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# **Implementing Electronic Monitoring**

## **A comparative, empirical study on attitudes towards the measure in Lower Saxony/Germany and in Sweden<sup>1</sup>**

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### **1. Object and aim of the study**

The purpose of the attitude study in Lower Saxony/Germany and Sweden was to obtain insight into a number of key issues surrounding the debate on electronic monitoring. Those professionals in the penal justice and correctional system who were considered to be the most aware of such programmes, were surveyed in regard to their opinions towards various applications, target groups and the advantages and disadvantages of electronic monitoring. Additionally, it was hoped that the analysis of every study and the following comparison would allow for a statement on applicability in Germany.

### **2. Method of the empirical studies in Lower Saxony and Sweden**

Before 1998, no study had asked professionals, in the penal justice and correctional system in Germany and Sweden, about their attitudes towards electronic monitoring<sup>2</sup>. Therefore, the study has an exploratory and largely descriptive character.

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<sup>1</sup> Many thanks to Nimet Güller who proof-read the text.

<sup>2</sup> The oral survey of experts of Schramke 1996, p. 352, 433, 436 about old people in prison incorporates one question to electronic monitoring. The Swedish evaluation took into account, the attitudes of the probation service. The National Council for

The studies were carried out with written surveys for practical and economical reasons. In Sweden, the survey was mainly part of the implementation research among professionals with direct or indirect contact to electronic monitoring of offenders. In Lower Saxony, the lack of implementation forced the concept to be based on a mere study of views towards this alternative. Nevertheless, the survey in Lower Saxony was orientated according to the implementation approach<sup>3</sup>. The choice of the questioned people was founded on the question, who could be responsible for such a programme in Germany.

The studies of attitudes in Lower Saxony and Sweden were concipated according to comparative criminology<sup>4</sup>. The written survey in Lower Saxony took place from the end of April to the end of June 1998, and the survey in Sweden from the end of August to the end of October 1998. In Lower Saxony, a total of 1202 practitioners, including penal judges at county and district courts, prosecutors, probation officers and prison governors were questioned and 541 experts (45%) answered. In Sweden, a total survey among 802 persons was carried out. The response rate was 54.9% (440 answers). This study involved all penal judges at district courts and staff in the correctional system, under intensive supervision (correctional group superintendents, correctional group leaders, probation officers, prison officers and office staff).

Both questionnaires were developed together and correspond with each other in content and structure. Differences arise in the respective penal and enforcement systems and the different frameworks towards electronic monitoring. In Sweden, at the time of the survey, there was already a trial which had been running several years, whereas, in Germany, a fundamental discussion could be observed.

In the first step, the studies are interpreted concerning the respective country in order to grasp the typical circumstances of the country. In Lower Saxony, 522 answers were considered for the analysis of data and 438 in Sweden. The following “asymmetric” comparison finds out and interprets

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Crime Prevention questioned, with a written survey, all leaders of probation offices in 1997. In September 1998, another written survey among the nowadays-called correctional offices took place. A survey among penal judges and penal judges in supervision boards has not been carried out.

<sup>3</sup> See Mayntz, in: Mayntz 1980, p. 239; Mayntz, in: Mayntz 1983, p. 22.

<sup>4</sup> See the method of comparative studies, Albrecht, H.-J., in: Jescheck/Kaiser 1978, p. 289; Kaiser 1996, p. 157 f.; Schneider 2001, p. 262 ff.

correspondences and differences between the attitudes of the persons questioned from both countries. The findings are studied accordingly.

### **3. Findings of the study in Lower Saxony**

In Lower Saxony, a positive attitude towards electronic monitoring can be found among the experts. 68.3% (n=520) of the practitioners can imagine an applicability of the measure<sup>5</sup>. Only 27.9% of the questioned persons represent a critical or opponent position. The majority of 77.3% (n=396) would like to integrate the instrument as a form of enforcement.

81.7% of the questioned persons (n=437) would like to use electronic monitoring to avoid incarceration. Short prison sentences up to six months are regarded as a favourable application sphere by the majority 62.5% (n=309). Fine defaulters (67%, n=324), revocation of probation (59.6%, n=312) and short imprisonment gain prevailing approval. Support clearly goes back in the event of prison terms over six months: for example, imprisonment over six months up to one year is only favoured by 27.8% (n=295). The experts (8.1%, n=291) rarely argue for the use of electronic monitoring in case of prison sentences over one year. The clear support for short imprisonment indicates that electronic monitoring is probably understood as a link between suspended and unsuspended prison sentences. The views towards the severeness of the measures in the penalty system also hint in favour of this function. 48.7% (n=454) of the questioned persons place electronic monitoring in the intermediate area between probation and imprisonment.

More than one third (34.6%, n=387) support an aggravating application according suspended prison sentences up to six months. Electronic monitoring could settle as an option in the sense of a “stricter” probation, for a suspension seen as too lenient and imprisonment considered as too punitive. In this tensional relation the measure might be used as an alternative to imprisonment pursuant to the idea of the majority. However, there also exists a potential to replace traditional probation through

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<sup>5</sup> Because 81 persons (77 opponents + 4 others) went straight to question 23, only 441 questionnaires out of a total of 522 questionnaires were analysed; questions referring to application sphere, eligible offender groups etc. Quite high missing values came up in the evaluation of variables designed in table form. On checking the questionnaires, it was striking that approx. 40 of the questioned persons only answered with yes. The no-answers entailed a great number of missing values.

electronic monitoring. The existing gap between suspended and unsuspended prison sentences, hints to a lack of surrogates for imprisonment and to a certain unsatisfaction with the sanction system. This unsatisfaction is expressed by several experts in their open answers.

During and after serving time in prison, most of the questioned persons would consider an application of electronic monitoring. Parole is thought of 51.1% (n=224) of practitioners. In case of an early release, the majority would like to use the option after half-time for imprisonment up to one year (65.3%, n=197) and after two-thirds, up to 18 months (53.2%, n=188). Many questioned people (46.4%, n= 192) are open-minded towards an application for longer prison sentences after having served two-thirds. Electronic monitoring could shorten time in prison for inmates who cannot be released earlier due to bad conduct. At the same time, the option may function as an aggravating condition of parole. In this case, the enforcement at home would be a widening of the social control for this clientele.

The practitioners name low risk target groups with petty or middle delinquency and fine socio-economical backgrounds as eligible types of offenders. This concerns a permanent place of residence (84.8%, n=434), work (52.1%, n=434) and social bonds (59.7%, n=434). The typical prisoner clientele such as repeated offenders (71.5%, n=404) and substance abusers (68.6%, n=398) are regarded as a more ineligible group. The questioned persons prefer first time prisoners and atypical prisoners such as elderly offenders (74.7%, n=403), physically handicapped offenders (73.9%, n=399) and pregnant women (71.9%, n=405). At this point, an unintended tendency towards net-widening appears because the experts include offenders with an optimistic social prognosis who might be sentenced to probation. In this area, the use of electronic monitoring could lead to an unwanted aggravation, though the questioned persons would like to avoid imprisonment. In contrast to the wanted low risk profile of offenders with high socio-economical conditions, the professionals consider as the most important advantages for society, the relief of prisons (88.9%, n=495) and a reduction of cost (87.1%, n=488). These expectations could not be fulfilled because the preferred type of convicted person is a minority in prison. In this context, electronic monitoring would probably be an unsuitable “universal key” for solving the problem of overcrowding.

The professionals would prefer to assign the concrete realization to not only one responsible body. 52.3% (n=333) give priority to the separated powers, according to the phase of the process. A responsibility of prison

governors (56.3%, n=364) and prosecutors (51.4%, n=348) meets with a positive response by more than half of the questioned people. All other suggestions such as the probation service (39.4%, n=353) have a less favourable response. Within the framework of supporting measures, 55.6% (n=392) would approve of a probation order. But this is probably thought of for isolated cases. In supporting measures cases, control actions are taken into consideration such as unannounced home visits by judges, prosecutors and prison governors. In contrast to this, probation officers place more value on treatment measures e.g., an advisory service and therapeutical aids. The difference between their professions may explain this differentiation. Socio-pedagogical studies would probably support a clientele-orientated, assisting point of view, whereas prosecutors and judges might have a more repressive insight.

The different perspectives of probation officers in comparison to the other professionals is clearly expressed by the attitude of disadvantages for the society. Differences between probation officers and the other representatives can be observed according to their political tendency<sup>6</sup>. While probation officers represent a more liberal position, judges and prosecutors belong to a more conservative line of thought. The liberal viewer regards electronic monitoring as inhuman punishment, fears an aggravation and the development of a surveillance society. Whereas, the conservative point of view considers the option as a too lenient punishment, a threat of security interests and a higher risk of recidivism. These opposite starting points especially arise among critics and opponents and are also of influence concerning the attitudes towards the severeness of electronic monitoring in the sentencing system.

#### **4. Findings of the study in Sweden**

In Sweden, the implementation of intensive supervision with electronic monitoring has succeeded, according to the opinion of the questioned persons. 92.9% (n=421) designate the trials as a success or a great success. The legal provision with its form of enforcement of prison sentences up to three months, mainly meets with approval (78.1%, n=397). Half of the judges (50.5%) would prefer it as an introduction to a sentence, rather than as a form of enforcement. They would probably prefer to have the

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<sup>6</sup> The following results are based on a factor analysis; further to the factor analysis of Brosius 1998, p. 369 ff.

competence to decide on the conviction for intensive supervision.

The mainstream of the experts (92.1%, n=431) agree with the goal of not serving the sentence in prison. A replacement of less intensive ambulant sanctions through intensive supervision is rejected by a clear majority<sup>7</sup>. However, nearly half of the practitioners (48.8%, n=418) support a conjunction of the sentence “probation” with intensive supervision. The high resonance could hint to a need for a “tougher” probation and could lead sometimes to an aggravation. According to the legislator’s target, the majority (87.9%, n=371) approves of the application sphere for imprisonment up to three months.

During serving time in prison more than half (54.7%, n=428) would appreciate the use of the option as a loosening measure of enforcement. In the framework of parole, three-quarters of the questioned persons (74.3%, n=428) were in favour of its application. In their opinion, an early release with electronic monitoring should be possible after half-time, in prison sentences of up to six months (83.5%, n=303) and after two-thirds, in prison sentences up to nine months (61.4%, n=285). Whereas half-time parole would shorten the stay in prison, an application after two-thirds, might aggravate the release situation for the parolee.

In the view of most of the questioned persons, the essential conditions for participation are, a permanent place of residence (83.6%, n=434) and at least a half-time job (77.6%, n=434). In cases where the sentence should not be served in prison, the questioned persons call for low-risk target groups with petty and middle offences (first-time prisoners, serious drunken drivers) and minorities in prison (handicapped persons, pregnant women etc.). In their opinion difficult and dangerous inmates (drug abusers, violent offenders, sexual offenders) are not eligible. A comparable picture also results from an application in case of parole. At this point, differences arise between judges and employees in the correctional system. While correctional superintendants and most of the probation officers mainly consider sexual and repeated offenders, most judges speak out against their participation. This deviation is probably based on the different professional comprehension. Judges might favour a just punishment, whereas correctional superintendants and probation officers would focus on the rehabilitation of the offender.

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<sup>7</sup> 86.3% (n=408) speak against intensive supervision concerning probation and 91.3% (n=404) concerning fines.

The design of intensive supervision within the legal framework often corresponds with the opinion of the practitioners. But nearly half of the experts (46.5%, n=426) speak out for a mere electronic control without supporting measures after or even without assessing every case. Such a concept is recommended by the majority of the judges (61.5%). This design would be against the motives of the law. Electronic monitoring would not play a subordinate part, but would be the only element of the enforcement at home. The term “intensive supervision with electronic monitoring” would be misleading in that case. Judges, being members of a supervision board, and the other professionals mainly believe that social-pedagogical care is needed. The discrepancy might result from the distance of the judges towards intensive supervision. All other professionals, because of their own experience, may come to another valuation.

The probation service is seen as a well-established implementation actor by the experts. Their responsibility in intensive supervision meets with nearly unanimous approval (94.8%, n=423). Though most of the questioned persons have confidence in the technique (94.9%, n=416), the electronic equipment is a sore point. Several practitioners would like to have better technical devices<sup>8</sup>.

According to the mainstream, violations against the programme need a reaction. While in the case of severe (93.1%, n=434) or repeated (95.2%, n=434) misconduct, most of the questioned persons only support the transport to prison, there could be an opportunity in cases of simple offences. The experts would prefer to react with a warning in single offence cases (86.1%, n=433). In cases with several violations, the independent organisation of the local correctional offices partly leads to a different handling. The more lax practise in some local correctional offices does not correspond with the intention of the legislator with a clear and homogeneous concept<sup>9</sup>.

According to the opinion of the questioned people, the success of intensive supervision is based on the convict remaining in his social network, reduction of prisoners (98.4%, n=431) and of the cost (97.4%, n=430) and the small number of violations. In their eyes, the possible commitment of new offences (63.9%, n=402) during the enforcement is

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<sup>8</sup> This is especially shown by the answers of the open question: 32.6% (n=233) suggest technical improvements.

<sup>9</sup> Reg. prop. 1993/94:184, p. 24 f.

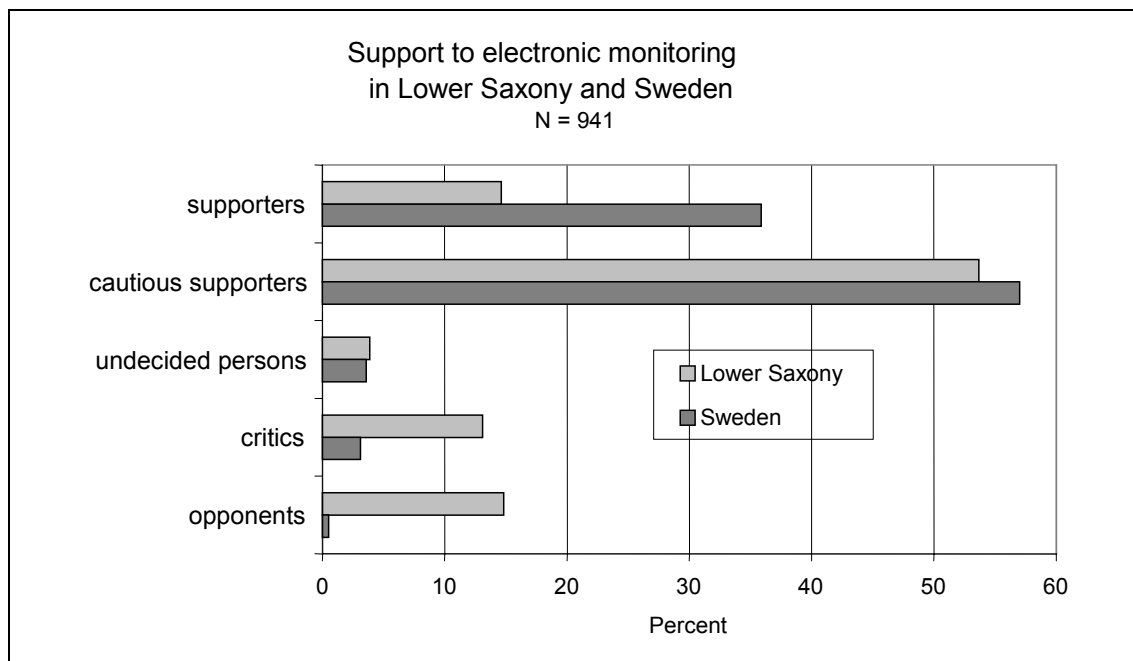


one important disadvantage. This estimation could be a considerable cause for the preferred low-risk offender profile.

Three-quarters place intensive supervision (n=401) according to its severity in the intermediate area and on the stage of imprisonment up to three months. This assessment is another indication for the successful implementation of intensive supervision in Sweden.

## 5. The comparison of the results

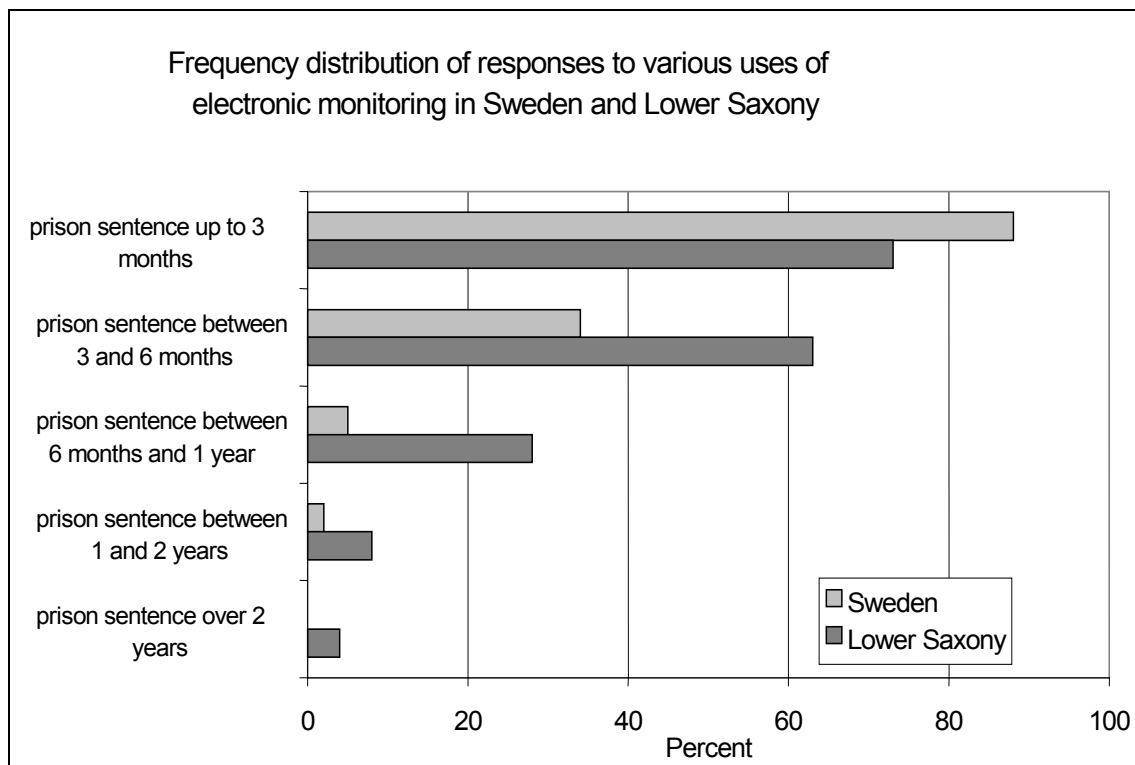
The comparison of the findings shows several differences concerning the attitudes of the German and the Swedish experts. The following figure shows the attitudes of the practitioners in both countries towards electronic monitoring.



The questioned people in both countries have, in principal, a positive view of electronic monitoring. Of course, the support among the Swedish practitioners is higher than the support among their German colleagues, due to their experience with the option in Sweden. The professionals in both countries want to integrate electronic monitoring as a form of enforcement in the sentencing and correctional system. They also agree on the goal of the measure. Accordingly, serving time in prison should be avoided. However, the German questioned persons tend to favour a more

aggravating use. More than one third would appreciate a “tougher” probation in cases of suspended prison sentences up to six months, whereas, in Sweden, only a few of the questioned persons want this. Differences in sentencing and the implemented project in Sweden may explain this deviation.

Further common grounds might be found concerning the application in order to avoid imprisonment. The next table deals with the various uses of electronic monitoring instead of serving a prison term.

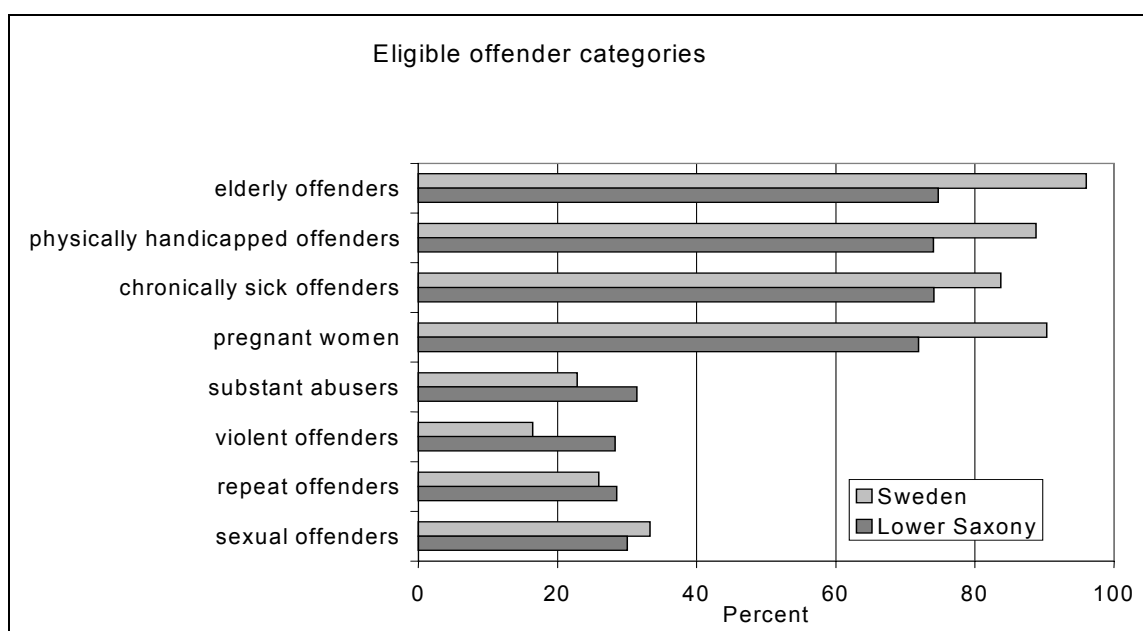


The professionals in both countries would like the use of electronic monitoring in short imprisonments, only a minority support its application for middle and long-term prison sentences. The desired use as an alternative to short-term imprisonment hints at the function of the option. Electronic monitoring may be an intermediate sanction between suspended and unsuspended sentences. But deviations exist according to the length of punishment. In Sweden, the upper limit of applicability is three months and, in Lower Saxony, six months. There is some coherence between these results in Sweden and Lower Saxony, Cramer's V amounts to 0.289. The contrast between the Swedish and German employees is probably based on the different legal systems and the different sentencing practises towards

short imprisonments. In Germany, short imprisonment is “frowned” upon due to the commitment of Franz von Liszt. Also, a special rule in the German Penal Code (sec. 47) intends to reduce imposing unsuspended prison sentences under six months. Contrary to this, in Sweden, short prison sentences are an essential part of the sanctions system.

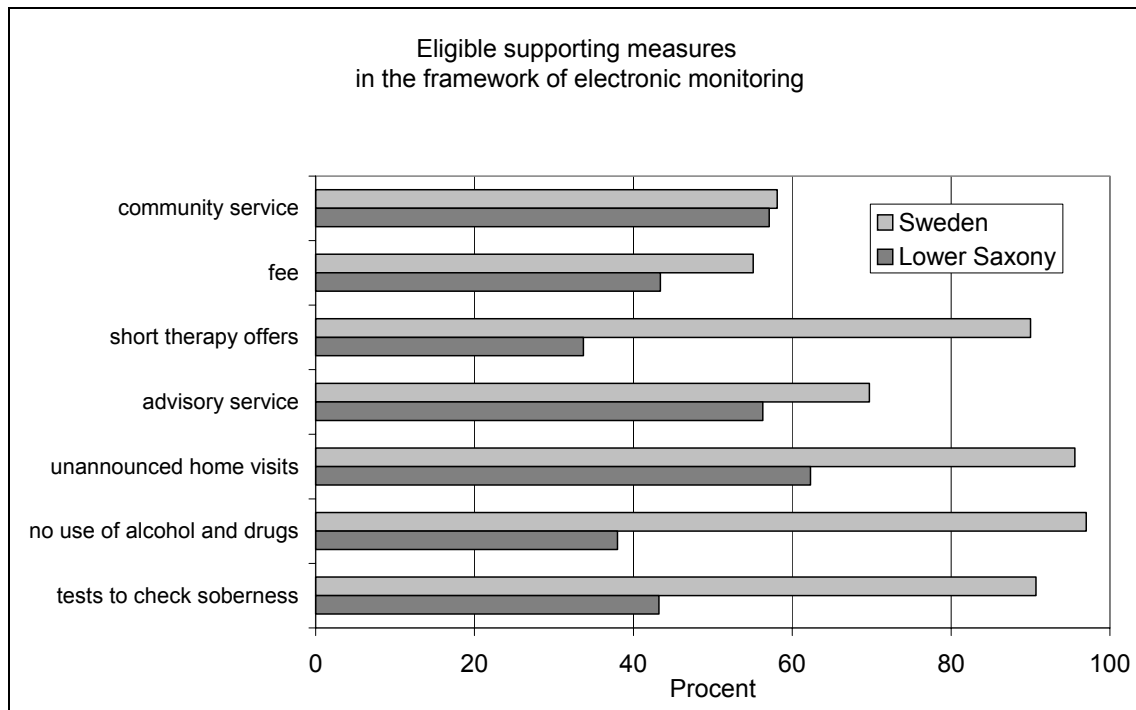
During and after prison, the majority in Lower Saxony and Sweden, demand the use of electronic monitoring, but, in Sweden, its application within parole is preferred. In the framework of an early release, the experts in both countries favour the use after half-time and after two-thirds, with a rest of punishment up to three months. It concerns inmates serving short-term prison sentences. The continued enforcement at home means, in the case of an early release, after two-thirds of the sentence, a lengthening of enforcement and an aggravation of their parole, otherwise, inmates come into consideration who are not released early because of bad conduct. Contrary to Sweden, many German practitioners support an application for middle and long-term imprisonment in the framework of the two-thirds parole. Within this application sphere, there could also arise an aggravation of parole conditions for inmates who ought to be released early. The preference given to inmates with short imprisonment could be based on the crime policy with its emphasis on security during the nineties. Due to this policy dangerous offenders are incarcerated more often and longer.

According to the preferred type of offender, the following figure presents the application of electronic monitoring by the offender group avoiding imprisonment (front-door).



Again, the attitudes in both countries correspond concerning the ideal type of offender for electronic monitoring. Minorities in prison (elderly people, handicapped persons, pregnant women, single parents) are considered as eligible target groups. The typical prison population such as drug addicts and repeated offenders is excluded by the professionals in both countries. Accordingly, first offenders or inmates with a permanent place of residence and work are the most eligible. Minor or middle offences and a small risk of recidivism round off the profile of the most eligible offender. While according to this result, in Germany, only a small target group for electronic monitoring is left over, in Sweden, there is a huge number of social integrated convicted persons with short imprisonments, for example grossly drunken drivers.

Divergences between the questioned people in both countries may be observed in cases of supporting measures shown by the next figure.



In Sweden, nearly all the experts appreciate the implemented control and care measures. In contrast to this, in Lower Saxony, the practitioners are reluctant to such measures. Differences particularly arise between the probation officers in both countries. One striking example is their support to unannounced home visits. While, in Sweden, this control measure is met

with a nearly unparted approval by probation officers, in Lower Saxony, only one-third of them are in favour of unannounced home visits. These findings may hint to a deviating comprehension of their profession. In Sweden, probation officers accept control and care measures. In Lower Saxony, the helping work seems to dominate. Therefore, electronic monitoring could widen the profession of German probation officers with an unwanted element of control.

Also, the experts in both countries have different opinions concerning the implementation body. In the opinion of the questioned persons in Sweden, the probation service turns is the best responsible actor, whereas, in Lower Saxony, prison governors are mainly considered. In the point of view of the German practitioners, prison governors probably have the best supports control and aid with electronic monitoring.

In both countries, the reduction of the number of inmates and the costs are regarded as the most important arguments for the society. According to them, electronic monitoring only has advantages for the surveilled person. The practitioners describe the option as rehabilitating, and a more human and less severe alternative to prison. In their eyes, the advantages predominate the disadvantages. The estimations towards the violation of human rights vary considerably in Sweden and Lower Saxony. While, in Lower Saxony, the majority assumes violations of human rights, in Sweden, electronic monitoring is not regarded as a violation by the majority. This difference is based on the deviating comprehension of human rights.

In both countries, a large number of the questioned people believe that electronic monitoring should be placed in the intermediate area according to its severity in the sanction system. In Lower Saxony, a huge span of estimations reaches from ambulant sanctions up to the prison area. In contrast to this, in Sweden, the focal point clearly lies on the intermediate area and in short imprisonments. The different frameworks could be the reason for this deviation.

## **6. Discussion**

### *6.1. The development of Electronic Monitoring*

The origins of electronic monitoring date back, in the United States, to the end of the sixties<sup>10</sup>. The first, but forgotten system, was tested on parolees and mental patients.

Since the seventies, a repressive crime policy can be observed as a reaction to the failed treatment idea in the United States. The so-called “getting tough” movement led to the crisis in the correctional system. The number of prisoners increased rapidly and led to hopeless prison and jail overcrowding<sup>11</sup>. In this situation one promising solution seemed to be the electronic monitoring of offenders.

In 1983, a district judge in New Mexico began using the bracelet on five offenders<sup>12</sup>. Already one year later, the option was incorporated into the largest and most ambitious programme of diversion in Florida<sup>13</sup>. At the end of the eighties, an unclear variety of electronic monitored programmes were in operation in many states of the US<sup>14</sup>. Later Canada, Australia, Singapore and Israel took up the idea and implemented schemes<sup>15</sup>.

Electronic monitoring came to Europe with a delay. In 1989, England was the first country to begin experiments with pre-trial detainees<sup>16</sup>. The outcome of the first pilot project is often called a “disaster” due to the many transgressions<sup>17</sup>. At the beginning of the nineties, prison populations increased dramatically in Sweden and the Netherlands<sup>18</sup>. Durations in prison lengthened for many inmates as a consequence of aggravations in sentencing concerning violence, sexual and drug offences and also restrictive reforms such as early release. Although, both countries were formerly known as leaders of a progressive and modern correctional system.

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<sup>10</sup> Harvard Law Review 1966-67, p. 403-421; Gable (former Ralph Schwitzgebel), Journal of Criminal Justice 1986, p. 168; Schwitzgebel, Law and Computer Technology 1969, p. 9; Schwitzgebel, Lex et Scientia 1968, p. 99.

<sup>11</sup> Ball/Huff/Lilly 1988, p. 20 ff.; Corbett/Fersch, Federal Probation 1985/1, p. 13; Erwin, Federal Probation 1986/2, p. 17; Petersilia, Federal Probation 1987/2, p. 56 f.

<sup>12</sup> Fox, ANZJ 1987, p. 139; Gable, Journal of Criminal Justice 1986, p. 169; Renzema, in: Byrne/Lurigio/Petersilia 1992, p. 44.

<sup>13</sup> Ball/Huff/Lilly 1988, p. 90 ff.

<sup>14</sup> Jolin/Rogers, Journal of Contemporary Criminal Justice 1989, p. 141; Schmidt, Journal of Contemporary Criminal Justice 1989, p. 138.

<sup>15</sup> Overview in Whitfield 1997.

<sup>16</sup> Mair/Nee 1990.

<sup>17</sup> Compare Lindenberg 1992, p. 144-163 for more suggestions.

<sup>18</sup> Compare the overview of the average prison population of Walmsley 1998.

In this situation electronic monitoring was a welcoming alternative to incarceration. This measure chiefly addresses low risk offenders such as property delinquents and drunken drivers<sup>19</sup>. Similar tendencies can be found in other Western European countries, for example Belgium, Germany, France, Italy, Portugal, Switzerland and Spain which carry out trials with electronic monitoring.

Therefore, the rise of electronic monitoring led back to a repressive crime policy in the nineties<sup>20</sup>. The option emphasizes the interest of the population for security of the population by treating offenders more roughly. Due to the alarming overcrowding in prisons we are looking for more cost-effective ways out of this dilemma. But electronic monitoring does not mean a final farewell of the treatment thinking, moreover, it seems to revive the idea of rehabilitation through a synthesis with the concept of security. The boom of conservative notions paired with educational thinking is a phenomenon to be observed in many Western European states. This combination promotes the implementation of electronic monitoring because it might satisfy both aspects.

## *6.2. Electronic Monitoring in Sweden and in Germany*

Nowadays, in Sweden, intensive supervision with electronic monitoring is not absent within the correctional system. As a form of serving prison terms at home, the measure replaces the enforcement of imprisonment up to three months<sup>21</sup>. The main target group consists of severely drunken drivers who have been traditionally sentenced to short prison sentences. The probation service carries out the programme on its own. The work consists of the elements, help and control. The technical part has a subordinate role. The crucial point lies in the caring work of the probation service. This method should guarantee a more human way of the serving at home according to the intention of the legislator. Intensive supervision helps to remove capacity problems in open prisons and to save money by closing down prisons. In Sweden, approximately 3000 convicted persons serve their prison term at home every year and unburden prisons with circa

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<sup>19</sup> This strategy is called “bifurcation” or “dualisation” (french); Dünkel/Snacken, ZfStrVo 2001, p. 197.

<sup>20</sup> Haverkamp, in: Neue Kriminalpolitik 1999/4, p. 4.

<sup>21</sup> Compare BRÅ-Rapport 1999:4, p. 69 ff. (English summary); Haverkamp, in: BewHi 1999, p. 51 ff.; Somander 1998.

300 prison places. After the successful implementation, another trial of intensive supervision with electronic monitoring has been going on within the scope of the early release of long term inmates, since autumn 2001<sup>22</sup>.

While electronic monitoring was the subject of an emotional controversy in Germany at the end of the nineties<sup>23</sup>, there has been a more objective attitude in science and the public since the beginning of the new century<sup>24</sup>. The key arguments of the opponents are, on the one hand, a too lenient punishment and the endangered interests of security<sup>25</sup>. On the other hand, electronic monitoring is considered as being inhuman and as a pioneer towards a society of total surveillance<sup>26</sup>. Moreover, the target group is a problem because the convict usually needs a permanent place of residence and at least a part-time job, which prisoners often do not have<sup>27</sup>. But usually offenders with a well-developed social and economic background participate in many programmes. In 1999, the upper house introduced a bill to the parliament<sup>28</sup>. The parliament has not decided on the bill yet, because the junior coalition partner, the Greens, has many doubts about electronic monitoring<sup>29</sup>. The bill would give the German states the opportunity to initiate trials over a period of four years. Electronic monitoring would have a special provision in the Penal Enforcement Act. A pilot project, limited to two years, has begun in Frankfurt/M. since May 2000<sup>30</sup>. After the end of this first experiment period, the trial will be extended to other court districts in the state of Hesse. The application of electronic monitoring is also used in connection with the suspension of arrest warrants (Section 116 Penal

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<sup>22</sup> Ds 2000:37, p. 3, 24.

<sup>23</sup> Compare Dünkler, *Neue Kriminalpolitik* 1989, p. 8; Dölling, *ZStW* 1992, p. 286; Ostendorf, *ZfStrVo* 1991, p. 87; Pfeiffer, *Neue Kriminalpolitik* 1990/4, p. 29; Schall, *BewHi* 1988, p. 446; Weigend, *GA* 1992, p. 363.

<sup>24</sup> See Bernsmann 2000; Hudy 1999; Schlömer 1998; Schramke 1996, p. 372 ff.; Wittstamm 1999.

<sup>25</sup> Arguments of politicians in Saxony and Bavaria; see for further details Haverkamp, *Bürgerrechte&Polizei* 1998/2, p. 43 ff.

<sup>26</sup> Garstka, *DuD* 1998, p. 64; Gössner 2000, p. 121; Künast, in: *Bündnis 90/Die Grünen* 1998, p. 41 f.; Streng, *ZStW* 1999, p. 851.

<sup>27</sup> Haverkamp, in: Jehle 2000, p. 378; Hudy 1999, p. 261; Kawamura, *Neue Kriminalpolitik* 1999/1, p. 9; Märkert/Heinz, *der Kriminalist* 1999/9, p. 348; Wittstamm 1999, p. 180 f.

<sup>28</sup> BR-Drs. 401/99 „Entwurf eines Gesetzes zur Änderung des Strafvollzugsgesetzes“.

<sup>29</sup> BT Plenarprotokoll 14/61.

<sup>30</sup> About the design of the trial Albrecht/Arnold/Schädler, *ZRP* 2000, p. 467 f.; first results in Mayer 2002.



Procedural Code), with a condition of probation, in cases of suspended prison terms (Section 56 f. Penal Code) or in cases of parole (Section 57 f. Penal Code) and within supervision of conduct (Section 68 f. Penal Code).

### *6.3. Statement*

The statement suggests a change in the criminal proceedings towards a more moderate crime policy. In this context, electronic monitoring could be an option to avoid imprisonment and to shorten time in prison. In order to avoid the net-widening effect, the option should be integrated *de lege ferenda* as a form of enforcement.

To avoid imprisonment, it is possible to apply the measure for a revocation of probation and parole in cases of minor severe offences and in cases of short prison sentences up to six months. Scepticism is called for, when using as an application to pre-trial detention. In the framework of fine defaulters, an entire reform is recommended according to the procedure in Sweden.

In cases of shortening the time in prison, the measure could be used after half-time in prison, in cases of imprisonments up to three years, with a length of six months or in cases of longer prison sentences, six months before an early release after two-thirds. Further, an application after two-thirds before release comes into consideration for prisoners with bad conduct.

Apart from the small group of socially integrated persons and the infirm or care bounded persons, the bigger group of convicted persons with socialization problems should be considered. There has also been the suggestion to include substance abusers with delivery of heroin or other substances, long-term inmates and complicated prisoners. Conditions of participation would be an application of the convicted person, a place of residence, a telephone subscription and electricity as well as a half-time job.

The realization could be assigned to the prosecutors in cases of avoiding imprisonment. After having made their choice the prosecutors should pass the records on to the probation service. The probation service would carry out a social assessment and would help to remove any obstacles. Afterwards the prosecutor would decide whether to use electronic monitoring. In cases of shortening the time in prison, the prisons would be in charge of the social assessment and the parole boards would decide. The

concrete enforcement would be in two parts: The social pedagogical care would be done by the probation service and the technical part by the data processing authority. In cases of minor violations, the leader of the probation service office would be allowed to take action against the misconduct. In cases of serious offences, the parole board should be contacted.

Perhaps, electronic monitoring may remove barriers, but this will not be the start of a new era without imprisonment. In the course of a repressive crime policy the home confinement presents, in principle, problems concerning the sense and the nature of punishment. The electronic bracelet makes the enforcement at home for the surveilled person vivid, but the incarceration happens mentally. The expressed burden characterizes having electronic monitored house arrest. The undeveloped potential of cells at home and the progress in technology, gives a new challenge to society for the treatment of offenders. In the framework of a moderate crime policy, there could be a more human alternative to prison with electronic monitoring.



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