



# How To Use Electronic Monitoring By Convicts Inside And Outside Prisons

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## Abstract

The use of electronic monitoring is one of the modern methods of alternative policy of penal tolerance of convicts in the Iranian legal and penal system, which has currently been announced as a useful and effective solution in order to reduce the number of convicts sentenced to imprisonment and to depopulate prisons. Today, due to the heavy financial costs of keeping convicts in prison that have been incurred by the government and the prison organization, this modern innovative policy has entered the Iranian penal system to reduce costs in prisons and convicts, instead of enduring in prison, can be monitored at their place of residence by installing electronic systems without any cost and with a traffic radius determined by the court. This modern method has been used by the legislator, the government, judges, the judiciary, the prison organization, and even convicts sentenced to imprisonment. Research shows that in line with the policy of de-incarceration and reducing the number of convicts in prison, reducing crime and even at the level of criminal policy, the electronic tracking system is used as an effective solution for preventing and recidivism.

**Keywords:** electronic tracking system, Iranian penal system, release from prison, convicts in ta'ziri prison

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## 1. Introduction:

In implementing the general judicial policies approved by the Supreme Leader of the Islamic Revolution in the field of de-incarceration, the instructions for organizing and reducing the criminal population in prisons were approved by the Head of the Judiciary in 2019. This instruction replaced the instructions for organizing prisoners and reducing the criminal population in prisons approved in 2013. Subsequently, in 2019, the instructions for organizing prisoners and reducing the criminal population in prisons were also approved by the Head of the Judiciary. In fact, the use of the electronic monitoring system and the benefit of prisoners from this system is one of the examples of the use of new technologies and the intelligitization of the judiciary in the era of transformation and excellence. In fact, a person who uses this system is generally not released and is under the supervision of electronic systems available to the judicial system. At the same time, by being present in the family and community, a better opportunity is provided for him on the path of resocialization and return to society.

## 2. The law governing the use of electronic monitoring:

Initially, the use of electronic monitoring was foreseen in Article 62 of the Islamic Penal Code and Article 553 of the Criminal Procedure Code approved in 1392, which was limited to convicts imprisoned in prisons. However, with the approval of the Executive Regulations on Electronic Monitoring approved in 1397, the use of this system has gone beyond and even includes convicts outside prison. Below we discuss the use of convicts inside and outside prison and the opinions of court judges:

As mentioned, the use of electronic monitoring was initially designed only for convicts in prison, and based on the request of the convict and the opinion of the honorable court issuing the final verdict, the privilege is given for the convict to serve his prison sentence outside prison under the supervision of an electronic monitoring device. The legal document for this is Article 62 of the Islamic Penal Code and Article 553 of the Criminal Procedure Code approved in 1392, which emphasizes that the judge executing sentences, after

receiving the case from the classification council from the prison, sends the minutes of the session to the honorable court issuing the final verdict for a decision in this regard. Therefore, it is clear that the convict must be in prison to benefit from the electronic monitoring device.

However, with the approval of the Electronic Monitoring Executive Regulations approved in 1397, Article 7 thereof states that if the convict is free and has not reported himself to the execution of sentences and prison to serve his sentence, the judge executing sentences shall announce the contents of the court's decision to the center and summon the convict and introduce him to the center. So, with the coming into force of this regulation, even convicts outside prison can be given electronic monitoring, but this procedure is disputed among court judges. Some judges believe that in the discussion of the conflict between the regulation and the law, the law prevails, and Article 553 of the Criminal Procedure Code emphasizes that the convict must be in prison in order to obtain a classification for him through the prison council, then the classification council sends the sentence execution judge and the sentence execution judge sends the case along with the prison theory to the court that issues the final sentence, and the court must make a decision in this regard. However, some judges believe that although the law prevails over the regulation, the legislator, in addition to the law, by enacting the executive regulation of electronic monitoring, has provided a way for convicts to be placed on electronic monitoring outside prison, so that they can use this electronic method by submitting a request and a bill.

In this regard, many judicial meetings have been held, and the majority opinion is that convicts outside prison can also use electronic monitoring and there is no restriction. In the author's opinion, if we want to consider convicts who have no previous record and who, for reasons that can be said to have committed a crime by mistake or negligence, and now, in order to preserve their honor and dignity and prevent couples from separating from the warm family center, cannot present themselves to prison, and even in the judicial system, this solution is useful and effective in managing old cases of execution of sentences, proposing electronic monitoring for convicts outside prison. Currently, due to the symmetry of my employment in the prosecution, about 20 cases outside prison are sent to the court every month just to submit their case bill to the court issuing the final verdict in this case. Of course, it should be emphasized that the use of electronic monitoring for convicts outside prison is only for those who have been sentenced to a 5th to 8th degree of punishment without enduring the prison sentence. However, if a convict is out of prison but has committed a second, third or fourth degree penal offense, this cannot be applied because he must serve a quarter of the prison sentence.

Now the question is, are all crimes subject to the use of electronic monitoring or are there any exceptions in this regard?

In Article 62 of the Islamic Penal Code and the Note to the Additional Article of the Anti-Narcotics Law, some crimes either have the conditions for using electronic monitoring or do not have the conditions for using electronic monitoring at all, and the court cannot grant electronic monitoring privileges to convicts, which is explained as follows:

- Article 62 of the Islamic Penal Code states in Note 2 that the provisions of the article regarding second, third and fourth degree penal imprisonments of the convicts must be applicable after serving a quarter of the prison sentence, so we can divide Article 62 into three parts

- Convicts whose penal punishment is second, third and fourth degree, on condition of serving a third of the prison sentence.

- The beginning of Article 62 declared that the punishment of Ta'zir of the fifth to eighth degree is unconditional and without the imposition of imprisonment.

- Electronic monitoring is not assigned to Ta'zir of the first degree, so those sentenced to Ta'zir of the first degree cannot use electronic monitoring.

- Article 62 explicitly declared that one of the conditions for granting electronic monitoring is to have the conditions stipulated in the postponement of care. These conditions are: 1- Not having an effective criminal record 2- Not having a private plaintiff or compensation for losses or establishing arrangements for compensation 3- Existence of mitigating factors 4- Anticipation of reform of the perpetrator. That is, if one of these conditions is not present, the convicted person cannot use electronic monitoring.

•Those convicted of drug offenses, according to the note of Article 45 of the Supplement, which states that if people who have been sentenced to more than 5 years in prison are sentenced to the minimum legal punishment, the perpetrator is deprived of legal relief, including electronic monitoring.

Of course, some judges believe that Article 62 of the Islamic Penal Code is related to Article 40 and related to the provisions on postponement of punishment, so it also applies to Article 47 of the Islamic Penal Code, meaning that if a person commits the crimes listed in Article 47 of the Islamic Penal Code, since those crimes cannot be postponed, they are not covered by Article 62 and those convicted of such crimes cannot use electronic restraints.

### 3. Traffic range in the electronic monitoring system

According to Article 1 of the guidelines for determining the surveillance range of convicts under the supervision of electronic systems, it is divided into three levels:

First level, the permissible traffic radius is a maximum of 200 meters from the building where the convict lives.

Second level, the permissible traffic radius is a maximum of 500 meters from the building where the convict lives.

Third level, the permissible traffic radius is a maximum of 1000 meters from the building where the convict lives.

Of course, according to Article 2 of the guidelines, determining this range depends on the diagnostic, individual, family, social conditions and harmful effects of the convict.

Now the question arises here, if a situation arises for the convict or he is forced to go beyond the designated range, for example, he becomes ill and the distance from the hospital to the convict's residence is more than one kilometer, what is the duty? In this case, if the convict crosses the designated range due to an emergency, then his excuse is justified and the prison authorities have not committed a violation.

If the convict wants to leave the designated area for his administrative work or daily affairs for a long period of time, for example, about 5 days, is it necessary to obtain permission from the court that issued the electronic tag? Here too, if the convict wants to go on daily leave, he does not need permission from the court. In this case, he must request leave from the county prosecutor or the judge executing criminal sentences, and if he agrees, he can leave the designated area for him, according to the granting of daily leave.

Another question is; if the convict works in a place where the distance from the workplace to the convict's residence is more than one kilometer, can he request the court to exceed the electronic tag area for his daily travel, for example, the court can determine a travel area for the convict up to a radius of 2000 meters? Here, the law and the aforementioned instructions are silent. However, according to Article 2 of the instructions, this permission is given to the court, which, considering the social and individual status of the convict and taking into account his job status, has the authority to determine the area up to a radius of more than one kilometer.

This guideline is optional for the court and does not impose an obligation on the court to determine the range up to the specified radius. As the legislator's goal in inventing the electronic system is, firstly: to control the convicted person, secondly: to return to the family center and reform the offender, of course, there is a difference of opinion on this matter among the judges of the courts. Another question is, if the convicted person repeats the violation during the period of supervision with the electronic system without a valid excuse and goes beyond his designated range, or if the convicted person commits a new crime, what is the duty of the court issuing the final verdict and the judge executing criminal sentences? Considering that the court issuing the final verdict only grants and prescribes electronic binding to the convicted person, and according to the aforementioned law and guideline, the supervision of the execution of the convicted person's sentence is with the relevant judicial authority, namely the judge executing criminal sentences and the prison organization. Therefore, in the event of a new crime or repeated violation by the convicted person, the judge executing criminal sentences has the authority to refer the convicted person to prison to continue serving his sentence and at the same time send the matter to the court issuing the final verdict and granting the binding system to cancel it. The court issuing the final verdict may also, based on the report

of the prosecutor or the judge executing criminal sentences, take action to cancel the electronic restraint of the convicted person and take into account the harmful effects of the convicted person.

4. For the use of electronic restraint, is property a legal punishment or a judicial punishment? In other words, if a person is sentenced to 3 years in prison for the crime of fraud, if we look at the main punishment of fraud, the legal punishment is 7 years. That is, the convicted person must first serve a quarter of the sentence. Then he can use the restraint system and also serve the 3-year sentence that the judge has calculated in his verdict, because the punishment is 3 years of level 5. Therefore, there is no need to endure a quarter of the sentence and he can use the electronic restraint without serving the quorum. In answer to this question, it should be said: According to the beginning of Article 62 of the Islamic Penal Code, which states; In Ta'zir crimes from level five to level eight, the court can, if the conditions exist, place the convicted person under the electronic restraint system. Therefore, it is clear that the criterion is the legal punishment of the crime. That is, for the crime of fraud, considering that according to the law on the punishment of perpetrators, bribery and fraud are imprisoned The maximum sentence for fraud is 7 years. Therefore, even if the convicted person is sentenced to 3 years in prison according to the verdict, he must serve a quarter of the prison sentence. In that case, he can request the use of an electronic restraint.

5. Is the decision issued by the court regarding the use of electronic restraints final or appealable? First of all, it should be said that considering that the use of the electronic restraint system is considered a form of concession and is not a right for the convicted person, the court has the discretion to place the convicted person under the supervision of the electronic system. The decision issued in this regard is final and cannot be appealed or acknowledged. However, the convicted person reserves the right to request the court to install the restraint again after the court has rejected his request, and there is no prohibition in this regard. It is also possible that the court issuing the final judgment may reject the convicted person's request due to the absence of one of the existing conditions, and then, considering the conditions, it may agree to his request. For example, the convicted person may not have paid the private aspect of the crime, including the compensation, the plaintiff's property damage, and his request will be rejected. However, as soon as the private aspect of the crime is paid, the court may agree to the request for granting the Mashalaliyah restraint at a later stage.

#### **\*\*Conclusion\*\***

As mentioned, the electronic restraint system is one of the most innovative methods for controlling first-time offenders, and their absence from prison to serve the prescribed sentence can create another life for them, as well as prevent them from committing and repeating crimes in line with criminal policy. Of course, this option should not be given to those convicted with a history of criminal activity because it will have devastating effects on society and the public, and the possibility of these individuals committing a new crime is foreseeable. And the court issuing the final verdict must carefully consider the conditions for using this leniency. But overall, this modern method can be effective and useful in reforming the offender and returning to prison.