



Electronic Monitoring STATE OF NEW YORK

BACKGROUND

Jurisdiction: State of New York | Population: 19.84 million

Pretrial EM

The use of electronic monitoring has varied greatly across the geographical regions of New York, especially in the pretrial setting. In New York City monitors have never been used extensively, with the exception of high-profile cases like that of lawyer [Steven Donziger](#) and activist [Prakash Churaman](#). The built environment of the city, with its vast expanses of high rise buildings and extensive underground subways, makes maintaining a signal extremely challenging. However, in the counties outside the city, whose lockups hold [83%](#) of the state's jail population, EM has played a more prominent role.

Electronic monitoring landed on the agenda in many counties during the statewide campaign to reduce pretrial incarceration and end cash bail which was launched in 2017. This campaign, which featured high profile mass action directed at the closure of [Rikers Island Jail](#) and responses to the death of [Kalief Browder](#), achieved a major success with the passage of the [Bail Reform Act of 2019](#). This Act took major steps toward limiting pretrial incarceration by requiring pretrial liberty in most misdemeanor and nonviolent felony cases. Estimates were that some [80,000 people](#) avoided jail due to the Act from 2019 to 2021. The Act also addressed the issue of EM.

EM AND THE ACT

The Bail Reform Act demonstrated how local struggles focused on EM were intimately related to statewide pretrial justice reform. In New York, as elsewhere, moderate reformers often opted to push for electronic monitoring as an acceptable alternative to incarceration in a brick and mortar jail. But in New York, which included both abolitionists and more reform oriented activists, rejected the use of EM and refused to accept it as anything other than another form of incarceration. Although they didn't have the political clout to enact a total ban on EM, the Center for Community Alternatives and other organizations, explored methods to reduce the use of EM through legislation.

The crux of this battle took place in 2018-19, just before the arrival of the pandemic created enormous pressure to find ways to release people from jails. EM was often high on the list. Abolitionists and their allies were acutely aware the Act could spark a massive move toward EM. These activists took on EM in two ways in the construction of the legislation. First, they fought for the Act to recommend any pretrial release to be on the "least restrictive conditions" with EM being labeled the most restrictive. Second, they created a cleverly constructed clause that effectively ended the use of pretrial electronic monitoring by outlawing contracts between government entities and private EM providers. Since virtually all electronic monitoring devices were sold or rented by private companies, the Act eliminated all existing suppliers from the EM market.

It also contained other EM policies such as requiring courts to make individualized

determinations on the necessity of electronic monitoring, imposing limits on who might be subject to electronic monitoring, permitting the locations of individuals charged with certain offenses to be tracked for no more than 60 days at a time and to be subject to speedy trial protections. The Act also outlawed user fees for EM.

Unfortunately, the victories of the Bail Reform Act were short-lived. Governor Andrew Cuomo, who had postured as a supporter of cash bail reform in 2018, began to listen to the chorus of police and fear mongering right wingers about the dangers of "criminals on the street". Not long after the implementation of the Act in January 2020, Cuomo sparked a reversal. By budget time in April of 2020, Cuomo succeeded in pushing through a number of measures that expanded the range of offenses for which people could be held on cash bail.

Kathy Hochul, who took over as governor in August of 2020 after Cuomo resigned amidst charges of sexual harassment, wasted no time in jumping on the bandwagon of undermining the Bail Reform Act. In her April 2021 budget speech, Hochul went for the jugular of the pretrial changes. She expanded the list of charges for which someone could be held on cash bail and eliminated the clause in the Act that banned private contractors as EM vendors.



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While these reversals by Hochul had little impact on EM usage in New York City proper, they did open the door to growth in the use of electronic monitoring in suburban NYC and beyond. In suburban NYC in 2021 49% of those released pretrial with violent felony charges [landed](#) on electronic monitors. In Upstate counties the figure was 16%. Though a little slower on the uptake, by 2022 Broome County authorities were signing a one year contract with British EM provider Buddi for electronic monitors.

Hochul’s moves on EM went beyond pretrial as she also [added](#) EM conditions to a number of people on parole from the state prison system.

Table: Electronic Monitoring as a % of Releases with Non-Monetary Conditions by Geography and Charge Level Source: Two Years In: Bail Reforms in Action in New York State

	% Released on EM - 2020	% Released on EM 2021		% Released on EM - 2020	% Released on EM 2021
Upstate Courts			NYC		
Violent Felony	13	16	Violent Felony	0	0
Non-Violent Felony	10	11	Non-Violent Felony	0	0
Misdemeanor	6	7	Misdemeanor	0	0
Suburban NYC			Statewide		
Violent Felony	40	49	Violent Felony	8	8
Non-Violent Felony	28	31	Non-Violent Felony	12	13
Misdemeanor	16	13	Misdemeanor	5	4

ACLU EM STUDY

Though little study has been done on electronic monitoring in New York, in 2023 the state ACLU did publish a damning report on EM, calling for its elimination and recommending serious harm reduction policies if the courts were to use the monitor.

The report's conclusion stated:

The rise of electronic monitoring over the past two decades has resulted in the expansion of e-carceration — increasing surveillance, eroding civil liberties, and sending many people back to traditional incarceration for technical violations. This expansion ignores the evidence that EM fails to demonstrably protect public safety, prevent flight, or advance rehabilitation, while causing immense harm to those under surveillance, at a significant financial toll. To preserve civil liberties and mitigate harm, this practice must ultimately be replaced. Where it continues, its scope must be strictly limited to minimize its inherent negative impacts.

BREAKING THE SHACKLES - FIGHTING ICE EM

Activists in New York initiated an unprecedented campaign against EM on immigrants. In 2019 they formed a coalition of more than two dozen groups known as [Break the Shackles](#) (BTS). Co-anchored by two organizations of impacted immigrants, [African Communities Together](#) and the [Envision Freedom Fund](#) (formerly the Brooklyn Community Bail Fund), the coalition spent three years crafting and advocating for a bill that eventually passed the state legislature. The bill, known as the [Stop Immigration Bond Abuse Act](#) (SIMBAA) banned the use of

electronic shackles by immigration bail bond companies and capped fees and interest rate such companies could charge. The bill largely targeted the company Libre by Nexus which had a long history of financially exploiting immigrants. Some 30,000 immigrants were part of its exploitative scheme. Libre's game was to loan a person in ICE detention the money to pay the bond to be released. When they were released, Libre then placed them on a Libre ankle monitor program, independent of ICE or the state. The Libre EM cost \$14 per day and the EM fees were not applied to the money owing on the loan. In 2020, Libre switched from ankle monitors to cellphone-based GPS trackers.

BTS coalition members built relationships with key legislators to get this bill through the House and Senate to Gov. Hochul's desk. The governor signed the bill on December 9, 2022. New York thus became the first state to outlaw immigration bail bond companies from running their own EM schemes for profit.

Apart from the work of BTS, individuals and impacted folks have also brought a number of [lawsuits](#) against Libre, including action by the attorneys general in Virginia, New York and Massachusetts who joined [litigation](#) put forward by the Consumer Finance Protection Bureau (CFPB). In addition to facing lawsuits, three executives from Libre were [charged](#) with fraud in the state of Virginia in late 2022.

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