

# First Step Act, COVID-19, and the Future of Location Monitoring

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**THE ENACTMENT OF** the First Step Act (FSA) in December 2018 ushered in major changes to federal reentry practices, particularly regarding the expansion of location monitoring, the dominant method of remote supervision in community corrections. A little more than a year later, COVID-19 disrupted practices and demanded a quick expansion of virtual supervision methods. These changes, and a surge of COVID-19-driven releases onto location monitoring, strained U.S. Probation and Pretrial Services staff. In this article, we first describe how U.S. probation and pretrial services initially absorbed FSA's expansion of federal location monitoring. We next describe how COVID-19 impacted the use of location monitoring and demanded innovation. (This section includes commentary from three leaders in the field.) In a sense, the passage of FSA and the arrival of COVID-19 created a natural experiment, providing an opportunity to reexamine long-held assumptions about how location monitoring should be provided and the role of virtual supervision. The article concludes with questions whose answers will likely shape the future of community supervision in a post-pandemic era.

## Location Monitoring and the First Step Act

Offices have used location monitoring technology to enforce restrictive court-imposed home

confinement conditions for several decades.<sup>1</sup> Courts impose home confinement conditions as an alternative to pretrial detention and as a sanction for noncompliance in pretrial and post-conviction supervision.<sup>2</sup> Except for placement in halfway houses—referred to as Residential Reentry Centers (RRCs) in the federal system—location monitoring is considered the most restrictive condition the court can impose, and, consistent with the risk principle, should be reserved for those presenting the highest risk to community safety. In addition to supervising those on location monitoring by court order, U.S. probation officers have, for several decades, supervised a small number of select lower risk Bureau of Prison (BOP) inmates in prerelease

status.<sup>3</sup> Referred to as the Federal Location Monitoring (FLM) program, the arrangement is made possible through an Inter-Agency Reimbursable Agreement between the BOP and the Probation and Pretrial Services Office (PPSO) within the Administrative Office of the U.S. Courts (AO) under 18 U.S.C. 3624(c) (2)-(3).<sup>4</sup> Traditionally, fewer than half of the U.S. probation offices in the federal courts' 94 districts chose to participate in the FLM program.<sup>5</sup> For years, PPSO encouraged U.S. probation offices to participate in the FLM program, given both the savings and the research supporting the transition of low-risk inmates from custody. The call for expansion of FLM had, until recently, been met with modest results.<sup>6</sup>

The FSA, as enacted in December 2018, represents the most comprehensive criminal justice reform in decades. Unfortunately, this

<sup>1</sup> See Annesley K. Schmidt, "Electronic Monitoring: What Does the Literature Tell Us?" *Federal Probation*, Volume 62, Number 2, December 1998; Darren Gowen, "Overview of the Federal Home Confinement Program (1988-1996)," *Federal Probation*, Volume 64, Number 2, December 2000; Darren Gowen, "Remote Location Monitoring—A Supervision Strategy to Enhance Risk Control," *Federal Probation*, Volume 65, Number 2, September 2001; Ryan Petroff and Trent Cornish, "Developing an Effective Location Monitoring Program," *Federal Probation*, Volume 74, Number 2, September 2010.

<sup>2</sup> For the quarter ending December 31, 2020, there were 31,326 individuals on pretrial supervision and 125,882 on post-conviction supervision. As of March 2021, there were 10,285 participants on location monitoring.

<sup>3</sup> While supervised by U.S. probation officers, inmates remain under the jurisdiction of the Attorney General.

<sup>4</sup> The statute limits inmates' prerelease status to six months or 10 percent of their sentence, whichever is less.

<sup>5</sup> U.S. probation offices are under no statutory requirement to participate in the program. Given the resource demands, many chose not to participate.

<sup>6</sup> See Trent Cornish and Jay Whetzel, "Location Monitoring for Low-Risk Inmates: A Cost-Effective and Evidence-Based Reentry Strategy," *Federal Probation*, Volume 78, Number 1, June 2014.

watershed reform was immediately followed by a massive federal government shutdown that lasted for months, hobbling initial implementation efforts. In addition to several sentencing (or “front end”) provisions, the FSA greatly expanded the use of location monitoring with BOP prerelease inmates.<sup>7</sup> First, the FSA directed that home confinement<sup>8</sup> with location monitoring should be the preferred prerelease option for all low-risk, low-need inmates.<sup>9</sup> Second, FSA directed the BOP to expand an earlier pilot home-confinement prerelease program for elderly inmates to all BOP institutions. Inmates who were at least 60 years old; had completed two-thirds of their sentence; and had no history of violent offending, sex crimes, or crimes of treason became eligible for release onto home confinement.<sup>10</sup> Third, the FSA’s landmark provision directed the BOP to create a risk assessment tool that could be applied to all inmates and then used to determine in which evidence-based recidivism-reducing programming they should participate. Program completion would generate prerelease credits that could allow inmates to earn additional time in prerelease status, including home confinement.<sup>11</sup> Fourth, and at the time not necessarily linked to home confinement, was the change in how inmates, typically those terminally ill, could apply for compassionate release, also known as a reduction in sentence. The revised provision authorized inmates to file requests for compassionate release directly with the sentencing court if denied by the BOP, once they had exhausted all administrative remedies.<sup>12</sup> Taken together, these statutory changes presented an

increased demand for location monitoring alongside implementation challenges to the U.S. probation and pretrial services location monitoring program.<sup>13</sup>

The FSA changes came at a time of already significant strain in the U.S. probation and pretrial system. For one, U.S. probation and pretrial chiefs, as well as the rest of the federal judiciary, were facing a 9.4 percent budget cut. While workload often varies across the judiciary’s 94 districts for a host of reasons,<sup>14</sup> cuts of that scale sometimes require restructuring of both personnel and operational priorities. Supervising individuals on location monitoring places significant demand on the officer and requires 24-hour availability to respond to alerts and notifications. Given the personal strain this work can bring, location monitoring positions are often difficult to fill. Expansion of Global Positioning Systems (GPS) technology and associated requirements to constantly track participants, as opposed to Radio Frequency (RF) technology, exacerbated the stress officers faced.<sup>15</sup> The FSA language itself complicated matters further, as U.S. probation’s responsibility to assist the BOP was specified differently under each of the three location monitoring provisions. While the judiciary has requested that Congress create more consistent statutory language, there has been no change to date.<sup>16</sup>

In response to the increased location monitoring workload and budgetary constraints, PPSO took several steps to help expand FLM program participation. Beginning in the second quarter of fiscal year 2020, the

AOUSC provided requesting districts with supplemental advance funding for any FLM case activated in the previous quarter. The advance funding mechanism, while modest, provides districts with new incentives to accept BOP cases.<sup>17</sup> The early funding is in addition to the regular workload credit the districts receive in arrears under the traditional workload process. The advance funding provision was continued into fiscal year 2021. To further address workload demands, during the cyclical updating of the probation and pretrial services workload system, the AO made changes to fund FLM cases in the same manner as cases that had come under the judiciary’s jurisdiction, based upon risk level as determined by the Post-Conviction Risk Assessment instrument.<sup>18</sup> This addressed field concerns that FLM cases had been traditionally underfunded. In response to FSA and past implementation hurdles, PPSO and the BOP began rewriting the interagency agreement to account for the various new provisions and to clarify roles and responsibilities.<sup>19</sup> Under the revised agreement, the AO increased the rate of reimbursement charged to the BOP, but the new rate is still significantly lower than that the BOP pays private RRC providers for a similar service. Due to the legislative changes, added incentives, and program updates, the number of inmates accepted by U.S. probation into the FLM program increased by 350 percent by March 2021.<sup>20</sup> Simultaneously, to provide some quality-of-life improvements for location monitoring officers, PPSO began working to develop a call center model with the national vendor. The model enables Monitoring Call Center staff to respond and investigate 12 pre-approved events before officers are contacted via alert notification, which is described later in this article as part of “Supporting the Field.”

<sup>7</sup> See Jay Whetzel and Sarah Johnson, “‘To the Greatest Extent Practicable’—Confronting the Implementation Challenges of the First Step Act,” *Federal Probation*, Volume 83, Number 3, December 2019.

<sup>8</sup> Home Confinement, referred to as Home Detention in the U.S. probation and pretrial services system, requires participants to remain at the residence at all times, except for pre-approved and scheduled absences for employment, education, religious activities, treatment, attorney visits, court appearances, court-ordered obligations, or other activities as approved by the supervising officer.

<sup>9</sup> 18 U.S.C. Section 3624(c)(2).

<sup>10</sup> 34 U.S.C. Section 60541. One challenge in this provision is that inmates may have many years of their sentence left to serve. Traditionally, U.S. probation offices try to limit home confinement sanction to a short time frame, such as a few months.

<sup>11</sup> 18 U.S.C. Section 3632 and 18 U.S.C. Section 3624(g).

<sup>12</sup> 18 U.S.C. Section 3582(c)(1)(A)(i).

<sup>13</sup> For a detailed explanation of statutory challenges and the judiciary’s effort to address them, see Lauren Shuman, “Addressing Legal Aspects of Implementation Challenges from Expanded Use of Home Confinement and Compassionate Release,” *Federal Probation*, Volume 84, Number 3, December 2020.

<sup>14</sup> Changes in prosecutorial priorities, which may vary by district, directly impact U.S. Probation and Pretrial Services workload and budgeting. Different approaches to border enforcement also drive system workload.

<sup>15</sup> GPS technology has 11 additional alerts compared to RF. It requires officers to review GPS tracks daily and to ensure participant compliance with daily tracker charging. There are also environmental issues with GPS trackers entering poor cellular reception areas (e.g., large factories, high rise buildings, and rural areas).

<sup>16</sup> Again see Lauren Shuman, “Addressing Legal Aspects of Implementation Challenges from Expanded Use of Home Confinement and Compassionate Release,” *Federal Probation*, Volume 84, Number 3, December 2020.

<sup>17</sup> During fiscal year 2020, participating districts had received \$691,390 in Advance FLM funding.

<sup>18</sup> James Johnson et al., “The Construction and Validation of the Federal Post Conviction Risk Assessment (PCRA),” *Federal Probation*, Volume 75, Number 2, September 2011. See also “Driving Evidence-Based Supervision to the Next Level: Utilizing PCRA, Drivers and Effective Supervision Techniques,” *Federal Probation*, Volume 78, Number 3, December 2014.

<sup>19</sup> The New Agreement was finalized in July 2020.

<sup>20</sup> Until very recently, there were on average 100 BOP inmates enrolled in the FLM Program. Prior to COVID-19, the program had increased to 250, driven by FSA demands alone.

## The Location Monitoring Response to the Pandemic: Innovating for Safety, Maintaining the Mission

While some medical experts anticipated that the world would soon face its worst pandemic in 100 years, the rest of us, arguably, were unprepared for COVID-19. Few areas of modern life have not been drastically impacted by the pandemic. Criminal justice systems, including custodial and community-based corrections, have been forced to adjust practices, in some cases dramatically. Prisons and detention centers, with no capacity to “socially distance,” almost unavoidably became hotbeds of infection.<sup>21</sup> This had an immediate impact on the entire criminal system, and the U.S. courts were no exception. Given the decentralized nature of the federal courts, as well as the differential spread of the virus, U.S. probation and pretrial services offices locally adjusted practices as deemed appropriate and in coordination with their local court and health officials. While many federal courthouses closed completely and began fully remote operations, less impacted regions maintained regular operations. The ability to respond to virtual supervision demands varied by region and the availability of resources. In general, federal probation and pretrial offices throughout the system were confronted with maintaining continuity of operations in unprecedented times. Few, if any, offices had personal protective equipment or had previously established protocols on how to conduct supervision during a pandemic.

For some jurisdictions, supervision shifted to “remote” under COVID-19.<sup>22</sup> Location monitoring was particularly affected for two main reasons. First, such technology was traditionally reserved for the highest risk persons under supervision. For some higher risk defendants, those charged with certain sex offenses, the

technology is required by statute.<sup>23</sup> Rightly or wrongly, location monitoring seems to provide releasing authorities with greater levels of confidence when placing higher risk supervisees back into the community. Second, as described earlier, installation of the dominant technologies requires close personal contact between the officer and the participant. In many probation and pretrial offices, officers installing location monitoring equipment on the newly released were the only staff physically present in the office. COVID-19 also severely impacted location monitoring participants (e.g., loss of employment, lack of housing, medical vulnerability).<sup>24</sup> Many persons charged with or convicted of a sex-related offense are on location monitoring. Restricted to their homes on location monitoring, due to their risk level, instant offense, past noncompliance, and compounded social isolation, these men and women are arguably the most challenged subset of the federal supervision population.<sup>25</sup>

In response to the pandemic and beginning in March 2020, PPSO provided updated location monitoring guidance to courts. Given social distancing demands, the pandemic significantly impacted officers’ ability to complete routine in-person equipment inspections and home assessments, including the placement of location monitoring equipment within the residence, and to properly investigate equipment tamperers. Many officer duties and responsibilities shifted to alternative methods such as virtual contacts. PPSO recommended the use of virtual platforms such as FaceTime or Skype to limit personal contact and to complete home inspections, verify placement of equipment in the residence, conduct required 30-day community contacts, inspect equipment (base unit and transmitter/tracker), and address equipment issues or equipment tamper-related alerts.

PPSO also offered the use of less-invasive technologies as an alternative to traditional location monitoring equipment (GPS and RF),

as personal contact is not required for installation and there is no physical equipment to check monthly. One such technology, Voice Recognition, which is part of the judiciary’s national contract, relies on automated calls from a host computer to a home telephone landline at a participant’s residence, using voice biometrics, to verify a respondent’s identity and presence in the approved residence. PPSO also authorized the use of virtual monitoring supervision, another monitoring alternative that, while not part of the national location monitoring contract, uses a smartphone application to monitor defendants and persons under supervision with a location monitoring condition. Many districts procured the current vendor’s virtual monitoring supervision product, SmartLINK, for use during the pandemic. SmartLINK uses two-factor authentication (facial recognition, fingerprint, and/or password), depending on the mobile device’s available functions. The mobile device’s GPS locational services verify the participant’s presence at a location (e.g., residence, employment, treatment) during scheduled, random, or on-demand check-in calls/contacts. Policy changes involved the adjustment of rules, practices, and procedures to allow FLM participants to be monitored in the community using virtual monitoring supervision.<sup>26</sup>

COVID-19 specifically required flexibility in the use of technology, changes in procedural requirements, and a different manner of engagement between the officer and the person under supervision. In-person contact between the probation officer and the person under supervision, be it for monitoring or intervention purposes,<sup>27</sup> has traditionally been deemed essential in community corrections. In contrast, the term “remote” supervision was reserved for other, technology-based methods used by officers to monitor the location (e.g., RF, GPS, Voice Recognition), internet usage (e.g., computer monitoring software), or substance use (e.g., remote transdermal alcohol testing) of those under supervision. In some instances, the abilities of these technologies to

<sup>21</sup> As of 4/28/201, The BOP has 127,324 federal inmates in BOP-managed institutions and 13,607 in community-based facilities. The BOP staff complement is approximately 36,000. There are 199 federal inmates and 161 staff who currently have confirmed positive test results for COVID-19 nationwide. Currently, 46,455 inmates and 6,710 staff have recovered. There have been 233 federal inmate deaths and 5 BOP staff member deaths attributed to COVID-19. Of the inmate deaths, 5 occurred while on home confinement. BOP website.

<sup>22</sup> PPSO authorized and supported the use of “telehealth” substance abuse disorder treatment and mental health treatment for those under supervision. See Christopher Mangione, “The Impact of COVID-19 on Treatment and Testing,” this issue.

<sup>23</sup> 18 U.S.C. 3142(c)(1)(B).

<sup>24</sup> In federal probation and pretrial services, months spent on substance abuse testing and treatment decreased during the pandemic while money spent assisting those on supervision with basic needs through Second Chance Act authority increased 80 percent.

<sup>25</sup> See Lisa Bishop, “The Challenges of GPS and Sex Offender Management,” *Federal Probation*, Volume 74, Number 2, September 2010. Also, Michelle Spidell et al., “Considerations for Supervision of Persons Charged with or Convicted of Sex Offenses During the COVID-19 Pandemic,” this issue of *Federal Probation* (Vol. 85, no. 1).

<sup>26</sup> Mandatory 30-day personal community contact requirements could be accomplished through virtual means using FaceTime or Skype. Same-day LM installation requirements were modified to include installation delays due to inmate travel considerations and officer safety concerns. Home inspections for new referrals were permitted using a virtual tour of the residence, via FaceTime or Skype.

<sup>27</sup> U.S. Probation’s supervision framework for those under post-conviction supervision consists of Monitoring, Restrictions, and Interventions. *Guide to Judiciary Policy*, Volume 8.

provide community safety have been oversold, and authorities have not realized the critical role the officer plays in ensuring that these methods are used effectively.<sup>28</sup> During the COVID-19 pandemic, agencies were challenged to make a direct shift from in-person community supervision and treatment programming to “virtual” contact.

## The Continued Challenge

Throughout the pandemic, PPSO worked to maintain the integrity of the location monitoring program while accommodating the COVID-19 reality and supporting field staff. COVID-19, however, continued to challenge the system in its impact on bail reviews and compassionate release and with the passage of the CARES Act in March 2020.

As mentioned above, COVID-19 impacted jail and prison populations nationwide. The U.S. Marshals Service and the BOP were not spared. The U.S. Marshals rely on a large network of contracted local jails to house most federal defendants who are ordered held in pretrial detention due to their risk of nonappearance, danger to the community, or both.<sup>29</sup> Around the country, federal courts began holding (mostly remotely) bail review hearings, prompted by certain defendants’ reported vulnerability to COVID-19 and/or to the prevalence of infection within certain jails. Given concerns of exposure in jails and prisons, there was an effort to reduce incarceration, and defendants previously ordered detained were often released on location monitoring, directly increasing officer workload. Relatedly, given that many BOP facilities stopped accepting new inmate admissions,<sup>30</sup> sentenced defendants in the community on location monitoring had their self-surrender dates extended, thus remaining on officers’ caseloads.

FSA made major changes in how BOP inmates were able to seek a reduction in sentence under compassionate release

provisions.<sup>31</sup> Widespread dissatisfaction with how the BOP had exercised its discretion with compassionate release fueled the legislative change. Prior to FSA, the BOP requested, and the court typically granted, compassionate release for 20 to 30 inmates per year. FSA allowed inmates to directly petition the sentencing court for compassionate release if the BOP denied the request or failed to respond in a timely fashion. Initially, the increase in granted motions was gradual. In the month of November 2019, the courts granted 17 motions for compassionate release. In March 2020, courts also granted 17. But by April 2020, as the threat of COVID—particularly to the aged and physically vulnerable—became clear, courts granted 131 motions. Courts granted 237 in May, 281 in June, 362 in July, 338 in August, and 222 in September. This exponential increase in compassionate release should not necessarily have impacted location monitoring. However, when granting a motion and credit for time served, many courts exercised their discretion and replaced all or part of the remaining sentence with a period of home confinement with location monitoring.

In response to COVID-19, in late March 2020, Congress passed the CARES Act, sweeping legislation aimed at helping the nation weather the pandemic. Within the massive bill, one provision authorized the U.S. Attorney General (AG), if he found COVID-19 was disrupting BOP operations, to lift the statutorily limited time frames for home confinement under 18 U.S.C. 3624(c) (i.e., 10 percent of the sentence or 6 months, whichever was less). In April 2020, the Attorney General lifted those limits. Although vacillations in the home confinement eligibility criteria created considerable confusion, a very large number of inmates have returned to the community early under the CARES Act. Fortunately, the AO had conveyed to Department of Justice authorities that U.S. probation was not positioned to absorb a large number of inmates onto home confinement. While the BOP-contracted RRCs absorbed the lion’s share of CARES Act releases, inmates returning to more remote

locations are often supervised by U.S. probation officers under the FLM program.

## The Impact on Location Monitoring Supervision—The Field Perspective

Upon enactment of the FSA—with its complexities, ambiguities, and inconsistencies—and continually during the early months of the COVID-19 pandemic, PPSO provided guidance to the courts as quickly and as thoroughly as possible. The “real work” of community supervision, however, fell to the probation and pretrial services officers in the field, who did their best to innovate as required by the circumstances on the ground. Chief U.S. Probation Officer Robin Grimes of the Northern District of Ohio reported that her office “has improvised on a number of occasions throughout the pandemic in order to fulfill their mission.” As noted earlier, the combination of terms “remote supervision” and location monitoring may suggest a lack of in-person contacts or in-person equipment inspections. In fact, however, the technology requires direct officer engagement to ensure proper equipment functioning and to guard against participants’ attempts to evade the technology.

The Northern District of Ohio’s Probation Office’s LM program was impacted significantly by the court granting inmates pro se requests for compassionate release with considerable periods of home confinement in lieu of the custodial term, which was converted to time served. Chief Grimes expanded:

The act of installing, inspecting and effectively monitoring equipment created unique challenges to our officers, as distance had to be maintained while the integrity of effective supervision is maintained. Location monitoring has been a preference for judges and attorneys when conditions of release are being considered as a measure to protect the public. The increase in location monitoring cases has placed a strain on resources, necessary equipment, and the time and workload of our officers.

Chief Grimes also addressed the limitations of using FaceTime and other virtual supervision methods when supervising defendants and persons under post-conviction supervision. Virtual supervision methods have “required our officers to have conversations with our clients about why current

<sup>28</sup> See Trent Cornish, “The Many Purposes of Location Monitoring,” *Federal Probation*, Volume 74, Number 2, September 2010.

<sup>29</sup> As of October 5, 2020, the U.S. Marshals Service housed 60,910 federal pretrial defendants in over 800 different facilities, the vast majority of which were contracted county or sheriff facilities. Report of John Sheehan, U.S. Marshals Service, to PPSO.

<sup>30</sup> At the height of the pandemic, 60 BOP facilities were not accepting any new admissions. As of October 5, 2020, that number had been reduced to 5. Report of John Sheehan, U.S. Marshals Service to PPSO.

<sup>31</sup> Again, see Lauren Shuman, “Addressing Legal Aspects of Implementation Challenges from Expanded Use of Home Confinement and Compassionate Release,” *Federal Probation*, Volume 84, Number 3, December 2020; and Jay Whetzel and Sarah Johnson, “‘To the Greatest Extent Practicable’—Confronting the Implementation Challenges of the First Step Act,” *Federal Probation*, Volume 83, Number 3, December 2019.

supervision methods look this way, and has left officers feeling inadequate about the strategies applied to a case when thorough home inspections, searches, and the invasiveness associated with typical supervision strategies have been suspended.” While disruptive to officers’ monitoring function, COVID-19-required cautions also seem to impact the critical relationship building between officers and those under supervision.

Building a rapport with the primary stakeholders, persons under supervision or inmates, has become a challenge because the contacts are limited due to virtual supervision. In cases where contacts are in person, barriers, shields and distancing are all tactics used to keep our staff and clients safe, but these safeguards create psychological distancing in terms of building relationships as we previously have experienced.

Some of the earliest, most severe COVID-19 outbreaks were in the northeastern United States, which immediately disrupted court operations, including pretrial services. In the District of New Jersey, things quickly became complicated. When the federal courthouse suddenly closed, U.S. pretrial services officers were unable to access the spare location monitoring equipment that was needed to fulfill the release orders on pretrial defendants. When asked how COVID-19 had impacted them, Chief U.S. Pretrial Services Officer Jon Muller, District of New Jersey, explained:

Early on, the numerous emergency requests for bail as a result of COVID-19 impacted our program since many of the releases were placed on some form of location monitoring. Our location monitoring caseload grew about 15-20 percent. Due to safety concerns and the growing number of COVID-19 exposures in the jail, we added SmartLink to our available technology. As we approach September, our caseloads have remained high since sentencing have been postponed and we haven’t had much attrition as a result of [delayed] BOP surrenders.

In these circumstances, as noted earlier, pretrial defendants whom the court had previously determined needed to be detained<sup>32</sup> had their status revisited due to possible COVID-19 vulnerability. Moreover, some were released

<sup>32</sup> As of 12/31/2020, 67.1 percent, or 44,228, of the 65,913 federal defendants were held in pretrial detention. U.S. Courts H-Tables Table H-14.

on a new, alternative remote supervision technology. Again, from Chief Muller:

I believe we have maintained the level of supervision our court expects from us on LM cases. Officers have been fantastic throughout this pandemic and remained in the field conducting community supervision at a distance and facilitating as many LM installations as possible in the controlled environment of the jail and arresting agent’s offices.

In the District of New Mexico, Chief U.S. Probation Officer Margaret Vigil noted they likewise experienced an increase in location monitoring cases due to COVID-19-driven bail reviews. For higher risk defendants who might normally be released into a BOP-contracted Residential Reentry Center (RRC), COVID-19 outbreaks in the RRC eliminated that option as an alternative to detention, leading the courts to order location monitoring. In some cases, for higher risk sex offenders, location monitoring is statutorily mandated as a condition of pretrial release<sup>33</sup> and alternative “virtual” technologies were not considered appropriate.

PPSO has relied upon the field to be aware of how various courts have responded to COVID-19 and adjust the operations in each office consistent with their court’s directives. Just as courts responded differently to the pandemic, any resumption of normal operations, referred to as reconstitution, will likely proceed in a somewhat patchwork fashion.

## Supporting the Field

Prior to FSA and the pandemic, PPSO had taken multiple steps to support location monitoring officers in the field and maintain program integrity. In the wake of several natural disasters, particularly Hurricane Katrina in 2005, PPSO organized what is referred to as the “PPSO LM Emergency Response Team,” comprising experienced officers who can assume supervision and respond to alerts in regions of the country that are being seriously impacted by natural disasters (e.g., hurricanes, forest fires, earthquakes, tornadoes) or other local issues (e.g., civil unrest, lack of staffing). Unfortunately, circumstances have required team activation on multiple occasions.

As mentioned above, PPSO was aware of the demands that location monitoring places upon officers. PPSO investigated alert data, particularly the volume of after-hours

<sup>33</sup> 18 U.S.C. 3142(c)(1)(B)(xii).

“nuisance” (e.g., power loss, low battery) alerts that unnecessarily negatively impact officers’ quality of life. To mitigate this, PPSO added a provision to the national contract solicitation that included a Monitoring Call Center that would investigate alerts proactively and attempt to resolve the alert before an officer receives an alert notification, thus reducing an officer’s workload. For this initiative, vendor staff contact the LM participant and/or a collateral source to investigate the alert and gain valuable information for the officer. All location monitoring cases can be enrolled within this program, including FLM cases. The Monitoring Call Center was piloted between February and July 2020 in three districts. In July 2020, the Monitoring Call Center national rollout began, and all districts gained access to the program in December 2020. Currently, 6695 participants in 89 districts are enrolled within this program, with the level of participant enrollment varying by district. Since the release of the Monitoring Call Center, after-hour alert notifications have decreased by 56 percent, with decreased alert notifications of 48 percent for all time periods. Alerts generated during business hours are frequently driven by equipment installations or adjustments of approved leave schedules.

PPSO had also already begun tracking advancements in technology, including the exploration of alternative monitoring methods,<sup>34</sup> including “virtual” supervision technology. Updated hardware has also been provided by the contract vendor. In late 2019, new GPS technology, the LOC8XT, was released to the field.<sup>35</sup> In addition, a new radio frequency unit, the Homeguard (HG) 2020, underwent field testing from summer 2020 to spring 2021, with an anticipated release date of early summer 2021.<sup>36</sup>

<sup>34</sup> In September 2018, PPSO released a Request for Information (RFI) to solicit ideas for a “Virtual Supervision Application” (VSA) that might complement and/or replace traditional location monitoring equipment. Ultimately PPSO decided to create its own VSA functionality as part of its planned new case management system, PACTS 360.

<sup>35</sup> This GPS tracker has the following advanced features compared to the current GPS tracker: non-removal battery; longer battery life; wireless charging; 5G-ready LTE technology.

<sup>36</sup> The HG2020 RF base unit has the following advanced features compared to the current RF base unit: 5G-ready LTE technology; advanced motion and tamper detection; GPS and Wi-Fi receiver location acquisition; guest detection; ability to send the participant text messages via the digital screen; officer digital screen function to assist with the installation process, including range testing and

Between July 2020 and December 2020, PPSO held weekly training webinars covering the use of the Monitoring Call Center, the new Low-Risk Key Alert Protocol, recent and future vendor software changes, and new equipment updates. The technology and software updates, in addition to the comprehensive training sessions, were made to assist the field with the effective supervision of location monitoring participants.<sup>37</sup>

### Program Impact to Date

As discussed above, location monitoring plays a key role in federal community corrections, for defendants under pretrial services supervision, for BOP inmates in prerelease custody, and for those on post-conviction supervision. Moreover, the statutory and policy landscape, the technological variations, as well as the inter-agency operational context, are decidedly complex. COVID-19 has not made things easier. The charts and tables that follow provide a snapshot of how location monitoring has grown and evolved over the past year.

cellular strength measurement. The HG2020 RF bracelet has the following advanced features compared to the current RF bracelet: smaller and lighter design; two-year internal battery; advanced tamper detection including proximity and case tampers; no motion sensor.

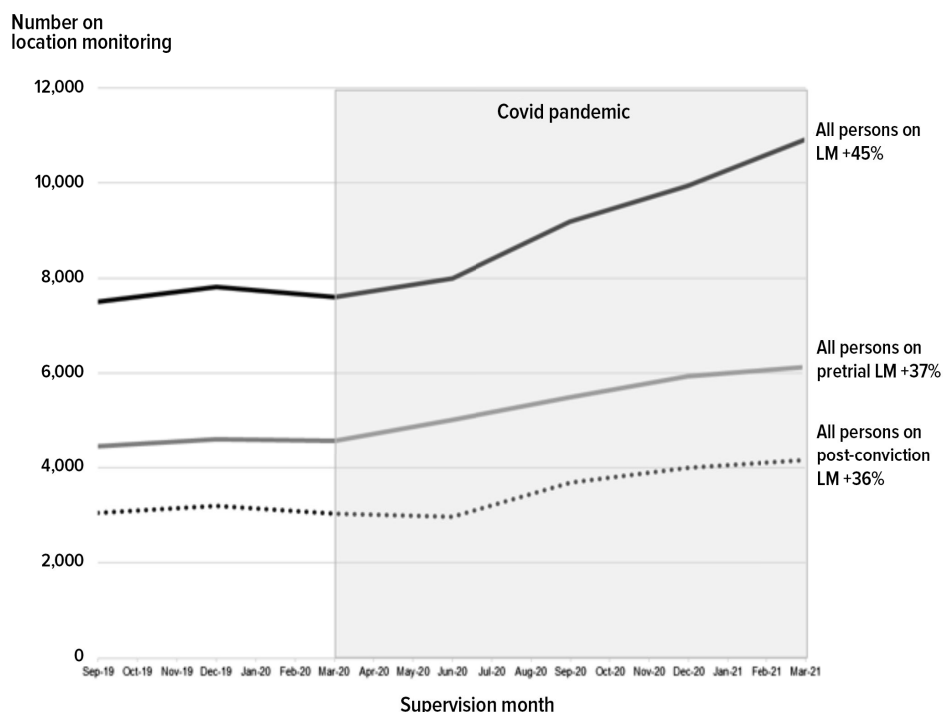
<sup>37</sup> Webinars addressed the use of Monitoring Call Center; Low-Risk Protocol; relaxing of national policies due to COVID-19 (e.g., delayed range testing, virtual monthly contacts and equipment checks, virtual home inspections, virtual tamper inspections); release of a mobile application for officers to be able to access their caseload from the field and easily make any adjustments to schedules and/or equipment; software updates to notify an officer of a possible GPS zone or scheduling error (avoid officer error); notes made within the mobile app will transfer to PACTS; approval of wearable mobile devices (e.g., Apple watch) to allow officers to respond to alerts without carrying a mobile telephone at all times (e.g., working out, lawn care, swimming, sporting events). The wearable mobile device allows the officer the ability to be notified of alerts (e.g., wrist vibration) without making a disturbance of loud sounders (e.g., wake up family members, movie theater).

As shown in Figure 1, prior to COVID-19, enrollment in location monitoring was fairly stable. Pretrial cases increased almost immediately with the start of the pandemic, whereas the post-conviction increase lagged, likely driven by the courts' rulings regarding compassionate release petitions. As discussed earlier, FSA had increased the ability of the incarcerated to seek relief, but the increased vulnerability of those in poor health during the pandemic appears to have influenced decision-making. Additionally, some districts

agreed to accept BOP inmates onto location monitoring under the CARES Act authority. Location monitoring overall increased more than the respective categories.

Table 1 shows changes in the type of technology used. While Radio-Frequency and Global Positioning remained the dominant technologies used for location monitoring, offices expanded the use of Voice Recognition and also deployed "virtual" SmartLink technology reliant on cell-phone applications. Absent COVID-19, such growth would have

**FIGURE 1**  
Growth and changes in U.S. probation and pretrial services location monitoring, total enrollment September 2019–March 2021



**TABLE 2**  
Federal Location Monitoring Program (FLM) - BOP Inmates supervised by U.S. Probation

Average Enrollment 2010-2018	March 2020	September 2020
100 +/-10	250	450

**TABLE 1**  
Changes in the types of location monitoring programs for the U.S. probation and pretrial services system, September 2019–March 2021

Location monitoring programs	Number of persons on location monitoring supervision							Percent change
	September-2019	December-2019	March-2020	June-2020	September-2020	December-2020	March-2021	
Radio frequency	4,028	4,230	4,165	3,976	4,496	4,899	5,050	25%
Global Positioning Systems	3,324	3,421	3,351	3,363	3,836	4,197	4,431	33%
Smart LINK	4	5	5	381	569	563	563	13975%
Voice Recognition	155	155	82	276	281	277	247	59%

Note: Includes person on location monitoring supervision at the pretrial or post-conviction levels.

been unlikely. It remains to be seen if the use of these alternatives continues to grow.

From pre-FSA to September 2020, the FLM program realized a 350 percent increase in participants (see Table 2). While significant from U.S. probations' perspective, the numbers pale in comparison to the increase in BOP-contracted RRCs' location monitoring program numbers. As of October 2020, there were 8,004 BOP inmates on home confinement, driven primarily by the CARES Act releases.<sup>38</sup>

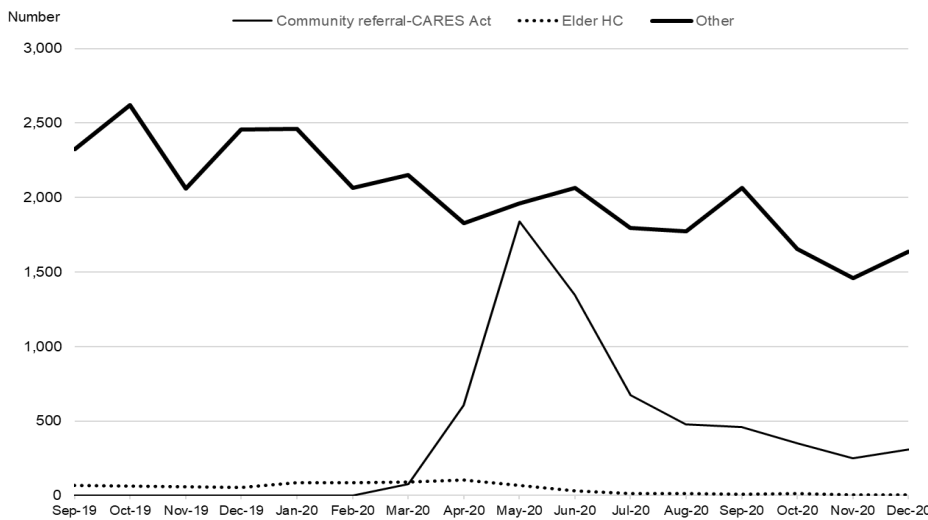
<sup>38</sup> The volume of BOP Home Confinement is three times higher than it has ever been. Email from Jon Gustin, Reentry Administrator, Federal Bureau of

Prisons. October 5, 2020.

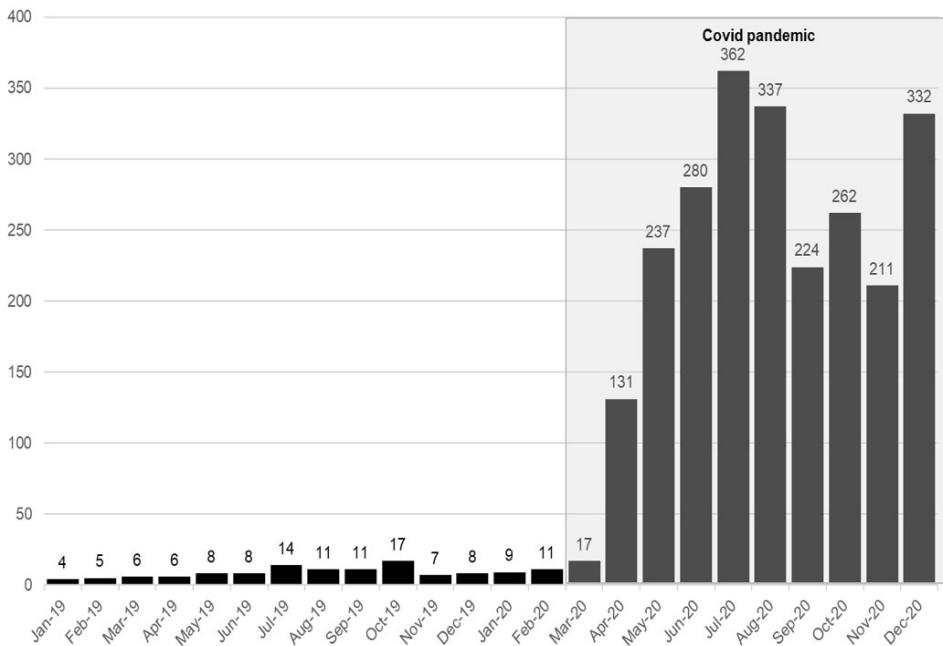
Figure 2 is from data provided by the BOP and is particularly telling about COVID-19's impact on community corrections, well beyond the federal probation system's role. The Elderly Home Confinement program (dotted line), fueled in part by COVID-19 concerns, grew as the pandemic took hold. However, under CARES Act authority, the BOP relied heavily on the contracted RRC providers to supervise inmates with location monitoring, initially with procedural adjustments similar to those put in place by federal probation.

Prisons. October 5, 2020.

**FIGURE 2**  
Number of FURL TRANS releases to RRC/HC, September 2019–December 2020



**FIGURE 3**  
Number of persons placed on compassionate release, 2019–2020



The CARES Act gave the Attorney General and BOP tremendous discretion to place low-risk inmates in prerelease custody, some with many years left to serve.<sup>39</sup> The decline in placement of inmates under the Elderly Home Confinement program from March to October is directly linked to the increase in placement under the CARES Act authority. As age is a COVID-19 risk factor, the BOP has processed numerous inmates who would otherwise be eligible in the Elderly Home Confinement program under authorities prescribed under the CARES Act. Systems do not allow the inmates to be tracked or processed under multiple authorities for placement.<sup>40</sup> This program may continue to grow, regardless of COVID-19, given that there are over 9,000 inmates 61 years of age or older housed within the BOP.<sup>41</sup> Also reflected in Figure 2 is the decline in residential placement into RRCs. Historically, the RRCs have physically housed most BOP prerelease inmates within their facilities, with a minority being placed on location monitoring.<sup>42</sup>

As noted above, a larger story for the future of community corrections and remote supervision—and perhaps for the federal criminal justice system itself—is whether the thousands of BOP inmates released early under CARES Act authority succeed, that is, do not recidivate. In recent testimony before the House Appropriations Subcommittee, the BOP Director reported to Congress that of over 22,000 inmates placed in early prerelease custody during the pandemic, only 21 had been returned to custody for noncompliance; of those, only 1 was for a new arrest.<sup>43</sup> Such a low rate of program failure will likely encourage advocates for expanding alternatives to incarceration. Last, in a complicated

<sup>39</sup> PPSO advised U.S. probation offices to focus their investigative and supervision efforts on prerelease inmates who had six months or less to serve, consistent with the original statutory authority. Offices retained discretion to accept or reject referrals from the BOP. The BOP also relied on their ability to furlough inmates, in 30-day increments, pending their being acceptance into the RRC location monitoring programs.

<sup>40</sup> Email from Jon Gustin, Reentry Administrator, federal Bureau of Prisons, October 7, 2020.

<sup>41</sup> See BOP website [https://www.bop.gov/about/statistics/statistics\\_inmate\\_age.jsp](https://www.bop.gov/about/statistics/statistics_inmate_age.jsp)

<sup>42</sup> RRCs are paid significantly more for housing inmates than for monitoring them with technology in their homes, approximately \$109 per day compared to \$57 per day. Under a recently renegotiated agreement, BOP reimburses U.S. Probation \$30 per day for supervising prerelease inmates on location monitoring.

<sup>43</sup> BOP Director Carvejal, March 18, 2021.

but perhaps predictable development, the Department of Justice has opined that once the pandemic is declared over, inmates in early pre-release status must be returned to custody.<sup>44</sup> This will likely be disruptive for the BOP, U.S. probation, the RRCs, and especially for the thousands of men and women who will have surely become accustomed to living at home, albeit with limited liberty.

Figure 3 shows the dramatic increase in the number of persons who have come under U.S. probation supervision by way of Compassionate Release. Most of these were not placed on location monitoring. As described earlier, there is no requirement that courts impose that condition, and the federal judiciary's Committee on Criminal Law has advised judicial officers that imposing special terms of supervision and home confinement conditions are not required, and to do so may impose unnecessary demands on probation resources. Even after COVID-19, pro se petitions directly to the court for Compassionate Release will likely continue, as will judges choosing to use location monitoring technology to limit the liberty of those whose petitions they grant.

### Location Monitoring Going Forward—A Natural Experiment in “Remote” Supervision?

Every so often, when physical or social circumstances change suddenly and drastically, an opportunity emerges to “test” our assumptions about how things work. Such occasions are sometimes referred to as natural experiments. According to Britannica.com, a natural experiment is an “observational study in which an event or a situation that allows for the random or seemingly random assignment of study subjects to different groups is exploited to answer a particular question.”<sup>45</sup> Researchers world-wide will exhaustively explore how COVID-19 impacted a full range of practices, and, hopefully, policy makers will make use of what, if anything, is learned. In the criminal justice research literature, two such natural experiments stand out. In the first, the Finnish police strike of 1976, researchers investigated whether the absence of police led to an increase in crime. In the second, researchers compared the recidivism rates of Louisiana parolees who returned to their homes after Hurricane Katrina to those who

started new lives elsewhere.<sup>46</sup> The takeaway here, for community corrections, is that police strikes, hurricanes and, arguably, new legislation followed by a world-wide pandemic have something in common: They present unique opportunities to evaluate criminal justice practices, including location monitoring.

Fully understanding COVID-19's impact on U.S. Probation and Pretrial Services practices and outcomes would require a research agenda far beyond the scope of this paper, and this special issue. However, sudden statutory changes, social distancing demands and resulting adjustments in procedural requirements, as well as the deployment of new technologies, clearly impacted the location monitoring program. The changes present empirical questions. As described above, FSA brought new categories of inmates and persons under post-conviction supervision,

<sup>46</sup> In early 1976, the police across the nation of Finland went on strike for 17 days. Afterwards, criminologists sought to assess the “amount and nature of public disturbance during the strike, as well as the special precautions, such as arming themselves, that citizens took at the time.” Methodologically, the biggest challenge was, since police were on strike and not making arrests, there were no official records of crime. The researchers sought out non-traditional data. For example, they found that admissions of victims of violent crime at Helsinki medical clinics was double the average during the two-week period. They also found that apparent homicides during the strike were double those of the same period the previous year. Phone interviews of citizens revealed a slightly increased incidence of burglaries and vandalism. (Takala, 1979 NCJRS Abstract, NCJ #63502). Based on these findings, one might infer that the absence of police reduced deterrence and resulted in increased criminality during the strike, a sort of “the cats away, the mice will play” hypothesis. Similarly, we do not know if changes in community corrections during the pandemic, either in reduced monitoring or reduced interventions, led to increases in recidivism. More recently and closer to home, research into the impact of Hurricane Katrina in 2005 on criminal justice outcomes explored a natural experiment in community corrections. Given that many prisoners return to a relatively small number of concentrated, disadvantaged communities, the researcher investigated whether releasing inmates who chose not to return to their original communities might have different levels of recidivism. In this instance, Hurricane Katrina was “an exogenous source of variation that influenced where a parolee would reside upon release from prison.” The researcher found that those inmates who chose not to return to their former locality had substantially lower likelihood of reincarceration (David S. Kirk, *American Sociology Review*, June 1, 2009). Perhaps inmates who relocated were able to avoid the entrenched criminal networks in their original communities, or they were able to establish new routines that were less criminogenic.

including the elderly, some with many years left to serve. Will elderly participants present different supervision challenges? Will they have better supervision outcomes? Will location monitoring program compliance diminish over extended periods? Will location monitoring provide a just punishment that is less costly than incarceration for the aged, as Congress perhaps assumed? Can location monitoring play a larger role in safely reducing incarceration? Courts have also granted Compassionate Release to inmates facing potentially terminal illnesses—or enhanced COVID-19 vulnerability—and placed them on location monitoring, many with long terms of home confinement and terms of supervised release. Will location monitoring be suitable for very sick participants with a wide variety of medical conditions? Will participants' medical requirements and doctors' visits complicate location monitoring scheduling? Courts likewise revisited detention orders for higher risk defendants and released them due to COVID-19 concerns. If there are no detectable increases in those defendants' rates of noncompliance, rearrest, or failure to appear, will courts increase their use of location monitoring? If there are increases in noncompliance, will courts grow again more cautious in a post-pandemic environment? As detailed above, the risk of contagion required new strategies in daily supervision practices. Location monitoring technology is not foolproof. Did supervision using FaceTime and related technologies, including “virtual” home and equipment inspections, compromise program integrity? Are cell phone-based technologies using biometric recognition sufficient to enforce the courts' orders and assure participant compliance? Should adjustments to procedural requirements that were made due to the pandemic be reversed?

These are indeed unusual times that have greatly impacted criminal justice practices, as well as the lives of criminal justice practitioners. Probation and pretrial services officers, while not typically considered first responders, are nevertheless required to be in the community and supervise defendants, BOP inmates, and those under post-conviction supervision. Location monitoring officers serve on the “front line” of community-based supervision and often have the highest risk caseloads, requiring supervision 24 hours a day, seven days a week. As the pandemic continues, we cannot say when things will return to normal, or what a new normal might look like. That uncertainty can and will cause anxiety.

<sup>44</sup> DOJ <https://www.justice.gov/sites/default/files/opinions/attachments/2021/01/17/2021-01-15-home-confine.pdf>.

<sup>45</sup> EncyclopediaBritannica.com July 26, 2020.



PPSO has dedicated energy and resources to providing tools and strategies to help location monitoring officers persevere through these times, and PPSO depends upon the field's perspective and feedback. As a system, we

will have to explore the questions above, and we should use what we learn as best we can to improve supervision outcomes, to ensure officer safety and well-being, to be cost effective, and to support the fair administration of

justice. Collectively, we will work together to fulfill our mission despite the uncertainties and challenges.