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# **Between a Rock and a Hard Place: The Social Costs of Pretrial Electronic Monitoring in San Francisco**

Faculty Research Working Paper Series

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HARVARD Kennedy School

**MALCOLM WIENER CENTER**  
for Social Policy

*Program in Criminal Justice Policy  
and Management*

# **Between a Rock and a Hard Place: The Social Costs of Pretrial Electronic Monitoring in San Francisco\***

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## Executive Summary

In the year following *Humphrey*, a judicial decision mandating that judges consider both defendants' ability to pay cash bail and non-monetary release options, San Francisco Sheriff's Office (SFSO) reported a 308% increase in the number of people court-ordered for pretrial electronic monitoring (EM) – from 178 to 725. Although proponents of pretrial EM have described it as an effective alternative to pretrial incarceration – one that ensures public safety and court appearances – critics contend that it is simply an alternative *form* of incarceration, with many of jail's attendant harms. With this debate in mind, we explore people's recent experiences on pretrial EM in San Francisco – the extent and nature of difficulties program participants face while attempting to meet program obligations, the extent to which and how these difficulties put them at risk for noncompliance, and how threats of noncompliance interact with other major issues that system-involved people face to affect program outcomes.

Through in-depth, semi-structured interviews with a convenience sample of 66 people court-ordered to participate in pretrial EM between 2018 and 2020, we find that prior struggles, especially with housing insecurity and co-occurring disorders, made it much more difficult to meet program obligations, amplifying risks of noncompliance. Further, conditions of pretrial EM release also *created* hardships for many, making it even more difficult to find safe, affordable, and stable housing; to protect health and well-being; to secure employment and keep jobs; and to maintain physical, emotional, and psychological connections to loved ones. Indeed, pretrial EM often placed program participants in the untenable position of constantly having to choose between two or more equally awful options, such as program compliance or maintaining employment. These findings have major implications for debates about pretrial EM's net-widening effects but also the inherent stickiness of the criminal legal system.

## Introduction

Since 2018, court-ordered, pretrial electronic monitoring (EM) in San Francisco County has increased dramatically. 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. The primary driver behind this striking and abrupt change in San Francisco County's pretrial detention and release practices was the *Humphrey* decision, a 2018 appellate court ruling that mandated two items: first, that judges consider a defendant's financial ability to pay before determining bail amounts that defendants would need to secure their release; and second, that judges consider the least restrictive conditions needed to both ensure that defendants would attend court hearings and would not threaten public safety. The appellate court's messages were clear: Individuals' freedom should not solely be determined by their ability to post bail, but also, if less restrictive alternative measures might be taken to secure the government's interest in public safety and the court proceedings' integrity, individuals should not lose their liberty.

By the time that the California Supreme Court affirmed the appellate court's ruling in March of 2021, noteworthy changes were already evident in San Francisco County's pretrial detention and release practices. Among filed cases, the likelihood of detention declined by three percentage points (from 25 percent to 22 percent), the percentage released on cash bail also declined by eight percentage points (from 22 to 14 percent), and the percentage who were released to assertive case management and electronic monitoring, the very alternatives suggested by the appellate court,<sup>1</sup> increased by 14 percentage points (from 14 to 28 percent).<sup>2</sup>

Responses to San Francisco County's pretrial pivot have varied. Proponents see it as an important advance toward pretrial justice. They contend that because defendants who are released on EM are less likely to commit new crimes and more likely to attend court hearings than those who are released without EM, the public is safer, and the integrity of court proceedings remains intact. Further, because pretrial EM relieves defendants of pretrial incarceration, it also relieves them of pretrial incarceration's attendant harms, including downstream collateral consequences.

But the growing reliance on pretrial EM has also been met with opposition in San Francisco and beyond.<sup>3</sup> From this perspective, two arguments are centered. First, critics note that even among the most rigorously conducted studies, findings of pretrial EM's relative efficacy are nonexistent, weak, and/or inconsistent.<sup>4</sup> Second, centering the voices of system-involved people, critics assert that pretrial EM is less an alternative to pretrial incarceration than a form of incarceration; EM is e-carceration, with many of jail's attendant harms.<sup>5</sup> In other words, where public safety and attendance at court hearings are concerned, not only is pretrial EM superfluous, but it also does unjustified harm to defendants, their families, and the communities in which they live. For these reasons, they argue that pretrial EM should not be a part of efforts to decarcerate. Less harm would result if people were released pretrial without EM.

The current study is an effort to inform debates related to the second issue – the potential harms done to those court-ordered to participate in pretrial electronic monitoring. We ask the following set of questions: To what extent do program participants experience difficulties attempting to meet program obligations, and what is the nature of the difficulties they face? To what extent and how do the difficulties participants face put them at risk for noncompliance and future criminal legal system involvement? And how do threats of noncompliance interact with other major issues that system-involved people face to affect program outcomes?

To address these questions, we conducted in-depth, semi-structured interviews with a convenience sample of 66 people court-ordered between 2018 and 2020 to participate in pretrial EM in San Francisco County. We find that a higher percentage of people who struggled with housing insecurity and co-occurring disorders reported difficulty meeting program obligations, struggles that amplified their

risks of noncompliance. Pretrial EM obligations also created struggles with housing, work, and social isolation, making successful program completion even more difficult and new contact with law enforcement more likely. We end with a discussion about the implications our findings have not only for debates about pretrial EM's net-widening effects,<sup>6</sup> but also for concerns about the criminal legal system's stickiness.<sup>7</sup>

## **What is EM, and what does it do?**

Criminal legal authorities began deploying electronic monitoring technologies in the mid-1980s to coerce accused and convicted people to obey conditions of their pretrial, probation, and/or parole release by affecting their behaviors<sup>8</sup> and/or by tracking their movements. Radio frequency systems (RF), which used to dominate, use home-based receivers to determine whether targets are at a fixed location or not. GPS systems, now dominant, can track targets in real time by triangulating signals from satellites and cell towers. Both systems use tracking devices that are attached to the target's body, often the ankle, although some jurisdictions are replacing ankle devices with GPS-enabled smartphones. Although only a tiny fraction of people in community supervision programs are being monitored electronically – just two percent in 2015 – the number being surveilled under EM has grown substantially in recent years. At least in part in response to the lower costs of emergent GPS tracking systems and the growing call for alternatives to incarceration, between 2005 and 2015, across the nation, the number monitored on a single day increased by almost 140 percent, from approximately 53,000 to roughly 131,000.<sup>9</sup>

## **Electronic Monitoring: Mechanisms of Harm?**

Proponents of pretrial EM contend that the benefits of this approach lie in part in the fact that it relieves defendants of many of detention's short- and long-term harms while also ensuring public safety and court appearances.<sup>10</sup> Critics, however, point to parallel harms. As stated in *No More Shackles: Ten Arguments against Pretrial Electronic Monitoring*, James Kilgore, Emmett Sanders, and Myaisha Hayes write, “While often framed as supportive ‘alternatives,’ most of these measures are actually highly punitive. In our research we have found electronic monitoring (EM) typically to be the most punitive of all pretrial release conditions.” Others advance similar arguments.<sup>11</sup> In what follows, we describe the harms identified by EM's critics as well as the mechanisms through which purported harms are done to those ordered to participate in pretrial EM programs.

### ***An Alternative to Jail Time?***

One of EM's selling points is that it relieves defendants of the pains of pretrial incarceration. But, according to the Chicago Appleseed Center for Fair Courts (Appleseed),<sup>12</sup> for most on pretrial EM, this is

simply not the case. In Cook County, which has required most pretrial EM participants (83 percent) to post bond as one of the conditions of their pretrial release<sup>13</sup> and where on any given day over 3,300 people are being electronically monitored pretrial, 67 percent spent at least two days in detention before entering the EM program. In San Francisco, those court-ordered to pretrial EM spend an average of seven days in jail before being released; this compares to three days for those released to supervision without EM.<sup>14</sup> By day two, however, many of the harms associated with detention would have already taken root, including missed work and lost jobs, car seizures, amassed debt, violence, strained social bonds, and destabilized mental and physical health and well-being.<sup>15</sup> What these patterns in Chicago and San Francisco suggest is that pretrial EM is not an intervention that occurs *instead of* pretrial incarceration. For most, it likely occurs *in addition to* pretrial incarceration.

### ***Fighting the Current Case***

Relative to pretrial incarceration, one of the benefits of pretrial release is the ability to participate in one's own defense. That pretrial release is associated with significantly lower odds of conviction,<sup>16</sup> all things equal, is at least in part attributable to this.<sup>17</sup> Pretrial releasees can much more easily discuss their cases with their legal counsel, for instance, no matter the method of communication. They can also engage in activities, like evidence gathering, that might support their cases. And because they are not being harmed by the harsh conditions of confinement typical in the US context, they are less likely to feel pressured to make a deal for their freedom, an oft-cited reason for why pretrial detention leads to criminal convictions.<sup>18</sup>

Critics of pretrial EM contend, however, that such freedoms should not be assumed to exist for pretrial EM participants. Their conditions of release – where they can go, when they can go, for how long they can be gone, what they can do, and under what circumstances – often preclude the kinds of freedoms we associate with the presumption of innocence. The time and energy that it takes to meet these conditions and avoid noncompliance reports – and the resulting threat of jail readmission – might be so great that EM participants have little time or energy left to participate in their own defense. Indeed, given the many hurdles EM participants must overcome to remain in compliance, critics have reported that too many defendants come to feel pressure to plead guilty to become unburdened by a system that, like pretrial incarceration, is harsh, unyielding, and unforgiving.<sup>19</sup> These experiences call into question the oft-described benefit of pretrial EM for case outcomes.

### ***Problems with the Monitoring Devices***

Despite being around for roughly six decades, monitoring devices are deeply flawed devices – inconsistent, inaccurate, and unreliable. Such issues with devices are typically mentioned to raise

awareness about how much faulty devices threaten public safety. Presumably, if devices are malfunctioning, authorities cannot easily locate people they are tasked with monitoring. As reported in the Los Angeles Times, “Officials found that batteries died early, cases cracked and reported locations were off by as much as three miles. They also found that tampering alerts failed and offenders were able to disappear by covering the devices with foil, deploying illegal GPS jammers or ducking into cars or buildings.”<sup>20</sup> Despite knowledge of the devices’ major failings, law enforcement in California has attempted to suppress evidence of their failings through the courts, arguing that such evidence will inform people under penal supervision about how to effectively evade monitoring efforts. But they have also fought to continue using the devices; if people under supervision believe they were being effectively monitored, they will obey. Apparently, most important to law enforcement is the perception that supervised people have about the system’s validity and reliability; that strong evidence exists of its invalidity and unreliability is irrelevant.

But these concerns are not minor or irrelevant relative to public safety concerns. Because law enforcement is no better informed about when devices are malfunctioning, the threat faulty devices pose to supervised people is considerable. Even if those being monitored fully abide by program rules, too often faulty devices indicate otherwise, setting into motion a series of events that at the very least unnecessarily disrupts the lives of people being monitored – required immediate check-ins by phone or in person, for instance – but that might also put their freedom at risk – if the device indicates that someone had wandered into an area they were forbidden to be, they can be remanded into custody. Combined, serious issues with the actual monitor devices call into question whether it is fair or just to rely on them at all, for the public and monitored individuals alike.

### **Health and Well-Being**

Pretrial detention worsens individuals’ mental and physical health and well-being. Many are admitted to jail with serious mental and physical health conditions.<sup>21</sup> People detained in jails also suffer from chronic physical health conditions at rates far higher than the general population.<sup>22</sup> Despite this, jails tend to be woefully inadequate at addressing their healthcare needs.<sup>23</sup> It is not only that jails do relatively little to treat the mental and physical health concerns that people arrive at jail with, but also that inadequate treatment can worsen individuals’ conditions, putting their health at risk. Among some, detention can bring about mental and physical health concerns where none existed before.<sup>24</sup>

It is difficult to imagine that conditions of pretrial release that include EM are as detrimental to individuals’ health and well-being as pretrial incarceration has been found to be,<sup>25</sup> but critics of the practice have raised some serious concerns.<sup>26</sup> First, reports indicate that the devices can cause physical harms – rashes and welts brought on by devices that are too tight and/or cumbersome. Mostly, however,

reported harms fall in the realm of the psychological. Program participants are expected to meet all conditions of release. If they fail to do so, they can be found noncompliant and, in some cases, returned to jail. But participants are often court-ordered to meet over a dozen conditions. Many are difficult to follow, and the ability to do so is not always in the control of defendants so ordered. For instance, participants are required to operate and maintain monitoring devices as instructed and not tamper with, defeat or remove them. As stated above, however, some devices are known to malfunction frequently, raising false alarms about participants' whereabouts, putting them in jeopardy of noncompliance reports, technical violations, and a return to pretrial detention. Under normal circumstances, such stressful conditions have the potential to bring about the anger and frustration, anxiety and stress, fear and intimidation, misery, powerless and helplessness that is found at moderate to high rates among individuals detained pretrial.<sup>27</sup>

But anecdotal reports suggest that, above and beyond the typical stresses program participation causes, conditions of release can put participants' health and well-being at risk. Participants have been required (forced) to live in homes where they are at significant risk of domestic violence; risk noncompliance reports and technical violations if they respond to healthcare emergencies – their own or that of another – without first getting permission from authorities, who often fail to respond in a timely manner and might refuse participants' requests; and must navigate superfluous and burdensome bureaucratic barriers to simply travel to see their healthcare provider and to get prescribed meds or to receive routine healthcare, such as MRIs, x-rays, and CT scans, which would require the temporary removal of the device. In other words, the conditions of pretrial EM have the potential to endanger program participants' lives by delaying or effectively disallowing preventive, diagnostic, and routine chronic care for a population beset by many often-untreated mental health illnesses, substance use problems, and chronic health conditions.

### **Employment Prospects**

Relative to pretrial incarceration, another benefit associated with pretrial EM is the ability to work, to earn money in the formal wage economy. Those who want a job can search for one; those already with jobs can continue their employment endeavors. Critics contend, however, that the conditions of pretrial EM distort these optimistic pictures and can eventuate in job loss among the employed; among job seekers, it can create difficulty securing job offers.

Employment troubles are generally rooted in three sets of concerns – the limitations that pretrial EM places on individuals' movements, the requirement that participants check in with authorities regularly, and the device's visibility *and* audibility. Pretrial EM participants under intensive supervision are allowed some time each week to search for jobs and, if employed, to work. Even though labor force



participation is allowed, participants are often under strict limits in terms of where, when, and for how long they can be out and about, and authorities often deny or delay giving permission to deviate from these limits, even temporarily. For job seekers, these conditions of release often make it difficult to secure job offers, especially in competitive job markets. For instance, according to Alicia Virani, in Los Angeles County context, job seekers on house arrest are “given a maximum of three to four hours each day, two to three days per week to seek employment.”<sup>28</sup> If, after submitting applications, a job seeker is invited to an interview the next day, they must contact the authorities to ask permission to attend the interview. In some cases, permission is delayed, because the proper authorities are not always available to take those calls. In other cases, permission might be denied.<sup>29</sup> In Cook County, when applicants contact authorities to ask for permission to attend interviews, authorities first reach out to employers to verify that the applicant was invited to be interviewed before giving permission to attend.<sup>30</sup> Even before the interview takes place, this act alone immediately and effectively marks applicants who have yet to be convicted of the crime(s) for which they have been charged as likely criminals, a mark that dramatically reduces the odds that applicants will be seriously considered for positions in question.<sup>31</sup> If authorities give applicants permission to attend interviews, the applicants’ devices might become participants in the room, salient either because tracking devices are too big to hide from sight, or because they often give off sounds that are difficult to ignore. Even when the device is neither visible nor audible, however, if the interview is held in a building that blocks the device’s signal, this can trigger a false alarm that then requires the applicant to interrupt the interview and immediately call the authorities to confirm that they are, in fact, acting in compliance with court-ordered conditions. Ironically, in a context where employers generally have a distaste for hiring people with criminal records<sup>32</sup> but are increasingly asked to “ban-the-box” – to give applicants with criminal records a fair chance to compete for jobs they are qualified for by ignoring their records until later in the hiring process – pretrial EM effectively centers criminal legal system contact near the beginning of the job matching process, almost certainly reducing the odds that system-involved job seekers will secure job offers.<sup>33</sup>

Pretrial EM conditions have also been associated with job loss, a potentially distressing pattern given how central paid employment is in attempts to avoid future criminal legal system involvement. Where paid employment is concerned, pretrial EM authorities often assume standard employment arrangements in which employees work a set number of days per week and hours per day, with little deviation over time.<sup>34</sup> To the extent that changes to work schedules are made, participants must seek approval from authorities in advance.<sup>35</sup> A growing number of jobs, however, have nonstandard work arrangements characterized at least in part by frequently changing, unpredictable work hours and schedules.<sup>36</sup> “Flexible schedules,” one contributor to work’s precariousness,<sup>37</sup> are common among the most vulnerable labor force participants, a population that includes the system-involved.<sup>38</sup> Many such

workers will require special permissions a few times each week to meet their work obligations. Failure to secure special permissions will likely result in noncompliance reports, technical violations, and possibly pretrial incarceration.<sup>39</sup> Failure to meet work obligations because of their conditions of release will likely result in dismissal from their jobs.

While on the job, EM participation can also be disruptive, in too many cases eventually leading to job loss. In addition to negotiating workplaces where co-workers likely know they have had criminal legal system contact (because of the visible and audible device), when on the job, employed EM participants are required to regularly check-in with authorities. Thus, in the middle of a work task, they might have to interrupt what they are doing at random times to confirm with authorities that they are where they are supposed to be. If their devices need to be recharged, they might have to stop work to do so, a process that can take anywhere from 15 minutes to one hour; failure to keep their devices charged can lead to a noncompliance report. If the device's signal is not detected at the work site, a false alarm will be triggered that the employed participant would have to address immediately. As indicated in a 2011 DOJ report on the effects and perceptions of electronic monitoring, "This did not please employers" (2). Among system-involved workers on EM that they interviewed, 22 percent reported being fired or dismissed from their job because of EM; 32 percent of those fired pointed to signal loss as the primary factor. This led the authors of the DOJ report to state, "Offenders and officers alike were almost unanimous in their belief that the visibility of the monitoring systems makes it much more difficult for offenders to obtain and keep a job" (2). Ironically, lost signals have also led authorities in some jurisdictions, like Cook County, to deny employment in places where detecting devices' signals might be difficult – warehouses, high-rise buildings, or concrete parking structures, for instance – and to deny employment that required participants to attend multiple sites,<sup>40</sup> effectively restricting participants' employment options in huge segments of the service and transportation industries.

### **Monetary Sanctions**

Monetary sanctions are applied at every stage of criminal case processing<sup>41</sup> – at pre-conviction,<sup>42</sup> at sentencing,<sup>43</sup> and for court costs.<sup>44</sup> During jail or prison stays, fees are routinely assessed for a variety of programs and services.<sup>45</sup> Among the sanctions added to probationers' and parolees' tabs are monthly fees for supervision (including electronic monitoring) and administration fees for the installation of monitoring devices, drug testing, mandatory treatment, therapy, and classes. Further, at each stage of criminal case processing, there are interest charges and penalties for tardy payments, application fees for payment plans, and fees for debt collection services, all adding to the heavy weight of accumulated debt placed on system-involved people, who are already disproportionately at a disadvantage economically and educationally.<sup>46</sup>

Increasingly, too, authorities are charging user fees for pretrial EM supervision, at an estimated cost of between \$5 and \$35 per day.<sup>47</sup> Critics of EM see several problems with this practice. First, system-involved people are disproportionately low-income and have great difficulty making ends meet under normal circumstances. Adding monthly fees to their already deficit-filled budgets will make survival that much more difficult.<sup>48</sup> For some, overly burdensome fees will increase the likelihood that participants will forego paying other bills to meet their pretrial EM obligation. Others will engage in illegal or illicit activity to make ends meet.<sup>49</sup> Some will engage in system avoidance to relieve themselves of the system's oppressive, exploitative, and extractive practices. Or, as suggested in *Electronic Monitoring: Proceed with Caution*, some participants will eventually plead out so as to end debt accumulation resulting from EM's monthly charges.<sup>50</sup> Further, not only will participants lose all of the money they've paid, even if their cases are dismissed, it is entirely possible that after many months of payments, accumulated EM fees might end up being greater than what participants would have paid had they bailed out instead.<sup>51</sup> With these concerns in mind, some jurisdictions, including San Francisco and many others in California, have eliminated user fees for pretrial EM program participation,<sup>52</sup> and some jurisdictions have waived fees for those who cannot afford them,<sup>53</sup> but far more expect participants to repay the state for the cost of being monitored.

### **Social Bonds**

A small but growing body of research suggests that, like pretrial detention, pretrial EM can also have detrimental effects on bonds of affection and instrumentality, especially for those who live in the same household as EM program participants. Notably, in 2011, the DOJ reported that while almost half of the system-involved interviewed believed that monitoring negatively affected their relationships with friends and family members, 89 percent of probation officers reported that monitoring changed system-involved people's relationships to family and friends for the worst.<sup>54</sup> Strength of close ties weakened in part because pretrial EM placed significant burdens on those closest to program participants. Restrictions on where they could go, what they could do, for how long, and under what circumstances meant that program participants had to rely heavily on loved ones, especially those with whom they lived, to meet their social and economic obligations, including chores that required leaving home, shopping, banking, filling prescriptions, and in some cases making ends meet; if participants are unable to find work because of EM participation, others in their family might have to step up to fill the gap.<sup>55</sup> Meanwhile, EM participants potentially have less to give, to the extent that program restrictions create barriers for them to act as important resources for others.<sup>56</sup> With much greater needs and much less to give, EM program participants effectively become liabilities in their relationships with others. This, perhaps, is made all the

worse by visible and/or audible tracking devices that can bring shame to EM participants' families, further weakening bonds among those who were once close.

### ***Future Criminal Legal System Involvement***

A small yet growing body of research indicates that spending any more than 1-3 days in pretrial detention can dramatically increase the likelihood that one will have future contact with the criminal legal system. Although at least one rigorous study has shown that pretrial EM significantly reduces the likelihood of a new criminal complaint relative to pretrial releases not on EM,<sup>57</sup> other rigorous studies have found no such benefit.<sup>58</sup> And even where pretrial EM has no clear impact on the odds of new crime, it can still lead to new and prolonged contact with the criminal legal system, widening the net to encompass more people who might not otherwise be criminal legal system-involved. In some jurisdictions, for instance, even low-risk, low-level defendants are being court-ordered to participate in pretrial EM, despite the very low likelihood that they will engage in a criminal act or miss their court dates — and the potential that such a practice might violate constitutional norms.<sup>59</sup> Further, pretrial EM often comes with numerous conditions that would be difficult for people without prior criminal legal system contact to meet. Indeed, one rigorous study of pretrial EM in Santa Clara County, California, found that when compared to defendants who were not ordered to be electronically monitored, those who were monitored electronically were over three times more likely to be revoked for failing to meet the conditions of their release.<sup>60</sup> According to one Cook County-based study, one-quarter of participants were found out of compliance and given technical violations that made them vulnerable to re-incarceration for engaging in non-criminal acts.<sup>61</sup> Eight percent were re-incarcerated because they were housing insecure.<sup>62</sup> In general, previous research finds that more intensive supervision – more frequent check-ins and more conditions of release – are associated with poorer, not better, pretrial release outcomes. The problem here is that superfluous surveillance, including numerous and strict conditions of release, might very well reveal imperfect compliance with program rules and then technical violations that can worsen current case outcomes and lead to pretrial incarceration without improving public safety at all.<sup>63</sup>

### ***Summary***

Although largely based on anecdotal evidence or derived from data unsystematically collected, the charges leveled against pretrial EM raise serious concerns about the extent and nature of harms done to those who participate in pretrial EM programs, their families, and the communities in which they live. This is especially so given weak or inconsistent evidence that pretrial EM participants are more likely than

releasees not on EM to attend their court hearings and to abstain from new crime. With these serious concerns in mind, we consider pretrial EM in the San Francisco context.

## **Pretrial EM in San Francisco County**

Although pretrial EM had been in existence in San Francisco well before *Humphrey*, after the 2018 appellate court decision, the county ramped up by over 300 percent its use of this surveillance tool to address concerns that community-based defendants would threaten public safety or miss scheduled court hearings. In other words, in a context where judges could no longer detain someone for being too poor to bail out of jail,<sup>64</sup> judges began to rely much more heavily on pretrial EM, even though this was not necessarily the least restrictive option available to them. Program participants have been disproportionately male (88 percent), without stable housing (roughly 20 percent),<sup>65</sup> and under 35 years of age.<sup>66</sup> Pretrial EM participants are also disproportionately Black (43 percent) in a city with a very small (just 4-5 percent) and rapidly declining Black population.

Presiding judges are solely responsible for determining who will be released to the Sheriff's Office's Electronic Monitoring Program and their conditions of release, including whether they will have additional supervision. By the end of 2021, 45 percent of pretrial EM participants were also ordered by the Court to participate in assertive case management (ACM), a more structured and intensive program for individuals with the highest needs;<sup>67</sup> 30 percent were released on their own recognizance without active supervision; and 26 percent were released with EM only.<sup>68</sup>

Every individual on EM must comply with at least twelve conditions – obeying all orders given by an SFSO employee; obeying all laws; reporting any new arrest or citation to SFSO; reporting any changes in address or phone number to the EM program; waiving their Fourth Amendment rights to search and seizure and submit to a search of their person, residence, automobile or property by any peace officer at any time; submitting to random drug tests; refraining from possessing any weapons and consuming illegal substances (and, for those on SCRAM, refraining from consuming alcohol); refraining from tampering with or removing the monitor; charging the monitor for at least one hour per day; residing within a 50-mile radius of the SFSO Community Programs Office; remaining in the interior premises of the home during curfew hours; and engaging in only preapproved activities. For those under ACM, additional conditions apply, such as attending counseling and programmatic groups as directed, abiding by stay away orders, and getting approval for schedule changes (see [San Francisco Sheriff's Department Electronic Monitoring Program Rules Pre-Sentenced Participants](#)). Importantly, unlike many other jurisdictions across the country, San Francisco does not charge monthly user fees to pretrial EM program participation.<sup>69</sup>

Since August of 2019, the Sheriff's Office has contracted with Sentinel Offender Services, Inc, a for-profit company, to administer its EM program.<sup>70</sup> Sentinel's employees alert the Sheriff's Office when the GPS monitoring device indicates someone is out-of-compliance regarding tracking, home detention, curfew, residential treatment, or alcohol monitoring. Defendants under ACM are also separately monitored by San Francisco Pretrial Diversion Project (SF Pretrial), an independent, community-based nonprofit agency in San Francisco's pretrial system.<sup>71</sup>

Technical violations for noncompliance,<sup>72</sup> failure to make court appearances,<sup>73</sup> and an arrest for a new offense while on pretrial EM<sup>74</sup> are all reasons that defendants' participation might be terminated, leading to unsuccessful EM program completion. Of completed cycles, just 38 percent were successfully completed. Among those who did not successfully complete, in 2021, 16 percent had a new criminal complaint (arrest), 36 percent missed court appearances, and 54 percent had a noncompliance report. Of those who did not successfully complete, just over 50 percent were remanded into custody within one week of EM termination; two-thirds of those who were remanded were booked into custody on the same day as their EM termination.

Given concerns that critics of pretrial EM have raised about how participants, their families, and communities are harmed by such programs, we asked the following questions with the San Francisco program in mind:

- To what extent do program participants experience difficulties attempting to meet program obligations, and what is the nature of the difficulties they face?
- To what extent and how do the difficulties participants face put them at risk for noncompliance and future criminal legal system involvement?
- And how do threats of noncompliance interact with other major issues that system-involved people face to affect program outcomes?

## **The Case Study**

To address the questions outlined above, between July of 2021 and January of 2022, we conducted in-depth, semi-structured interviews with a non-random sample of 66 defendants court-ordered to participate in San Francisco Sheriff's Office's Pretrial Electronic Monitoring Program between 2018 and 2020. As reported in Table 1, respondents were ethnoracially diverse (42 percent Black, 13 percent Latino, and 19 percent White), disproportionately male (84 percent), and disproportionately housing insecure (17 percent), meaning they were homeless, in a shelter, or with no set place to live (generally hopping between the houses of friends and family members) at any point during their time on the electronic monitor. The overwhelming majority of respondents in the sample were high school completers (over 90 percent), and 67 percent were never married. On average, study participants were 37 years old, had 1.3

children, and lived in a household with fewer than two people. Forty-nine percent were employed in the formal labor market.<sup>75</sup> While 20 percent reported at least one mental health disorder and 14 percent reported a substance use issue, 42 percent reported *both* a mental health and substance use disorder. Forty-seven percent indicated access to social capital for emotional support and/or instrumental aid.<sup>76</sup>

Table 1. Demographic Characteristics of Sample (N=66)

	Percentage or mean	Std. dev.	Range
Race/ethnicity			
% Asian	3.1		0-1
Black, non-Hispanic	42.2		0-1
Hispanic/Latinx	12.5		0-1
Multiracial	7.8		0-1
Something else	15.6		0-1
White, non-Hispanic	18.8		0-1
Age	37.1	11.8	19-64
% Male	84.4		0-1
Education			
% Some high school	7.9		0-1
High school grad/GED+	44.5		0-1
Some college	36.5		0-1
College	9.5		0-1
Graduate/prof degree	1.6		0-1
Marital status			
% Single, never married	67.2		0-1
Living with partner	3.1		0-1
Married	14.1		0-1
Separated	6.3		0-1
Divorced	9.4		0-1
Children <sup>†</sup>	1.3	1.90	0-10
Household size <sup>‡</sup>	1.6	1.82	0-10
% With...			
Employment <sup>§</sup>	48.5		0-1
Housing instability	16.7		0-1
Mental health disorder(s)	12.7		0-1
Substance use disorder issues	13.6		0-1
Co-occurring disorders	42.4		0-1
Social capital access	46.7	17.9	0-70
Close family	23.3	8.9	0-35
Instrumental family	23.4	10.0	0-35

Among our study participants, 35 percent were under ACM, 44 percent were OR'd with minimum supervision, and 21 percent were released on their own recognizance on EM only (see Table 2).<sup>77</sup> Most (89

<sup>†</sup> Those with more than 10 children are coded as having 10 children.

<sup>‡</sup> Those who were unhoused were coded as having a household size of 0. Those with a household size greater than 10 were coded as having a household size of 10.

<sup>§</sup> Over 75 percent reported having a formal and/or an informal job.

percent) only had their locations tracked, but 11 percent had their locations tracked *and* their alcohol intake monitored. On average, participants were monitored pretrial for 12 months – roughly 10 months for ACM and those under minimum supervision, but 17 months for those on EM only.

As stated above, technical violations for noncompliance, missed court appearances, and an arrest or citation for a new offense while on pretrial EM are all reasons that defendants’ participation might be terminated, leading to unsuccessful EM program completion. While on EM, 18 percent of our study participants had a new criminal complaint, although for more than half, these charges were eventually dropped.<sup>78</sup> Seven percent reported a new citation.<sup>79</sup> Sixteen percent missed at least one court appearance.<sup>80</sup> Thirty-seven percent also reported receiving a noncompliance report – a program violation that was reported to the court – a figure that was higher for those under ACM than those under less intense supervision. In what follows, we primarily focus on noncompliance, linking it not only to the troubles that pretrial EM participants faced in their attempts to meet program obligations but also to the major life challenges they faced in terms of social, psychological, and economic stability, challenges that some started pretrial EM with and that others developed *during* their EM program participation.

Table 2. Descriptive Statistics on Electronic Monitoring Supervision and Outcomes

	Percentage or mean	Range
Supervision Level		
Assertive case management (ACM)	34.9	0-1
OR’d with minimum supervision	44.4	0-1
Released on own recognizance	20.6	0-1
Assigned EM System		
Location and alcohol monitoring (GPS and SCRAM)	10.8	0-1
Location monitoring only (GPS)	89.2	0-1
Mean Time on EM (months)	12.1	1-33
ACM	10.2	2-26
OR’d with minimum supervision	10.8	1-27
OR’d, EM only	17.1	2-33
Factors Leading to Unsuccessful Pretrial EM Completion		
New arrest while on EM	17.7	0-1
New citation while on EM	6.6	0-1
Failure to appear**	15.6	0-1
<b>Noncompliance report</b>	<b>36.5</b>	<b>0-1</b>
ACM	45.5	0-1
OR’d with minimum supervision	33.3	0-1
OR’d, EM only	25.0	0-1

\*\* These respondents received bench warrants for their failure to make court appearances. In 8 out of 10 cases, the warrant was stayed; they were given another chance to make their court hearings without arrest for failure to appear. In 2 out of 10 cases, the bench warrant was issued. For 23 percent of respondents, Sheriff’s affidavit warrant was filed/received.



## **The Difficulties Program Participants Face**

As stated above, every individual on EM must comply with at least twelve conditions of release; those on ACM face additional restrictions on their movements. To better understand the extent and nature of difficulties program participants faced, we asked the following questions: Were obligations clearly explained? Also, what obligations gave participants trouble?

### ***Were obligations clearly explained?***

We first determined whether troubles meeting EM obligations were associated with individuals' assessment of how well authorities explained their court-ordered obligations to them before beginning the program. As shown in Table 3, 17 percent of respondents indicated that authorities had not explained their obligations well; all but one of these respondents were under ACM. There are several possible reasons why those under ACM gained less clarity around their pretrial EM conditions of release. First, they were being monitored by *at least* two separate agencies – the Sheriff's Office, which administers and monitors pretrial EM program participants, and the San Francisco Pretrial Diversion Project, which supervises individuals with higher needs. Each organization has its own set of obligations and conditions. Second, in part because people under ACM had at least two administrative masters, they also had many more conditions to meet. Still, their EM conditions alone outnumbered the conditions that those under less supervision were expected to meet. Thus, it is likely that because they had many more conditions of release and were monitored by at least one additional agency, they would have had greater difficulty understanding all the obligations they were expected to fulfill. Finally, by definition, ACM is reserved for “higher needs” individuals, including but not limited to individuals who are struggling with housing insecurity, substance use disorder, mental health disorders, and other life challenges that might make comprehending a complicated set of obligations difficult. In our sample, relative to people who were OR'd only or under minimum supervision, a higher percentage of people under ACM were housing insecure, struggling with co-occurring disorders, and without strong labor market attachments. Having one or more such challenges likely sapped participants of mental and emotional energy, making comprehension of numerous, complicated conditions more difficult than they might otherwise be. Importantly, among those who reported that their release conditions were poorly explained, 45 percent were found noncompliant at some point during their EM cycle; for those who received a proper explanation, just 35 percent reported noncompliance.

### ***What obligations gave participants trouble?***

Technical violations are a major route to unsuccessful program completion and result from lapses in one or more of the many obligations courts order. We asked all study participants if they had trouble

meeting the conditions set forth. As shown in Table 3, for several conditions, the percentage reporting troubles was under 10 percent, with zero reporting troubles for three conditions, including not returning the equipment or vandalizing/damaging the equipment. When asked if they had ever been accused of failing to return the equipment, many respondents laughed. One recounted that as soon as she was able to return the monitor, she stated emphatically, “Take this back with lightning speed, okay!”

Respondents’ tone became more serious, however, when discussing difficulties with other obligations. Between one-tenth and one-fifth of study participants reported trouble obeying all laws, possessing any illegal drugs or weapons, living within 50 miles of the program office, and getting permission for scheduled appointments. For six conditions, between one-quarter to one-half reported troubles. For instance, among all participants, 25 percent had difficulty obeying any orders by EM authorities and 43 percent had trouble keeping their devices charged. One respondent described the difficulty, and paranoia, associated with charging as follows:

You weren’t allowed to let it get below a battery percentage. However, there is no percentage on the device. [The device] went off of beeps and vibrations. And so, sometimes when you’re walking or sometimes when you’re doing an activity, you don’t feel the amount of vibration, you know? So, that was really annoying and difficult. Because once you were under a certain percentage you would be in some form “penalized.” And the device was so ... sometimes the battery would last all day. Sometimes you had to charge it three times a day. It was the most piece-of-crap technology. It seemed suspiciously crappy. That was the only thing that was unclear. What happens if it goes under this percentage? Will I get in trouble? The “keep it above a certain percentage” thing was the only thing that was really unclear. What happens? Why?

For people assigned to ACM, obligations were not only more difficult to understand, but also more difficult to fulfill. Twenty-two percent had trouble getting approval for schedule changes, 25 percent had difficulty complying with curfew hours, 33 percent had trouble engaging only in pre-approved activities, and 47 percent had trouble completing errands in the time allowed.<sup>81</sup> Some under ACM were given less than two hours of errand time each week to complete activities that were not approved by the court. But, in the words of one participant, “There ain’t too much you can do in a two-hour window.” While this requirement did encroach on important errands – looking for a job, grocery shopping, or visiting the doctor – many reported that seemingly small but meaningful experiences – getting a haircut, dining out, attending pre-planned family events, or seeing a show with friends – often were the first to get eliminated from their schedules. The fact that many of the most common troubles were only applicable to participants assigned to ACM is further supported by the average number of troubles reported by individuals in each group (see Table 3). Whereas non-ACM participants reported 1.8 troubles on average, ACM participants reported 50 percent more – 2.8, on average.

Table 3. Percentage Reporting Troubles Meeting EM Obligations

	Means or %	Std. dev	Range Possible	Universe
Percentage reporting obligations were not explained clearly	17			All
Percentage reporting troubles...				
Obeying any orders	25			All
Submitting to a search	7			All
Obeying all laws	16			All
Enrolling in alcohol monitoring	0			LAM <sup>††</sup>
Possessing any illegal drugs or weapons	13			All
Tampering with equipment	8			All
Failing to return equipment	0			All
Vandalizing/damaging equipment	0			All
Keeping the device charged	43			All
Notifying authorities of new arrest, citation, or other contact	8			All
Changing address or phone information	6			All
Living within 50 miles of program office	19			All
Complying with curfew hours	25			ACM <sup>‡‡</sup>
Engaging only in pre-approved activities	33			ACM
Completing your errands in time allowed	47			ACM
Getting permission for scheduled appointments	11			ACM
Getting approval for schedule changes	22			ACM
Mean number of...				
Interaction Troubles <sup>§§</sup>	.48	.74	0-3	All
Use Troubles <sup>***</sup>	.13	.13	0-1	All
Device Troubles <sup>†††</sup>	.51	.56	0-2	All
Communication Troubles <sup>‡‡‡</sup>	.29	.52	0-2	All
Intensive Case Management Troubles <sup>§§§</sup>	1.3	1.52	0-5	ACM
Total Troubles <sup>****</sup>	1.8	1.81	0-8	All
ACM	2.81	0.227	0-8	ACM
OR'd with minimum supervision or EM only	1.23	0.1807	0-4	Non-ACM

†† Location and alcohol monitoring (N=7)

‡‡ Assertive case management (N=22)

§§ Description: the number of troubles an R had interacting with law enforcement. Sum of outputs for obey\_orders, submit\_search, and obey\_laws. Max possible value is 3.

\*\*\* Description: the number of number of troubles an R had with use of unauthorized items/substances. Sum of outputs for alc\_monitor and possession. Max possible is 2.

††† Description: the number of troubles an R had interacting with the EM device. Sum of outputs from tampering, vandalism, theft, and charge. Max possible is 4.

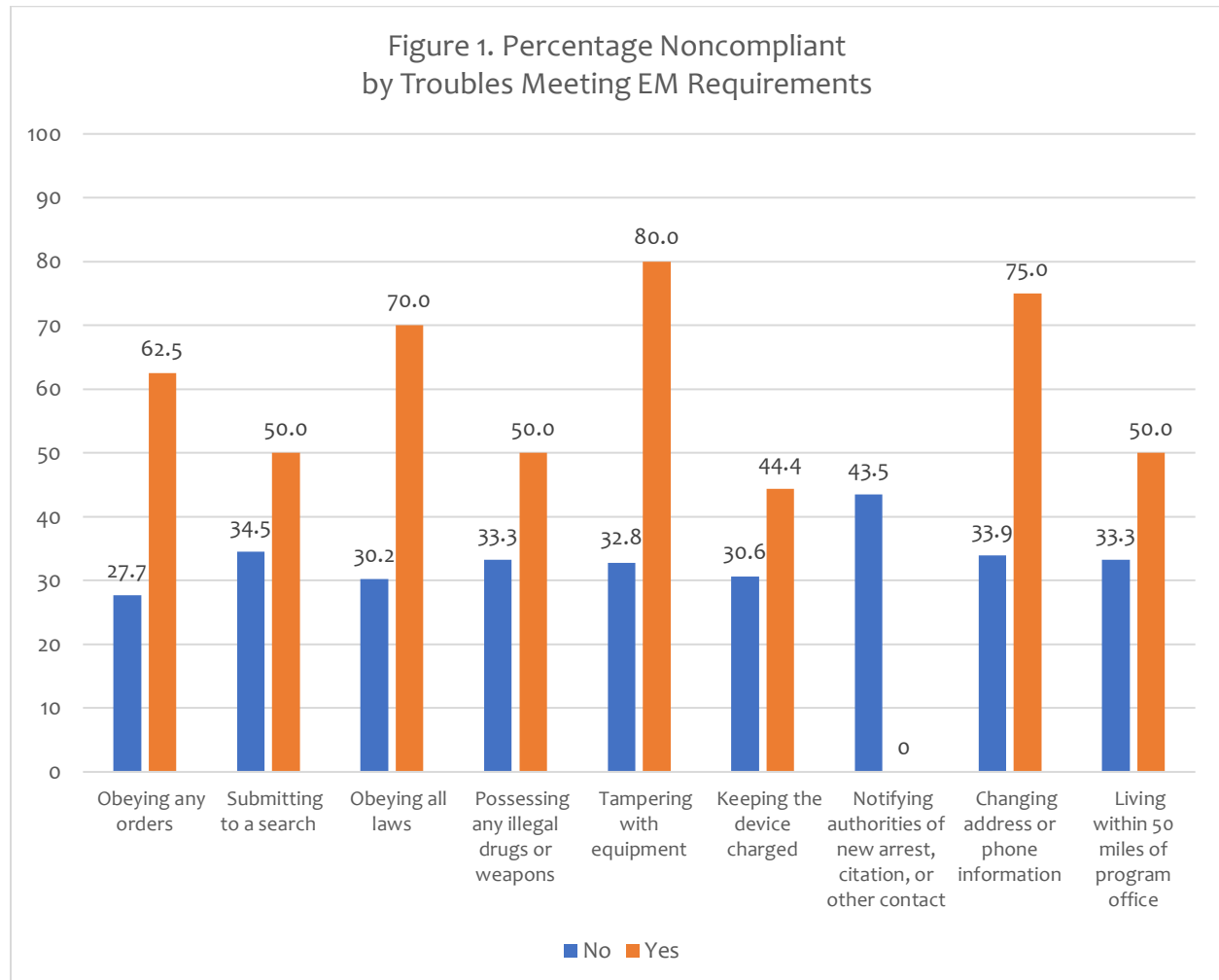
‡‡‡ Description: the number of troubles an R had communicating changes with SFSD. Sum of outputs from officer\_contact, contact\_change, and LiveIn50. Max possible is 3.

§§§ Description: the number of troubles an R had communicating changes with SFSD. Sum of outputs from curfew, activities, errands, scheduled appointments, schedule changes. Max possible is 5.

\*\*\*\* Description: the number of troubles an R had. Sum of IntensiveCaseManagement2, CommunicationTroubleCount2, EMTroubleCount2, UseTroubleCount2, and InteractionTroubleCount2. Max possible is 17 for those on Assertive Case Management and 12 for all others.

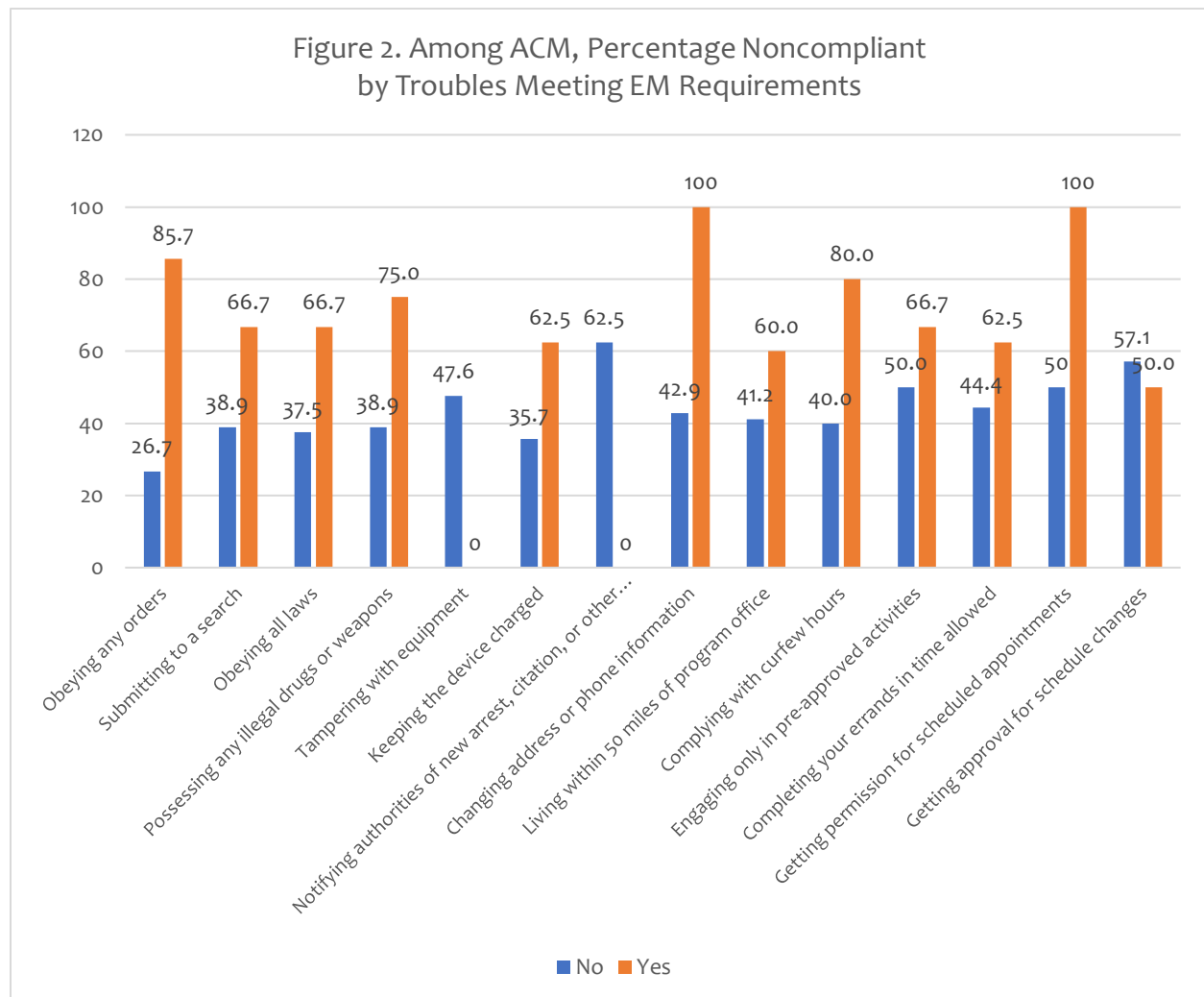
## Linking Troubles and Noncompliance

Troubles meeting EM obligations were associated with noncompliance, with gaps in noncompliance rates between those with and without troubles ranging from 14 to 47 percentage points (see Figure 1).



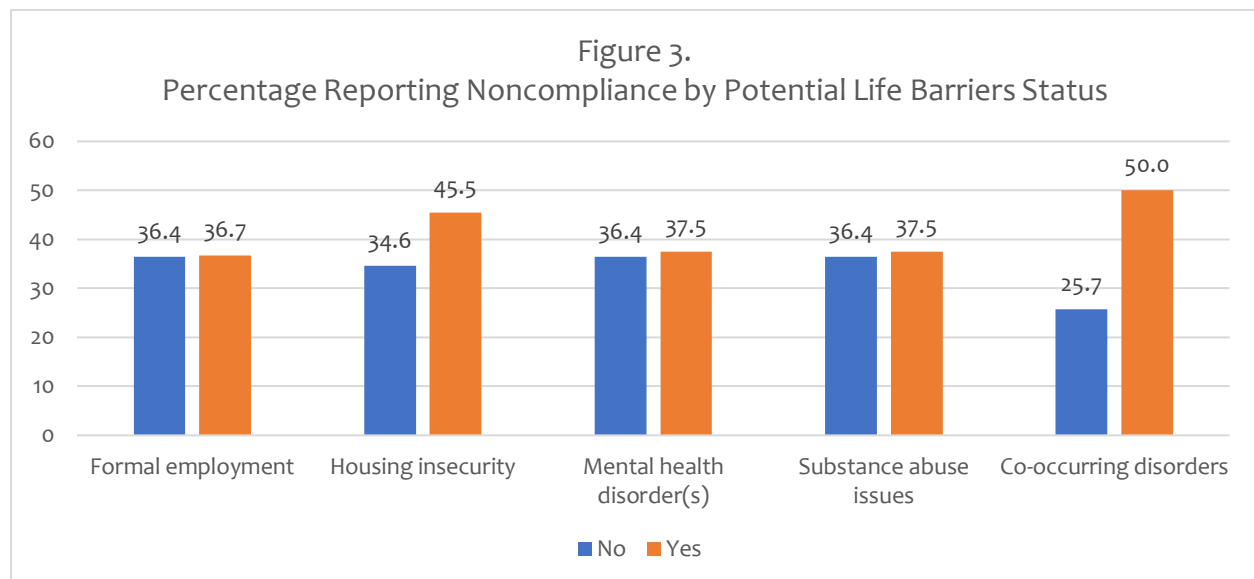
The conditions that many had trouble meeting, however, were not necessarily the conditions that appeared strongly correlated with noncompliance. For instance, although 43 percent of respondents reported trouble keeping devices charged, with one respondent attributing a new arrest directly to not charging his monitor, the gap in noncompliance rates between those having trouble charging devices and those who did not was the lowest at 14 percent. Meanwhile, although only eight percent of study participants reported troubles with tampering with, defeating, or removing monitoring devices, among those who did, 80 percent had noncompliance reports; this compared with 33 percent of those without tampering troubles. Similar patterns were found with obeying all laws and changing address or phone

information; although relatively few respondents had troubles meeting these obligations, a much higher percentage of those who did suffered noncompliance reports than those who did not have these troubles, with gaps on the order of 40 percentage points. We also observe a similar but starker pattern among those assigned to ACM; in almost every category, at least two-thirds of those who experienced troubles were found noncompliant, including 100% of those reporting troubles changing addresses or phone numbers and getting permission for scheduled appointments (see Figure 2). This suggests that authorities treat violations of different kinds with varying degrees of severity. Most, but not all, who failed to charge their devices, for instance, were let off with a warning. However, for most who were accused of failures deemed more serious, such as removing devices, noncompliance reports were submitted to the courts.



## How Troubles and Other Major Life Challenges Impact Noncompliance

Major life challenges, such as weak labor market attachments, housing insecurity, mental health disorders, substance use issues, and co-occurring disorders, are reliable and strong predictors of criminal legal system involvement. Importantly, we found that a number of these challenges also made successful completion of pretrial EM very difficult. Indeed, as shown in Figure 3, among study participants, a higher percentage of people who struggled with housing instability and co-occurring disorders reported noncompliance at some point during their stint on pretrial EM. While 46 percent of people struggling with housing insecurity reported noncompliance, 35 percent of those who did not struggle with serious housing issues did. Similarly, 50 percent of those with co-occurring disorders reported being found noncompliant, just 26 percent of those who did not have these issues, respectively, reported noncompliance. In essence, struggles with these major life challenges contributed to the difficulties pretrial EM participants faced when attempting to meet program obligations. Below we take each in turn.



### Housing Insecurity

For almost every condition, individuals who suffered housing insecurity had trouble fulfilling obligations at higher rates than their housing-secure counterparts. The life challenges they faced made meeting most requirements much more difficult (see Figure 4). For instance, among the housing-insecure, 64 percent reported difficulty charging their EM devices; this compares with 38 percent of those who did not face housing insecurity. Unsurprisingly, housing-insecure respondents had difficulty because they had no place to plug in their devices. For many, charging devices meant charging in public spaces, like libraries and coffee shops, a challenge the pandemic exacerbated to the extent that access to public locations with outlets dramatically declined while shelter-in place orders were in effect. And their struggles to stay

charged were not limited to EM devices. Those who struggled to charge EM devices also struggled to charge other devices that allowed them to communicate with authorities (assuming they had these devices), leading to a cascade of negative consequences. As one respondent detailed, not only was he unable to charge his EM device, but he was also unable to charge his cellphone. This resulted in two violations – charging and contacting SFSO – and a subsequent noncompliance charge. He explained as follows:

Like I said, I was on the streets at the time. And I was homeless. So, it minimizes hours that I have to charge a device, like the monitoring. Or even my phone. So, I had problems charging the monitor in a timely fashion. So, they thought I was doing some underhanded shit. They thought I was ... probably I just wasn't complying with the program... So, I was pulled back in, because I couldn't charge the monitor, basically. Or because I couldn't answer [the phone]: certain [monitor] alarms that went off, where I was supposed to call back and report.

Consistent with the above, housing-insecure respondents reported difficulty changing their addresses and telephone numbers, or otherwise staying in communication, with authorities. Whereas just 3.9 percent of housing-secure respondents reported trouble meeting this obligation, 18 percent of the housing-insecure did.

For many housing-insecure respondents, the requirement to live within a 50-mile radius of the program office forced them to search in an area known to be prohibitively expensive. Indeed, 45 percent of housing-insecure respondents experienced trouble complying with the obligation to live within 50 miles of the SFSO community programs office; only 13 percent of housing-secure respondents reported the same. One respondent described how the combination of high rent and a previous arrest made safe and affordable housing extremely difficult to find.

Because San Francisco is very expensive, and when you're getting out of jail, or, in my case, getting back on your feet and getting out of jail... Any slight gust of wind could just put me on the streets. It was really hard to find a place in this very expensive city if you're not looking to stay in program, that is. If you're looking to get an apartment and live on your own. It was really difficult.

For some unhoused defendants, the system attempts to find housing. If a judge unknowingly releases an unhoused person to pretrial EM with home detention or curfew, the Sheriff's Office will notify the courts. Typically, the courts have one of three possible responses – to change the conditions to GPS monitoring only and release; to remove the order for pretrial EM and release to another program; or to keep the unhoused person in custody, especially if a bed cannot be found. If someone becomes unhoused while they are on pretrial EM, then the Sheriff's Office will work to find housing for them. SF Pretrial does the same for the people they supervise on pretrial EM (mostly those under ACM), tapping into a network of over 100 agencies across the city and contracting with a half dozen hotels to identify available beds for clients in need.<sup>82</sup> This is no easy task, however. In a city notorious for having too few housing units and

woefully inadequate annual housing production,<sup>83</sup> for unaffordable housing costs,<sup>84</sup> for one of the worst problems of homelessness in the country – sheltered and unsheltered<sup>85</sup> – and, until recently, for indifference toward the housing needs of the system-involved, the challenge for system actors to find shelter for unhoused pretrial EM participants has been almost insurmountable.

Even when available, however, housing assistance comes with its own significant *drawbacks*, and so those who accepted placements also experienced significant *setbacks*. The first issue was where beds were located. Beds for the unhoused were often found in the Tenderloin, an area of San Francisco infamous for drug use and violence. For those struggling with addiction and trying to avoid trouble with the law, the Tenderloin was perhaps the worst place to live. As one respondent explained, “All type of stuff [is] going on every night, every day, all the time. But it’s convenient for [SFSO], because they can just walk down there and check and see what you’re doing. But it’s a really messed-up area, especially if you’re on some type of monitoring by the police.”

Beyond neighborhood characteristics, those who were offered beds also expressed frustration about the condition of the housing they were provided. When asked to describe the sober houses and rehab facilities where he was placed, one respondent said, “None of it was good. None. No experience within the last year has been remotely pleasant.” Another shared this about the space that was found for him: “It was super-demoralizing. I felt like I was paying for a prison cell. And I didn’t want to be living there. I was just stuck there because that’s where they put me; the city put me there.” A third respondent in search of housing described the hotel room that had been identified for him as “just trashed.”

Those who chose to accept housing also complained that support was extremely limited and that housing rules were quite restrictive. Most often, SF Pretrial is able to make beds available for 2-3 days immediately upon release. Funding constraints, however, require that extended stays in housing can only be guaranteed if another organization has a treatment or housing bed available, often leaving housing insecure defendants on the streets even if they remain on SF Pretrial’s caseload for months. In addition, receiving housing required full compliance with a host of housing rules as well. Thus, not only did they have a greater number of rules to follow, but their behaviors were now also monitored closely by the Sheriff’s Office, SF Pretrial, and housing authorities, most notably Adult Probation, the source of a significant percentage of housing for the system-involved. When noncompliant, they were sanctioned swiftly and harshly. As one respondent described it, the program-provided housing was “sort of like a jailhouse. The police actually [have] full authority to come in there any time they want to.” Those who were unable to abide by all rules were either taken back to jail or evicted from housing and forced to find other living arrangements on their own. In the context of abstinence-based drug treatment programs championed by Adult Probation, any drug use, for instance, would result in immediate revocation of



housing and a noncompliance report. Two respondents reported that they had been evicted from program housing because they were using.

Made to abide by even more rules and under more intense supervision, housing-insecure respondents were at much greater risk of noncompliance than their housing-secure counterparts. The result was that many, especially those suffering with addiction, felt the system had set them up to fail. As one respondent explained: “Temptation is there. You’re out of jail. You’re out of this highly strict program. You want to give into your vices. So, you just do. It’s just human.” What this respondent described was a common phenomenon. Among the housing-insecure, nearly 30 percent reported experiencing trouble with obligations to refrain from the possession and/or use of illegal drugs and weapons; this compares to less than ten percent of the housing secure. Indeed, present to the high risk of possession-related noncompliance, one respondent preemptively left the housing program so that he could use. His attempt to remain compliant with the program-provided housing rules, however, resulted in noncompliance with his EM program rules and a corresponding noncompliance record; he could not inform SFSO of a change in his address because he did not have a cellphone. He explained in detail:

The last time I was on ankle monitor, I didn’t have a cell phone. And so, when I decided I was leaving the program to go get high, I was under the impression that as long as I’m within 50 miles of the marker where I’m supposed to stay in, I wouldn’t have any issues. So, my goal was to move into a hotel room instead of being at the program. So, basically, I was relapsing. And they say at the ankle monitoring facility, “Call us if your address changes or if anything has a problem.” And I didn’t have a phone. And so, I couldn’t call them and let them know that I was leaving. So, they were contacting me via the ankle monitor, by buzzing me. But knowing that they’re trying to contact me, it’s weird, because I don’t have a phone to contact them back. It’s like a dog on a leash. I know you’re telling me something, but I don’t know what you’re telling me.

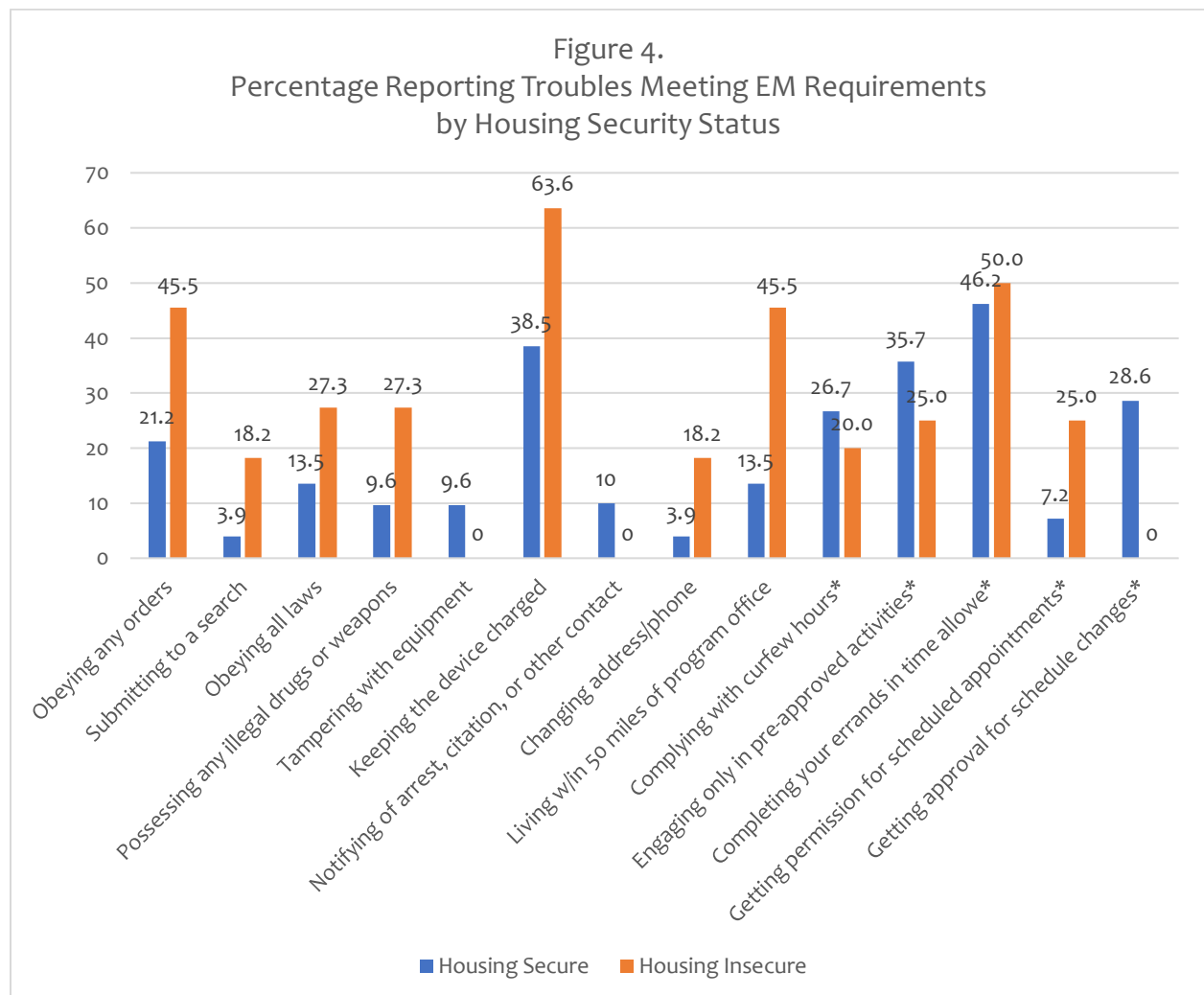
Even those that were able to contact SFSO about a change in address experienced issues that threatened their freedom. One respondent on house arrest in program-provided housing described how at the beginning of the pandemic, the housing program continued to switch the location of his housing to maintain social distancing guidelines. Even though he called the program office to inform them of these changes, SFSO did not keep track of his calls and attempted to charge him with violating his stay-at-home order. To explain, he shared the following:

And we had to move whole hotels. And I gave them an updated date a week ahead of time. I gave them the times that I would be moving everything, and how many trips we were going to have to possibly make and everything else. So on and so forth. And even the updated address. They failed to put any of that in or log it. They were really trying to nail me for failure to, for leaving the house when I wasn’t supposed to. Or moving when I wasn’t supposed to, though I had given them ample amount of time and information about the whole situation. The only thing that saved me is that I remembered one of the officers’ names that I had talked to and had to have them come in to verify.

Recognizing some of these issues, many respondents sought alternatives to program-provided housing. These options, however, also represented threats to their success in the EM program. In one particularly illuminating example, a respondent describes how he made an unplanned stop at an organization that could provide him with housing and was later cited for noncompliance for failure to first receive pre-approval for this stop. He explained:

I was walking by the Foundation. If I signed up there, they would possibly be able to get me help with housing once I got off of the ankle monitor. I stopped and registered real quick. Those were unscheduled stops. I kept a detailed log. SFSO locked me down and took my privileges away. I went and I listened to [an authority at SFSO], and I stayed locked down. You know what I mean? I wasn't happy about it because I thought I was doing the right thing. But, still, I wasn't following the rules.

Of those who experienced housing insecurity, 45 percent also had trouble obeying all orders given by SFSO and the EM program. This respondent's experience, however, illustrates how these violations are often complicated by deeply personal and practical factors, such as taking advantage of opportunities to secure safe, affordable, and stable housing.



## **Co-Occurring Disorders**

Most people in this sample had either a mental health disorder (13 percent), substance use disorder issue (14 percent), or both (42 percent).<sup>86</sup> Overall, although mental health and substance use disorder issues alone were not strongly associated with noncompliance, having co-occurring disorders was. As shown in Figures 5, 6, and 7, to varying degrees, a higher percentage of those with each of these conditions reported troubles than those without the same respective issues. Differences in rates of troubles between those with and without mental health challenges were greatest for the obligation to obey any orders and the obligation to live within 50 miles of the SFSO Community Programs Office (see Figure 5). Where substance use disorder issues are concerned, differences in rates of troubles were greatest for submitting to a search, obeying all laws, refraining from possessing illegal substances and weapons, informing SFSO of a new officer contact, and abiding by curfew (see Figure 6). For those with co-occurring disorders, differences in rates of troubles were greatest for obeying any orders, charging devices, abiding by curfew, engaging only in preapproved activities, completing errands in the allotted time, and enrolling in counseling and other programmatic groups such as Alcoholics Anonymous (see Figure 7).

Overwhelmingly, people who struggled with co-occurring disorders reported feeling as though they were “put in an unfair position to fail,” primarily because of their struggles with addiction. One of the most basic obligations of electronic monitoring – to obey all laws – was also the most difficult for people with co-occurring disorders. Thirty-six percent of those with co-occurring disorders reported trouble obeying any program orders, and these troubles put them at risk for noncompliance. Substance addictions made it overwhelmingly difficult to obey all laws because SFSO mandated a cold-turkey approach to dependencies on illicit substances that usually barred them from successful program completion. And because the EM program treated drug use and possession as illegal activities rather than health conditions, respondents who struggled with addiction and recurrence of use were often categorized as having violated program rules and laws. While some reported that the obligation to not use drugs was too great for them to even attempt, most earnestly attempted sobriety but too often found symptoms of withdrawal too difficult to overcome. One respondent explains the tension he experienced:

As far as not obeying laws, I don't see myself as a criminal. I am just a drug addict. So, I just do drugs. You know what I mean? I don't go break windows. I don't break into cars. I don't beat people up; I don't shoot people. You understand? Like, I don't carry a gun. None of that. I'm not a violent person. I just do drugs. So, as far as was it hard to obey the law; I mean, as far as having drugs on me and getting high by myself—yeah... It was the hardest thing. It was basically the only thing I struggled with, was always having drugs on me. Always. If I didn't have drugs on me, I would go to get drugs. Or I was on my way to get drugs.

Another explained as follows:

In my neighborhood there’s drug activity on every block. There is alcohol on every block. So, if I participate in any of that, then I will violate the orders. And to me, because of the ability to have it around me was so plentiful, it was hard to stay clean. Just like a person who smokes; you don’t want them going to the store where they sell cigarettes every day. Eventually, they’re going to participate.

In part because EM required that participants refrain from using and possessing illegal substances, 50 percent of respondents with co-occurring disorders reported noncompliance; this compares to 26 percent of those without co-occurring disorders.

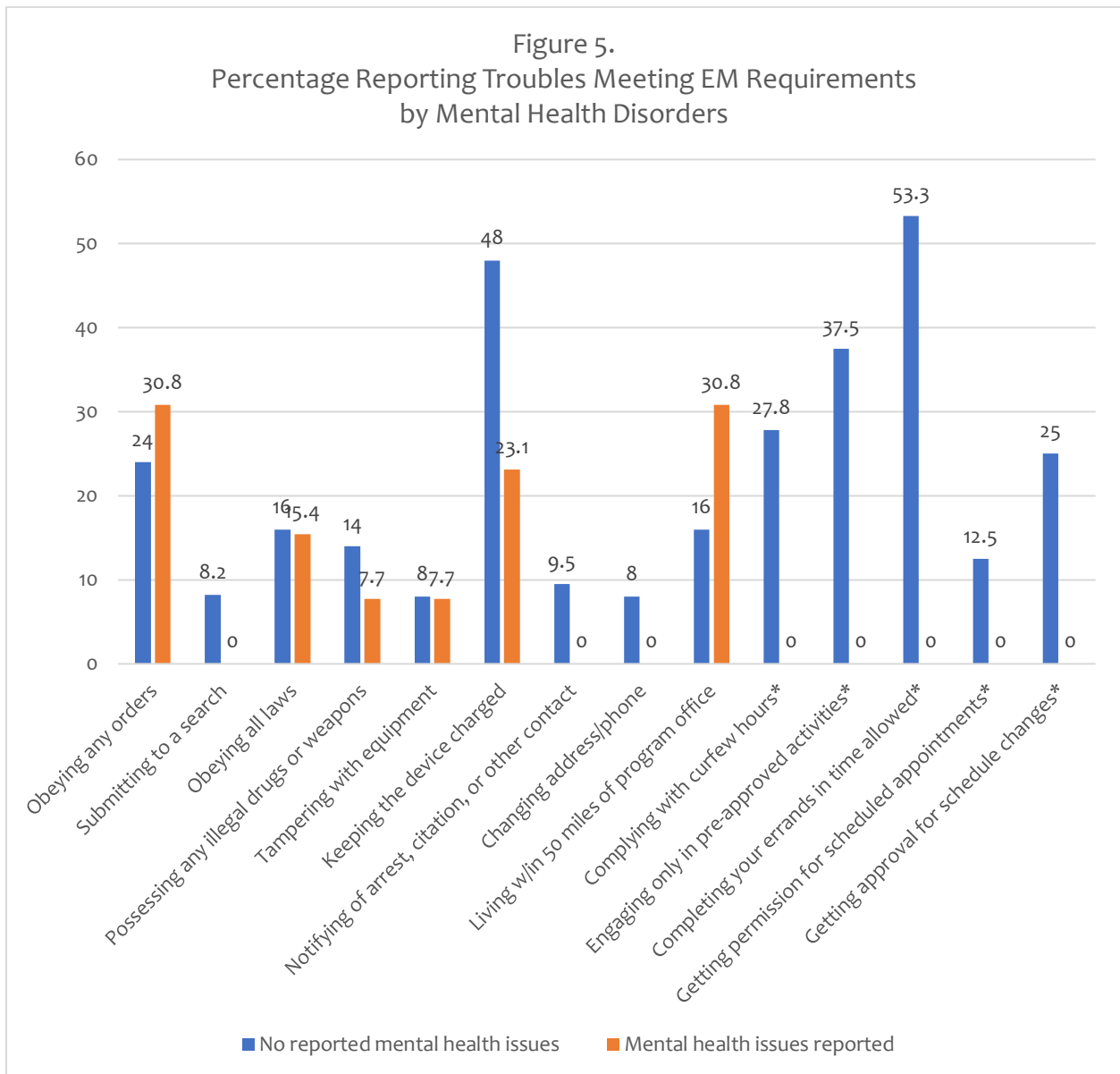


Figure 6.  
 Percentage Reporting Troubles Meeting EM Requirements  
 by Substance Abuse Issues

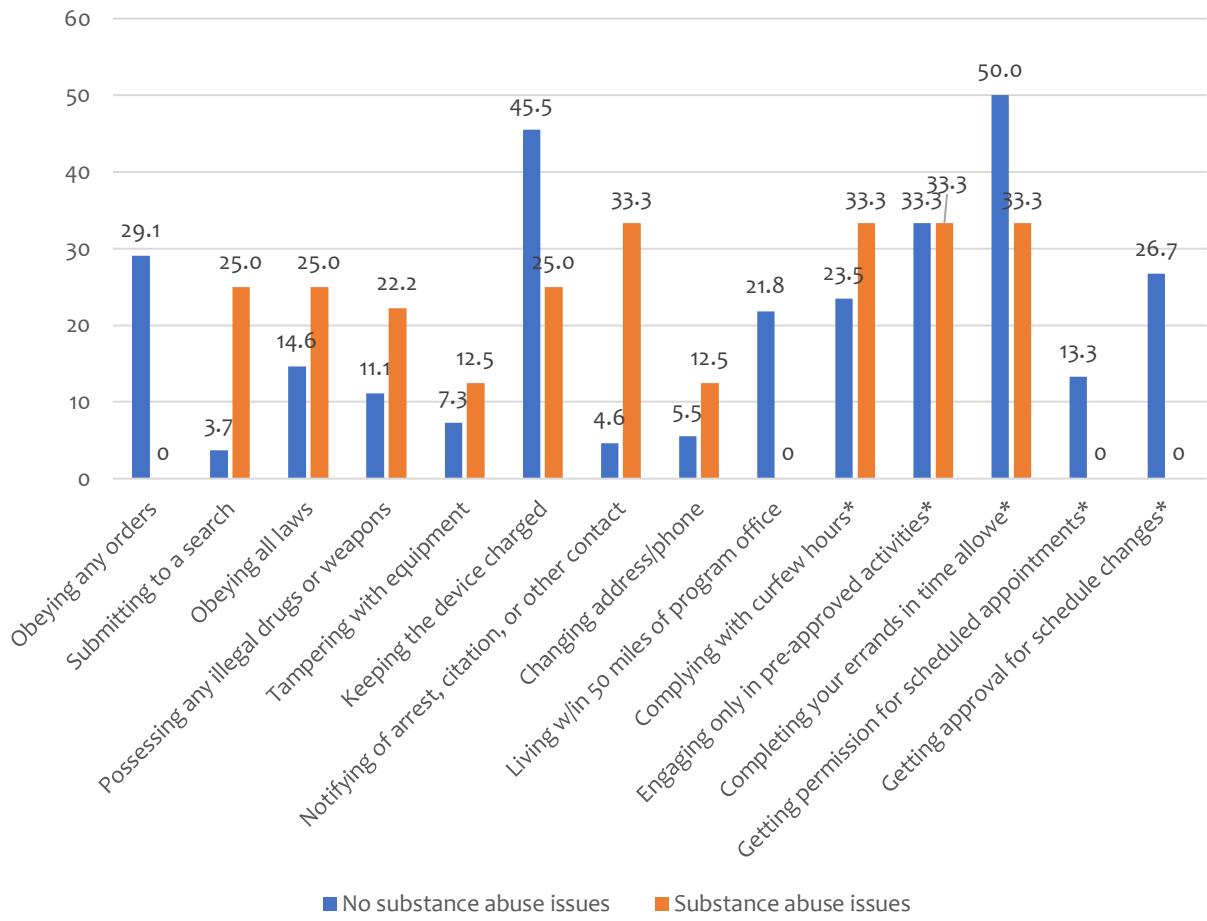
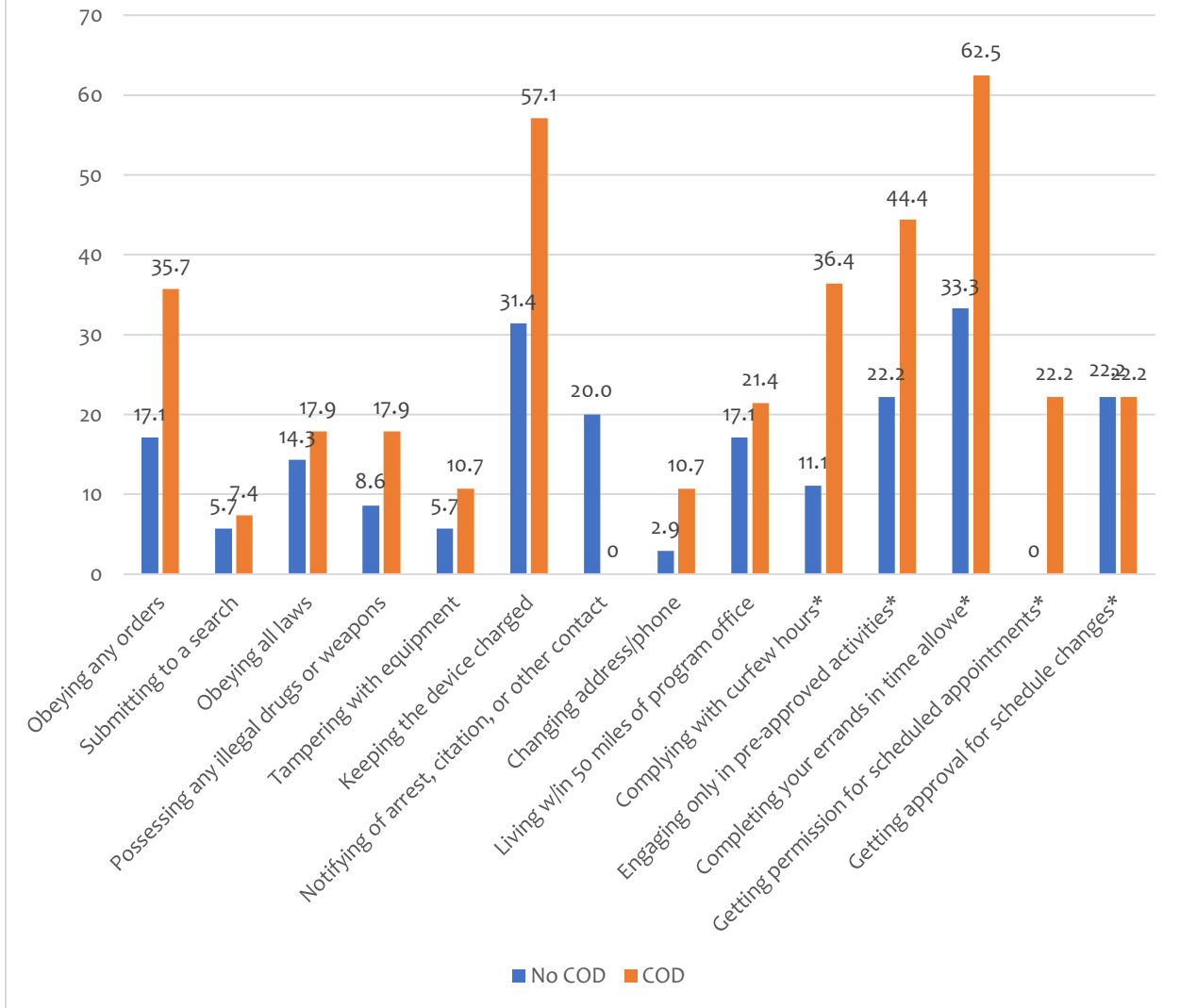


Figure 7. Percentage Reporting Troubles Meeting EM Requirements by COD Status



## How Pretrial EM Creates and Exacerbates Major Life Challenges

Like any contact with the criminal legal system, pretrial EM also significantly impacted the lives of respondents. In the areas of housing, mental health and well-being, employment, and social capital, study participants reported several changes to their lives during and after their time on the device. Though some changes were positive – particularly around addiction and substance use – most changes were categorically negative.

### **Destabilized Housing**

Finding and keeping safe, affordable, and stable housing became even more difficult under EM. Seven respondents reported that EM significantly narrowed their housing options in a housing market already characterized by chronic shortage. It did so in at least three ways. First, EM conditions often included orders to stay away from their own homes. Such stay-away orders were almost always the result of domestic disputes, but such conditions, understandable as they might have been, rendered some not only homeless but also without the personal items they needed for survival. One respondent, for instance, described how his stay-away order left him on the street with no access to vital resources:

When I got arrested, I told the police officer I need my wallet. “Can you guys get that for me?” They didn’t get my wallet. And then when I was released, I needed my work laptop, and I had no way to access that. I needed to go to work so my ass wouldn’t get fired. And so, when I was released, I was kind of left to my own devices – no wallet, no laptop – and I had to get those back. And so, I made communications that were not legal in order to get those items back before I could schedule a police escort to get my things. [I couldn’t even] even like feed myself. I didn’t have access to credit cards, ID, anything. It was left at the residence where I was ordered to stay away from.

In this situation, pretrial EM contributed to the respondent’s housing insecurity by including a stay-away order as a condition of release without providing alternative housing and much-needed access to the respondent’s belongings. Three respondents attributed their housing difficulties to this issue.

Second, pretrial EM contributed to housing insecurity by making housing difficult not only to search for but also to secure. It did so in two ways. For people on home detention, EM not only constrained where they could search but also the amount of time they could devote to search. For instance, finding housing in the private market was near impossible; many who sought housing did not have adequate time to apartment search. As one respondent explained,

I couldn’t just go look for an apartment. I had to wait until my errands time to be able to do that. It wasn’t until they put me on curfew. I had to try to take the opportunity to see apartments on Zillow. And I had to schedule them for my errand time, and that was difficult because a lot of people didn’t have those times [for Open Houses].

Furthermore, if home detainees wanted to visit open houses, meet with potential landlords, or otherwise engage in apartment searches outside of designated errand hours, they had to seek approval from the

courts beforehand. Approval, however, required documentation; home detainees had to provide the courts with paperwork necessary to prove that they had an appointment before the courts approved their requests. Not only did these procedures delay the process of securing housing, assuming housing seekers could, but too often, getting needed paperwork meant making potential landlords aware that they were being monitored by the criminal legal system. For most landlords, this knowledge alone would disqualify program participants from further consideration because landlords would discriminate against them.<sup>87</sup>

Third, in the face of such barriers, many housing seekers give up housing searches altogether or deploy resources that, in the end, might do more harm than good. Expecting to be denied access to Section 8 housing because of his record of arrest and EM status, one respondent explains,

I was supposed to have housing in 2018, but I was incarcerated. So, I missed my appointment. I think I kind of canceled myself out for that. After that, I never really tried to sign up for Section 8 or none of that kind of stuff.

Worse still, barriers related to EM participation also seemed to increase the likelihood that EM participants resolved their housing issues by taking advantage of potentially unsafe opportunities. Those who could not find their own housing often relied on family members and friends for a place to stay, but this reliance sometimes forced respondents to live in places or with people who might negatively influence their behavior. One respondent explained that the only people who would feel comfortable taking him in – and doing so without judgment – were those who were also “in the life.”

While being on the electronic monitoring it is very hard to find a place to live and to find a job. People think that it's scary. You look like you are a dangerous person, that you're going to harm people. So, you really turn to a certain type of friend that doesn't bat an eye at it. And nine out of ten times, those are not the greatest people. So, it's a crapshoot after that, of bullshit. It's difficult.

In these ways, conditions of pretrial EM release significantly constrained participants' access to safe, affordable, and stable housing, and in so doing, they actually pushed participants toward seeking and accepting potentially unsafe circumstances.

### ***Diminished Health and Well-Being***

EM also appears to have worsened individuals' mental and physical health and well-being. EM conditions were the source of depression, anxiety, isolation, stress, and other emotional and psychological states among almost three-quarters of study participants, or exacerbated conditions that already existed.<sup>88</sup> Respondents reported that EM “made me a hermit,” “created anxiety of the unknown,” “made me less social,” “fucked my self-esteem up,” and “[made] me depressed.” For 42 percent of respondents, devices also caused physical pain. It brought about swellings, rashes, and nerve damage in the ankle/foot area. This figure includes those six people who experienced changes in weight.



They either lost weight because of the stress and shame of having to wear the device outside, or they gained weight because of their inability or unwillingness to leave their homes to exercise.

Critics of EM have also reported that EM participation creates barriers to receiving healthcare. One barrier was court approval, which critics have reported is difficult to receive. Consistent with critics' reports, one respondent in this study who requested the court's approval to have an emergency dental procedure was denied because he had not provided proper documentation prior to the visit. He explained,

I was having a really bad toothache. I wanted to go in to see a dentist or get a tooth pulled, and [SFSO] told me 'No.' So, I have to pretty much stay home, in pain.

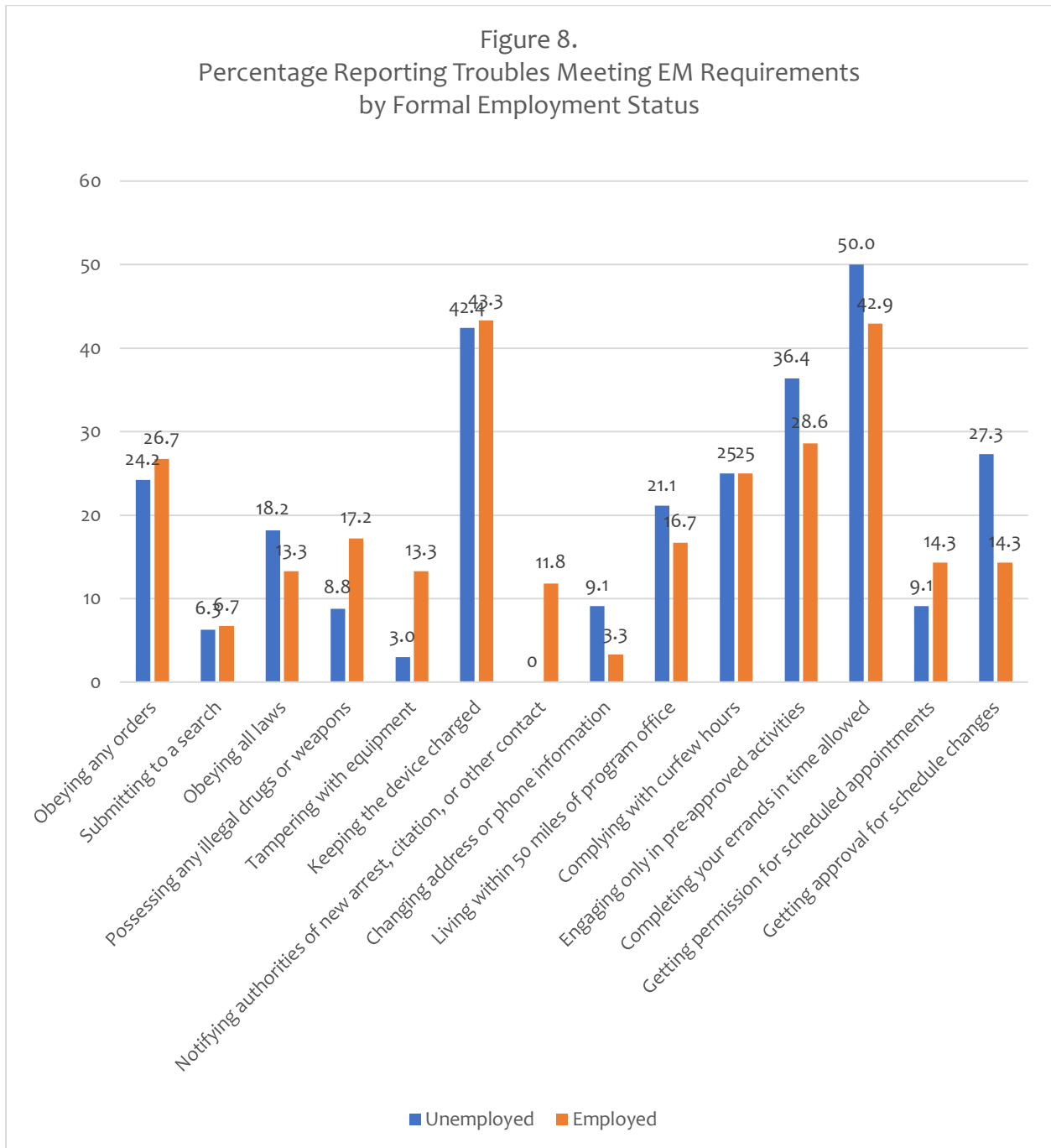
None of the other study participants raised this issue. However, this was largely because they anticipated major hurdles to doing so and so did not attempt to access such care; they opted not to try – in the process, increasing the likelihood of poorer health outcomes. A second barrier was stigma; a few participants expressed reluctance to leave home with a monitor on their ankle, ashamed about what the device would signal to others.

In rare instances, however, respondents reported that EM participation had positive impacts on their health and well-being. This was especially true for a few participants with addictions. Forced into sobriety while under surveillance, they believed the program gave them extra motivation to change their lives. As such, EM was an “opportunity to go out and prove myself and get off drugs,” although a non-surveillance based, non-coercive approach of structured support might also have this result without attendant harms. For those who were forbidden from operating a vehicle, EM also forced them to exercise more – to walk to their appointments or to complete their errands. Still, important as these improvements were for the individuals who experienced them, they paled in comparison to the high costs to health and well-being that pretrial EM participants were otherwise made to pay.

### ***Disrupted Labor Force Participation***

No matter their employment status, pretrial EM diminished individuals' employment prospects.<sup>89</sup> While the quantitative data indicates that similar percentages of employed and unemployed respondents were cited for noncompliance (see Figure 8), the qualitative data reveals variegated sets of troubles for those *with and without* jobs associated with pretrial EM program participation. This is primarily because several program requirements – residing within a 50-mile radius of the program office, abiding by curfew, keeping the device charged, engaging in only pre-approved activities, abiding by stay-away orders, and getting approval for schedule changes – made securing job offers and keeping jobs difficult. Even though it was a Sisyphean task to find and maintain a job while on EM, a few respondents noted that having a job could eventually relax the conditions of one's e-carceration. As one respondent explained, “If you find a

job, they let you go out. Any job.” For many, however, EM obligations were so all-encompassing that they avoided searching for work, were fired, or quit their jobs to avoid issues with SFSO.



One of the greatest challenges for both job seeking and employed EM participants was scheduling, including getting court approval for schedule changes, an issue of particular relevance for those under ACM. Those who wished to find work tried to fit search activities in during the time allotted for errands – two to four hours each week. If they were fortunate enough to be invited to interview, to

visit work sites, or to attend other events that might put them in the pipeline for new jobs, they would need court approval to do so, since the timing of such events would likely not overlap with the severely limited times that program participants had available. Court approval, however, required documentation – some form of evidence to support loosening restrictions – but such documentation was difficult to come by. While authorities could grant exceptions for restrictions to account for job interviews, respondents whose interviews were not officially “on the books” (as in, there was no letter stating a date/time/place, for example), were not allowed to change their schedules to attend. One respondent explained the embarrassment of dealing with this obligation as follows:

I would get a random interview. [Employers] would call me, and if I would call [the program office] and let them know I have an interview tomorrow, they sometimes wouldn't buy it, and then I'd have to reschedule. Stuff like that. Telling my employer ... I mean, I never got that far, but what am I going to tell my employer, 'I'm on house arrest? And could you please schedule ahead of time?'

Further, even when one authority found supporting documents sufficient to amend the schedule and allow the activity, another authority figure could override this determination. In one instance, the judge allowed for a schedule change, but the sheriff would not, and so the job seeker could not attend the interview. Not only does this experience reveal precisely how much discretion layers of legal authorities have over the lives of pretrial EM participants, but it also reveals just how capricious their decisions can be. For these reasons, seven study participants chose not to search for work at all while under supervision.<sup>90</sup> One respondent who anticipated the difficulty he would have because of program requirements chose not to look for work at all. He stated, “I didn't even try to find one. I wasn't interested. It would have [been difficult] had I tried, though, because I couldn't go anywhere.” With court hearings in mind, another respondent stated, “I didn't want to have to tell my new employer that I needed to go to court, and I can't show up to work,” so he opted out of looking for a job altogether.

Just as some job seekers often struggled to get approval to engage in job search activities because of difficulty securing approval for schedule changes, employed EM participants also often struggled to stay employed, forced to choose between difficult options.<sup>91,92</sup> Those with “flexible schedules” and/or multiple employment sites faced huge challenges on a regular basis to get approval to go to work. For instance, employed EM participants faced difficulty working within the 50-mile radius of the program office. This was particularly true for those employed in the gig economy, who juggled jobs with DoorDash, Uber, and the like. For them, working within the 50-mile radius and staying away from areas where they had stay-away-orders meant being very intentional about the trips they could take, including which income-generating opportunities they would have to decline. One respondent explained, “DoorDash and Postmates, and Caviar. It was all apps like that. So, I didn't really have a boss. I just knew not to go over there, because the judge said not to. I would just stay away from there.”

But strictly abiding by EM program rules too often meant forsaking some of their employment commitments and risking their jobs – the primary source of income for many. Indeed, conditions of release often placed workers in the untenable position of having to choose between, on the one hand, making ends meet and potential reincarceration through technical violation or, on the other hand, remaining in compliance but unable to care for themselves and their families financially. Many were willing to risk noncompliance – to break curfew, for instance, or to ignore stay-at-home orders – when these orders interfered with their ability to earn money. Indeed, a few reportedly broke curfew to work for companies, like DoorDash, whose peak hours often overlapped with curfew. As one respondent explained,

The times with Door Dash were that it could be a peak pay; it might be later in the night or something. And I have got to be in at 10:00. So, I don't get to really do my whole overtime that I wanted to do for myself and get the more bang for the buck. It kind of like held me up from a couple of dollars.

Weighing the pros of surge pricing and higher payments against the cons of noncompliance, they often chose the former.

When faced with EM-related challenges, however, others quit their jobs or were fired. In our sample, seven people reported losing their jobs because of difficulties with EM conditions; four quit and three were fired, but whether they quit or were fired, the end of their employment was rooted in the same underlying factor – EM inhibited their ability to be present and productive at work. Two respondents described how SFSO gave them faulty EM devices that would erroneously flag their places of employment as outside of the 50-mile radius. Each time, they had to visit the program office to rectify the situation. This was the case even though one respondent's employer confirmed that he was at work. Still, the judges and the Sheriff's Office did little to resolve the ongoing issues with the devices. One of the respondents described his experience as follows:

[The Sheriff's Office] were telling me that I never was going to work, like, "Oh, you wasn't going to work, and you weren't doing this and that." I'm like, "What? I was going to work. I'm literally going to work." They're like, "No, you ain't never been to Fremont." Six months I would go in there. And they said I had never been in Fremont. And I'm like, "That's impossible [that] I've never been to Fremont, because I can call my supervisor and my supervisor can confirm that I've been in Fremont." And they were like, "Oh, you better do that, or you're going to jail." I called my supervisor, and my supervisor confirmed it, and they still didn't change it. They knew it was messed up. They knew that it was messed up. They knew that they couldn't see me in Fremont, and they still didn't give me a replacement [ankle monitor] to make sure that I'm really going to places to be monitored. And they didn't care. I was looking at it like, "Well, you all must want me to get in trouble." That's why I really quit the Tesla job. Because they were telling me that they weren't seeing it. I'm like, "Well, I can't come to work because my ankle monitor telling them I'm not showing up. I'm not trying to go to jail because I'm trying to feed my family."

This respondent was not the only one to quit under these circumstances. The other worker who struggled with this persistent problem also eventually quit his job because SFSO continued to erroneously flag him as being outside of the 50-mile radius.

I was on the way in-between the 50-mile radius limit, [the device] would beep. And the minute it would send that signal, I had to call the Sheriff's Department to check in. I don't know if it was a battery or if it was something that the tracking device thought that I was outside the 50-mile radius – which I was not – but they asked me to come in immediately, just to check in, which was a big hindrance, because it didn't reflect well on my boss. And I had to stop what I was doing and make my way all the way back to the Sheriff's Department to get it recalibrated.

Finally, for both job seeking and employed EM participants, the devices made it much easier for employers to discriminate. Because of its size, it was visible, and because it frequently beeped, it was also audible, resulting in awkward looks, “embarrassing comments,” and assumptions from co-workers, bosses, clients, and potential employers. As one job seeker explained,

You couldn't put anything on over that thing. You could only wear sweatpants or a skirt. And if you wear a skirt, it's on display. So, there was absolutely zero possible way that anybody can go and get a job with that thing on, except if they're going to go work at a jail [laugh] or something. There's no way. No one is going to hire someone with that thing on. Huge.

Although California is a ban-the-box state that prohibited employers from asking about previous system contact until the final stages of the hiring process, when potential employers saw the monitor, job seekers observed that they never called back.<sup>93</sup> One respondent explains:

Sometimes perception is worse than the actual facts. So, they see the ankle monitor and they perceive that you're not a good person—without knowing the true facts. So, you're very limited and you're very handicapped when it comes to jobs.

Even if a respondent believed they had faced discrimination, it was generally impossible to discern between employer discrimination and the everyday disappointments of a job search in a way that would elicit grounds for legal action. One respondent described:

One time I had an interview, and because they seen the monitor, they ... I'm not going to say they discriminated against me, but they didn't give me the job. I mean, I felt like I was a good candidate for that job. And I didn't ever get called back. Because I felt like they seen my monitor.

Thus, not only does it appear that employers are able to ignore laws that forbid them from discriminating against system-involved people without cost or consequence, but in so doing, they contribute to a larger system that punishes job seekers who have been marked with a criminal record and the scarlet EM device.<sup>94</sup>

## **Social Isolation**

For a subset of respondents, pretrial EM had no discernible effect on their relationships with family members and friends. This was either because they had weak ties to family or friends (or very low levels of social capital) to begin with, as was the case for five respondents, or they have very high levels of social capital, with very strong ties to family members and friends, as was the case for three respondents. Thus, the networks of one in eight pretrial EM participants seemed unaffected by program participation.

For those whose ties were neither very strong or very weak, however, pretrial EM had a corrosive effect, weakening bonds of affection and instrumental aid, and pushing people toward social isolation. Growing isolation primarily happened in three ways. The first was through stigma and shame, which created distance between pretrial EM program participants, their family members and friends, and others in their larger community. Pretrial EM program participants who felt ashamed by their status emotionally distanced themselves from family and close friends to avoid further embarrassment or feeling like a burden. One respondent describes:

I think it was just a whole mental state in general. I kind of felt like I had to deal with everything on my own. And in doing that, I kind of shut people out. Got a little ... not depressed but upset. I guess I just shut down a little bit. And so, it definitely strained relationships with family, because I wouldn't answer the phone. So, I'd be upset and alone. I wouldn't engage with friends as much.

For another, even though he technically had not yet been convicted of anything, time on EM caused irreparable damage to his relationships. He explained,

Things were never the same. There is a certain kind of tarnish that happens with people. You don't look at them the same. And you're no longer their baby. There is an innocence that is taken from you, and things get a little real. People get uncomfortable. And I believe that it made my mom and dad uncomfortable. It made my brother uncomfortable. It made everyone uncomfortable ... I was ashamed. And so, when you're ashamed you don't really want to even be around family. It was horrible.

For some, the shame was so great that they avoided telling their close relations about their ankle monitor at all. One described this thought process as follows:

I'll tell you the truth. I haven't really told them about any of this. Because it's just ... like I said, it's something that I don't like, you know? And just with the pandemic and all of this stuff, I feel like I would tell them once I get to see them or visit them...I also don't want to stress [my siblings] out with my problems, you know? Especially if they have kids and problems on their own. So, the truth is that I have not told them anything. Just because I don't want to worry them. This wouldn't affect our relationship at all. If anything, it would make them more worried about me and they would probably just be more attenuative of me. I'm very lucky to have very good siblings.

EM program participation was particularly tricky for parents of young children. They often found it embarrassing and difficult to explain what the electronic monitor was, and why they had to wear it. One respondent reflected on how difficult it was to set a good example for his children, stating,

I mean, my kids ask me questions. You know? So, yeah. I would explain to them, you know? Having to explain to them. That's kind of hard. Not really hard ... just having to see that daddy's in trouble, got in trouble. Trying to set a positive ... you know, be a positive role model for your kids. Practicing what you preach, you know?

Others were nervous about what other parents and children might say during school drop-off.

If I had to pick her up from school wearing that thing? I mean, it would have been embarrassing and shame all over the place to everybody. Even just having to wear the sweatpants every day was embarrassing and shameful. You know? How inappropriate; you're just wearing sweatpants everywhere you go. It would have been awful. And that would have been the devastation; just embarrassment and shame. [If] my daughter was going to, say, have friends over or something, I would have had to hide [laugh] when their kids were... I wouldn't want her friends to see that. I wouldn't want her friend's parents to see that. I wouldn't have wanted anybody in the whole community to know that I was wearing that thing. It would have been awful. It would have been a problem, being a parent.

The thought of explaining the conditions that got her to EM to her child was so challenging that she explicitly opted out of telling her daughter what the monitor was, instead explaining that it was "a device to quit smoking cigarettes." Beyond the aforementioned issues, many documented that their families had secondhand stress as they worried about respondents, and others spoke about the stigma that came along with the monitor even though they had never been convicted of anything.

Second, social isolation emerged because of the geographic distance, time constraints, and stay-away orders that EM program participation placed on people. Many reflected on how the geographic and time obligations of electronic monitoring impacted their ability to maintain good relationships with their family and friends. For some respondents, curfew and the obligation to remain within a 50-mile radius were particularly challenging on their relationships because it meant that they "can't go out and see my friends," especially those that lived outside of San Francisco. Often, this meant that respondents were unable to perform the tasks and duties that they once did to support their families like picking up groceries, driving folks around, and even working.

Time and distance restrictions also made parenting and caregiving especially difficult. In one particularly poignant example, one respondent's girlfriend was in labor in another city. This respondent describes how he had to get approval to leave the city to be there for the birth of his child. He explains he was approved to leave the city for two days to be with his girlfriend and newborn baby. Getting swept up in the hospital visits and time with his new baby, he ended up staying for three days, an immediate violation of his orders that resulted in a noncompliance report. While the noncompliance report was subsequently dismissed, this story is an extreme version of something that happened often : respondents lived too far away from their children to visit them regularly or participate in parenting the way they would have liked – and the way that would prevent developmental consequences to their children; due in part to its attendant attachment effects, parental incarceration is considered an Adverse

Childhood Experience per the Centers for Disease Control and Prevention,<sup>95</sup> and given these findings EM may result in similar harmful effects.

Many whose children lived within the 50-mile radius were prohibited from seeing their kids because of stay-away orders. This was the case for one respondent who reflected on the impact this arrangement had on the children as follows:

I think it affected them. I think it bothered the younger ones, because they didn't have access to me. Weren't able to be around them. I know my youngest son was very upset. He didn't like it. He didn't like the fact that I could only be around him for an hour a day. That bothered him a lot...He would just say that "I don't like the fact that I can't spend more time with you," and "Why does it have to be like this?" "Why are these restrictions in place?" He didn't like that at all. He was really upset with just the fact that he couldn't have more time with me.

Others had stay away orders from their houses or wives, making it difficult to see their children even if they were not ordered to stay away from them explicitly.

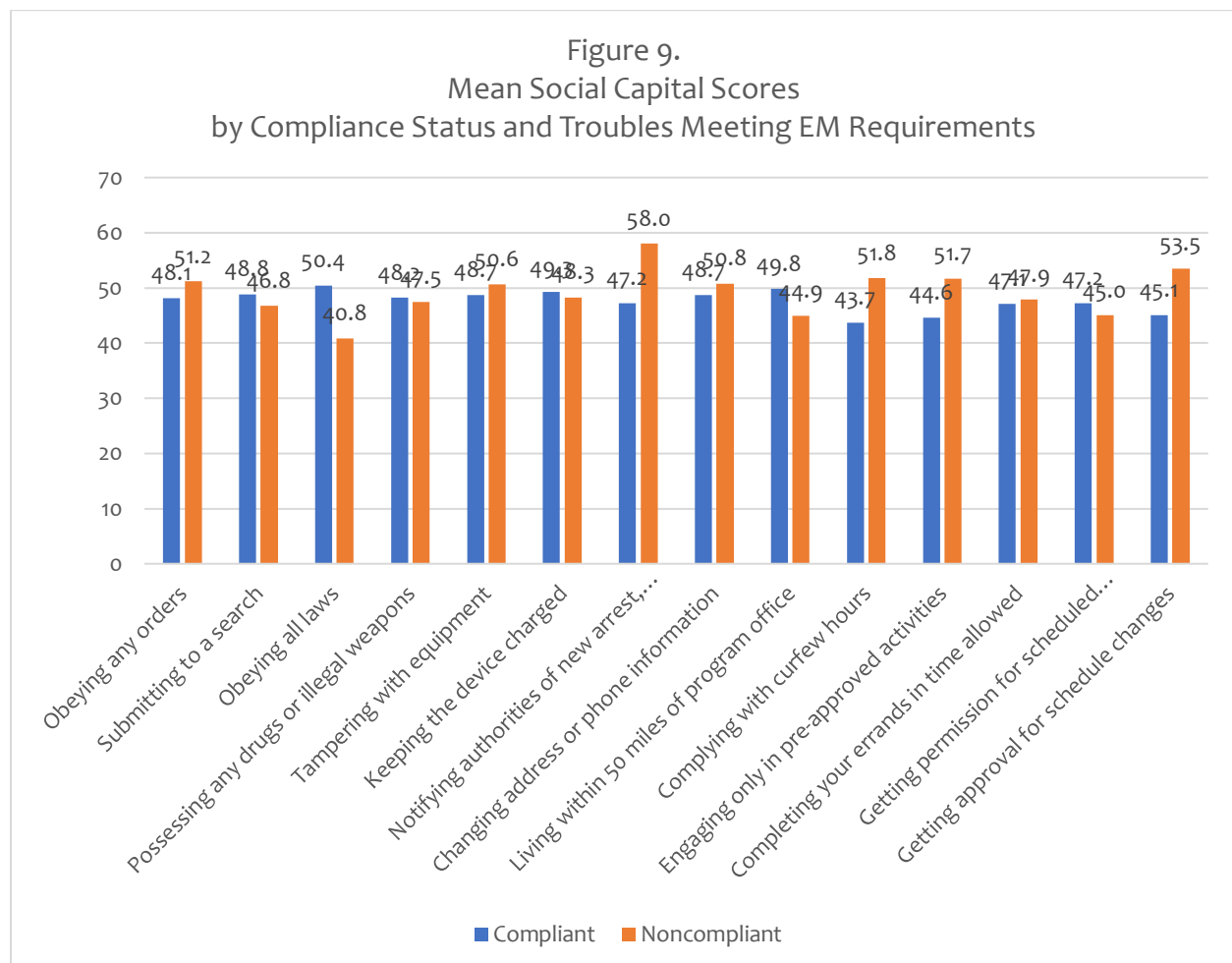
Challenges to staying connected were more complicated for romantic partners and spouses. For some, EM restrictions were a nuisance that caused stress in their relationships because they could not go on dates, had to be wary of curfew hours, or had to stay within the 50-mile radius. Many who were not in relationships actively avoided them so as not to have to explain why they were being monitored pretrial. Others were on the monitor explicitly because of an issue with a significant other or spouse (ex. domestic violence situation with wife); these respondents described how EM prohibited them from seeing or talking to spouses/partners as an additional EM obligation. While this stipulation was meant to protect victims of domestic violence while their cases made their way through the criminal legal system, the solution was not always ideal; it caused extra stress for the parent who had primary custody of the children and responsibility for the household. Others suggested that stay-away orders unnecessarily limited contact and prevented them from working out their difficulties with their partner. This respondent had a mixture of all three of these issues.

Well, I didn't talk to [my wife] during that time I was on it. After the whole case and everything was done, she was like, "Well, I wanted to talk to you, but I wasn't able to. I wanted you to be able to come get the kids." But the electronic monitoring prevented me from being within a certain radius of where she was at. So, she didn't like it at all. She was very upset about it. She didn't like the restrictions on it because she was like ... it was hard for her to just do everything without any assistance from me. Basically, kind of taking me out of the equation, where I wasn't able to really do anything. It was just said that I couldn't have any contact with her or my kids. But it wasn't really her that was doing it. She said it was more of the court system. The district attorney, they were the ones really pushing for it. And they weren't really giving her a chance to speak. This is not something that she wanted at all.



The result: Not only was he unable to see his wife and children, but he was also unable to participate in their lives and contribute to their lives, a development that placed a great burden on his wife to do everything to care for their family.

For those with ties strong enough to weaken or lose, some of the constraints that conditions of pretrial EM placed on program participants were too much. Indeed, it was among those with greater access to social capital that we see higher rates of noncompliance on a number of measures (see Figure 9). Those who were noncompliant regarding notifying authorities of new arrests, citations, or other contact with the criminal legal system; complying with curfew hours; engaging only in pre-approved activities; and getting approval for schedule changes had *greater* access to social capital that could offer instrumental and/or emotional support when compared to those who were compliant on each of these measures. Much like some workers who chose to violate conditions that interfered with their ability to earn money through work, respondents with greater stores of social capital would act in ways that violated the conditions of their release – breaking curfew, engaging in activities that had not been pre-approved, or fail to get approval for schedule changes – to bridge the physical and emotional distance that separated them from family members and friends.



## Final Thoughts: How Respondents Perceive EM Relative to Jail

Among study participants, attitudes about EM were mixed. While some described it as a “blessing,” others characterized it as “bullshit.” Several reflected on EM positively. For instance, one respondent described how EM “gave me time to chill,” to think about his addiction as well as how to better his life. Another respondent who contemplated acting violently toward her abuser but did not because she feared further legal troubles suggested that EM “probably kept me sane. No. Made me kind of feel like I was going insane. But I think in retrospect, literally probably kept me sane [laugh].” Most of those who characterized EM in positive terms, however, did so solely because it allowed them to escape harsh conditions of jail confinement. In other words, reflecting what sociologist Gabriela Kirk describes as “the hegemony of carceral logics,” in contrast with pretrial incarceration, pretrial EM was significantly better.<sup>96</sup>

For those who contrasted pretrial EM with a pretrial period free of penal supervision, however, EM was viewed quite negatively. They were confused about why “EM was necessary for me,” when they presented a low risk of failure to appear in court and a low risk of harming anyone pretrial. They were upset that EM in effect led them to “waive my right to a speedy trial.” Indeed, perhaps especially as the pandemic raged, it became clear to several that their time on the ankle monitor would far outlast any possible time they would have had in jail. They were frustrated with the “frivolous technology” that seemed to have so much power over their lives. On EM, they were demeaned by the fact that they had so little control over their own lives. As one respondent explained, I “feel like somebody else owns you. Somebody else is in control of your life. For the moment. Like a fucking dog. Less than.” Indeed, they felt enslaved. For too many, pretrial EM “simulated slavery with me.” The physicality of the ankle monitor, operating like a shackle with digital tracking, likely contributed to that conclusion.<sup>97</sup>

Most respondents, however, held both views. Even if pretrial EM was better than pretrial incarceration, they could not ignore the hardships that pretrial EM created and the harms that it caused them, directly and indirectly. One respondent described how EM “takes away your constitutional right to illegal searches and seizures,” but shortly after described that “electronic monitoring – as embarrassing and shameful as it would be – beats jail any day of the week ten times over. So, any kind of shame and drama, or hoops that one would have to jump through to deal with electronic monitoring is well worth it, compared to the alternative of incarceration.” Another respondent shared a similar view: “It’s a joy to be out of jail, and a blessing to be on ankle monitor, I felt like. But it was a whole other frying pot to jump into. You’re not in jail, but there’s a new stress – and it’s, if not bigger than jail was ... it made me feel like I was cattle. And that these life-changing decisions by people that I’ve never even seen, or talked to, or know me at all were going to be based off of things like my ankle monitor performance. It made me feel hopeless.” Another echoed the earlier sentiments: “You got something around your leg, and you’re being

monitored. You're like, 'Damn, I ain't got no freedom.' ... But I'm free. You know? You don't have to worry about no jail... I had to accept it." Given these reflections, "e-carceration" seems an apt term for pretrial EM.

## Conclusion

For proponents of pretrial EM, San Francisco's embrace was a step closer to reducing its jail population and ending mass incarceration. Because of EM, defendants who were released pretrial were less likely to commit new crimes and more likely to attend court hearings. Further, because pretrial EM relieves defendants of pretrial incarceration, it also relieves them of pretrial incarceration's attendant suffering, including downstream collateral consequences.

Not only do critics of pretrial EM deny the public safety benefits attributed to pretrial EM, pointing to a body of evidence offering inconsistent, weak, or non-existent support, they also contend that as with other forms of incarceration, pretrial EM, or e-carceration, also has substantial costs and does considerable harm. Not only does it fail to relieve defendants of the harms of detention – in San Francisco, pretrial EM participants average seven days in jail before release, enough time to experience many of the very real harms associated with detention – but pretrial EM also makes it difficult for people to fight their cases, maintain their mental and physical health and well-being, secure employment and keep their jobs, avoid debt, and maintain social bonds.

With this debate in mind, we explored people's recent experiences on pretrial EM in San Francisco – the extent and nature of difficulties program participants face while attempting to meet program obligations, the extent to which and how these difficulties put them at risk for noncompliance, and how threats of noncompliance interact with other major issues that system-involved people face to affect program outcomes. We conducted in-depth, semi-structured interviews with a convenience sample of 66 people court-ordered to participate in pretrial EM between 2018 and 2020. We did not have data and/or evidence to support all the charges that critics have leveled against pretrial EM. For instance, we did not ask respondents about the impact that EM participation had on their cases, and no respondent reported that pretrial EM participation interfered with their ability to fight the cases against them. Also, likely because San Francisco does not force participants to pay fees to participate in the program, none linked criminal legal debt to program participation.

Still, our analysis revealed several points of convergence with critics' concerns while also deepening our understanding of the mechanisms that underlie pretrial EM's negative effects. We found that prior life challenges, especially with housing insecurity and co-occurring disorders, made it much more difficult to meet program obligations. This amplified risks of noncompliance and further contact with the criminal legal system. This was at least in part because the system did not do enough to address

the life challenges that “high needs” participants faced, and too often the supports they did offer were weak, very temporary, and often punitive, not therapeutic. The result is that participants who struggled with problems like housing insecurity and co-occurring disorders felt as if they were set up to fail. And fail they did – they were more likely to experience troubles meeting program conditions and being found noncompliant.

We also found evidence that pretrial EM conditions also *created* many struggles, making it even more difficult than it usually is in the Bay Area for participants to find safe, affordable, and stable housing; to protect their health and well-being; to secure employment and keep their jobs; and to maintain their physical, emotional, and psychological connections to loved ones. EM conditions did so by constantly placing pretrial EM participants in the untenable position of having to choose between awful options. For example, several of our respondents reported having to make calculated decisions about staying in compliance with EM program rules but risk losing their jobs or meeting work obligations and risk violating EM program rules. For many, successful EM program completion meant finding ways to navigate this minefield of no-win situations, a minefield made worse by monitoring devices known to be inaccurate, unreliable, and inconsistent.

Importantly, because we interviewed several people who were under supervision during the pandemic, our summary of troubles and noncompliance likely underestimates how bad pretrial EM participation in San Francisco can be for some. Respondents, particularly those with access to much-needed technology, reflected on how their obligations were easier to fulfill during the pandemic because check-ins and court dates were on Zoom. Further, conditions of release were easier to manage because the cadences of everyday life had been suspended in ways that decreased the mental and emotional impact of the ankle monitor. While the pandemic undoubtedly erected many other barriers to successful program participation, some of which we have described in this report, both factors – the ability to fulfill some obligations on Zoom and the slower cadence of life – made it easier to comply with strict rules.

These findings have major implications for debates about pretrial EM’s net-widening effects but also its inherent stickiness. Pretrial EM highlights how positive legal rulings like *Humphrey* can result in reformist reforms<sup>98</sup> that only extend the criminal legal system in ways that most acutely impact the system’s most marginalized. Reforms like pretrial EM, while presumably meant as a move toward decarceration, end up trapping participants in cycles of interaction with the criminal legal system even before they have been convicted of the crime(s) for which they are being monitored but remain merely accused. As a result, EM, like incarceration itself, reproduces inequalities by race and class and prevents participants from becoming full members of society.

What’s next? Given the serious issues that we and others before us have raised, the tendency for reform-minded people would be to consider how to address aspects of the pretrial EM system that do

harm. We suggest another path – that San Francisco significantly and substantially scale back its use of pretrial EM and use it only for the very limited types of offenses for which there is strong empirical support of its efficacy relative to pretrial release without EM. In all other instances, pretrial EM should be denied in favor of pretrial release without EM.<sup>99</sup> In a context where limited evidence from rigorous studies exists to support the efficacy of pretrial EM over release without EM, and with a growing body of evidence that pretrial EM does real and potentially long-lasting harm to those released to the program, significantly and substantially scaling back is the only evidence-based approach to take and would also be consistent with treating pretrial EM as the most restrictive condition of release. Further, given that many of the issues the participants confront while on EM relate to the significant life challenges that they face – most notably housing insecurity and co-occurring disorders – San Franciscans would be far better served by investing in long-term, safe, and affordable housing as well as easily accessible, strong supports for those with both mental health and substance use disorder issues, the very people at greatest risk of frequent contact with the criminal legal system.

## ENDNOTES

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<sup>1</sup> See *In re KENNETH HUMPHREY on Habeas Corpus*. S247278 First Appellate District, Division Two A152056, San Francisco City and County Superior Court 17007715, March 25, 2021, p. 2.

<sup>2</sup> Lacoë, Johanna, Alissa Skog, and Mia Bird. “Bail Reform in San Francisco: Pretrial release and intensive supervision increased after Humphrey,” Policy Brief, California Policy Lab, May 25, 2021.

<sup>3</sup> See, for instance, Chicago Appleseed Center for Fair Courts and Chicago Council of Lawyers, *10 Facts about Pretrial Electronic Monitoring in Cook County*, September 2021; James Kilgore, Emmett Sanders, and Myaisha Hayes, *No More Shackles: Ten Arguments against Pretrial Electronic Monitoring*. MediaJustice, 2019; and Wendy Shang, *Electronic Monitoring: Proceed with Caution*. Pretrial Justice Institute, March 21, 2018, <https://university.pretrial.org/blogs/wendy-shang/2018/03/21/electronic>.

<sup>4</sup> Alicia Virani, *Pretrial Electronic Monitoring in Los Angeles County: 2015 through 2021*. UCLA School of Law Criminal Justice Program, 2022.

<sup>5</sup> Chicago Appleseed Center, 2021. See also Michelle Alexander, “The Newest Jim Crow,” *The New York Times*, November 8, 2018. (<https://www.nytimes.com/2018/11/08/opinion/sunday/criminal-justice-reforms-race-technology.html>)

<sup>6</sup> S. Mainprize, “Electronic Monitoring in Corrections: Assessing Cost Effectiveness and the Potential for Widening the Net of Social Control,” *Canadian Journal of Criminology* 34(2):161-80.

<sup>7</sup> Kohler-Hausmann, I. (2018). *Misdemeanorland: Criminal courts and social control in an age of broken windows policing*. NJ: Princeton University Press; Natapoff, A. (2018). *Punishment without crime: How our massive misdemeanor system traps the innocent and makes America more unequal*. New York: Basic Books; and Jennifer L. Doleac, “[Study after study shows ex-prisoners would be better off without intense supervision](#),” Brookings, 2018.

<sup>8</sup> For instance, automobile ignition interlock devices are installed in cars to reduce the likelihood that people will drive while intoxicated.

<sup>9</sup> Stephanie Fahy, Adam Gelb, John Gramlich, and Phil Stevenson. “[Use of Electronic Offender-Tracking Devices Expands Sharply: Number of monitored individuals more than doubled in 10 years](#).” A brief from The Pew Charitable Trusts, September 2016.

<sup>10</sup> Recent research indicates that spending any more than one day in pretrial detention can have devastating consequences, dramatically worsening individuals’ social, psychological, economic, and penal trajectories. This is not just because detention increases the likelihood of conviction on current charges and leads to more severe sentences with conviction, although it does both. Pretrial detention also significantly and substantially erodes individuals’ physical and psychological well-being; reduces employment, wages, and annual earnings; increases the burden of legal debt, often shared with family members; weakens social bonds; and increases the likelihood of future criminal legal system involvement. There are three major take-aways from this small but growing body of research. First, being held in detention pretrial, beyond one or two days, increases a person’s chances of being arrested and charged again pretrial (for those eventually released before case disposition) and post-disposition. Second, all things considered, the longer one’s stint in detention, the greater the odds of new criminal activity. And third, the effects of pretrial detention on future criminal legal involvement are especially pronounced for low-risk defendants, individuals who likely would not have had future criminal legal involvement had they not been held in detention. Thus, a growing body of research indicates that pretrial detention is creating recidivators out of individuals who might not otherwise re-offend. Christine Scott-Hayward and Henry F. Fradella, *Punishing Poverty: How Bail and Pretrial Detention Fuel Inequalities in the Criminal Justice System*. Berkeley: University of California Press, 2019; Arpit Gupta, Christopher Hansman, and Ethan Frenchman, “The Heavy Costs of High Bail: Evidence from Judge Randomization,” *Journal of Legal Studies* 45, 471-505, 2016; Emily Leslie and Nolan G. Pope, “The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments,” *The Journal of Law and Economics*, 60(3), 529-557, 2017; Megan Stevenson, “A Decomposition of Racial Disparities in Pretrial Detention.” Working Paper, George Mason University, 2018; David Arnold, Will Dobbie, and Crystal S. Yang, “Racial Bias in Bail Decisions,” *The Quarterly Journal of Economics*, 133(4), 1885-1932, 2018; Paul Heaton, Sandra Mayson, and Megan Stevenson, “The Downstream Consequences of Misdemeanor Pretrial Detention.” *Stanford Law Review* 69(3), 711-794, 2017; Leslie and Pope, 2017; Stevenson, 2018; Joseph Bick, “Infection Control in Jails and Prisons,” *Clinical Infectious Diseases* 45(8), 1047–55, 2007; Allen Beck, Marcus Berzofsky, Rachel Caspar, and Christopher Krebs, *Sexual victimization in prisons and jails reported by inmates, 2011–12-Update*. NCJ 241399, Washington, D.C.: Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 2013;

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Margaret E. Noonan, *Mortality in Local Jails, 2000–2014 – Statistical Tables*. NCJ 250169. Washington, D.C.: Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 2016; Will Dobbie, Jacob Goldin, and Crystal S. Yang, “The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges.” *American Economic Review* 108(2), 201–40, 2018; Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi, *Who Pays? The True Cost of Incarceration on Families*. Oakland, CA: Ella Baker Center, Forward Together, Research Action Design, 2015. Also see Stevenson, 2018; Petersilia 2006; Travis and Visser 2005; Uggen et al. 2006; Dobbie et al. 2018; Jaeok Kim, Preeti Chauhan, Olive Lu, Meredith Patten, and Sandra Susan Smith, “Unpacking Pretrial Detention: An Examination of Patterns and Predictors of Readmissions,” *Criminal Justice Policy Review* 29(6-7), 663-687, 2018. Leslie and Pope, 2017; Gupta et al., 2016; Heaton et al., 2017; Alexander M. Holsinger, “Exploring the Relationship between Time in Pretrial Detention and Four Outcomes. Crime and Justice Institute Research Brief, Community Resources for Justice, 2016; and Christopher Lowenkamp, Marie VanNostrand, and Alexander M. Holsinger, *The Hidden Costs of Pretrial Detention*. Houston, TX: The Laura and John Arnold Foundation, 2013.

<sup>11</sup> See Chicago Appleseed Center, 2021; Erin Eife, “Electronic Monitoring during Pretrial Release,” pp. 194-213 in the *Handbook of Pretrial Justice*, edited by Christine S. Scott-Hayward, Jennifer E. Copp, and Stephen DeMuth, 2022; Wendy Shang, 2018; and Alicia Virani, 2022.

<sup>12</sup> Chicago Appleseed Center, 2021.

<sup>13</sup> In Illinois, the cash bail system will end in January 2023.

<sup>14</sup> Alissa Skog and Johanna Coe, *Pretrial Electronic Monitoring in San Francisco*, Policy Brief, California Policy Lab, September 2022.

<sup>15</sup> See Sandra Susan Smith, *The Difference a Day Makes: How Spending Even One Day in Jail Can Have Devastating Consequences*, Harvard University. In progress.

<sup>16</sup> See Will Dobbie, J. Goldin, and Crystal S. Yang, “The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges,” *American Economic Review*, 108(2), 201-40, 2018; E. Leslie and N. G. Pope, “The unintended impact of pretrial detention on case outcomes: Evidence from New York City arraignments,” *The Journal of Law and Economics*, 60(3), 529-557, 2016; and Megan Stevenson, “A decomposition of racial disparities in pretrial detention,” Working Paper, George Mason University, 2017.

<sup>17</sup> Claire Chevrier, “Why Individuals Who Are Held Pretrial Have Worse Case Outcomes: How Our Reliance on Cash Bail Degrades Our Criminal Legal System,” pp 67-87 in *Handbook on Pretrial Justice*, edited by Christine S. Scott-Hayward, Jennifer E. Copp, and Stephen Demuth. New York: Routledge, 2022; Stacie St. Louis, “Does Jail Derail? The State of the Literature on Cumulative Disadvantage and Pretrial Detention,” pp. 51-66 in *Handbook on Pretrial Justice*, edited by Christine S. Scott-Hayward, Jennifer E. Copp, and Stephen Demuth. New York: Routledge, 2022.

<sup>18</sup> Dobbie, Goldin, and Yang, 2018.

<sup>19</sup> Wendy Shang, 2018; and Kilgore, Sanders, and Hayes, 2019.

<sup>20</sup> Paige St. John, “Parolee GPS Ankle Monitors: Major Flaws Found in Vendor’s System,” *Los Angeles Times*, March 31, 2013. <https://www.latimes.com/local/lanow/la-xpm-2013-mar-31-la-me-ln-major-flaws-found-in-parolee-gps-monitoring-devices-20130331-story.html>

<sup>21</sup> Meghan A. Novisky and Daniel C. Semenza, “Jails and Health,” pp. 36-50 in *Handbook on Pretrial Justice*, edited by Christine S. Scott-Hayward, Jennifer E. Copp, and Stephen Demuth. New York: Routledge, 2022.

<sup>22</sup> Ibid.

<sup>23</sup> Novisky and Semenza, 2022; David C. May, Brandon K. Applegate, Rick Ruddell, and Peter B. Wood, “Going to Jail Sucks (and it really doesn’t matter who you ask),” *American Journal of Criminal Justice* 39, 250–66, 2014; Ronald Goldfarb, *Jails: The Ultimate Ghetto*. Anchor Press, 1975; John J. Irwin, *The Jail: Managing the Underclass in American Society*. Berkeley: University of California Press, (2013 [1985]); and Jennifer Wynn, *Inside Rikers: Stories from the World’s Largest Penal Colony*. New York: St. Martin’s Press, 2001.

<sup>24</sup> In absolute terms and relative to prisons, jails are awful places. With poor and unstable funding, jails tend to employ staff who are underpaid and poorly trained and have rules and regulations that are inconsistently enforced but punitively

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sanctioned for noncompliance. Jails are often operated in facilities that are unsafe, unsanitary, and inadequate. In contexts where there are too few beds due to overcrowding, detainees must sleep on floors. They must contend with excessive heat or cold, poor quality and low quantity of food, and insufficient resources to maintain personal hygiene. Jails offer limited, if any, programming to occupy and engage inmates, and so boredom overwhelms. Jails are breeding grounds for the spread of infectious disease, situations made all the worse by plagues of rodents, mold, and mildew. The result is that daily life is highly volatile. Rates of predation in jail are high from other incarcerated people and corrections officers (COs) alike. Consequently, individuals must be hypervigilant so as not to become preyed upon. They must also be wary of the intentions of corrections officers and other jail staff, who engage them in ways that are not just dismissive, but also contemptuous, neglectful, and exploitative. Environmental conditions like these can worsen or help to create the chronic physical and mental health conditions with which many incarcerated people struggle. See Beck et al., 2014; and Bick, 2007; Wynn, 2001; and Laura McKendy, *The Pains of Jail Imprisonment: Experiences at The Ottawa-Carleton Detention Centre*. Dissertation, Carleton University, 2018. Access: <https://curve.carleton.ca/96758edo-204e-46b3-8f31-6df3d1650c99>.)

<sup>25</sup> Gabriela Kirk's "The Limits of Expectations and the Minimization of Collateral Consequences: The Experience of Electronic Home Monitoring," which appeared in *Social Problems* in 2021 (volume 68, p. 642-657), highlights just how comparisons to jail and prison incarceration help to minimize the harm done with penal interventions like EM. In this case, she contends that comparisons to jail incarceration work to diminish the harms done by pretrial EM.

<sup>26</sup> Kilgore, Sanders, and Hayes, 2019.

<sup>27</sup> See Smith, *The Difference a Day Makes*, In progress.

<sup>28</sup> Alicia Virani, 2022.

<sup>29</sup> Kilgore, Sanders, and Hayes, 2019.

<sup>30</sup> Chicago Appleseed Center, 2021.

<sup>31</sup> Richard D. Schwartz and Jerome H. Skolnick, "Two Studies of Legal Stigma," *Social Problems* 10(2):133-42, 1964; Devah Pager, "The Mark of a Criminal Record," *American Journal of Sociology* 108(5):937-75, 2003; Harry Holzer, Steven Raphael, and Michael Stoll, "The Effect of an Applicant's Criminal History on Employer Hiring Decisions and Screening Practices: Evidence from Los Angeles," pp. 117-50 in *Barriers to Reentry? The Labor Market for Released Prisoners in Post-Industrial America*, edited by Shawn Bushway, Michael A. Stoll, and David R. Weiman. New York: Russell Sage Foundation, 2007; Simone Ispa-Landa and Charles E. Loeffler, "Indefinite Punishment and the Criminal Record: Stigma Reports among Expungement Seekers in Illinois," *Criminology* 54(3):387-412, 2016.

<sup>32</sup> To explain why contact with the penal system is associated with worse employment outcomes, most researchers highlight the role that legal and social stigmas play in erecting institutional barriers to legitimate work in the formal economy. From this perspective the system-involved experience high rates of unemployment, despite their efforts to find work in part because of employers' fears that they will be found liable for negligent hiring if marked employees act criminally on the job, but also because of employers' general distrust of a pool of applicants who essentially have been certified untrustworthy by the penal system. Shawn D. Bushway, "The Impact of an Arrest on the Job Stability of Young White American Men." *Journal of Research in Crime and Delinquency* 35(4):454-479, 1998; Timothy P. Glynn, "The Limited Viability of Negligent Supervision, Retention, Hiring, and Infliction of Emotional Distress Claims in Employment Discrimination Cases in Minnesota," *William Mitchell Law Review* 24:581-633, 1998; Mary L. Connerley, Richard D. Arvey, and Charles J. Bernardy, "Criminal Background Checks for Prospective and Current Employees: Current Practices among Municipal Agencies." *Public Personnel Management* 20(2):173-183, 2001. See also Holzer et al., 2007; Schwartz & Skolnick, 1964; Pager 2003; Holzer et al. 2007; and Ispa-Landa & Loeffler 2016.

<sup>33</sup> Schwartz & Skolnick 1964; Pager 2003; Holzer et al. 2007; and Ispa-Landa & Loeffler 2016.

<sup>34</sup> In L.A. County, for instance, authorities require 24-hour advanced notice and are available to accept such calls Mondays through Fridays, 10am to 4pm (Virani 2022).

<sup>35</sup> Ibid.

<sup>36</sup> Arne Kalleberg, Barbara F. Reskin, and Ken Hudson, "Bad Jobs in America: Standard and Nonstandard Employment Relations and Job Quality in the United States." *American Sociological Review* 65(2):256-278, 2011.

<sup>37</sup> Ibid.



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<sup>38</sup> Although “flexible schedules” are often described in ways that suggest that the benefits accrue to workers, employers are the primary beneficiaries of this practice, enabling them to make decisions about scheduling to address real time labor needs. Relatively few workers want such jobs or having any say about what their flexible schedules might look like. They receive short or no notice of work changes, making managing other scheduling obligations—like childcare—difficult but also impeding budgeting and bill payment as work hours fluctuate inconsistently.

<sup>39</sup> According to Virani (2022), workers on EM with unconventional or irregular work schedules often have great difficulty securing approvals unless and until they report specific work days and time periods (Virani, 2022: 32).

<sup>40</sup> According to Kilgore, Sanders, and Hayes (2019), it was not unusual for EM supervisors to refuse to allow certain types of employment – for instance, house cleaning, gardening, delivery, home healthcare, and driving, i.e., jobs that often require movement from one place to another – because they are too difficult to track with monitoring devices. Troublingly, in so doing, supervisors are essentially constraining workers on EM from employment in the types of jobs that are most often available for them, a population that is disproportionately low-wage, lesser-skilled.

<sup>41</sup> Alicia Bannon, Mitali Nagrecha, and Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry*. New York, NY: Brennan Center for Justice, 2010.

<sup>42</sup> For instance, defendants can be charged booking fees, application fees to obtain a public defender, and jail fees for pretrial detention.

<sup>43</sup> Defendants who are found guilty are often charged court fees, fines, and restitution, and fines associated with convictions are typically accompanied by surcharges.

<sup>44</sup> designated funds and reimbursement for public defenders and prosecution

<sup>45</sup> Fines and fees are most common for medical services (including prescriptions, physician/nurse visits, dental care, and eye care), participation in work release programs, per diem payments, and telephone use.

<sup>46</sup> Bannon, Nagrecha and Diller, 2010.

<sup>47</sup> Jack Karp, “[Ankle Monitors Are Replacing Cash Bail, but at a Cost](#),” *Law360*, May 10, 2020.

<sup>48</sup> Devah Pager, Rebecca Goldstein, Helen Ho, and Bruce Western. “Criminalizing Poverty: The Consequences of Court Fees in a Randomized Experiment,” *American Sociological Review* 1-25, 2022.

<sup>49</sup> Alexes Harris, Heather Evans, and Katherine Beckett. “Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States.” *American Journal of Sociology* 115(6): 1753-1799, 2010; Karin Martin, “Criminal Justice Debt: Costs & Consequences.” Working Paper. New York, NY: City University of New York, John Jay College of Criminal Justice, 2015.

<sup>50</sup> Wendy Shang, 2018.

<sup>51</sup> Kilgore, Sanders, and Hayes, 2019.

<sup>52</sup> Alicia Virani, 2022. In San Francisco, efforts to eliminate fines and fees were due in part to the efforts of the [Financial Justice Project](#), a non-profit organization devoted to “assess[ing] and reform[ing] fines and fees that have an adverse disproportionate impact on low-income people and communities of color.”

<sup>53</sup> Department of Justice, *Electronic Monitoring Reduces Recidivism*. NIJ, September 2011.

<sup>54</sup> Ibid.

<sup>55</sup> Kilgore, Sanders, and Hayes, 2019.

<sup>56</sup> For instance, as described in *No More Shackles: Ten Arguments against Pretrial Electronic Monitoring*, if a healthcare emergency arose, EM restrictions would make it very difficult for participants to assist loved ones without also making themselves vulnerable to charges of noncompliance.

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<sup>57</sup> Kevin T. Wolff, Christine A. Dozier, Jonathan P. Muller, Margaret Mowry, and Barbara Hutchinson, “The Impact of Location Monitoring among U.S. Pretrial Defendants in the District of New Jersey,” *Federal Probation* 81(3), 2017.

<sup>58</sup> Sainju, Karla Dhungana, Stephanie Fahy, Katherine Baggaley, Ashley Baker, Tamar Minassian, and Vanessa Filippelli. “Electronic Monitoring for Pretrial Release: Assessing the Impact,” *Federal Probation* 82(3), 2018.

<sup>59</sup> In Massachusetts there is case law on this: *Commonwealth v. Norman*, 484 Mass. 330 (2019).  
<http://masscases.com/cases/sjc/484/484mass330.html>

<sup>60</sup> Ibid.

<sup>61</sup> According to Chicago Appleseed Center, “People can be violated and re-incarcerated for being late returning from work, going to a doctor’s appointment or the hospital without authorization, or taking out their trash.” In *10 Facts about Pretrial Electronic Monitoring in Cook County*, September 2021.

<sup>62</sup> Ibid.

<sup>63</sup> Jennifer L. Doleac, “[Study after study shows ex-prisoners would be better off without intense supervision](#),” Brookings, 2018.

<sup>64</sup> Judges’ decisions are aided by an Arnold Ventures pretrial risk assessment tool that recommends various conditions of release based on a set of defendant characteristics.

<sup>65</sup> A 2020 analysis by the San Francisco Sheriff’s Office found nearly 20% of persons on pretrial EM did not have stable housing.

<sup>66</sup> In terms of race/ethnicity, 44% of court-ordered pretrial EM participants are Black, 23% are Latino, 24% are white, 6% are API, and 3% are Filipino. Among Black defendants, for 70%, release was not recommended while 12%, 9%, and 9%, respectively, had no active supervision, minimum supervision, or assertive case management. Among Whites, those figures were 66%, 12%, 11%, and 11%, respectively. And among Hispanics they were 61%, 9%, 13%, and 17%, respectively. 81% of those on electronic monitoring have housing; 19% are without housing. 88% are male; 12% are female. In terms of age, roughly 25% are 18-24, over 30% are 26-35, roughly 15% are 36-45, roughly 12% are 46-55, and slightly over 10% are 56 or older. [San Francisco Sheriff’s Office, Electronic Monitoring Program Annual Review, Budget & Finance Committee, December 2, 2020.](#)

<sup>67</sup> For those who are assigned to ACM, SF Pretrial has the authority to alter the conditions that judges have set forth to address the specific needs of the clients that come before them.

<sup>68</sup> Policy Analysis Report: Review of Sheriff Department Community-Based Programs and Contracts memo, December 14, 2020.

<sup>69</sup> This is the case as well for Los Angeles County and Santa Clara County. Alicia Virani, 2022. See also Sainju et al., 2018.

<sup>70</sup> Before Sentinel, LCA Services was the service provider.

<sup>71</sup> The majority of SF Pretrial’s clients are not on EM, and SF Pretrial only receives clients on EM that have been referred to their caseloads by the Courts. SF Pretrial does not administer or monitor EM related to the Sheriff’s role in that capacity.

<sup>72</sup> According to Skog and LaCoe, the Sheriff’s Office receives hundreds of alerts per day about potential violations. When this happens, a deputy reviews each alert and decides if additional investigation is needed or if they need to send a warning to the program participant about the noncompliance concern. *Pretrial Electronic Monitoring in San Francisco*, 2022.

<sup>73</sup> According to Skog and LaCoe, if a program participant misses any scheduled court hearings, the judge can issue a bench warrant for arrest. If this is done, “program participation is terminated unsuccessfully.”

<sup>74</sup> According to Skog and LaCoe, if a participant is arrested on a new charge, the arrest would trigger the Sheriff’s Office to seek a Sheriff’s Affidavit Warrant (SAW). If or when a judge signs the warrant, the participant is terminated unsuccessfully from the program.

<sup>75</sup> Although 49 percent reported formal employment, 79 percent reported formal and/or informal employment.

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<sup>76</sup> To measure respondents' social capital in terms of access to emotionally close ties as well as their ability to mobilize these relations for instrumental aid, we asked them to respond to 14 statements with strongly agree (5) to strongly disagree (0). They are as follows: 1) I feel close to my family; 2) I want my family to be involved in my life; 3) I consider myself a source of support for my family; 4) My family is a source of support for me; 5) I fight a lot with my family members; 6) I often feel like I disappoint my family; 7) I am criticized a lot by my family; 8) I have someone in my family I can count on to listen to me when I need to talk; 9) I have someone in my family to turn to for advice about how to deal with a personal problem; 10) I have someone in my family who would provide help or advice on finding a place to live; 11) I have someone in my family who would provide help or advice on finding a job; 12) I have someone in my family who would provide support for dealing with a health problem; 13) I have someone in my family who would provide transportation to work or other appointments, if needed; and 14) I have someone in my family who would provide me with some financial support. Some questions were reverse coded to ensure that higher scores indicated greater social capital.

<sup>77</sup> Because this is a convenience sample, we do not expect our sample characteristics to match those of pretrial EM participants. Thus, discrepancies between this sample and the pretrial EM population are likely because we recruited study participants non-randomly. Still, when self-reporting, study participants often guessed the level of supervision they were under. Many did not know what supervision level they had and guessed after the interviewer read all the options.

<sup>78</sup> For at least two respondents, new criminal complaints were directly related to pretrial EM noncompliance – stepping into a restricted area and letting the device's battery die. Most charges seemingly unrelated to pretrial EM were dropped, including for auto theft, possession of methamphetamine, domestic violence, and assault with a deadly weapon.

<sup>79</sup> New citations were for driving without a license; paraphernalia, sales, and transporting drugs; and burglary and vandalism.

<sup>80</sup> These data were provided by the San Francisco Public Defender's Office. For most, bench warrants were stayed, giving defendants another opportunity to make their hearings without sanction.

<sup>81</sup> ACM participants, and specifically those under house detention, are granted 2.5 hours per week of errand time to attend to personal needs such as church services or grocery shopping. After one successful month of compliance, they are granted four hours per week at a consistent time (to be scheduled before 9pm).

<sup>82</sup> During the pandemic, SF Pretrial partnered with Adult Probation to manage a 51-bed hotel to fill the gaping hole in available housing. [https://www.sfexaminer.com/news/sf-secures-hotel-rooms-for-up-to-51-homeless-inmates-released-during-pandemic/article\\_fafe3ed3-ae8-5ad3-abcd-d62c50628d52.html](https://www.sfexaminer.com/news/sf-secures-hotel-rooms-for-up-to-51-homeless-inmates-released-during-pandemic/article_fafe3ed3-ae8-5ad3-abcd-d62c50628d52.html)

<sup>83</sup> According to the latest [2014 Housing Element](#), San Francisco needs to build at least [82,000](#) new units between 2023 and 2030 – roughly 10,000 units each year – to adequately address housing needs. The city is currently producing roughly one-third of what it needs. See [Key Facts about Housing in San Francisco](#), by Adriana Rezal and Erin Caughey, June 29, 2022.

<sup>84</sup> See *2021 San Francisco Housing Inventory*, San Francisco Planning Department, April 2022, p. 32-36.

<sup>85</sup> Rezal and Caughey, 2022. <https://www.sfchronicle.com/projects/2022/fixing-san-francisco-problems/sf-homelessness-data>

<sup>86</sup> These figures are mutually exclusive.

<sup>87</sup> Jaboa Lake, "[Preventing and Removing Barriers to Housing Security for People with Criminal Convictions](#)," Center for American Progress, April 14, 2021.

<sup>88</sup> Some were unsure of whether their declining health and well-being was due to pretrial EM or to the pandemic.

<sup>89</sup> Many were jobless while on EM and immediately afterward. For some, looking for a job was not a priority while on electronic monitoring. Multiple respondents commented that they were "focused on other things," like battling court cases, maintaining relationships with their families, getting sober, and otherwise dealing with the conditions that prompted their criminal legal troubles.

<sup>90</sup> During the pretrial period, it is common for people to forgo job search until their cases are resolved. Smith and Broege (2019) report that after arrest, people are less likely to search for work, and those who do search tend to use fewer, and less effective, search methods. They attribute the change in search engagement to at least three factors that discourage labor force participation altogether: a decline in the quality and quantity of job opportunities; growing debt liabilities; and reduced time and flexibility need for active and engaged search. Sandra Susan Smith and Nora C. R. Broege, "Searching for

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Work with a Criminal Record,” *Social Problems* 1-25, 2019. See also Naomi R. Sugie, “Work as Foraging: A Smartphone Study of Job Search and Employment after Prison,” *American Journal of Sociology* 123(5):1453–1491, 2018; and Apel, Robert, and Gary Sweeten, “The Impact of Incarceration on Employment during the Transition to Adulthood,” *Social Problems* 57(3):448–479, 2010.

<sup>91</sup> They also had to shift their work schedules around to accommodate court appearances, mandatory check-ins with SFSO and EM, and any trips to SFSO for a random check-in or drug test.

<sup>92</sup> For those with informal jobs – jobs paid without W2 documentation or paid under the table – it was near impossible convincing the court that their work activities were valid. Because respondents did not have a formal employer or schedule, the court often did not allow for schedule changes to accommodate these activities. Indeed, 36 percent of those without a consistent formal job reported having trouble with preapproved schedules. One respondent explained, “I had a few side jobs and things that I needed to do, and they [the Court] just weren’t really being too lenient with that type of thing. It was more like this is our program, and this is what you’ve got to abide by... There really wasn’t a way for me to prove it. Because I didn’t have like a supervisor or anything like that. If it was a real job, they probably would have accepted it. But since I was working for myself basically, they weren’t going for it.” For those seeking permission to pursue opportunities in the informal economy, barriers were even greater. Several respondents explained that they were “trying to hustle to get money” and therefore could not always comply with program rules. This often meant skipping required check-ins or programmatic events.

<sup>93</sup> This is consistent with findings shared in a recent policy brief by Christopher Herring and Sandra Susan Smith, “[The Limits of Ban-the-Box Legislation](#),” distributed by the Institute for Research on Labor and Employment, 2022.

<sup>94</sup> See Roger Boshier and Derek Johnson, “Does Conviction Affect Employment Opportunities?” *British Journal of Criminology* 14:264–268, 1974; Holzer, Raphael, and Stoll, 2007; Ispa-Landa and Loeffler, 2016; Pager, 2003; and Schwartz and Skolnick, 1964.

<sup>95</sup> See, e.g., Annie Gjelsvik, Dora M. Dumont, Amy Nunn, and David L. Rosen, “Adverse childhood events: incarceration of household members and health-related quality of life in adulthood,” *J. Health Care Poor Underserved*, 25(3): 1169–1182, Aug. 2014; Ctrs. for Disease Control and Prevention (CDC). (2010). *Adverse childhood experiences reported by adults – five states*, 2009. *MMWR Morb. Mortal. Wkly. Rep.* 59(49):1609–1613; *About the CDC-Kaiser ACE Study*, Ctrs. for Disease Control and Prevention: Violence Prevention (Apr. 6, 2021), <https://www.cdc.gov/violenceprevention/aces/about.html>; Christopher Wildeman, Alyssa W. Goldman, and Kristin Turney, *Parental Incarceration and Child Health in the United States*, *Epidemiologic Revs.*, 40:146–156, 2018. Lee, R.D., Fang, X., & Luo, F. (2013). The impact of parental incarceration on the physical and mental health of young adults. *Pediatrics* 131(4):e1188–1195; Uggen, C., McElrath, S. (2014). Parental incarceration: What we know and where we need to go. *J. Crim. Criminol.* 104:597; Daniel P. Mears & Sonja E. Siennick, *Young Adult Outcomes and the Life-Course Penalties of Parental Incarceration*, 53 *J. Res. Crime & Delinquency* 3 (2016). Amanda Geller, Irwin Garfinkel, Carey E. Cooper, Ronald B. Mincy, *Parental Incarceration and Child Well-Being: Implications for Urban Families*, *Soc. Sci. Q.*, 2009, 90(5): 1186-1202; Geller, A., Cooper, C. E., Garfinkel, I., Schwartz-Soicher, O., & Mincy, R. B. (2012). Beyond absenteeism: Father incarceration and child development. *Demography*, 49(1), 49-76. Murray, J., Farrington, D. P., & Sekol, I. (2012). Children’s antisocial behavior, mental health, drug use, and educational performance after parental incarceration: A systematic review and meta-analysis. *Psychol. Bulletin*, 138(2), 175–210. <https://doi.org/10.1037/a0026407>.

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<sup>96</sup> Kirk, 2021.

<sup>97</sup> Kilgore, Sanders, and Hayes, 2019.

<sup>98</sup> For more on Critical Resistance, see [https://criticalresistance.org/wp-content/uploads/2021/08/CR\\_abolitioniststeps\\_antiexpansion\\_2021\\_eng.pdf](https://criticalresistance.org/wp-content/uploads/2021/08/CR_abolitioniststeps_antiexpansion_2021_eng.pdf)

<sup>99</sup> Evidence supports the efficacy of EM for sex offenders but at this point for little else. See James Bonta, Suzanne Wallace-Capretta, and Jennifer Rooney, “Can Electronic Monitoring Make a Difference? An Evaluation of Three Canadian Programs,” *Crime and Delinquency* 46(1): 61-75, 2000.