, complex rules	Provide advance notice and obtain approval for schedule changes	Regular check-ins with program administrators	Keep device charged and secured to body	Restrict movement to specific destinations and/or timeframes
Intellectual and Developmental Disabilities (e.g., autism spectrum disorders, down syndrome)	May experience difficulty understanding supervision conditions, making compliance with complex rules more challenging.	May experience difficulty with communication and advance planning and/or abstract reasoning, making it difficult to provide required notice.	May experience difficulty understanding or remembering check-in schedule, making it difficult to get to meetings. May experience difficulties effectively communicate with program administrators.	May experience difficulty understanding or remembering charging requirements, leading to dead batteries.	
Post-Traumatic Stress Disorder (PTSD)	May experience avoidance related to EM requirements, making complying with rules difficult. Medications may have side effects that impair memory, attention, or motivation—making it difficult to remember and/or follow rules.	May experience heightened sensitivity to, and difficulties forming trusting relationships with, authority figures, which may lead people to avoid contacting authorities to provide notice.	May experience heightened sensitivity to, and difficulties forming trusting relationships with, authority figures—making check-ins with program. administrators more difficult. May interpret instructions as confrontational and react defensively or avoid EM administrators, leading administrators to interpret their behavior as defiance/noncompliance. May experience flashbacks or panic attacks if the location of a check-in is triggering, which may result in missed appointments or refusal to meaningfully engage during meetings.	May experience intensified symptoms of trauma and paranoia due to triggering nature of having an EM device physically attached to their body at all times. These exacerbated symptoms may make compliance with other requirements more challenging.	May experience worsened symptoms of claustrophobia and trauma as home confinement can trigger prior trauma. These exacerbated symptoms may make compliance with other requirements more challenging.

Common EM Requirements → Person with: ↓	Comply with extensive, complex rules	Provide advance notice and obtain approval for schedule changes	Regular check-ins with program administrators	Keep device charged and secured to body	Restrict movement to specific destinations and/or timeframes
Anxiety Disorders (e.g., generalized anxiety disorder, panic disorder)	May find it more difficult to concentrate, and the stress of being on EM may exacerbate anxiety symptoms such as difficulty sleeping, fatigue, excessive and persistent worry, and/or heart palpitations. These symptoms can make compliance with complex rules more challenging. May have medication-related side effects that impair memory, attention, or motivation—making it difficult to remember and/or follow rules.	May experience excessive and persistent worry, which may lead people to avoid contacting program administrators to provide required notice.	May experience excessive and persistent worry and/or heart palpitations, which can make it difficult to interact with authority figures during check-ins and to engage in required programming. May experience difficulty sleeping and fatigue, which can make it difficult to get to required check-ins, especially early in the morning.	May experience intensified worry/stress and other anxiety symptoms due to constant surveillance via EM. These exacerbated symptoms may make compliance with other requirements more challenging.	Stress of being confined to certain spaces may exacerbate symptoms of anxiety such as difficulty sleeping, fatigue, excessive and persistent worry, and/or heart palpitations. These exacerbated symptoms may make compliance with other requirements more challenging.

Endnotes

[1] See generally Chaz Arnett, Virtual Shackles: Electronic Surveillance and the Adultification of Juvenile Courts, 108 J. Crim. L. & Criminology 399 (2018); Kate Weisburd, Monitoring Youth: The Collision of Rights and Rehabilitation, 101 Iowa L. Rev. 297 (2015); Catherine Crump, Tracking the Trackers: An Examination of Electronic Monitoring of Youth in Practice, 53 U.C. Davis L. Rev. 795, 797 (2019).

[2] For a compelling account of the impact of EM on young people, see the testimony of young people and advocates before the Philadelphia City Council in 2025. See Joint Committees on Children & Youth and Technology & Information Services 10-29-2025.

[3] While this guide focuses on EM issues unique to young people, most of the problems with electronic ankle monitoring are not limited to young people. Advocates working on behalf of young people and/or adults may want to challenge the reliability of EM, the necessity of EM, as well as the general constitutionality of 24/7 geolocation tracking and the sharing of sensitive data with law enforcement. For more on these topics see: ACLU, Rethinking Electronic Monitoring: A Harm Reduction Guide (2022); Juliana DeVries, et al, Check the Monitor: Parole & Probation Technologies in Review, Samuelson Law Technology & Public Policy Clinic, 2026; Jess Zhang, Jacob Kang-Brown, and Ari Kotler, People on Electronic Monitoring, Vera Institute, Jan. 2024; Sandra Susan Smith & Cierra Robson, Between a Rock and a Hard Place: The Social Costs of Pretrial Electronic Monitoring in San Francisco, Harvard Kennedy School Faculty Research Working Paper Series (Sept. 2022); Patrice James et al, Cages Without Bars: Pretrial Electronic Monitoring Across the United States, March 2022, https://www.povertylaw.org/wp-content/uploads/2022/09/cages-without-bars-final-rev1.pdf; Kate Weisburd et al., Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System (Geo. Wash. U. L. Sch. 2021); Kate Weisburd, Sentenced to Surveillance: Fourth Amendment Limits on Electronic Monitoring, 98 N.C. L. Rev. 717 (2020); Kate Weisburd, Punitive Surveillance, 108 Va. L. Rev. 147 (2022); James Kilgore, Emmett Sanders, Kate Weisburd, The Case Against E-carceration, Inquest, July 30, 2021, https://inquest.org/the-case-against-e-carceration/.

[4] John D. Elliott & Anna M. Limoges, Deserts, Determinacy, and Adolescent Development in the Juvenile Court, 62 S.D. L. Rev. 750, 765 (2017).

[5] Roper v. Simmons, 543 U.S. 551 (2005); Graham v. Florida, 560 U.S. 48 (2010); Miller v. Alabama, 567 U.S. 460 (2012) (extending Graham to homicides); Montgomery v. Louisiana, 577 U.S. 190 (2016) (extending Miller to apply retroactively). See also Tatum v. Arizona, 580 U.S. 952 (2016) (vacating five juvenile life sentences where the underlying crimes reflected "transient immaturity").

[6] This guide refers mainly to probation, but the arguments regarding EM are not limited to young people on probation and would apply to EM as a condition of pretrial release or parole.

[7] For a detailed and comprehensive guide to challenging juvenile probation conditions, see Gault Ctr. & Youth Empowerment for Advancement Hangout (YEAH Philly), Under These Conditions: Accountability Should Be Possible: A Toolkit (2026), https://www.defendyouthrights.org/document/under-these-conditions-accountability-should-be-possible/.

[8] Cal. Welf. & Inst. Code § 628.2.

[9] Assemb. B. 2658, 2021–2022 Reg. Sess. (Cal. 2022).

[10] Weisburd et al., supra note 3.

[11] Jyoti Nanda, Set Up to Fail: Youth Probation Conditions as a Driver of Incarceration, 26 Lewis & Clark L. Rev. 677, 727 (2022).

[12] Weisburd et al., supra note 3.

[13] See generally Kate Weisburd, Carceral Control: A Nationwide Survey of Criminal Court Supervision Rules, 58 Harv. C.R.-C.L. L. Rev. 1, 19, 24 (2023).

[14] Crump, supra note 1, at 819; Nanda, supra note 10, at 723–25.

[15] See Harvard University Digital Accessibility Services, Technique: Writing readable content (2025) (recommending a score of 60–70 on the Flesch-Kincaid Readability Test for documents addressed to the average adult), https://accessibility.huit.harvard.edu/technique-writing-readable-content; Ben Long, Flesch-Kincaid Readability Test and Calculator (2024) (explaining that a score of 60–70 on the Flesch-Kincaid test corresponds to about an 8th-grade reading level), https://hemingwayapp.com/articles/readability/flesch-kincaid-readability-test.

[16] Nanda, supra note 10, at 726.

[17] Rena Coen & Chieh Tung, Electronic Monitoring of Youth in the California Juvenile Justice System, 10 & n.77 (Samuelson Law, Technology, & Public Policy Clinic, 2017).

[18] Nanda, supra note 10, at 725.

[19] Assemb. B. 2658, 2021–2022 Reg. Sess. (Cal. 2022).

[20] See Crump, supra note 1, at 814 & n.100; Electronic Monitoring Program Rules: A Compilation of California County Juvenile Justice SystemRules Relating To Electronic Monitoring Programs For Youth 1–2, 21, 23, 118–19, 146, 149, 215–16 (Catherine Crump & Amisha Gandhi eds., 2018), https://n2t.net/ark:/85779/j4mq0n (last visited Feb. 25, 2025) (noting EM rules related to charging in Alameda County ("Minors on GPS will maintain and recharge their battery system daily"), Contra Costa County ("The GPS unit must be charged for two continuous hours each day, or until the GPS unit gives you an audible alert 'battery charged,' indicating that the battery is fully charged"), Orange County ("I am responsible for maintaining the battery charge of the CEM equipment at all times. I will charge the GPS device twice a day, every 12 hours, for 60 minutes each time"), San Francisco County ("I understand that I am required to charge my SCRAM GPS bracelet for 3 hours each day. I will charge the device for 1 ½ hours in the morning, and 1 ½ hours in the evening"), and Ventura County ("You will charge the unit daily and/or as directed and follow the directives of the unit")).

[21] D.C. Code § 22-1211(a)(1)(C).

[22] Nat'l Rsch. Council, Reforming Juvenile Justice: A Developmental Approach (Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, & Julie A. Schuck eds., 2013).

[23] See Grace Icenogle et al., Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a "Maturity Gap" in a Multinational, Cross-Sectional Sample, 43 Law & Hum. Behav. 69 (2019).

[24] See Laurence Steinberg, A Social Neuroscience Perspective on Adolescent Risk-taking, 28 Dev. Rev. 78, 82 (2008).

[25] Steinberg et al., Age Differences in Future Orientation and Delay Discounting, 80 Child Dev. 28, 29 (2009).

[26] See Nat'l Rsch. Council, supra note 21, at 93–94; Steinberg et al., supra note 24, at 28.

[27] Laurence Steinberg, Should the Science of Adolescent Brain Development Inform Public Policy?, 64 Am. Psych. 739, 743 (2009).

[28] Nat'l Rsch. Council, supra note 21, at 99.

[29] Nat'l Rsch. Council, supra note 21, at 92–93; Nina Tottenham, Todd Hare & B.J. Casey, Behavioral Assessment of Emotion Discrimination, Emotion Regulation, and Cognitive Control in Childhood, Adolescence, and Adulthood, 2 Frontiers in Psych. 1, 8 (2011).

[30] See, e.g., Angela Keyzers, et al., Peer Pressure and Substance Use in Emerging Adulthood: A Latent Profile Analysis, Substance Use & Misuse (2020) (confirming a heightened response to peer pressure for adolescents as compared to adults in the context of drug use).

[31] Laurence Steinberg & Kathryn C. Monahan, Age Differences in Resistance to Peer Influence, 43 Dev. Psych. 1531 (2007); Nat'l Rsch. Council, supra note 21, at 95.

[32] Margo Gardner & Laurence Steinberg, Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study, 41 Dev. Psych. 625, 626 (2005).

[33] Chein et al., Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry, 14 Dev. Sci. F1, F2, F7 (2011).

[34] Assemb. B. 2658, 2021–2022 Reg. Sess. (Cal. 2022).

[35] See Joint Committees on Children & Youth and Technology & Information Services 10-29-2025.

[36] Crump, supra note 1, at 814.

[37] Smith & Robson, supra note 3.

[38] Claudia D. Solari et al., Urban Institute, Housing Insecurity in the District of Columbia 20 (2023).

[39] Coen & Tung, supra note 16, at 8.

[40] Id.

[41] Weisburd, supra note 1, at 329; see Joint Committees on Children & Youth and Technology & Information Services 10-29-2025.

[42] Assemb. B. 2658, 2021–2022 Reg. Sess. (Cal. 2022); see also Melanie Lefkowitz, Ankle monitors could stigmatize wearers, research says, Cornell Chronicle (2020) (noting the design has not changed in nearly 30 years).

[43] Laurence Steinberg, Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science, 16 Current Directions Psych. Sci. 55, 56 (2007);see alsoArnett, supra note 1, at 408–09.

[44] Commw. v. Norman, 484 Mass. 330, 338–39 (2020).

[45] Nanda, supra note 10, at 733.

[46] Nanda, supra note 10, at 702.

[47] Id. at 684–85; D.C. Dep't of Youth Rehab. Servs., DC Juvenile Justice System Flowcharts (2025), https://dyrs.dc.gov/page/dc-juvenile-justice-system.

[48] See Joint Committees on Children & Youth and Technology & Information Services 10-29-2025.

[49] Juv. Just. Advisory Grp., Meeting Minutes (Mar. 1, 2022), https://www.open-dc.gov/meeting/juvenile-justice-advisory-group-jjag-32 (panel discussion on electronic monitoring featuring agency representatives and youth with lived expertise).

[50] Smith & Robson, supra note 3, at 8.

[51] Id. at 7.

[52] Id. at 35.

[53] Nazish Dholakia, Electronic Monitoring Is an Extension of Mass Incarceration, Vera Inst. (2024), https://www.vera.org/news/electronic-monitoring-is-an-extension-of-mass-incarceration.

[54] Id.

[55] Smith & Robson, supra note 3, at 8–9.

[56] Christopher Thomas, The Racialized Consequences of Jail Incarceration on Local Labor Markets, CrimRxiv, 9 (2022) https://doi.org/10.21428/cb6ab371.128a98c0.

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[58] But see supra Section I (b) (explaining that peer influence has a serious impact on involvement in the juvenile delinquency system). Developing bonds with peers who have shared pro-social interests may create a more positive social group for the child. See generally Sophia Choukas-Bradley et al., Peer Influence, Peer Status, and Prosocial Behavior: An Experimental Investigation of Peer Socialization of Adolescents' Intentions to Volunteer, 44 J Youth & Adolescence 2197 (2015) (demonstrating that prosocial responses can be socialized through exposure to prosocial peer norms); Julia van Hoorn et al. Peer Influence on Prosocial Behavior in Adolescence, 26 J of Rsch. on Adolescence 90 (2016) (examining the influence of peers on prosocial behavior in adolescents); Carolyn McNamara Barry & Kathryn R. Wentzel, Friend influence on prosocial behavior: The role of motivational factors and friendship characteristics, 42 Developmental Psych. 153 (2006).

[59] See generally Travis Hirschi, Causes of Delinquency (1st ed. 1969).

[60] Julia S. Feldman et al., Extracurricular Involvement in the School-Age Period and Adolescent Problem Behavior Among Low-Income Youth, 89 J. Consulting & Clinical Psych. 947, 948 (2022); Amy F. Feldman & Jennifer L. Matjasko, The Role of School-Based Extracurricular Activities in Adolescent Development: A Comprehensive Review and Future Directions, 75 Rev. Of Educ. Rsch. 159 (2005).

[61] Weisburd, supra note 1, at 307–08.

[62] See Joint Committees on Children & Youth and Technology & Information Services 10-29-2025.

[63] Nat'l Juvenile Defender Center, Promoting Positive Development: The Critical Need to Reform Youth Probation Orders 3 (2016).

[64] Smith & Robson, supra note 3, at 34 ("I would call [the program office] and let them know I have an interview tomorrow, [and] they sometimes wouldn't buy it").

[65] See Joint Committees on Children & Youth and Technology & Information Services 10-29-2025; U.S. Gov't Accountability Off., GAO-23-105873, Pretrial Supervision: Actions Needed to Enhance Management of the Location Monitoring Program, 29 (2023), https://www.gao.gov/assets/gao-23-105873.pdf; Juliana DeVries, et al, Check the Monitor: Parole & Probation Technologies in Review, Samuelson Law Technology & Public Policy Clinic, 2026.

[66] Juliana DeVries, et al, Check the Monitor: Parole & Probation Technologies in Review, Samuelson Law Technology & Public Policy Clinic, 2026; U.S. Gov't Accountability Off., GAO-23-105873, Pretrial Supervision: Actions Needed to Enhance Management of the Location Monitoring Program, 29 (2023), https://www.gao.gov/assets/gao-23-105873.pdf; GPS Accuracy, https://www.gps.gov/gps-accuracy (last visited Feb. 19, 2026).

[67] See, e.g., Yazmine Nichols, Jailed for a faulty battery and left to catch COVID-19, ACLU News & Commentary (June 25, 2021), https://www.aclu.org/news/criminal-law-reform/jailed-for-a-faulty-battery-and-left-to-catch-covid-19 (describing how father of three imprisoned after ankle monitoring device battery failed); Paige St. John, One in four GPS devices on criminals in L.A. County were faulty, Los Angeles Times (Dec. 27, 2013) https://www.latimes.com/local/la-me-ff-gps-audit-20131228-story.html (reporting that one in every four GPS devices faulty, with problems such as batteries that would not charge and excessive false alarms); Designed to Reduce Cook County Jail Population, Electronic Monitoring System May Produce False Readings, WTTW News, March 21, 2022 https://news.wttw.com/2022/03/16/designed-reduce-cook-county-jail-population-some-say-electronic-monitoring-system-may.

[68] Smith & Robson, supra note 3, at 6.

[69] Jeffrey Fagan & Tom Tyler, Legal Socialization of Children and Adolescents, 18 Soc. Just. Rsch. 217, 220 (2005).

[70] Grady v. North Carolina, 575 U.S. 306, 309 (2015); see also Kate Weisburd, Sentenced to Surveillance: Fourth Amendment Limits on Electronic Monitoring, 98 N.C. L. Rev. 717 (2020).

[71] Commw. v. Norman, 484 Mass. 330, 338 (2020); Commw. v. Feliz, 481 Mass. 689, 705–06, 119 N.E.3d 700, 714–15 (2019); State v. Grady, 831 S.E.2d 542, 556 (N.C. 2019).

[72] Id.

[73] See, e.g., Carpenter v. United States, 138 S. Ct. 2206 (2018); Riley v. California, 134 S. Ct. 2473 (2014); United States v. Jones, 132 S. Ct. 945, 951 (2012).

[74] Riley v. California, 134 S. Ct. 2473, 2495 (2014).

[75] United States v. Jones, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring).

[76] Jones, 565 U.S. at 416.

[77] Griffin v. Wisconsin, 483 U.S. 868, 875 (1987) (noting that the "permissible degree" of state "impingement upon [the] privacy" of individuals under supervision is "not unlimited.").

[78] James Kilgore, Emmett Sanders, Kate Weisburd, Carceral Surveillance and the Dangers of "Better-than-Incarceration" Reasoning, LPE Blog, June 27, 2024 https://lpeproject.org/blog/carceral-surveillance-and-the-dangers-of-better-than-incarceration-reasoning/.

[79] Weisburd, supra note 1.

[80] Micah C. Owen et al., Advocacy and Collaborative Health Care for Justice-Involved Youth, 146 Am. Acad. Pediatrics 1, 4 (2020).

[81] Elizabeth S. Barnert et al., What Is the Relationship Between Incarceration of Children and Adult Health Outcomes?, 19 Acad. Pediatrics 342, 345–49 (2018); Destiny G. Tolliver et al., United States Youth Arrest and Health Across the Life Course: A Nationally Representative Longitudinal Study, 23 Acad. Pediatrics 722, 725–27 (2023).

[82] See id.; Elizabeth S. Barnert et al., What Is the Relationship Between Incarceration of Children and Adult Health Outcomes?, 19 Acad. Pediatrics 342, n.29 at 345 (2018).

[83] Cal. Welf. & Inst. Code § 628.2.

[84] See Laura M. Maruschak, et al., Bureau of Justice Statistics, Survey of Prison Inmates, 2016: Disabilities Reported by Prisoners 1 (2021) (in 2016, nearly 2 in 5 people in state and federal prison had at least one disability), https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf; Laura Hawks, et al., Health Status and Health Care Utilization of US Adults Under Probation: 2015-2018, 110 Am J. Pub. Health 1411 (2020) (study showed "[p]ersons on probation had a higher burden of physical conditions, mental illnesses, and substance use disorders than did the general population"), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7427211/. See also Nat'l Assoc. of Crim. Def. Law., Disability in the Criminal Legal System, https://www.nacdl.org/Landing/RespectAbility-Disability-and-the-CLS (last accessed June 16, 2025); Qudsiya Naqui, Advancing Equal Justice for Americans with Disabilities, DOJ Off. for Access to Just. (July 26, 2023), https://www.justice.gov/archives/atj/blog/advancing-equal-access-justice-americans-disabilities-moving-towards-closing-justice-gap.

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[88] Assemb. B. 2658, 2021–2022 Reg. Sess. (Cal. 2022).

[89] 42 U.S.C. § 12132 (ADA); 29 U.S.C. § 794(a) (Rehabilitation Act).

[90] State and local government entities can be subject to both the ADA and the Rehabilitation Act. See Am. Council of the Blind v. Paulson, 525 F.3d 1256, 1260 n.2 (D.C. Cir. 2008) (collecting cases); Randolph v. Rodgers, 170 F.3d 850, 858 (8th Cir. 1999).

[91] Note that because state juvenile justice programs are exclusively operated by state and local governments, attorneys should also check whether their state has a more expansive state law analogue to the protections in federal disability law.

[92] In determining which communication method is best for someone under EM, federal law mandates that an entity give "primary consideration" to the auxiliary aids and services that the person with the disability requests. Types of auxiliary aids and services include qualified sign language interpreters, qualified deaf interpreters, assistive listening devices, and communication access real-time translation (CART). Federal law prohibits entities from imposing charges to cover the costs of auxiliary aids and services, or from asking people with disabilities to provide or pay for these accommodations themselves. 28 C.F.R. § 35.160(b)(2); 28 C.F.R. §§ 35.104, 35.160(b)(1); 28 C.F.R. § 35.130(f).

[93] 28 C.F.R. § 35.130(b)(1)(ii).

[94] 28 C.F.R. § 35.130(b)(7); see also Alexander v. Choate, 469 U.S. 287, 301 (1985).

[95] 28 C.F.R. § 35.130(b)(1); 28 C.F.R. § 35.130(b)(8); 28 C.F.R. §§ 35.160, 35.164; see also U.S. Dep't of Just. Effective Communication, https://www.ada.gov/effective-comm.htm (last updated Feb. 28, 2020); 28 C.F.R. § 35.160(b)(2); 28 C.F.R. § 35.130(b)(7).

[96] See, e.g., Pierce v. District of Columbia, 128 F. Supp. 3d 250, 267 (D.D.C. 2015) (prison engaged in disability discrimination "as a matter of law when it failed to evaluate [a disabled individual's] need for accommodation at the time he was taken into custody."); Armstrong v. Davis, 275 F.3d 849, 859 (9th Cir. 2001) (upholding injunction requiring California parole board "to identify. . . which prisoners have a disability, create and maintain a system for tracking disabled prisoners and parolees, and provide them with accommodations at parole and parole revocation proceedings"); Lewis v. Cain, No. 15-cv-318, 2021 WL 1219988, at *59 (M.D. La. Mar. 31, 2021) (prison violated ADA by "[f]ailing to identify and track disabilities and accommodation requests in a meaningful way"); Tellis v. LeBlanc, No. 18-541, 2022 WL67572, at *8-10 (W.D. La. Jan. 6, 2022) (same); Dunn v. Dunn, 318 F.R.D. 652, 665 (M.D. Ala. 2016) (same); L.H. v. Schwarzenegger, 645 F. Supp. 2d 888, 892 (E.D. Cal. 2009) (approving class settlement on ADA disability claim in parole revocation context).

[97] Juvenile Law Center, A Powerful Tool for Change in the Child Welfare and Justice Systems: The Americans with Disabilities Act (July 18, 2017), https://jlc.org/news/powerful-tool-change-child-welfare-and-justice-systems-americans-disabilities-act ("Large numbers of youth end up in or returning to the juvenile justice system because of behavior related to a disability, or because of the failure to provide adequate supports and treatment in the community or to youth who enter the system."). For similar issues in the adult system, see PEW Charitable Trusts, Adults with Mental Illness Are Overrepresented in Probation Population: But Many Probation Agencies Lack Specialized Training or Tools to Supervise them Effectively (2024), https://www.pew.org/en/research-and-analysis/reports/2024/01/adults-with-mental-illness-are-overrepresented-in-probation-population.

[98] Mary Jo C. v. N.Y. State & Loc. Ret. Sys., 707 F.3d 144, 153 (2d Cir. 2013) (quoting Staron v. McDonald's Corp., 51 F.3d 353, 356 (2d Cir. 1995)); see McGary v. City of Portland, 386 F.3d 1259, 1270 (9th Cir. 2004).

[99] 28 C.F.R. § 35.130(b)(7).

[100] Dadian v. Village of Wilmette, 269 F.3d 831, 838-39 (7th Cir. 2001) (internal citation and quotation marks omitted).

[101] Mary Jo C., 707 F.3d at 153 (internal citation and quotation marks omitted).

[102] Pa. Prot. & Advoc. v. Pa. Dep't of Pub. Welf., 402 F.3d 374, 380 (3d Cir. 2005) (collecting cases).

[103] See, e.g., Furgess v. Pa. Dep't of Corr., 933 F.3d 285, 288–89 (3d Cir. 2019); Wright v. N.Y. State Dep't of Corr., 831 F.3d 64, 72 (2d Cir. 2016).

[104] 42 U.S.C. § 12102(1); 28 C.F.R. § 35.101(b) (2025); see also 29 U.S.C. § 705(20)(B) (defining disability under Section 504).

[105] 28 C.F.R. § 35.101(b); see 42 U.S.C. § 12102(4)(A) (noting the "definition of disability . . . shall be construed in favor of broad coverage of individuals").

[106] 42 U.S.C. § 12102(1) (ADA); see also 29 U.S.C. § 705(20)(B) (Rehabilitation Act).

[107] ACLU, Reducing Barriers, supra note 86, at 16.

[108] 42 U.S.C. § 12210.

[109] Mathis v. U.S. Parole Comm'n,No. 24-cv-01312, 2024 WL 4056568, at *5–6 (D.D.C. Sept. 5, 2024) (quoting Am. Council of the Blind v. Paulson, 525 F.3d 1256, 1267 (D.C. Cir. 2008)).

[110] See, e.g., id. at *6; Luke v. Texas, 46 F.4th 301, 306 (5th Cir. 2022) ("Not being able to understand a court hearing or meeting with a probation officer is, by definition, a lack of meaningful access to those public services. . . . Lack of meaningful access is itself the harm under Title II, regardless of whether any additional injury follows."); Robertson v. Las Animas Cnty. Sheriff's Dep't, 500 F.3d 1185, 1199 (10th Cir. 2007) (plaintiff was "injured" under the ADA when he "was denied the ability to participate in his probable cause hearing to the same extent as non-disabled individuals" even though he was not required to attend the court proceeding, and the hearing resulted in dismissal of all charges); Montgomery v. District of Columbia, No. 18-cv-1928, 2022 WL 1618741, at *25 (D.D.C. May 23, 2022) (plaintiff was "injured" under ADA and Section 504 when he could not "meaningfully access his interrogations" due to his psychiatric disability—"even if [his] prosecution were inevitable"); Paulone v. City of Frederick, 787 F. Supp. 2d 360, 405 (D. Md. 2011) (plaintiff was denied meaningful access to supervision-mandated program she could not understand due to her disability, even though she was not accused of violating her supervision); Armstrong, 275 F.3d at 865 (noting the "failure to make accommodations that would enable [people] to attend or comprehend parole and parole revocation hearings" "constitutes 'actual injury'" for standing purposes).

[111] See, e.g., Henrietta D. v. Bloomberg, 331 F.3d 261, 291 (2d Cir. 2003) (discrimination is "by reason of" an individual's disability "even if there are other contributory causes for the exclusion or denial, as long as the plaintiff can show that the disability was a substantial cause of the exclusion or denial"); Wis. Cnty. Servs., Inc. v. City of Milwaukee, 465 F.3d 737, 752 (7th Cir. 2006) (en banc) (holding that establishing a Title II claim "requires the plaintiff to show that, 'but for' his disability, he would have been able to access the services or benefits desired"); Brown v. District of Columbia, 928 F.3d 1070, 1098 (D.C. Cir. 2019) (Wilkins, J., concurring) (collecting cases discussing the causation standard).

[112] See Drasek v. Burwell, 121 F. Supp. 3d 143, 154 (D.D.C. 2015) (collecting cases applying a stricter causation standard under Section 504).

[113] Schine ex rel. Short v. N.Y. State Off. for People with Developmental Disabilities, No. 15-CV-5870, 2017 WL 9485650, at *4 (E.D.N.Y. Jan. 5, 2017), report and recommendation adopted, 2017 WL 1232530 (E.D.N.Y. Mar. 31, 2017); see also Mathis v. U.S. Parole Comm'n, No. 24-cv-01312, 2024 WL 4056568, at *5 (D.D.C. Sept. 5, 2024) (causation established where plaintiffs' "injur[ies]—obstacles to equal access [to supervision]—exists 'solely by reason' of their disabilities" (quoting 29 U.S.C. § 794(a)).

[114] For evidence from the adult prison system, see Irwin E. Facer et al., PTSD in Prison Settings: A systematic review and meta-analysis of comorbid mental disorders and problematic behaviours, 14(9) PLOS One 12 (2019); Fred Osher et al., Council of State Gov'ts Just. Ctr., Adults with Behavioral Health Needs under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery 6 (2012), https://csgjusticecenter.org/wp-content/uploads/2020/02/9-24-12_Behavioral-Health-Framework-final.pdf.

[115] See supra Section I (a)-(c).

[116] National Institute of Child Health and Human Development, Learning Disabilities, National Institutes of Health, https://www.nichd.nih.gov/health/topics/learningdisabilities (last accessed July 15, 2025); Mayo Clinic, Learning Disorders: Know the Signs, How to Help, https://www.mayoclinic.org/healthy-lifestyle/childrens-health/in-depth/learning-disorders/art-20046105 (last accessed July 15, 2025); National Institute of Child Health and Human Development, What Are Some Signs of Learning Disabilities? National Institutes of Health, https://www.nichd.nih.gov/health/topics/learning/conditioninfo/signs#f1 (last accessed July 15, 2025); Am. Ass'n on Intell. & Developmental Disabilities, Defining Criteria for Intellectual Disability, https://www.aaidd.org/intellectual-disability/definition (last accessed July 15, 2025); Dilip R. Patel et al., A Clinical Primer on Intellectual Disability, 9 Translational Pediatrics S23, S25 (2020).

[117] See supra Section I (c).

[118] ACLU, Reducing Barriers, supra note 86, at 10 n.78.

[119] Christina Rainville, Recognizing Signs of Undiagnosed and Misdiagnosed Disabilities in Your Child Client, ABA (July 2014), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/july-2014/recognizing-signs-of-undiagnosed-and-misdiagnosed-disabilities-i/.

[120] Katie Rose Quandt & Alexi Jones, Research Roundup: Incarceration Can Cause Lasting Damage to Mental Health, Prison Policy Initiative (May 2021), https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/.