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EDITOR INTRODUCTION

The 2016 Law Journal for Social Justice Symposium, “Promising Practices in Criminal Justice” focused on current programs regarding re-entry and rehabilitation. Discussions ranged from specialty court programs like the Veteran’s Court and Homeless Court, victim-oriented rehabilitation for trafficking victims, and re-entry programs. Panelists included judges, practicing attorneys, and community organizers.

Social justice is an evolving, broadening concept, finding new meaning throughout the academic community. This journal, and the articles found herein, is designed to present these emerging concepts in a manner that allows both the jurist and the layperson to engage them. The issue begins with *Zoning and Regulating for Obesity Prevention and Healthier Diets: What Does the South Los Angeles Fast Food Ban Mean for Future Regulation?*, written by Kim Weidenaar, an article commenting on local zoning ordinances as tools for preventing obesity in disproportionately affected populations. However, with the second article, *Eating Mascots for Breakfast: How Keeping Native Faces off Labels Can Grow Tribal Economies*, Leah K. Jurss concentrates on food sovereignty in tribal communities and labeling of Native food products. Alex D. Ivan then shifts the focus by studying how electronic monitoring may be used to empower victims while reducing burdens of imprisonment spending in *Utilizing Electronic Monitoring to Enhance Domestic Violence Victim Safety*. Next, in *Constitutional Protection of Domestic Violence Victims Reinforced by International Law* Marina Kovacevic argues ratification of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in the United States. Sara Movahed, in *Devastating Effects of the International Failure to Recognize Refugees of Gender Based Persecution*, then examines legal shortcomings resulting when asylum based solely on a history of gender-based persecution is not considered. Through *Kennedy’s Law: The Hidden Constitutionally-Protected Classification*, Nicole Fries explores the necessity of Supreme Court action to provide lower courts the ability “to apply a suspect class framework to non-marriage sexual orientation laws.” Next, Erin Iungerich, in *My Nurse is a Pornstar: Should Discrimination Law Protect Moonlighting in the Adult Industry?*, considers protections for at-will employees participating in adult industry activities after-hours. Finally, *Secrecy, Espionage, and Reasonable Efforts Under the Uniform Trade Secrets Act – An Unbalanced Mass* by Peter L. Krehbiel concludes the issue by analyzes concerns that shifting costs related to trade secrets may undermine public policy and society at large. Collectively, the unique perspectives of these articles present important domestic and international issues that must be examined in today’s changing landscape.

Special thanks to the Law Journal for Social Justice Editorial Board for their hard work and dedication.

Asha McManimon
2015-2016 Editor-in-Chief
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UTILIZING ELECTRONIC MONITORING TO ENHANCE DOMESTIC VIOLENCE VICTIM SAFETY

By Alex D. Ivan, JD*

INTRODUCTION

[T]he persons to be inspected should always feel themselves as if under inspection . . . for the greatest proportion of time possible, each man should actually be under inspection.¹

Widely held ideological views affirming the privacy of domestic violence² have long undermined effective punishment and community rebuilding. Traditional notions emphasized strict separation between public and private life.³ Through non-intervention, the law essentially insulated and facilitated intimate partner violence (IPV), deeming it a personal matter between two adults.⁴ Condoning offenders'⁵ behavior, the legal system often failed to provide abuse survivors adequate protection.⁶ Consequently, the law regularly served as a vehicle for further victim subjugation.⁷ Continuous surveillance, however, may curb offenders' confidence in defying law without consequence, and thereby enhance victim safety.

* J.D., Sandra Day O'Connor College of Law, Arizona State University; M.Ed. Secondary Education, Mary Lou Fulton Teachers College, Arizona State University; B.A., *Summa cum Laude* Baylor University, Economics and Political Science. The author thanks his wife and family for their unconditional patience and encouragement.

¹ JEREMY BENTHAM, THE PANOPTICON WRITINGS 41 (Miran Bozovic ed., 1995).

² "Domestic violence" occurs when one intimate partner uses physical violence, threats, stalking, harassment, or emotional or financial abuse to control, manipulate, coerce, or intimidate the other partner. See Roberta Valente, *Domestic Violence and the Law*, in THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK 1-3 to -4 (1996); Sarah M. Buel, *Access to a Meaningful Remedy: Overcoming Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders*, 83 OR. L. REV. 945, 1033 (2004).

³ Jane Aiken & Katherine Goldwasser, *The Perils of Empowerment*, 20 CORNELL J.L. & PUB. POL'Y 139, 149 (2010) (discussing the historical foundations for strict separation between law and domestic relations).

⁴ *Id.*

⁵ "Offender" as used in this article refers to both individuals charged with and convicted of domestic violence-related offenses.

⁶ Aiken & Goldwasser, *supra* note 3, at 149-50.

⁷ *Id.*

Renowned Eighteenth Century philosopher Jeremy Bentham's imaginative approach to offender supervision may be practicable and beneficial in domestic violence cases. Bentham designed a hypothetical prison, the Panopticon.⁸ Inside, prisoners envision being endlessly observed by an omniscient guard whose surveillance guarantees delivery of swift, certain, and proportionate sanctions against disorderly inmates.⁹ The Panopticon operates under basic utilitarian principles. According to Bentham, individuals employ an internal cost-benefit calculus based on perceived satisfaction.¹⁰ An individual refrains from committing actions he believes will more likely produce pain than pleasure.¹¹ Theoretically, the Panopticon would reduce recidivism by deterring crime. The all-seeing guard's continuous surveillance combined with possible punishment would promote prisoner behavioral changes, decreasing criminality and ultimately allowing for community rebuilding.¹²

Continuous surveillance through electronic monitoring (EM), akin to the omniscient Panopticon guard, is one of law's latest attempts to combat domestic violence. More than three decades ago, prison overcrowding and technological advances spurred EM.¹³ Since then, state budgetary crises have placed reliance on prisons under more intense scrutiny.¹⁴ More prisoners serving longer mandatory sentences increased short-term operational and long-term construction costs.¹⁵ Resultantly, EM diversion programs gained prominence in corrections as a preferred alternative to offender incarceration, particularly as a condition of pretrial release.¹⁶

⁸ Molly Carney, *Correction Through Omniscience: Electronic Monitoring and the Escalation of Crime Control*, 40 WASH. U. J.L. & POL'Y 279, 289 (2012) (describing Jeremy Bentham's theoretical prison). The Panopticon's cells are circularly arranged and surround one guard concealed in a central tower. Graeme Wood, *Prison Without Walls*, THE ATLANTIC, Sept. 2010, at 88, available at <http://www.theatlantic.com/magazine/archive/2010/09/prison-without-walls/308195/>. The guard controls prisoners through constant presumed observation: Prisoners believe the guard is always monitoring them. *Id.* Bentham championed the Panopticon as a more efficient penal system concept. *Id.* Electronic monitoring resembles a contemporary application of Bentham's original vision. *Id.* Indeed, the modern prisoner need never question his being observed; constant observation is a virtual guarantee. *Id.*

⁹ Carney, *supra* note 8, at 290.

¹⁰ *E.g.*, SANFORD H. KADISH ET AL., CRIMINAL LAW AND ITS PROCESSES 91 (Vicki Been et al. eds., 9th ed. 2012).

¹¹ *Id.*

¹² Carney, *supra* note 8, at 290.

¹³ *Id.* at 287; see also Ralph Kirkland Gable & Robert S. Gable, *Electronic Monitoring: Positive Intervention Strategies*, 69 FED. PROBATION 21, 21 (June 2005).

¹⁴ Juliene James et al., *A View from the States: Evidence-Based Public Safety Legislation*, 102 J. CRIM. L. & CRIMINOLOGY 821, 822 (2012).

¹⁵ *Id.*

¹⁶ *E.g.*, WILLIAM BALES ET AL., A QUANTITATIVE AND QUALITATIVE ASSESSMENT OF

Employing a Benthamesque philosophy, EM technology's continuous surveillance promises to decrease monitored offenders' recidivism and promote community rebuilding.

Considering only the total number of deployed units nationwide, EM can be deemed a success.¹⁷ Still, few studies have definitively addressed whether the technology prevents crime. Emerging research, however, lends some credibility to the assertions that EM decreases recidivism and increases public safety.¹⁸ At minimum, offenders should be more aware of their likelihood of being caught when violating supervision conditions.

Within the domestic violence context, EM may recast diversion, offering a more victim-centric focus.¹⁹ Pilot programs in Connecticut and Massachusetts impressively substantiate the technology's prospect for enhancing victim safety.²⁰ Throughout these one and three-year programs, no monitored offender re-injured his victim.²¹ The continuous surveillance EM provides has greater potential than mere cost-effectiveness. It can shift the power and control paradigm for domestic violence victims while simultaneously providing a viable alternative to enhancing their safety.

Part I of this article summarizes the rapid, expansive national growth in incarceration rates and costs. Part II surveys EM developments, and evaluates EM's cost-efficiency and effect on public safety. Part III examines EM as applied to domestic violence, including its benefits and limitations. Part IV reviews various jurisdictional approaches incorporating EM, and comments on their relative strengths and flaws. Finally, Part V offers recommendations for successfully applying EM to decrease imprisonment expenditures while simultaneously enhancing victim safety.

I. OVERCROWDING, RISING COSTS, AND THE URGENT QUEST FOR ALTERNATIVES

ELECTRONIC MONITORING 1 (2010).

¹⁷ MATTHEW DEMICHELE & BRIAN PAYNE, OFFENDER SUPERVISION WITH ELECTRONIC TECHNOLOGY: COMMUNITY CORRECTIONS RESOURCE 20 (Bureau of Justice Assistance, 2nd ed. 2009), available at https://www.appanet.org/eweb/docs/appa/pubs/OSET_2.pdf.

¹⁸ BALES ET AL., *supra* note 16, at x.

¹⁹ Peter R. Ibarra & Edna Erez, *Victim-centric Diversion? The Electronic Monitoring of Domestic Violence Cases*, 23 BEHAV. SCI. & L. 259, 274 (2005) (discussing advantages of bilateral electronic monitoring in domestic violence cases).

²⁰ See *infra* notes 82-85 and accompanying text.

²¹ *Id.*

Though incarceration has historically served as the primary means of punishing crime, recent trends jeopardize imprisonment's long-term practical and economic sustainability. Despite a few minor fluctuations, the United States prison population remained relatively stable during much of the Twentieth Century.²² After 1973, however, the U.S. penal system experienced exponential growth because Congress and state legislatures increasingly utilized incarceration as the primary weapon within the criminal justice arsenal.²³ Employing a "tough-on-crime" policy rationale, legislatures expanded offenses punishable by incarceration and lengthened custodial sentences.²⁴ Predictably, the nationwide prison population ballooned.²⁵ In just thirty-eight years, the overall state prison population increased by more than seven hundred percent.²⁶ With rapidly increasing incarcerated populations, prison facilities face formidable overcrowding challenges with many prisons operating at, or very near, capacity.²⁷ Moreover, growing prison populations place a significant burden on government budgets.²⁸ Amid fast-rising prison costs and overcrowding, legislatures have eagerly sought cost-effective alternatives.

II. ELECTRONIC MONITORING

²² Matthew DeMichele & Brian Payne, *Electronic Supervision and the Importance of Evidence-Based Practices*, 74 FED. PROBATION 4, 4 (2010) (outlining the rapid growth of incarceration in the United States). Between 1925 and 1973, there were approximately 110 inmates per 100,000 people. *Id.*

²³ James et al., *supra* note 14, at 821.

²⁴ *Id.* Policymakers implemented mandatory minimum sentencing regimes, penalty enhancements, and truth-in-sentencing provisions to keep more offenders in prison for longer periods. *Id.*

²⁵ DeMichele & Payne, *supra* note 22, at 4. By 2010, approximately two million Americans were behind bars. *Id.* Many inmates were repeat offenders convicted of low-level, non-violent drug offenses. Carney, *supra* note 8, at 282.

²⁶ James et al., *supra* note 14, at 821.

²⁷ See Lauren E. Glaze, *Correctional Populations in the United States, 2009*, BUREAU JUST. STAT. BULL. 7 (Dec. 3, 2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpus09.pdf> (providing national prison population statistics). From 2000 to 2009, the number of people incarcerated in the United States increased by approximately 800,000 people, rising to roughly 7.2 million inmates in total. *Id.*

²⁸ The average cost of incarcerating a state or federal inmate has been estimated to range from \$60 to \$85 per day, making even the lower estimate a cost per inmate totaling nearly \$22,000 annually. Robert S. Gable & Kirkland R. Gable, *The Practical Limitations and Positive Potential of Electronic Monitoring*, 32 CORRECTIONS COMPENDIUM 6, 6 (2007). In 1982, local, state, and federal direct expenditures for criminal justice services totaled \$35.8 billion. DeMichele & Payne, *supra* note 22, at 4. By 2005, that number had increased to six-fold, climbing to nearly \$204.1 billion. *Id.*

EM diversion programs have quickly emerged as preferred alternatives to incarceration.²⁹ EM offers both versatility and cost-efficiency. Technological advancements also continue expanding its application. More importantly, however, EM offers promising results with respect to public safety. From one evaluation's perspective, EM yields safety and deterrence outcomes equal to or marginally better than those produced by imprisonment.³⁰

A. Overview and Applications

Growth in court case volume, imprisonment costs, and jail overcrowding spurred resourceful initiatives to divert offenders away from conventional criminal justice dispositions.³¹ Compared to incarceration, diversion can decrease costs borne by the state and offenders.³² EM sometimes serves as a diversion program, particularly for moderate to high-risk offenders.³³ Used in conjunction with house arrest, EM supervises offenders, tracking their whereabouts and restricting their movements.³⁴ Using devices emitting electronic signals, these monitoring systems identify an offender's location to better ensure compliance with sentencing requirements or supervised release.³⁵

EM systems vary widely in design.³⁶ In a typical monitoring program, an offender wears a uniquely coded transmitter, which sends signals to a home monitor.³⁷ The home monitor communicates with a central computer via telephone lines.³⁸ Using the computer, specialists track offenders' activities, noting any deviations from pre-established regimented schedules.³⁹ Responding to these recorded violations would

²⁹ See *infra* Part II, Section A.

³⁰ See *infra* Part II, Section C.

³¹ Ibarra & Erez, *supra* note 19, at 259.

³² *Id.* at 266.

³³ Marc Renzema & Evan Mayo-Wilson, *Can Electronic Monitoring Reduce Crime for Moderate to High-Risk Offenders?*, 1 J. EXPERIMENTAL CRIMINOLOGY 215, 218 (2005) (describing applications of electronic monitoring).

³⁴ DORIS LAYTON MACKENZIE, *WHAT WORKS IN CORRECTIONS* 319 (Cambridge Univ. Press, 2006).

³⁵ *Id.* Electronic monitoring is applied for a variety of purposes, including jail release programs, intermediate sanctions, crime investigation, treatment enhancement, and specialized caseloads. DEMICHELE & BRIAN PAYNE, *supra* note 17, at 20-22. It is also used to help transition prisoners back into their communities. Renzema & Mayo-Wilson, *supra* note 33, at 218.

³⁶ DEMICHELE & PAYNE, *supra* note 17, at 28.

³⁷ *Id.* at 28-29.

³⁸ *Id.*

³⁹ *Id.* at 29-30.

help enhance abuse victims' safety and remind offenders of their being under constant scrutiny.

Today, EM appears to be an established practice in the criminal justice system.⁴⁰ Considering only the total number of deployed units nationwide, EM might be judged a success.⁴¹ But popularity alone should not serve as valid justification for the program's aggressive, widespread application. Admittedly, many legislatures appear to have urgently applied EM simply to alleviate budget pressures.⁴² Resultantly, EM has punished, "perhaps more humanely and cheaply than otherwise possible, and it has been an element in the avoidance of prison crowding and prison construction."⁴³ Many jurisdictions, however, do not supplement monitoring technology with treatment; they evaluate a defendant's risk solely by the nature of his offense.⁴⁴ Similarly, some statutes authorize mandatory Batterer Intervention Program (BIP) participation without a prerequisite individualized risk assessment.⁴⁵ The most intense treatment and interventions, however, should be reserved for higher-risk offenders.⁴⁶ Whether applying BIPs or EM, standardized approaches, which disregard appropriate screening, may further jeopardize victim safety.

B. Technologies

EM technology comes in two forms, radio frequency (RF) monitoring and global positioning system (GPS) monitoring. RF monitoring operates via an ankle bracelet that communicates with a base unit connected to the landline telephone in the offender's home.⁴⁷ If the offender's ankle bracelet moves beyond a pre-determined distance from the in-home unit, the base unit alerts a monitoring center.⁴⁸ Applying this supervision to offenders without prior domestic violence records seems prudent, especially if they would otherwise be incarcerated. Jails often mix inmates of varying risk levels, which may harm low-risk offenders.⁴⁹

⁴⁰ *Id.* at 20.

⁴¹ *Id.* at 16-17. In 2009, nearly 100,000 global positioning surveillance monitoring devices were in use nationwide, as compared to just 230 units ten years earlier. *See id.* at 17.

⁴² Renzema & Mayo-Wilson, *supra* note 33, at 231.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-3602(G)(5) (2013).

⁴⁶ Edward J. Latessa, *Incorporating Electronic Monitoring into the Principles of Effective Interventions*, 13 J. OFFENDER MONITORING 5, 5 (2000) (discussing the importance of applying the risk principal to offenders).

⁴⁷ BALES ET AL., *supra* note 16, at 21-22.

⁴⁸ *Id.* at 22.

⁴⁹ Latessa, *supra* note 46, at 5.

Maintaining low-risk offenders' pro-social ties may increase their likelihood of compliance without increasing their dangerousness.⁵⁰

More technologically sophisticated than RF, GPS monitoring utilizes global positioning satellites to track offenders' locations in real time.⁵¹ This superior capability increases program customizability and expands area coverage.⁵² GPS monitoring can occur passively, actively, or as a combination thereof.⁵³ Passive devices store data, transmitting an entire day's worth for review and action, as appropriate.⁵⁴ In contrast, active systems continuously communicate with a monitoring tracking device (MTD).⁵⁵ Conveniently, active GPS systems monitor in near-real time without requiring cooperation from offenders.⁵⁶ In so doing, these systems diminish an offender's ability to frustrate victim protection efforts and closely resemble incarceration conditions.

C. Cost-Effectiveness and Public Safety

Despite its hurried application, EM offers promising results with respect to cost-effectiveness and public safety. A recent Florida study concluded that EM reduces recidivism by producing a 31% lower rate of failure compared to other community supervision programs.⁵⁷ Moreover, GPS-based monitoring systems decreased supervision failures by 6% compared to RF-based systems.⁵⁸ Qualitative analysis supports these quantitative findings. Numerous responses from offenders and supervising officers suggest that monitoring resulted in lower levels of absconding, violations of court imposed supervisory conditions, and re-

⁵⁰ *Id.*

⁵¹ BALES ET AL., *supra* note 16, at 22. Operating under a "geo-fencing" principle, GPS monitoring technology offers multiple and potentially unlimited zones of exclusion and inclusion. EDNA EREZ ET AL., GPS MONITORING TECHNOLOGIES AND DOMESTIC VIOLENCE: AN EVALUATION STUDY 2 (2012).

⁵² EREZ ET AL., *supra* note 51, at 12.

⁵³ DEMICHELE & PAYNE, *supra* note 17, at 35.

⁵⁴ BALES ET AL., *supra* note 16, at 22.

⁵⁵ *Id.* Communicating with a satellite, the MTD signals a monitoring center through a cellular telephone within the device. *Id.*

⁵⁶ DEMICHELE & PAYNE, *supra* note 17, at 35.

⁵⁷ BALES ET AL., *supra* note 16, at x. The study analyzed electronic monitoring as applied to community supervision programs (felony probation, drug offender probation, sex offender probation, and community control) and post-prison supervision programs (conditional release, parole, and addiction recovery). *Id.* at 17. Though not designed to exclusively examine electronic supervision of domestic violence offenders, the study does demonstrate monitoring technology's general success as an incarceration alternative for some medium to high-risk offenders.

⁵⁸ *Id.*

offending.⁵⁹ EM strengthens supervision by increasing offenders' awareness of their potential for monitoring violations.

Concerning domestic violence, one evaluation reveals that GPS supervision discernibly reduces short and long-term recidivism as measured by offenders' general compliance with the law and with the terms of their pre-trial release.⁶⁰ In the short-run (i.e., before case disposition), "practically no evidence" suggests that offenders breach established exclusionary perimeters to contact victims.⁶¹ Additionally, monitored offenders and those who remain in jail during the pre-trial period face similar conviction rates.⁶² Lastly, within one year of withdrawal from EM, offenders exhibit a decreased likelihood of future arrest for domestic violence.⁶³ Therefore, from one study's perspective, EM yields safety and deterrence outcomes equal to or marginally better than those produced by imprisonment.

EM also appears cost-effective. The Florida study estimated that daily expenditures range from approximately \$2.34 (\$854 annually) to \$8.97 (\$3,274 annually), depending on the technology used.⁶⁴ Similarly, a study evaluating GPS devices used exclusively in domestic violence cases calculated a mean per diem cost of \$9.80 (\$3,577 annually).⁶⁵ In contrast to these figures, daily prison operations average approximately \$55.09 (\$20,108 annually) per inmate.⁶⁶ This figure ignores prison construction and expansion costs amounting to an expenditure of \$107,441,753 in Fiscal Year 2007-2008 alone.⁶⁷ Stated alternatively, between six and twenty-eight offenders could be electronically monitored for the same cost as housing one inmate in a correctional facility for one year.⁶⁸ Financially, EM appears more viable than incarceration.

III. ELECTRONIC MONITORING AND DOMESTIC VIOLENCE

Jurisdictions have pursued bilateral monitoring programs designed to enhance abuse survivor security by strengthening protection orders. The initiatives appear to improve at least some domestic violence victims' safety while also offering ancillary benefits. Admittedly, bilateral

⁵⁹ *Id.* at 148.

⁶⁰ EREZ ET AL., *supra* note 51, at 127.

⁶¹ *Id.* at 129.

⁶² *Id.* at 134.

⁶³ *Id.* at 135.

⁶⁴ BALES ET AL., *supra* note 16, at 30.

⁶⁵ EREZ ET AL., *supra* note 51, at 37.

⁶⁶ BALES ET AL., *supra* note 16, at 31-32.

⁶⁷ *Id.* at 32.

⁶⁸ *Id.*

monitoring technology suffers from limitations. Yet current criticism, while understandable, cannot reasonably justify a categorical retreat from employing the technology in the domestic violence context.

A. Protection Orders and Bilateral Electronic Monitoring

EM technology has recently been applied to domestic violence protection orders. An abuse victim can obtain a protection order,⁶⁹ which legally restricts offender's future conduct.⁷⁰ Though the way in which a survivor can obtain judicial protection differs,⁷¹ challenges with the enforcement of these orders pose very real threats to a victim's safety.⁷²

The story of Amy Lake, a kindergarten teacher in Maine, is illustrative, as she and her estranged husband, Steven, were in the process of getting a divorce.⁷³ Steven Lake was scheduled to be tried in state court on four charges, including criminal threatening with a dangerous weapon and domestic violence criminal threatening.⁷⁴ As part of his bail conditions, Steven was ordered not to have contact with Amy.⁷⁵ Ignoring this, Steven allegedly contacted her.⁷⁶ To avoid her husband, Amy more than once assumed the burden of moving herself and her two children.⁷⁷ While the protection order was still in effect, Steven located his wife and

⁶⁹ In some jurisdictions, a restraining order serves as the functional equivalent of an order of protection.

⁷⁰ Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1506, 1508 (2008) (describing protection order procurement and sanctions).

⁷¹ An abuse victim can request that the court grant a civil protection order that carries criminal consequences. In contrast, prosecutors may ask judges to impose criminal protection orders.

⁷² Hannah Brenner, *Transcending the Criminal Law's "One Size Fits All" Response to Domestic Violence* 19 WM. & MARY J. WOMEN & L. 301, 339-40 (2013) (discussing the nature and effectiveness of orders of protection). First, some offenders may never be served protection orders, a required step which is essential for their subsequent enforcement. *Id.* Second, even when an offender has been served with a protection order, a victim must notify law enforcement of a violation, and police must respond. *Id.* Finally, a victim may not know an abuser is about to violate, or has already violated, a protection order. *Id.* Batterers frequently use this lack of knowledge as a way to further wield control over and perpetuate fear in their victims. *Id.*

⁷³ Diana Bowley, *Police: Man Shot Wife, 2 Children Before Killing Himself*, BANGOR DAILY NEWS, (June 13, 2011, 9:25 a.m.), <http://bangordailynews.com/2011/06/13/news/dexter-home-surrounded-by-police-after-reports-of-several-shots-fired/>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

two children at their newest home and, holding them hostage, killed Amy, Coty (13), and Monica (12), before killing himself.⁷⁸ Whether Amy's knowledge of her estranged husband's whereabouts would have prevented this outcome is difficult to predict, but had she been alerted to his close proximity, she and her children might well have had the opportunity to escape harm.

As Amy Lake's story demonstrates, it is often not enough for a victim to simply possess a valid protection order, as this cannot guarantee safety. For some victims, a protection order may generate a false sense of security. To address these issues, jurisdictions have experimented with technology-based initiatives intended to limit an offender's presumed threat to a specific victim by strengthening protection orders while also attending to victims' emotions and concerns. Referred to as bilateral electronic monitoring (BEM),⁷⁹ these programs employ RF-based or GPS-based technologies⁸⁰ to an offender's observance of spatial and temporal restrictions imposed by a protective order. Many states have adopted BEM as part of their domestic violence programs: by 2012, twenty-one states and the District of Columbia had enacted legislation mandating or recommending that justice agencies employ GPS to protect abused partners under specific conditions.⁸¹ In 2013, Maine enacted legislation reviving its EM program in response to Amy Lake's tragic murder.⁸²

B. Primary and Ancillary Benefits

BEM appears to enhance at least some domestic violence victims' safety. GPS monitoring has proven to increase the effectiveness of protection orders as monitored offenders violate protection orders less

⁷⁸ *Id.*

⁷⁹ BEM applies traditional house-arrest electronic supervision with individualized victim protection: Both the controlled offender and the protected survivor are enrolled. Edna Erez & Peter R. Ibarra, *Making Your Home a Shelter: Electronic Monitoring and Victim Re-entry in Domestic Violence Cases*, 47 BRIT. J. CRIMINOLOGY 100, 102 (2007). The offender wears a tamper-resistant, ankle-worn transmitter, which communicates with a receiver inside his residence. *Id.* at n.6. A second receiver inside the victim's home detects the offender's presence when he breaches a pre-determined radius. *Id.*

⁸⁰ RF-based BEM remains available and cost-effective compared to GPS-based systems. Nevertheless, community corrections programs prefer GPS in domestic violence cases because it offers "versatility, broadened detection range, and multiple zone coverage." EREZ ET AL., *supra* note 51, at 1-2.

⁸¹ EREZ ET AL., *supra* note 51, at 1.

⁸² Nick McCrea, *State Revives Monitoring Bracelets to Protect Domestic Violence Victims*, BANGOR DAILY NEWS, (Aug. 2, 2013, 6:08 a.m.), <http://bangordailynews.com/2013/08/020news/state/state-shelved-electronic-monitoring-bracelets-in-2004-but-revival-aims-to-stem-domestic-violence/>.

frequently.⁸³ Massachusetts reported no violations of protection orders by GPS-monitored offenders over a three-year period.⁸⁴ In Connecticut, which implemented a pilot project to test BEM's effectiveness in domestic violence cases, the results were profound: over a one-year period, expending only \$140,000, the state monitored 119 high-risk batterers electronically.⁸⁵ No batterer re-injured any victims during this period.⁸⁶ At the very least, assuming police cannot often timely respond to an offender's violation, BEM provides advance warning of a protective order violation. This offers the victim a better chance to escape or secure the location. Additionally, it gives the police an earlier automated warning to enable faster response. Without BEM, many victims, like Amy Lake, might be unaware of an offender's presence until it is too late to escape or too late to notify law enforcement officials.

Beyond increasing victim safety, BEM offers several ancillary benefits. One study has claimed that these particularly inspiring and ambitious advantages include "magnifying victim visibility, receiving personalized justice, validating victim perspectives, enabling victims to revisit their abusive relationships emboldened, and helping victims prepare for and re-imagine their futures."⁸⁷ First, by mobilizing the justice system on the victim's behalf, BEM assists in eliminating the stereotype that intimate partner violence constitutes a legally untouchable private matter.⁸⁸ Second, BEM also helps foster meaningful connections between program staff and victims, resulting in more personalized justice for victims.⁸⁹ Third, actions taken by justice personnel responding to BEM violations may validate victim understandings of their abuse experiences.⁹⁰ Prior unsatisfactorily resolved incidents often disillusion victims about the justice system's willingness to help them in their time of need.⁹¹ In contrast, consistent BEM enforcement communicates the law's sincere desire to take seriously victims' complaints, reinforcing their confidence in the system's ability to protect them.⁹²

⁸³ Andrew Wolfson, *12 States Use GPS Monitoring*, COURIER JOURNAL (Nov. 15, 2009), <http://www.courier-journal.com/article/20091115/NEWS01/911150318/12-states-use-GPS-monitoring>.

⁸⁴ *Id.*

⁸⁵ Josh Kovner, *Domestic Violence Offenders to Be Tracked Again*, HARTFORD COURANT, (June 13, 2012), http://articles.courant.com/2012-06-13/news/hc-domestic-violence-gps-0614-20120613_1_gps-device-alvin-notice-tiana-notice.

⁸⁶ *Id.*

⁸⁷ Erez & Ibarra, *supra* note 79, at 112.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 113.

⁹¹ *Id.*

⁹² Erez & Ibarra, *supra* note 79, at 113.

Fourth, BEM generally offers victims greater empowerment and autonomy. To ensure their safety, victims need no longer take sole responsibility for monitoring an offender's location, actions, or thoughts.⁹³ Significantly relieved from hyper-guardedness, victims have an opportunity to restructure their daily routines.⁹⁴ Finally, in addition to being a protective strategy, BEM can buttress prosecutorial efforts. Notwithstanding victim recantation, a common feature of domestic violence cases, BEM creates an evidentiary record useful for prosecuting offenders who violate protective orders. Alternatively, these records also offer offenders protection against false allegations.⁹⁵

C. Limitations

Despite its numerous benefits, BEM technology does not exist without limitations or criticism.⁹⁶ First, BEM does not provide victims guaranteed physical protection.⁹⁷ Rather, it usually warns victims of protective order violations, and deters offenders from violating protective orders.⁹⁸ In contrast, jail physically restricts abusers' access to victims. Moreover, BEM is prone to technical difficulties, especially in large buildings or remote locales.⁹⁹ GPS signals can get lost or be too weak to send and receive data from the device.¹⁰⁰ Once the GPS monitoring system detects a violation, the victim must still rely upon law enforcement's prompt response. And, though GPS is technically more sophisticated than RF-based BEM, GPS creates many more information streams for which supervising agencies can be held accountable.¹⁰¹

⁹³ *Id.* at 109.

⁹⁴ *Id.* at 109-10.

⁹⁵ EREZ ET AL., *supra* note 51, at 141.

⁹⁶ Electronic monitoring application frequently provokes legitimate constitutional concerns. More specifically, diversion programs utilizing electronic monitoring suffer common widespread criticism for engendering forms of "net widening." Net Widening Theory posits that alternatives to traditional punishment actually extend penal control: Diversion programs catch defendants who remain in the criminal system when they would have otherwise avoided or more quickly exited. *E.g.*, EREZ ET AL., *supra* note 51, at 10. Because domestic violence cases suffer high non-prosecution and dismissal rates, the net widening thesis suggests that monitored offenders will more likely remain entangled in criminal justice processing. *Id.* Though noteworthy, these constitutional concerns are beyond the scope of this paper. Moreover, existing legal scholarship has already begun to address them.

⁹⁷ Erez & Ibarra, *supra* note 79, at 115.

⁹⁸ *Id.*

⁹⁹ DEMICHELE & PAYNE, *supra* note 17, at 36-37.

¹⁰⁰ *Id.* at 37.

¹⁰¹ EREZ ET AL., *supra* note 51, at 12.

A monitored offender can also subvert BEM by using a proxy to contact the victim.¹⁰² No aspect of a BEM program deters offenders from contacting victims via telephone to encourage recantation or to simply harass them. In contrast, incarcerated offenders' telephone calls can be monitored and recorded. Therefore, jailed offenders' attempts at witness tampering can more easily result in prosecution under the doctrine of forfeiture by wrongdoing.¹⁰³

One of its more significant drawbacks is that BEM is a temporary solution.¹⁰⁴ Yet this temporary nature is not a limitation unique to BEM. Indeed, an offender's imprisonment on domestic violence charges is similarly temporary. Because most offenders will eventually be released from jail, BEM offers a strategic advantage to increase victim safety when the offender is not incarcerated.¹⁰⁵ Furthermore, technological advancements have increased GPS monitoring equipment reliability.¹⁰⁶ Therefore, when used in conjunction with a protection order, BEM can transform that order into a more effective tool to protect the victim.¹⁰⁷ The constant monitoring can itself be a deterrent to the offender because he knows protection order violations will be detected, reported, and recorded.

IV. LESSONS LEARNED: JURISDICTIONAL APPLICATIONS

Because BEM alone will not guarantee promising results, the technology's usefulness for victim protection is better secured through pragmatic, evidence-based application. Many jurisdictions have joined the BEM bandwagon, enacting provisions to use EM on offenders against whom courts have issued victim protection orders, or in other contexts.¹⁰⁸

¹⁰² Erez & Ibarra, *supra* note 79, at 116.

¹⁰³ At its equitable foundation, the doctrine of forfeiture by wrongdoing holds that a criminal defendant responsible for a witness's unavailability at trial cannot object to the admission of the absent witness's hearsay testimony. *E.g.*, James F. Flanagan, *Forfeiture by Wrongdoing and Those Who Acquiesce in Witness Intimidation: A Reach Exceeding Its Grasp and Other Problems With Federal Rule of Evidence 804(b)(6)*, 51 *DRAKE L. REV.* 459, 461 (2003) (discussing the doctrine's rationale and its relation to Sixth Amendment rights).

¹⁰⁴ Erez & Ibarra, *supra* note 79, at 116.

¹⁰⁵ Natalie Fox Malone, *GPS Monitoring of Domestic Violence Offenders in Tennessee: Generating Problems Surreptitiously*, 43 *U. MEM. L. REV.* 171, 185 (2013) (addressing GPS-based electronic monitoring technology's limitations).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Compare ARK. CODE ANN. § 9-15-217 (West 2009) (permitting electronic supervision of individuals found in violation of protection orders), with IND. CODE ANN. § 35-33-8-11 (West 2012) (authorizing defendants charged with domestic violence to

While some jurisdictional approaches have proven successful in application, others have suffered structural flaws undermining program effectiveness at enhancing victim safety.

A. Flawed Approaches

BEM programs that categorize offender actions inappropriately divert attention from victims, potentially jeopardizing their safety. As introduced, Kentucky's bill permitted monitoring to accompany an initial protective order.¹⁰⁹ Ultimately, Kentucky revised its proposal; it required not just a prerequisite protective order violation, but a "substantial violation" before monitoring could be considered, regardless of a judge's finding that domestic violence had occurred or was likely to reoccur.¹¹⁰ Kentucky's "substantial violation" requirement may create a potential chilling effect for victims seeking EM to augment an existing protection order. Moreover, this heightened prerequisite rationalizes domestic violence by arbitrarily classifying degrees of abuse. The law considers trivial protection order violations acceptable, concerning itself only with "legitimate" violations.

Kentucky also requires victims to complete a dangerousness assessment, the results of which offenders receive.¹¹¹ Regrettably, this practice preserves the imbalance of power and control between two parties in a violent domestic relationship because offenders gain insight into which tactics strike the greatest fear into their victims.¹¹² Moreover, offenders are incentivized to blame victims for imposing EM.¹¹³ This practice would likely discourage survivors from seeking help and further

wear a GPS monitor as a condition of bail). Victims also receive varied access to information regarding offenders' locations. *See, e.g.*, MICH. COMP. LAWS ANN. § 765.6b (West 2008) (permitting survivor notification when the offender is located within a pre-determined radius); OKLA. STAT. ANN. tit. 22, § 60.17 (West 2008) (allowing the survivor to track the offender's position and to receive notice if he breaches an established distance). Oklahoma's statute further empowers survivors by making information about an offender's whereabouts directly available upon a victim's request.

¹⁰⁹ H.B. 1, 2010 Reg. Sess. (Ky. 2010) (as introduced).

¹¹⁰ *See* KY. REV. STAT. ANN. §§ 403.750(1), 403.761 (LexisNexis 2010); Malone, *supra* note 104, at 192.

¹¹¹ KY. REV. STAT. ANN. § 403.761(7)(a) (LexisNexis 2010).

¹¹² Malone, *supra* note 104, at 192. Kentucky presumably sought to safeguard offenders' legitimate due process right to review allegations against them. Given the often extreme power and control disparity between IPV victims and abusers, balancing survivor safety with an offender's constitutional protections may be better achieved through an in camera review initiated upon an alleged abuser's request.

¹¹³ *Id.* at 192, n.100.

jeopardize their safety by increasing the likelihood abusers will violently retaliate.

Sometimes, operational issues can undermine BEM program implementation, which may ultimately endanger victims. For example, Illinois' statutes provide for EM following a protection order violation and an individualized offender dangerousness assessment.¹¹⁴ Because the statutory guidelines do not anticipate practical delays in the dangerousness assessment process, including staff shortages, bail is often set only to be modified three to ten days later.¹¹⁵ Additionally, some contend that the Illinois statute confusingly explains program implementation and available protections to victims.¹¹⁶ Even if BEM technology offers safety benefits, care must be taken to effectively implement monitoring programs. Inappropriate BEM application can undermine the scheme's legitimacy and authority, further endangering victims who depend on being notified of protective order violations.

B. Successful Approaches

Permitting courts to issue EM with an initial protection order generally improves victim safety. Louisiana's BEM statute permits court-issued monitoring without a prerequisite protection order violation.¹¹⁷ Similarly, Ohio courts may issue orders attaching monitoring to a protective order issued for stalking or sexually oriented offenses if the court finds by clear and convincing evidence that the "petitioner reasonably believed that the respondent's conduct at any time preceding the filing of the petition endangered the health, welfare, or safety of the person to be protected and that the respondent presents a continuing

¹¹⁴ 725 ILL. COMP. STAT. ANN. 5/110-5(f) (2013) (the court must consider factors a dangerous assessment would identify: "whether the evidence shows that as part of the offense there was a use of violence or threatened use of violence").

¹¹⁵ Stephen J. Culliton, *State of the Courthouse 2009*, 21 DCBA BRIEF 8, 10 (2009).

¹¹⁶ *Id.*

¹¹⁷ *See* LA. REV. STAT. ANN. § 46:2143(A) (Supp. 2009). Louisiana's statute provides:

When a court issues any peace bond, temporary restraining order, protective order, preliminary injunction, permanent injunction or court-approved consent agreements . . . or as part of the disposition, sentence, or bail condition of a criminal matter . . . for the purpose of preventing acts of domestic violence, the court may also order the domestic violence offender to participate in an electronic monitoring program.

Id. Louisiana is implementing BEM through a pilot program in two parishes, East Baton Rouge and Lafourche, the results of which will determine the model's expansion statewide. *Id.* § 46:2143(D)(1).

danger.”¹¹⁸ By permitting monitoring before a protection order violation, Louisiana and Ohio have taken an additional important step to enhance victim safety.

Massachusetts similarly sought to improve victim protection through implementation of a dangerousness assessment. One of several early domestic violence programs using BEM, Massachusetts successfully modeled use of a dangerousness assessment in determining offender lethality.¹¹⁹ Serving as an integral component to the BEM scheme, the dangerousness assessment forecasts the offender’s likelihood of retaliation against the victim using physical force.¹²⁰ Based on responses to various objective questions, the assessment generates an offender dangerousness score.¹²¹ Relevant information gathered includes whether the offender has strangled the victim, threatened to harm the victim’s children, abused alcohol or drugs, or threatened suicide.¹²²

Notwithstanding its simplicity, the Massachusetts dangerousness assessment has been tested and proven effective.¹²³ In a follow-up study over a three-year period, not one monitored offender enrolled in the Massachusetts BEM program violated protection orders.¹²⁴ Additionally, Massachusetts incorporated the “geo-fencing” concept, proposing monitoring at offender exclusion locations beyond the victim’s home (e.g., the victim’s workplace and her child’s school).¹²⁵

Like Massachusetts, Connecticut similarly emphasized use of a dangerousness assessment to more effectively protect victims. In Connecticut’s pilot BEM program, a specialized family violence intervention unit performs the dangerousness assessment.¹²⁶ The unit then reports its findings to the judge.¹²⁷ Presumably to protect an offender’s constitutional rights, Connecticut’s statute mandates a fixed standard: An

¹¹⁸ OHIO REV. CODE ANN. §§ 2903.211, 2903.214 (LexisNexis 2010 & Supp. 2012).

¹¹⁹ Diane L. Rosenfeld, *Correlative Rights and the Boundaries of Freedom: Protecting the Civil Rights of Endangered Women*, 43 HARV. C.R.-C.L. L. REV. 257, 264 (2008) (explaining The Greater Newburyport Domestic Violence High Risk Case Response Team offender assessment function).

¹²⁰ Jacquelyn C. Campbell et al., *The Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide*, 24 J. INTERPERSONAL VIOLENCE 653, 655 (2009), available at http://www.dangerassessment.org/uploads/DA_Validation_of_a_Lethality_Risk_Assessment_Instrument-Campbell.pdf.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Wolfson, *supra* note 82.

¹²⁴ *Id.*

¹²⁵ MASS. GEN. LAWS ANN. ch. 209A, § 7 (West 2007).

¹²⁶ CONN. GEN. STAT. ANN. § 46b-38c (West Supp. 2012).

¹²⁷ *Id.*

offender evaluated under the dangerousness assessment must be deemed “a high-risk offender” before a judge can order monitoring.¹²⁸

The dangerousness assessment is a powerful tool to promote victim safety and personalized justice. Properly utilized, an effective dangerousness assessment can more accurately assess an offender’s lethality risk, helping courts identify those victims requiring more protection.¹²⁹ The model programs from Massachusetts and Connecticut provide other jurisdictions useful guidance on dangerousness assessment implementation.¹³⁰ Moreover, when juxtaposed with failed approaches, the Massachusetts and Connecticut programs emphasize the “criticality of an effective response to domestic violence victims by the legal system.”¹³¹

V. RECOMMENDATIONS

To maximize BEM’s effectiveness at enhancing victim safety, jurisdictions should implement three components from existing, successful programs. First, an evidence-based dangerousness assessment should be utilized to more accurately predict an offender’s potential for physical retaliation. Second, BEM statutes should include a rebuttable presumption of offender dangerousness sufficient to justify automatic monitoring. Finally, EM program implementation and limitations should be straightforwardly articulated to victims.

A. **Evidence-Based Dangerousness Assessment**

Affirmative steps should be taken to help realize BEM technology’s full potential for enhancing domestic violence victim safety. First, as part of a court’s basic due diligence, an evidence-based dangerousness assessment should be employed to more accurately predict an offender’s potential for physical retaliation. Using dangerousness assessment responses, judges would estimate the offender’s likelihood of violently retaliating against the victim.

Although several available models exist on which to base a dangerousness assessment, Dr. Jacquelyn C. Campbell’s dangerousness assessment has been used, evaluated, and found reliable.¹³² At minimum,

¹²⁸ *Id.*

¹²⁹ Malone, *supra* note 105, at 192; *see also* Diane L. Rosenfeld, *The High Risk Team Model and GPS Offender Monitoring: Stopping DV in Its Tracks*, 17 DOMESTIC VIOLENCE REP. 33, 34. (2012) (discussing the importance of offender lethality screening through administration of danger assessment tools).

¹³⁰ Malone, *supra* note 105, at 192.

¹³¹ *Id.*

¹³² Campbell et al., *supra* note 120, at 655; Wolfson, *supra* note 83.

the dangerousness assessment should ask the victim to identify violent incidents occurring within the past year, detailing those incidents' severity, describing actions taken and injuries sustained, and noting whether weapons were involved. The victim should also answer questions designed to elicit information about the offender's regular behavior and history.¹³³ Based on the dangerousness assessment's results, courts can more objectively and reliably assess an offender's posed risk to the victim.

B. Rebuttable Presumption Justifying Monitoring

Second, EM should be permitted without a prerequisite protection order violation. Dangerousness assessments can more reliably assess when a victim needs greater protections. Therefore, BEM statutes should include a rebuttable presumption of offender dangerousness sufficient to justify automatic monitoring.¹³⁴ Specifically, if an offender's score on the dangerousness assessment exceeded a minimum threshold, monitoring would automatically apply.¹³⁵ Including a dangerousness assessment is critical to effective BEM program implementation.¹³⁶ As attorney Diane Rosenfeld argues, "Unlike most other homicides, domestic violence homicides are so predictable (sic) as to be preventable. . . . Death is far more likely when certain factors are present than when they are absent."¹³⁷ Predictable factors evaluated in dangerousness assessments (e.g., offender drug use and previous weapon possession/use), increase an offender's lethality threat potential.¹³⁸ However, low dangerousness assessments should not absolutely preclude the possibility of imposing monitoring on an offender. To maintain a victim-centric focus, judges should retain discretion to order EM even with a low, but presumably reliable, dangerousness assessment.

C. Victim Comprehension and Preparedness

Finally, EM program implementation and limitations should be straightforwardly articulated to victims. Victims should understand an EM program's basic functioning. More importantly, however, victims should be under no false pretenses; BEM cannot by itself guarantee safety. Therefore, every EM scheme implemented within the domestic violence

¹³³ See Appendix A.

¹³⁴ Malone, *supra* note 105, at 199.

¹³⁵ *Id.*

¹³⁶ Rosenfeld, *supra* note 119, at 263.

¹³⁷ *Id.* at 260.

¹³⁸ *Id.* at 263.

context should include safety planning¹³⁹ as a critical program component. Effective safety planning will increase the likelihood that, at the very least, a victim can escape an offender when law enforcement cannot timely respond to a monitoring violation.

CONCLUSIONS

EM of domestic violence offenders offers a similar promise to that envisioned by Jeremy Bentham's *Panopticon*. Research lends support for the conclusion that continuous surveillance via BEM enhances victim safety, autonomy, and empowerment while also decreasing jurisdictional imprisonment expenditures.¹⁴⁰ Importantly, though, as various jurisdictional approaches demonstrate, program success varies. Louisiana and Ohio exemplify that GPS-based BEM can be made available when issuing an initial protection order.¹⁴¹ Requiring objective offender dangerousness assessments, Massachusetts and Connecticut programs address EM comprehensively.¹⁴² On the other hand, approaches in Kentucky and Illinois reveal the potential for compromised victim safety when BEM programs are offender-focused or mismanaged.¹⁴³ BEM should be used not as a knee-jerk reaction to prison overcrowding and the high costs of running correctional systems, but to accomplish victim-centric justice. Merely applying the technology to domestic violence situations does not guarantee success. Instead, the BEM technology must be used sensibly to meet the clearly defined objective of improving survivors' safety.

Several measures should be taken to increase BEM's probability of enhancing victim safety. First, standardized, objective, and valid dangerousness assessment tools must be used to determine the risk level of the offenders being screened for placement in an EM program. Second, courts should be allowed to assign EM without an initial protection order

¹³⁹ A Safety Plan is a victim action plan for staying alive. Effective plans guide survivors through practical steps for protecting themselves (a) during explosive domestic incidents, (b) when preparing to leave abusers, (c) at work, (d) in public, and (e) with their children. Sarah M. Buel, *The Impact of Domestic Violence on Children: Recommendations to Improve Intervention and Prevention*, 7 n.48 (2013) (unpublished manuscript) (on file with author). The American Bar Association (ABA) has made available a sample Safety Plan at www.abanet.org/tips/publicservice/dvsafety.html. Additionally, a Safety Plan designed specifically for youth is available through the ABA's website at www.abanet.org/domviol. *Id.*

¹⁴⁰ *See supra* Part III, Section B.

¹⁴¹ *See supra* Part IV, Section B.

¹⁴² *Id.*

¹⁴³ *See supra* Part IV, Section A.

violation. Besides understanding program logistics, victims should also be fully aware of and prepared for the limitations of EM technology. Through EM of domestic violence offenders, the law can take another important step toward victim-centric justice by enhancing survivors' safety and helping them rebuild their lives to achieve greater well-being. In sum, this article concludes that deportation should be labeled as criminal punishment. The precedential labeling of deportation as a civil sanction or the hint by the Supreme Court that deportation may be criminal punishment shields the constitutional issues associated with deportation from being tackled. As this article establishes, aliens faced with deportation are subject to double jeopardy violations and cruel and usual punishment, which are contrary to the spirit of the Constitution. Thus, it is imperative for the judiciary to label deportation as criminal punishment. Such labeling may open doors to further discussions regarding reforming substantive and procedural deportation laws to minimize constitutional violations.

APPENDIX A¹⁴⁴

1. Has the physical violence increased in frequency over the past year?
2. Has the physical violence increased in severity over the past year and/or has a weapon or threat from a weapon ever been used?
3. Does he ever try to choke¹⁴⁵ you?
4. Is there a gun in the house?
5. Has he ever forced you to have sex when you did not wish to do so?
6. Does he use drugs? By drugs, I mean “uppers” or amphetamines, speed, angel dust, cocaine, “crack,” street drugs, or mixtures.
7. Does he threaten to kill you and/or do you believe he is capable of killing you?
8. Is he drunk every day or almost every day? (In terms of quantity of alcohol.)
9. Does he control most or all of your daily activities? For instance: does he tell you who you can be friends with, how much money you can take with you shopping, or when you can take the car? (If he tries, but you do not let him, check here: _____)
10. Have you ever been beaten by him while you were pregnant? (If you have never been pregnant by him, check here: _____)
11. Is he violently and constantly jealous of you? (For instance, does he say “If I can’t have you, no one can.”)
12. Have you ever threatened or tried to commit suicide?
13. Has he ever threatened or tried to commit suicide?
14. Is he violent toward your children?
15. Is he violent outside of the home?

¹⁴⁴ See Campbell et al., *supra* note 120.

¹⁴⁵ Though technically inaccurate compared to “strangle,” the term “choke” may be a more colloquially suitable choice to obtain accurate information when administering the dangerousness assessment.

