

Technological Innovations In Penal Policy: An Examination Of Electronic Surveillance As A Progressive Alternative To Short-Term Incarceration Within The Framework Of Jordanian Legislation

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Abstract

This paper analyzes electronic surveillance as an innovative, humane alternative to short-term incarceration within Jordanian penal policy. It critically examines the genesis, implementation, and termination of electronic surveillance, highlighting its potential to mitigate the detrimental effects of short-term incarceration. The study underscores the necessity of convict consent and the conditions for implementing electronic surveillance under Jordanian legislation. It further explores the implications of revoking a decree to undergo electronic surveillance, emphasizing the need for a comprehensive legal framework to govern its application. The paper concludes with a call for a nuanced approach to punitive measures, advocating for expanding electronic surveillance provisions in Jordanian legislation. This research contributes to the

discourse on progressive penal policy, offering valuable insights into the potential of technological innovations in transforming disciplinary practices.

Keywords: Electronic Surveillance; Progressive Penal Policy; Jordanian Legislation; Short-term Incarceration; Convict Consent; Legal Framework Implementation

Introduction

Contemporary criminological scholarship and empirical evidence strongly suggest that the sanction of deprivation of liberty, particularly in the context of short-term sentences, often fails to achieve its intended rehabilitative goals. Instead, it potentially exacerbates criminal propensities, contributing to a heightened societal risk. The critique levied against this punitive measure is that it serves as an expensive and counterproductive instrument that inadvertently fosters criminality, constituting a significant concern for societal well-being.

Despite this critique, most contemporary penal codes, inclusive of the Jordanian legislation, have not categorically dismissed the sanction of deprivation of liberty. Somewhat, they are progressively evolving toward the conceptualization and implementation of alternative penal strategies. One such innovative approach is electronic surveillance, emerging as an embodiment of progressive penal policy and humane punishment. The realization of this innovative punitive measure owes much to the significant strides made in scientific advancement, providing state-of-the-art technologies that augment the efficacy of penal law in its mission to counteract criminal behavior.

Significance of the Study

This research's importance lies in exploring electronic surveillance as an increasingly salient and transformative alternative to short-term deprivation of liberty in contemporary penal policy. This significance is underlined by the technological advancements in diverse fields that have fundamentally reconfigured crime control strategies.

Problem Statement

Given that the primary objective of the penal institution, through its various programs and activities, is to rehabilitate and reintegrate its

inmates in alignment with societal norms, it raises the critical question of whether such goals can be achieved through alternative measures outside the traditional confines of penal institutions. Undoubtedly, such alternatives could provide more advantageous outcomes than those associated with depriving liberty. The crux of this inquiry hinges on the feasibility of implementing electronic surveillance as a viable strategy. Does this method embody an efficacious penal policy when juxtaposed against short-term deprivation of liberty? Are there legal frameworks governing its implementation? Are there identifiable lacunae within the Jordanian legislation concerning such regulations?

Methodology

Given the nature of the research question, an analytical-descriptive approach is deemed most appropriate. This methodology involves a comprehensive review of the legal texts that delineate the provisions of electronic surveillance within the Jordanian legislation, coupled with an in-depth analysis and critical discussion to ascertain their effectiveness within current penal policy.

The Conceptualization of Short-Term Incarceration

The significance of incarceration as a punitive measure is most palpable when its duration is moderate or relatively extended, as it facilitates the integration of the convict into correctional and rehabilitative programs. However, the efficacy of short-term incarceration, it is capable of fulfilling its intended purposes, and the criteria for determining the length of such a punishment remain subject to debate. This is particularly relevant given that Jordanian legislation neither employs the term 'short-term incarceration' nor provides a definition for it (Al-Wreikat, M., 2017). The conceptualization of short-term incarceration is inherently linked to its duration, and jurisprudential perspectives vary in defining this period.

A faction of jurisprudence, as evidenced by the recommendations of the International Criminal and Punitive Committee held in Berne in 1946 and the first Arab seminar for social defense in Cairo in 1966, posits that the duration should be three months (Obaid, H. I., 1970). Others, including Ali, Y. A., Abdel-Rahim, A. (1999), and Al-Sarraj, A. (1990), argue for six months. A third group, including Kabeesh, M. (1995) and Al-Zeini, A. R. (2005), contends that it should be at most a year. We align with the latter jurisprudential approach, asserting that short-term incarceration should be defined as a period of one year or less, with one year representing the

upper limit for this penalty. Consequently, the penalty of short-term incarceration, which can be alternated with electronic surveillance, should not exceed one year as a maximum.

The Detrimental Consequences of Short-Term Incarceration

Since the latter half of the 19th century, this form of punishment has been subject to continuous critique from a majority of legal scholars. The practical implementation of short-term incarceration has revealed its numerous adverse impacts across physical, psychological, social, and economic domains. Furthermore, it has been linked to increased recidivism rates and penal institutions' overpopulation (Ghanmi, A. A. G., 2009; Saad, B. R., 2013). This has sparked a jurisprudential debate regarding its practical and theoretical viability, with one faction advocating for its retention but with limited scope and another calling for its complete abolition in favor of alternative punitive measures. Among these alternatives, electronic surveillance has emerged as a prominent option for replacing short-term incarceration in the contemporary era of punitive enforcement.

The Characterization of Electronic Surveillance

Criminal jurisprudence has employed various terms to describe this form of surveillance. Some refer to it as electronic home surveillance (Forment, J.C.H., 1998), others as home confinement under electronic surveillance (Benghazi, M., 1990), and yet others as the electronic bracelet (Atani, S., 2009). Some jurists prefer the term electronic control (Obaid, O. H., 2009) or electronic surveillance (Al-Youssef, A. b. A., 2003). Despite the variation in terminology, these designations converge in their meaning, all referring to the same concept. We prefer the term 'electronic surveillance,' as it is preferred by Jordanian legislation, and the analysis of the provisions of electronic surveillance in this legislation represents the core of this study.

Definition of Electronic Surveillance

As per Article 25 bis/1/c, Jordanian penal legislation defines electronic surveillance as: "Subjecting the convict to electronic surveillance for not less than a month and not exceeding a year." One jurisprudential approach (Salem, O., 2005) defines it as: "The confinement of the convict to his residence during specified hours, facilitated by electronic surveillance." Another approach (Al-Obaidi, N., 2015) defines it as: "An

innovative method that serves as an alternative to temporary incarceration, also known as home confinement. This penalty allows the convict to remain at home, with his movements monitored via an electronic bracelet attached to his wrist or leg.”

However, these definitions have been critiqued for not limiting electronic surveillance to those sentenced to short-term incarceration but instead mentioning different durations of this penalty. This suggests that this form of surveillance is an alternative to incarceration, irrespective of its duration. This contradicts the original intent behind the development of this form of surveillance, which was to mitigate the harms of short-term incarceration. Therefore, we propose that electronic surveillance is: “The obligation of a person sentenced to short-term incarceration to reside in his home or a specific location during specified times while being subjected to a set of obligations that he must fulfill. His compliance with these obligations is monitored electronically, and any violation will result in his incarceration.”

The Genesis of Electronic Surveillance

The historical roots of electronic surveillance can be traced back to an experiment conducted by the Schwitzgebel brothers, two scientists from Harvard University in the United States. In 1964, they developed a system for wireless surveillance, which was trialed on sixteen conditionally released convicts. However, it was not until 1977 in New Mexico, USA, that this form of surveillance took its final form (Cardet, C., 2004). By 1986, its use had expanded to twenty-six states. Due to its success, it was incorporated into most penal legislation, including Jordanian legislation, which introduced it as an alternative to incarceration under the Corrections Amendment Act No. (10) of 2022. Before this, it was introduced as an alternative to judicial detention under the law amending the Code of Criminal Procedure No. (32) of 2017, according to Article “114 bis / 1 / a”.

The Legal and Punitive Adaptation of Electronic Surveillance

Firstly, the legal adaptation of electronic surveillance: A jurisprudential approach (Charmatz, D., 2010) posits that electronic surveillance is a criminal penalty as it involves coercion and discomfort, and it constitutes a punishment that is executed in a free environment. The Jordanian legislation aligns with this view, as it explicitly categorizes it as one of the alternatives to incarceration, according to Article “25 bis / 1 / c” of the

Penal Code. Another jurisprudential approach (Al-Qadi, R. M., 2015) suggests that electronic surveillance is a precautionary measure to prevent recidivism and eliminate the criminal tendencies of the person being monitored. This view aligns with Jordanian legislation stipulating electronic surveillance as an alternative to judicial detention in the Code of Criminal Procedure.

Another approach in criminal jurisprudence (Salem, O., 2005) views electronic surveillance as an innovative means of penalty enforcement, a method for executing short-term incarceration using modern technologies to rehabilitate the convict. It is not considered a separate punishment added to the scale of criminal penalties used in legislation. Furthermore, a jurisprudential approach (Obaid, O. H., 2009) suggests that the legal adaptation of surveillance is based on a formal criterion for the procedural stage in which it is applied. If applied before the issuance of the verdict against the offender in a criminal case, it is then considered a measure, as it constitutes an alternative to arrest in this case. However, if applied in the subsequent stage to the issuance of the verdict, it is considered punitive. In our view, the latter opinion is more plausible for its relevance since it is not possible to always describe this kind of surveillance as a measure, as sometimes it has the nature and characteristics of punishment, and the distinction between the two cases depends mainly on determining how it is applied. If it is applied at the investigation stage, there is no doubt about describing it as a measure, but if it was done after the issuance of the judicial verdict, it could be described as a penalty.

Secondly, the punitive adaptation of electronic surveillance: While a few penal legislations considered the electronic surveillance decision to be within the competence of the administrative authority, most of them tended to assign the task of deciding on the surveillance to the judicial authority (Al-Zeini, A. R., 2005). This includes the Jordanian legislation that entrusted the task of determining the use of electronic surveillance with the judicial detainee to the execution judge. The court also may decide to use it as an alternative to the penalty of deprivation of liberty under the laws. The penalty execution judge supervises its implementation following the procedures stipulated in the system of means and procedures for executing alternatives to the penalty of deprivation of liberty No. 46 of 2022. The legislative approach that gives the judicial authority the right to decide on electronic surveillance is more plausible and ought to receive support, as the judiciary can guarantee the preservation of the rights and freedoms of those subject to surveillance.

The Advent of Electronic Surveillance

The historical genesis of electronic surveillance can be traced back to an experiment conducted by the Schwitzgebel brothers, two scientists from Harvard University in the United States. In 1964, they developed a system for wireless surveillance, which was trialed on sixteen conditionally released convicts. However, it was not until 1977 in New Mexico, USA, that this form of surveillance took its final form (Cardet, C., 2004). By 1986, its use had expanded to twenty-six states. Due to its success, it was incorporated into most penal legislation, including Jordanian legislation, which introduced it as an alternative to incarceration under the Corrections Amendment Act No. (10) of 2022. Before this, it was introduced as an alternative to judicial detention under the law amending the Code of Criminal Procedure No. (32) of 2017, according to Article "114 bis / 1 / a".

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The Necessity of Convict Consent for Electronic Surveillance

Most punitive legislation requires the consent of the convict for electronic surveillance. However, Jordanian legislation deviates from this norm and does not necessitate the convict's consent. This procedure is debatable, as the rehabilitation process hinges on the convict's willingness to undergo rehabilitation. Therefore, it is impermissible to disregard his will, especially since this surveillance presupposes a set of control and assistance measures that must be followed and which require cooperation with the competent authorities. This is unachievable if the convict refuses surveillance from the outset.

Conditions for Implementing Electronic Surveillance in Jordanian Legislation

The implementation of electronic surveillance necessitates the fulfillment of specific legal conditions and other material requirements, which can be summarized as follows:

First: Legal conditions: Specific legal conditions must be met for electronic surveillance to be implemented. These conditions pertain to the subject of surveillance, the crime committed, and the penalty of deprivation of liberty imposed.

1. Conditions related to the individual subjected to electronic surveillance: Electronic surveillance in Jordanian legislation is applied to adult criminals only, excluding juvenile delinquents. A penal jurisprudence (Obaid, O. H., 2009) that we concur with argues for the importance of subjecting juveniles to this kind of surveillance. It justifies this by the necessity to keep them away from the disadvantages of short-term deprivation of liberty, as they are more quickly affected by it than adult criminals. Furthermore, this surveillance allows for their rehabilitation within the framework of the realistic conditions in their social environment. Thus, it is more beneficial to them on the rehabilitative, social, and humanitarian levels than the deprivation of liberty.

Jordanian legislation stipulates that the electronic surveillance procedure for the convict shall not be repeated (Article 25 bis/1/g). We believe that this legislative approach is subject to criticism because the alternative to electronic surveillance is applied only to those whose criminal risk is at its lowest level and because the convicted person should not be viewed in isolation from the circumstances that surround him which may have the leading role in his return to crime. Moreover, there is no justification for being concerned about the prior criminal record as long as the legislator grants the judge discretionary power in ruling with this alternative. This is a shortcoming in Jordanian legislation that should be avoided.

2. Conditions related to the committed crime: The Jordanian Penal Code (Article 25 bis) allows the court to rule on subjecting the perpetrators of misdemeanors in general and some of the felonies to electronic surveillance provided that the latter is subject to two conditions: the first: that it is not a crime against persons, and the second: that the court had reduced the sentence to a year after the use of mitigating circumstances.

As such, the Jordanian legislation excluded the perpetrators of infractions from being subject to electronic surveillance. This is a criticized approach due to the presence of a number of violations, even if few, whose perpetrators are punished with the short-term deprivation of liberty, in addition to the fact that imprisonment may be sentenced if a fine cannot be paid. Therefore, this leads us back to the disadvantages of deprivation of liberty. Thereby, it indicates an undoubted legislative contradiction considering the reason for which electronic surveillance was introduced.

3. Conditions related to the penalty: The Jordanian Penal Code, in the text of Article 25 bis, permitted the application of electronic surveillance to perpetrators of misdemeanors and felonies that were not directed at persons and when the penalty was reduced to one year. Article 21 of the same law defines misdemeanor imprisonment as placing the convict in a reform and rehabilitation center for the period he is sentenced to, which ranges between one week and three years unless the law stipulates otherwise. According to the interpretation of this text, this means that the convict may be subjected to a three-year term of electronic surveillance. According to the view we support, this term does not fall within the framework of the short-term penalty of deprivation of liberty, which stipulates that the deprivation of liberty is considered short-term if it is for one year or less. Therefore, it is important to establish a legislative intervention to limit electronic surveillance for misdemeanors to a period not exceeding one year.

Second: Material requirements for the application of electronic surveillance: This kind of surveillance requires the availability of technical equipment, without which it cannot be implemented. This was stipulated in the system of means and mechanisms for implementing alternatives to Deprivation of Liberty penalties (Article "8/a" of the 2022 bylaw of Means and Mechanisms for Implementing Alternatives to Deprivation of Liberty.). For the person to be subject to surveillance, there must be a place of residence within a specific geographical area (Al-Obeidi, N., 2015), also providing a telephone line only for this surveillance without connected to any additional features such as the Internet and an automated answering service, in order to ensure good reception and transmission of telephone calls related to surveillance. In addition, the need to verify whether the person's health condition to be subject to surveillance is suitable for placing the electronic bracelet on his body to protect him from being harmed by the surveillance. This is certified by a

medical certificate that is kept in his file (Pradel, J., 1995). The Jordanian legislation does not contain this requirement, which can be considered a legislative shortcoming that must be rectified.

The Implementation of Electronic Surveillance

Electronic surveillance manifests in various forms, as follows:

1. **The Electronic Bracelet:** This is a compact electronic device typically affixed around the wrist or ankle of the individual under surveillance to ensure it is not tampered with or damaged due to the individual's body movements (Kenscy, A., Pitoun, R., Levyet, P-V., & Teurnier, 2003). The device intermittently sends signals to a receiving device, providing the surveillance authority with reports confirming that the individual is within the specified geographical scope. The device sends warning signals to the control authority if any rules are violated. The electronic bracelet is considered the most effective method of electronic surveillance due to its high efficacy in achieving the desired surveillance objectives (Otani, S., 2009).
2. **Voiceprint:** This method involves recording the individual's voice to be surveilled in an electronic file. The surveillance systems then make periodic calls to the individual's place of residence and compare the voice on the call with the recorded voice model using a central computer. If a mismatch is found in the voiceprint, the Central Surveillance Department is notified of the individual violating the surveillance conditions (Al-Zeini, A. R., 2005).
3. **Electronic Surveillance Using Satellites:** This method relies on the electronic bracelet device sending signals to satellites, which are then re-broadcast to the central computer in the surveillance center to determine the geographical location of the individual under surveillance. While this method is effective in management, it is costly and can be limited by certain obstacles, such as the presence of tall buildings (Al-Walid, S. I., 2013).

These varied forms of electronic surveillance offer a range of options for monitoring individuals, each with its advantages and potential limitations. As technology advances, these methods will likely evolve, and new forms of electronic surveillance will emerge.

The Termination of Electronic Surveillance

Electronic surveillance typically concludes upon the successful completion of the designated period. However, in certain instances, surveillance may be rescinded or substituted with other alternatives to penalties of deprivation of liberty, or an amendment in their application conditions may occur, as follows:

First: Rescission of Electronic Surveillance: The decision to electronic surveillance is rescinded if the individual under surveillance violates the imposed conditions and rules during the surveillance period. However, not every violation justifies the retraction of the surveillance decision, as some violations pose less risk, making the cancellation of the surveillance decision disproportionate to it (Al-Zeini, A. R., 2005). The necessary cases of violation that require the reversion of the surveillance decision reveal the extent of the criminal danger of the person under surveillance, as per Article 25 bis / 4 of the Jordanian Penal Code.

Second: Substitution of Electronic Surveillance or Amendment of its Conditions: Article "25 bis / 3" of the Penal Code permits the penalty execution judge to replace electronic surveillance with any of the alternatives to deprivation of liberty legally stipulated in the text of Article "25 bis" or to reduce or increase the period of electronic surveillance based on the marital status report and periodic follow-up reports of the convict. This applies if the individual cannot carry out the surveillance for a reason beyond his control or if he presents an acceptable excuse. While this course of action is commendable in the Jordanian legislation, it is taken against him that he did not indicate the procedure to be followed by the penalty execution judge if the person under supervision refused to amend the conditions of the supervision or replace them with an alternative. Furthermore, it is still being determined whether he has the right to appeal the amendment decision if he is willing to do so and whether his refusal of this amendment is considered a reason for reversing the decision to place him under surveillance.

Effects of Revoking a Decree to Undergo Electronic Surveillance

The Jordanian Penal Code stipulates for the judiciary to transfer the authority to overturn the ruling with the alternative to electronic surveillance and to grant the court that issued the ruling with this alternative a discretionary power in this matter (Article "25 bis / 3, 4" of Penal Code). This course is praiseworthy for Jordanian legislation, as the judiciary achieves an essential guarantee in preserving the rights and freedoms of those subject to this surveillance. The cancellation of the

decision to submit to this surveillance entails the implementation of the deprivation of liberty. The convict must spend what was left of his sentence period in the penal institution after calculating the period he spent under probation from the entire period of his sentence by five hours for each day of imprisonment (Article "25 bis / 4" of Penal Code).

Conclusion

In conclusion, this comprehensive study has delved into the intricacies of Electronic Surveillance as an Alternative to Short-term Deprivation of Liberty within the context of Jordanian legislation. This innovative punitive alternative has gained significant traction in contemporary legal systems, offering a more contextually relevant approach to dealing with offenders within their social milieu, free from the confines of penal institutions.

Key Findings:

1. The study has illuminated the relatively recent origins of electronic surveillance as a punitive alternative, tracing its roots back to the latter half of the previous century.
2. Jordanian legislation has incorporated electronic surveillance as an alternative to deprivation of liberty penalties for adult offenders in its most recent amendment to the Penal Code, as per Amendment Law No. 10 of 2022. However, it has yet to extend this alternative to juvenile offenders.
3. The study underscores that electronic surveillance necessitates a punitive treatment that restricts the offender's freedom without entirely depriving them of it. This treatment is contingent on certain obligations imposed on the offender, which are temporary and expire at the end of their term.
4. Electronic surveillance has emerged as an efficacious means of mitigating prison overcrowding and combating the disadvantages associated with short-term deprivation of liberty.
5. The study has identified several issues within the Jordanian legislation concerning electronic surveillance, necessitating a comprehensive legal framework for its application and reconsidering its implementation provisions.

Recommendations:

In light of these findings, the study recommends a thorough review of the Jordanian penal legislation, notably Article "25 bis" of the Penal Code, with the aim of expanding the provisions regulating electronic surveillance as an alternative to deprivation of liberty. Specific recommendations include:

1. Limiting the period of deprivation of liberty, which may be replaced with electronic surveillance, to a maximum of one year.
2. Requiring the convict's consent as a prerequisite for electronic surveillance, given the importance of their cooperation in its successful implementation.
3. Extending electronic surveillance to juvenile delinquents to shield them from the detrimental effects of deprivation of liberty.
4. Applying electronic surveillance to repeat offenders with minimal criminal risk to prevent them from experiencing the drawbacks of short-term deprivation of liberty.
5. Including those sentenced to financial penalties under the purview of electronic surveillance, particularly in insolvency cases, to prevent the conversion of fines into alternative imprisonment.
6. Incorporating the perpetrators of infractions under electronic surveillance, given their relative lack of criminal inclination and the necessity of protecting them from the corrupting environment within penal institutions.

In conclusion, the study advocates for a more nuanced and contextually relevant approach to punitive measures, underscoring the potential of electronic surveillance as a viable alternative to deprivation of liberty within the Jordanian legal context.

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