

**COUNTY OF MILWAUKEE**  
**Interoffice Communication**

DATE: September 27<sup>h</sup>, 2019

TO: Theodore Lipscomb Sr., Chairman, Milwaukee County Board of Supervisors

FROM: Michael Hafemann, Superintendent, Milwaukee County House of Correction (HOC)

SUBJECT: Proposed Expansion of the HOC Electronic Monitoring/Home Detention (EM) Program effective January 1<sup>st</sup>, 2020.

**Overview** - This proposal would expand the Electronic Monitoring (EM)/Home Detention Program at House of Correction and transition eligible individuals in two phases. The initiative aims to provide a community-based alternative to incarceration and reduce the population in Milwaukee County correctional facilities over time, while providing individuals the opportunity to access services, job opportunities and social supports in the community. Under this proposal, individuals transitioned to the EM Program would reside in a personal residence and be monitored through a global positioning system (GPS) twenty-four hours a day, seven days a week.

**Current Practice** - Presently, if an inmate remanded to the custody of the Milwaukee County House of Correction was provided Huber or work release privileges by the sentencing court – and - the subject inmate had a verified and confirmed reason to be released from the HOC to exercise their Huber/work release privileges, said inmate would either be transferred to the HOC EM Program or housed in one of the HOC Huber/work release dormitories. Huber/work release inmates can be released from the HOC as needed or transferred to an EM Program to address specific activities allowed by the Huber statute.<sup>1</sup>

Those housed in a HOC Huber dormitory are released each day to attend to whatever activity is allowed by the Huber Law/Work Release statute and/or sentencing court and must return to the HOC each day once the approved and confirmed activity is completed. However, when released these inmates are not supervised for as long as they are away from the HOC. But, those transferred to the EM Program are monitored 24 hours per day 7 days per week through a global positioning system (GPS) and/or continuous alcohol monitor or SCRAM device. GPS provides continuous monitoring of an inmate's location and activities and when not at work or other approved activity, the inmate is "confined" in their residence. SCRAM continually monitors an inmate's blood alcohol content to determine whether or not the subject inmate is consuming alcohol while they are in custody through the EM Program.

<sup>1</sup> **303.08 "Huber Law"; employment of county jail prisoners.** (1) Any person sentenced to a county jail for crime, nonpayment of a fine or forfeiture, or contempt of court or subject to a confinement sanction under s. 302.113 (8m) or 302.114 (8m) may be granted the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

- (a) Seeking employment or engaging in employment training.
- (b) Working at employment.
- (bn) Performing community service work under s. 973.03.
- (c) Conducting any self-employed occupation including housekeeping and attending the needs of the person's family.
- (cn) Attending court proceedings to which the person is a party or for which the person has been subpoenaed as a witness.
- (d) Attendance at an educational institution.
- (e) Medical treatment.
- (f) Obtaining counseling or therapy from an approved public treatment facility, as defined in s. 51.45 (2) (c), an approved private treatment facility, as defined in s. 51.45 (2) (b), a psychiatrist, a psychologist, a licensed clinical social worker, a professional counselor licensed under ch. 457, or a certified independent or advanced practice social worker who is authorized to practice psychotherapy under ch. 457.
- (g) Attending an assessment for the purpose of determining the person's need for counseling or therapy under par. (f).
- (h) Attending a parenting education program.
- (i) Meeting with the person's probation, extended supervision, or parole officer.

The HOC policy for the current EM Program prohibits inmates convicted of certain offenses from being transferred and supervised on the EM Program. Instead of being supervised on the EM Program these inmates are housed in a Huber dormitory and released each day to address work or other authorized and confirmed activities without continuous monitoring while they are away from the HOC. These inmates can and are released anywhere from 10 to 16 hours each work or activity day and their whereabouts and/or activities are unknown while away from the HOC

**Proposal to Enhance the EM Program** - The change in policy being proposed is to allow all inmates who have been provided and are actively exercising their Huber/work release privileges to be transferred and supervised by the HOC EM Program; **Phase 1** of this initiative. Those inmates who enter HOC custody with Huber/work release privileges and have a verified and confirmed need (verified and confirmed by HOC staff) to be released from the HOC as stipulated in the Huber statute, will be assigned to and supervised by the EM Program. Those inmates who enter HOC custody with Huber/work release privileges, who do not have a verified and confirmed need to be released to exercise their court granted privileges will be housed in a general population dormitory; these inmates will be allowed to participate in off-site work crews and/or in-house inmate work activities wherein they will be allowed to earn credit to reduce their sentences for work performed outside or within the HOC. These Huber/work release inmates, who will not be immediately transferred to the EM Program, will also be allowed to participate in in-house HOC employability and other programs and will be transferred to the EM Program at some later date during their confinement to seek and maintain employment, attend outside educational, apprentice and/or treatment programs; **Phase 2** of this initiative.

Inmates who presently complete job training and/or attend the in-house Job Center program can make themselves viable employment candidates, however, there is no bus transit service to and from the HOC. Unless inmates who have enhanced their employability prospects have a means (through family members or friends and/or a personal owned vehicle) to get to and from prospective employers, they cannot attempt to use the enhanced skills they have obtained during their confinement.

This proposal will allow the HOC to close three of the current Huber dormitories and reallocate limited staff resources to general population and programming needs and activities. Those inmates who successfully complete a job training program and are transferred to the EM Program on a later date and are able to subsequently obtain employment will free up additional HOC general population beds and provide revenue to the HOC in the form of Huber/work release fees. Moreover, we will have continuous 24 hours per day direct supervision of all inmates exercising their Huber/work release while they are at work, other approved activities and/or at their place of residence. This proposal will directly affect how we manage and supervise inmates while they are attending to work or other approved Huber activities; it will have no impact on inmates in custody at the HOC who do not have Huber/work release privileges (i.e., inmates serving "straight time" sentences). It will also have no affect for inmates being held on bail (pre-trial), inmates with active holds from other jurisdictions and/or those housed at the HOC for other purposes.

The process of transferring and supervising all Huber/work release inmates on an EM Program instead of releasing inmates each day from a county jail or house of correction has been in place and used by La Crosse County since 2005 and Monroe County since 2018.

**Key EM Program Partner** - A key partner in this process and the EM Program is Wisconsin Community Services (WCS). Since 2014 WCS has provided the GPS and SCRAM devices and is responsible for the 24 hour 7 day a week continuous monitoring of all inmates supervised on the EM Program. WCS works closely with and is in constant contact with HOC personnel assigned to the EM Program. In addition to providing the monitoring devices, WCS maintains and staffs the EM Program Office on 37<sup>th</sup> and Wisconsin Avenue and provides case management and alcohol and drug testing of all EM Program participants on a

weekly and as needed more frequent basis. The WCS management team has proven to be an effective and flexible partner. They are responsive to our needs and have continued to demonstrate they can adapt and address any situation and/or issue. The EM Program is well managed by WCS and they have always risen up to and have been able to address whatever challenges are presented. WCS is also very good at recognizing trends and/or potential problematic issues before they can manifest into critical situations. This ensures the EM Program functions as anticipated and continues to achieve program objectives and desired outcomes.

Phase 1 of this proposal is tentatively to be initiated on 01-01-2020 wherein all inmates in custody who are actively exercising their Huber/work release privileges will be transferred to the EM Program. Thereafter, inmates remanded to the custody of the HOC with Huber/work release privileges will be transferred to the EM Program once it is determined they have a verified and confirmed (verified and confirmed by HOC staff) reason to exercise their Huber/work release privileges. During Phase 2, as stipulated above, those inmates who do not have a verified and confirmed reason to exercise granted Huber/work release privileges upon admission to custody, will be housed in a HOC general population dormitory until such time it becomes appropriate to transfer said inmates to the EM Program.

**Implementation of the EM Program Proposal** - By 01-01-2020 all inmates currently being released each day to address work or other approved Huber activities will undergo a risk assessment using the **Level of Service/Case Management Inventory**, (LS-CMI) to measure risk, and its sources, as associated with the NIC's eight criminogenic risk factors. This fourth generation tool developed by Multi-Health Systems (MHS)- an improvement upon the LSI-R -not only identifies the level of risk for an individual, but the relevant *dynamic* (changeable) risk factors, AND guides evaluators through the translation of those risk factors into a Case Management tool to greatly assist in planning the best targeted interventions to reduce risk with the greatest efficiency (i.e., targeting interventions and resources first at the sources of risk that are both impactful *and* changeable). WCS practitioners have found this tool to be an enormous improvement over the LSI-R (still used by some other agencies) in that it measures risk in Section One just as comprehensively but with less scoring items and with improved predictive ability over the LSI-R. Perhaps more importantly, the LS/CMI added ten more sections of additional information to provide an evaluation team with the best possible comprehensive and integrated picture of the individual's life and to identify even more potential roadblocks to their success so that these can be addressed when individualizing an action plan.

As indicated above all candidates for the EM Program will undergo a LS-CMI risk assessment prior to being placed on the program. WCS has invested in six User Trainers to ensure the HOC has the capacity to train internal and external users of the assessment tool. With User Trainers, WCS has the ability to purchase LS-CMI assessments, but must meet the standards of MHS in all trainings, administration of the tool, and quality assurance checks on all certified user of the tool. To further enhance accuracy, WCS has purchased MHS' scoring software for certified users to reduce risk of human error. Of note, WCS has trained HOC staff to use the LS-CMI for the EM Program, and ensures HOC staff maintain the proper inventory to assess inmates for GPS or SCRAM. WCS currently has 14 certified users who must pass an examination to ensure they comprehend all aspects of and are proficient in the use of the tool. WCS employs User Trainers at WCS and who are responsible for conducting quality assurance (QA) on all assessments administered by WCS or HOC staff trained to use the LS-CMI tool. These QA checks must be conducted in accordance with the standards of MHS who developed the tool.

There are eight risk categories assessed by the LS-CMI: criminal history, education/employment, family/marital, leisure/recreation, companions, alcohol/drug problems, antisocial patterns, and pro-criminal attitude orientation. The EM Program participants must have a total risk score of no more than 29. Those who score higher than 29 are further evaluated and may, because of mitigating circumstance, be allowed to

participate in the EM Program, however, it is anticipated few if any with a score higher than 29 will be allowed to transfer to the EM Program. To date, no individual with a risk score higher than 29 has been allowed to participate in the EM Program.

Each inmate on the EM Program will be required to report to the EM Program Office at least one time per week to undergo an alcohol and drug use screening and to meet with a case worker to review the inmate's progress and/or to address any concerns and/or issues that arose since their last meeting with the case worker. Inmates determined to be higher risk to potentially violate EM Program rules of conduct will be required to meet two or more times per week with the case manager at the EM Program Office. Inmates can and will be removed from the EM Program for alcohol and/or narcotics use, violations of law and/or for repeated violations of EM Program administrative rules wherein previous corrective action failed to amend the predilection toward errant behavior.

This proposal of assigning all inmates actively exercising their Huber/work release privileges to the EM Program is predicated on Wisconsin State Statute 302.425 Home detention programs.<sup>2</sup>

**Corporation Counsel Opinion** - Moreover, the Milwaukee County Office of Corporation Counsel Deputy Corporation Counsel Paul Kuglitsch opined:

“In a 2003 published Court of the Appeals case *State v. Schell*, 2003 WI App 78, ¶ 12, 261 Wis. 2d 841, 850, 661 N.W.2d 503, 507, the circuit court gave the defendant 119 days in jail with Huber

- 2 302.425 Home detention programs. (1) DEFINITION.** In this section: (a) "County department" has the meaning given in s. 48.02 (2g).
- (b) "Jail" includes a house of correction, a work camp under s. 303.10 and a Huber facility under s. 303.09.
- (2) **SHERIFF'S OR SUPERINTENDENT'S GENERAL AUTHORITY.** Subject to the limitations under sub. (3), a county sheriff or a superintendent of a house of correction may place in the home detention program any person confined in jail. The sheriff or superintendent may transfer any prisoner in the home detention program to the jail.
- (2g) **COUNTY DEPARTMENTS AND DEPARTMENT; GENERAL AUTHORITY.** Subject to the limitations under sub. (3m), a county department or the department may place in the home detention program any juvenile who is in its custody or under its supervision.
- (2m) **INTENSIVE SANCTIONS PROGRAM PARTICIPANTS.** Notwithstanding the agreement requirements under sub. (3), the department may place any intensive sanctions program participant in a home detention program.
- (3) **PLACEMENT OF A PRISONER IN THE PROGRAM.** The sheriff or superintendent may, if he or she determines that the home detention program is appropriate for a prisoner, place the prisoner in the home detention program and provide that the prisoner be detained at the prisoner's place of residence or other place designated by the sheriff or superintendent and be monitored by an active electronic monitoring system. The sheriff or superintendent shall establish reasonable terms of detention and ensure that the prisoner is provided a written statement of those terms, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms may include a requirement that the prisoner pay the county a daily fee to cover the county costs associated with monitoring him or her. The county may obtain payment under this subsection or s. 302.372, but may not collect for the same expenses twice.
- (3m) **PLACEMENT OF A JUVENILE IN THE PROGRAM.** The department or, upon the agreement of the department, the county department may place the juvenile in the home detention program and provide that the juvenile be detained at the juvenile's place of residence or other place designated by the department or the county department and be monitored by an active electronic monitoring system. The department or the county department shall provide reasonable terms of detention and ensure that the juvenile receives a written statement of those terms, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms may include a requirement that the juvenile or his or her parent or guardian pay the county or state a daily fee to cover the costs associated with monitoring him or her.
- (4) **DEPARTMENTAL DUTIES.** The department shall ensure that electronic monitoring equipment units are available, pursuant to contractual agreements with county sheriffs and county departments, throughout the state on an equitable basis. If a prisoner is chosen under sub. (3) or a juvenile is chosen under sub. (3m) to participate in the home detention program, the department shall install and monitor electronic monitoring equipment. The department shall charge the county a daily per prisoner fee or per juvenile fee, whichever is applicable, to cover the department's costs for these services.
- (5) **STATUS.**
- (a) Except as provided in par. (b), a prisoner in the home detention program is considered to be a jail prisoner but the place of detention is not subject to requirements for jails under this chapter.
- (b) Sections 302.36, 302.37 and 302.375 do not apply to prisoners in the home detention program.
- (6) **ESCAPE.** Any intentional failure of a prisoner to remain within the limits of his or her detention or to return to his or her place of detention, as specified in the terms of detention under sub. (3), is considered an escape under s. 946.42 (3) (a).
- (7) **EXCEPTIONS.** This section does not apply to:
- (a) A person sentenced under s. 973.04.
- (b) A person in jail pending the disposition of his or her parole, extended supervision, or probation revocation proceedings.

**History:** 1989 a. 122; 1991 a. 39; 1995 a. 26; 1995 a. 27 ss. 6374 to 6381, 9126 (19); 1995 a. 77, 225, 281; 1997 a. 35; 1999 a. 32; 2009 a. 28.  
 A person subject to home detention under s. 302.425 is not "in custody" and therefore is not entitled to sentence credit for time served under s. 973.155. *State v. Swadley*, 190 Wis. 2d 139, 526 N.W.2d 778 (Ct. App. 1994).  
 This section allows the sheriff to place persons on home monitoring when they are given jail time as a probation condition. A circuit court has no power to prohibit the sheriff from ordering home monitoring for a probationer ordered to serve jail time as a probation condition. By precluding the sheriff from releasing the probationer on home monitoring, the trial court substantially interfered with the sheriff's power in violation of the separation of powers doctrine. *State v. Schell*, 2003 WI App 78, 261 Wis. 2d 841, 661 N.W.2d 503, 02-1394.  
 A court can not avoid the holding in *Schell* by modifying the conditions of probation to order the probationer to refuse home monitoring. *State v. Galecke*, 2005 WI App 172, 285 Wis. 2d 691, 702 N.W.2d 392, 04-0779.

privileges. The sheriff determined that the defendant was appropriate for home monitoring and placed her in the program. Someone complained to the circuit court, who did not address home monitoring in its decision. The court ordered the sheriff to take the defendant off home monitoring. The defendant appealed and the Court of Appeals determined that "the plain language of WIS. STAT. § 302.425 allows the sheriff [or superintendent] to place persons on home monitoring when they are given jail time as a probation condition. Section 302.425(2) allows the sheriff to place on home monitoring "any person confined in jail who has been ... convicted of ... a crime." The sheriff [or superintendent] must establish "reasonable terms of detention and ensure that the prisoner is provided a written statement of those terms," etc. *Id.*

In the Connor decision the Court of Appeals noted that "it is clear that once the trial court has sentenced an offender to jail, whether as a condition of probation or otherwise, the decision of who is to be electronically monitored is the sheriff's [superintendent's] call. Indeed, the authority given the sheriff [superintendent] to place any person in home detention is broad, as it includes anyone "who has been arrested for, charged with, convicted of, or sentenced for a crime." *State v. Connor*, 2007 WI App 19, ¶ 7, 298 Wis. 2d 552, 727 N.W.2d 375.

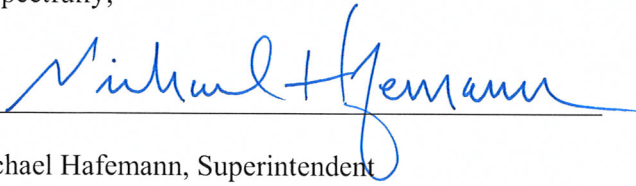
It should be stated that a court can also impose a sentence of home placement, in lieu of a sentence or the county jail. Wis. Stat. 97.03(4). But the sentence is to the jail [or HOC], then it's the sheriff's [or superintendent's] decision."

**Current EM Program Participant Data** - In 2018 - 879 inmates were transferred to and supervised on the EM Program. Of the 879; 832 remained in the EM Program until they were released from custody and, consequently, 47 were removed and completed their time in custody at the HOC - or - 95% remained on the program once transferred and 5% were removed from the program. And, none of the 5% were removed for violations of the law and/or for new offenses (they were removed for violations of EM Program rules and/or for violating conditions imposed by the sentencing court). As of the writing of this report; the total of all inmates either on the EM Program or having the potential for EM was 368; 114 of the 368 were already supervised on the EM Program and, therefore, 254 inmates were being held in the HOC in the Huber dormitories (i.e., being released each day) or in a general population dormitory.

Of the 254 inmates, 137 inmates were being housed in the Huber dormitories; of the 137 - 64 were being released each day for employment activities and the other inmates housed in the Huber dormitories were being released for childcare, eldercare, treatment, attendance at a job training program, school attendance, to participate in the DRC Program and for whatever other purpose is allowed by the Huber Law statute. Also when this report was prepared 114 inmates were supervised on the EM Program as stipulated above and 87 of the 114 were employed.

**Summary** - Although the impetus of this proposal is to provide enhanced 24 hours per day 7 days per week supervision of all inmates released to exercise their Huber/work release privileges, this proposal will have a positive impact on the overall HOC annual operations budget. Depending on how many inmates are transferred and supervised on the EM Program, the annual 2020 budget could be reduced by \$1.7 million. This cost saving will allow the HOC to meet budget targets and to continue to operate the Day Reporting Center and maintain the robust in-house female offender program at the HOC, with our Benedict Center partner, throughout the 2020 budget year.

Respectfully;



Michael Hafemann, Superintendent  
Milwaukee County House of Correction

cc: Chris Abele, County Executive  
Raisa Koltun, Chief of Staff, County Executive's Office  
Kelly Bablitch, Chief of Staff, County Board of Supervisors  
Joseph Lamers, Budget Director, Department of Administrative Services  
Scott Manske, Comptroller, Office of the Comptroller  
Steve Cady, Research Director, Office of the Comptroller  
Janelle Jensen, Committee Clerk, Office of the County Clerk