



Electronic Monitoring

SAN FRANCISCO, CALIFORNIA

PART TWO

BACKGROUND

While Part I of this case study provided background information on San Francisco's Pretrial EM Program, Part II seeks to provide more detail on the expansion of Pretrial EM in San Francisco. This includes a discussion of legislative moves that have impacted EM expansion, legal challenges to the constitutionality of SF's EM program, and growing dissatisfaction with the current state of the program from people on both sides of the issue.

The Humphrey Decision, Covid-19, and the Expansion of Pretrial EM in San Francisco

San Francisco has seen an incredible boom in the usage of pretrial electronic monitoring since 2017. This can at least in part be traced to the [Humphrey](#) decision. This 2018 appellate court ruling, which intended to eliminate pretrial detention through blocking the use of prohibitive bail, mandated judges to both consider defendants' ability to pay as well as prioritizing imposing the "least restrictive conditions" that would compel appearance in court and ensure public safety.

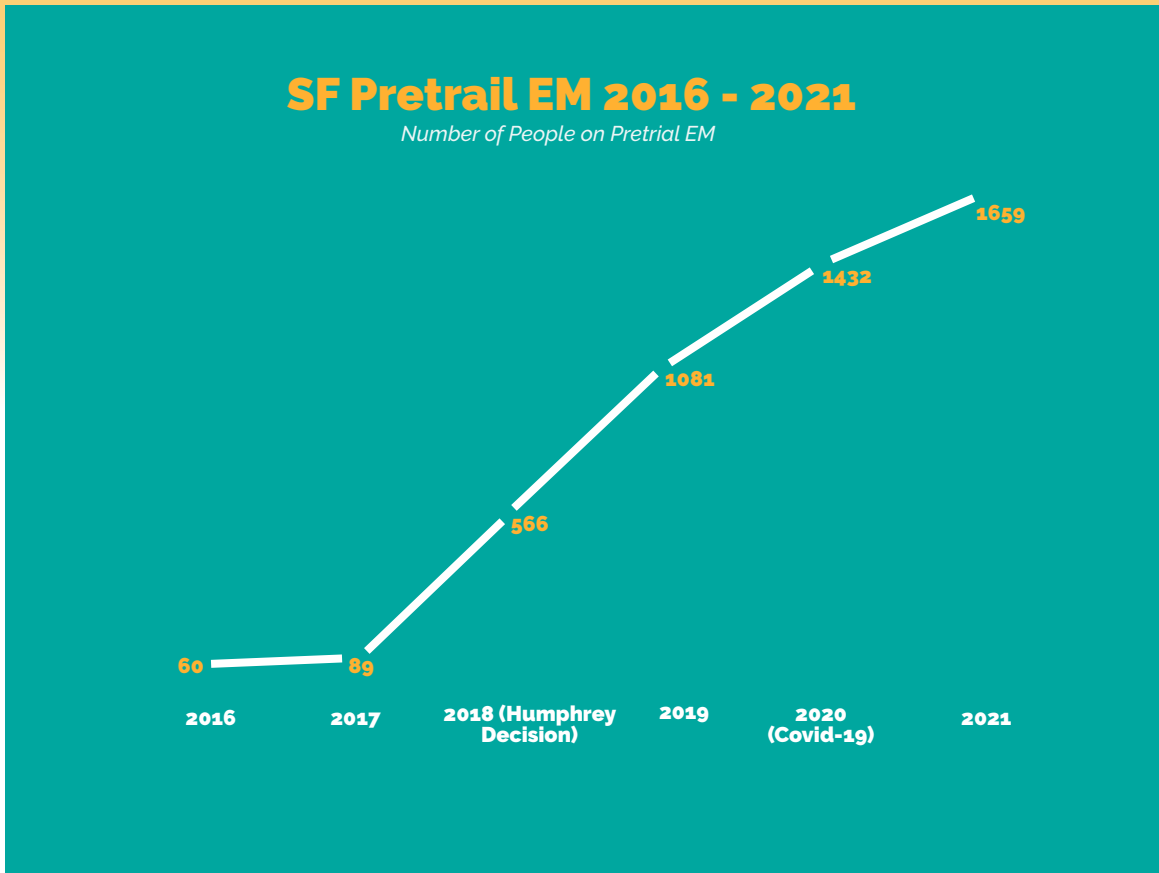


Figure 1: Courtesy California Policy Lab

This apparent victory for pretrial reform was only momentary, however, as the system quickly moved to reassert itself, largely through an incredible boom in the scope and size of its pretrial electronic monitoring program.

As noted in a 2022 [report](#) by the Harvard Kennedy School, “Before 2018, the county rarely if ever released more than 100 people on pretrial EM annually, but by 2020 they were releasing more than one thousand.” As this report notes, the actual increase in EM began in 2017, in anticipation of Humphrey.

The rise of the Covid-19 pandemic further complicated the matter, serving as the impetus for a [push](#) to reduce the population of San Francisco’s jails. While early pandemic efforts to decarcerate had some moderate success, these results were tempered by roughly a 32% increase in EM usage from 2019 to 2020 and a 53% increase between 2019-2021.

Overall, the California Policy Lab notes that San Francisco’s Pretrial Monitoring Program grew more than 20-fold between 2016-2021.

Ebb and Flow: The Fight for Pretrial Justice

The expansion of EM usage in San Francisco coincides with efforts to alleviate electronic monitoring fees. In 2018, the San Francisco Board of Supervisors [eliminated](#) the imposition of EM fees for folks on pretrial EM. (California’s [A.B. 1869](#) would later remove imposition of monitoring fees at a state level). While this was certainly a relief for families in the Bay Area and no one should be forced to pay for their own subjugation, the removal of these fees also effectively removed a major argument against the usage of EM, making it a more acceptable and prevalent option.

The issue of pretrial EM in San Francisco has also long been associated with the struggle to end cash bail. Beginning in 2013, [the No New SF Jail Coalition](#) led a campaign to close the jail at 850 Bryant Street. The campaign was largely victorious, with the Board of Supervisors voting to close the jail in May of 2020, leaving only two open jail sites for San Francisco expansion. However, despite concerted efforts from the Coalition, elected officials refused to include language



to address potential EM expansion in the jail closure legislation. Ultimately, as has been seen in other places that have made successful pretrial detention reform efforts, a massive increase in EM usage came in the wake of this victory. Indeed, while jail closure efforts have reduced the number of available jail beds by 838, the number of people on EM have increased to roughly twice that number. Indeed, while a [report](#) projected the county's jail population fall between 1235 and 1402, the increase in number of people on EM has exceeded these estimates considerably, underscoring both the continued increase in EM use as well as the fact that this expansion has augmented rather than replaced brick and mortar detention.

Growing Dissatisfaction with EM in San Francisco

In 2022, the ACLU filed a [Class-Action Lawsuit](#) against the City and County of San Francisco and SF County Sheriff Paul Miyamoto, citing the program's unconstitutional practice of coercing monitored individuals into agreeing to accepting "Unconstitutional 'four-way' searches and GPS location data-sharing as conditions of pretrial release on electronic monitoring". This suit echoes the [sentiments](#) of legal scholars such as George Washington University Law Professor Kate Weisburd who view such requirements as a clear violation of 4th Amendment rights.

Reform activists are not the only ones displeased with San Francisco's ever-expanding pretrial EM program, however. [Recently](#), there has been increased outcry from those in San Francisco who view the EM programs' high early termination rates as an indication of the EM programs lack of ability to ensure public safety. Supervisor Rafael Mandelman leads

the charge stating, "One out of every three people on pretrial electronic monitoring in San Francisco removes their ankle monitor or commits other crimes." Unintentionally echoing the long-held stance of anti-EM activists that EM is a form of incarceration, Mandelman goes on to note "If one out of every three cells in our jail had broken locks, we would do something about it." Mayor London Breed has called upon the Sheriff to offer suggestions to reform the program and the Board of Supervisors has asked the City Attorney to draft legislation to increase transparency in risk assessment usage.

*It should be noted that in 2021, 77.5% did not have their EM terminated early due to new arrest. Of those who were rearrested, only 8.4% were rearrested on felony charges, the majority of which were property crimes.



Key Take-Aways

- In the face of moves to decarcerate and reform cash bond and pretrial detention, the system often seeks to reassert itself through expansion of its EM programs. In many cases, this expansion remains in place even after the jail population has been restored to near-previous capacity.
- Pretrial EM program rules often require monitored individuals to “agree” to sign contracts, often under duress, forgoing their constitutional rights, even though there is little legal basis from which to compel them to do so.
- As other [reports](#) have noted, pretrial electronic monitoring programs which have almost no evidence to prove efficacy and cost millions of dollars, are also often viewed as deeply problematic, both by those who are pro-reform and those who are carceral-minded.

