

Forensic Patient Electronic Monitoring

Summary This Guideline outlines what electronic monitoring for forensic patients is, the principles when applying for electronic monitoring, suggested forms and/or devices of electronic monitoring and record keeping when undertaking electronic monitoring. It also provides guidance on electronic monitoring data storage and information sharing during breaches and patient apprehension.

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Forensic Patient Electronic Monitoring

GUIDELINE SUMMARY

This Guideline is for treating teams applying for and managing forensic patients with an order for electronic monitoring. It has been issued based on sections 85(1) and 94(4) of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW).

KEY PRINCIPLES

Electronic monitoring is defined as the use of an electronic device to monitor or track the location of a person at any given time, including by Global Positioning System.

The purpose of electronic monitoring is to focus on improving community safety and improving outcomes for forensic patients.

The *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) expressly allows the Mental Health Review Tribunal to order electronic monitoring as a condition of a forensic patient's leave or conditional release.

When considering making an application to the Mental Health Review Tribunal for electronic monitoring, the treating team are to adhere to the following key principles:

- Be the least restrictive practice in the patient's circumstances.
- Not become routine practice.
- Facilitate leave or release opportunities.
- Facilitate consent-based approaches by all parties.
- Be one of a suite of options available to monitor the patient.
- Have a clear planned approach and a clear purpose.
- Be determined by a risk assessment.
- Incorporate an agreed evaluation process for monitoring and reporting.

Monitoring data and information is to be recorded and stored in the patient's health record.

Use of the Guideline

This Guideline is a resource to support treating teams when considering and/or implementing electronic monitoring for forensic patients on leave or release across Local Health Districts and Specialty Health Networks.

This Guideline details each of these principles in more depth, guiding Local Health Districts and Specialty Health Networks to better align their services with the principles to deliver safe care for forensic patients and the community when undertaking electronic monitoring.

REVISION HISTORY

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CONTENTS

1. BACKGROUND 2

 1.1. About this document 2

 1.2. Key definitions 2

 1.3. Legal and legislative framework 2

2. APPLYING FOR ELECTRONIC MONITORING 3

 2.1. Key principles 3

 2.2. Planned approach 3

 2.3. Risk management 3

 2.4. Monitoring and reporting 4

3. TRIBUNAL AUTHORITY TO ORDER ELECTRONIC MONITORING 4

4. FORM OF ELECTRONIC MONITORING 4

5. RECORD KEEPING 4

 5.1. General principles 5

 5.2. Information sharing following a breach and/or patient apprehension 5

6. REFERENCES 5

1. BACKGROUND

1.1. About this document

This Guideline provides guidance to NSW Health staff who are part of the treating team involved in the care of a forensic patient who is ordered by the Mental Health Review Tribunal to be subject to electronic monitoring.

The Mental Health Review Tribunal (the Tribunal) have the power and discretion to direct the use of electronic monitoring for forensic patients while on leave or release.

This Guideline must be implemented in conjunction with the NSW Health Policy Directive *Forensic Mental Health Services* ([PD2012_050](#)).

Local Health Districts/Specialty Health Networks are encouraged to develop local protocols as necessary to support implementation of this Guideline.

1.2. Key definitions

Electronic monitoring	The use of an electronic device to monitor or track the location of a person at any given time, including by Global Positioning System (GPS).
Mental Health Review Tribunal	A specialist quasi-judicial body constituted under the <i>Mental Health Act 2007</i> (NSW). It has a wide range of powers that enable it to conduct mental health inquiries, make and review orders, and to hear some appeals, about the treatment and care of people with a mental illness.
Treatment plan	A detailed plan tailored to the individual patient, created by the patients treating team and outlines the goals for treatment.
Treating team	A group of professionals who work with the individual patient to provide treatment and help in the patient’s recovery. This may include medical specialists, nurses, Aboriginal Health Workers and allied health professionals such as social workers, psychologists, case managers, occupational therapists, and vocational and support workers.

1.3. Legal and legislative framework

The legislation governing the use of electronic monitoring is the [Mental Health and Cognitive Impairment Forensic Provisions Act 2020](#) (NSW).

Sections 85 and 94(4) of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) allows the Tribunal to impose conditions on forensic patients for the purposes of electronic monitoring when exercising leave from inpatient mental health units or while on conditional release in the community.

2. APPLYING FOR ELECTRONIC MONITORING

2.1. Key principles

The treating team are to adhere to the following principles when considering making an application to the Tribunal for electronic monitoring:

- be the least restrictive practice in the patient's circumstances
- not become routine practice
- facilitate leave or release opportunities
- facilitate consent-based approaches by all parties
- be one of a suite of options available to monitor the patient

2.2. Planned approach

Electronic monitoring is to have a planned approach and a clear purpose that is documented within the individual patient's treatment plan. It is to be used in conjunction with a rehabilitation plan and include strategies to reduce or remove the use of electronic monitoring practices over time. Electronic monitoring must not be a substitute for clinical care.

Treating teams are to make every effort to ensure that the patient, and their carer(s) are given the opportunity to participate in the planning process.

Aboriginal Health Workers are to be utilised to support both Aboriginal consumers and Aboriginal staff wherever possible.

2.3. Risk management

Electronic monitoring is to be used as a risk management tool, as part of a range of risk management strategies. Electronic monitoring should be used as the least restrictive practice in providing care and treatment. Section 70 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) states that the principles of care and treatment set out in section 68 of the *Mental Health Act 2007* (NSW) also apply to forensic and correctional patients under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW).

The purpose of electronic monitoring is to be focused on improving community safety and improving outcomes for forensic patients.

The criteria outlined below is to be considered as part of risk management when undertaking electronic monitoring:

- The use of electronic monitoring is to be a reasonable and balanced response to any risks presented by the patient to themselves and/or others
- The use of electronic monitoring is to be determined by a documented clinical risk assessment, forming part of an overall risk management plan
- The use of electronic monitoring must balance the safety of the community and the individual patient's rights, and does not undermine the patient's rehabilitation.

2.4. Monitoring and reporting

Electronic monitoring must incorporate an agreed evaluation process by all parties to ensure it is used for as long as necessary. This includes the participation of the forensic patient and their principal care provider/designated carer (if applicable) to ensure the safety of the patient and/or others.

Patients are to be reviewed within an appropriate time following each event during which electronic monitoring is used.

3. TRIBUNAL AUTHORITY TO ORDER ELECTRONIC MONITORING

The Mental Health Review Tribunal (Tribunal) has the authority to order electronic monitoring in any given form and impose conditions as the Tribunal sees fit. In determining whether to make an order for electronic monitoring, the Tribunal will consider each individual forensic patient's circumstances, taking into consideration the clinical evidence available.

Electronic monitoring must be administered in line with any conditions set by the Tribunal, acknowledging that the Tribunal may consider imposing additional or less restrictions as appropriate, and have legal oversight by the Tribunal (except for emergency leave).

Any difficulties in implementing electronic monitoring for a forensic patient must be brought to the Tribunal's attention, including before any order is made.

4. FORM OF ELECTRONIC MONITORING

The device used for electronic monitoring can be decided by the treating team, unless specified by order of the Mental Health Review Tribunal (Tribunal). The device must be approved by the Medical Superintendent/Director of Community Treatment of the facility.

When considering what device to use, treating teams may want to consider utilising the GPS function on patient mobile phones where possible and appropriate, considering the conditions and specifications set by the Tribunal.

Permanent tracking devices such as ankle bracelets, are not recommended¹.

All electronic monitoring activities must be managed by a clinician within the patient's treating team, or unit nursing staff. As electronic monitoring duration and conditions will be unique to each situation and patient, clinical discretion is to be used when implementing electronic monitoring, within the conditions set by the Tribunal and the principles outlined above.

5. RECORD KEEPING

Monitoring data and information is to be recorded and stored in the patient's health record. When storing monitoring data, Local Health Districts and Specialty Health Networks are to

¹ This position is consistent with the Review of the Mental Health Review Tribunal in respect of forensic patients, which did not support the use of permanent tracking devices (*Mental Health Review Tribunal. A Review in Respect of Forensic Patients*, p.47)

comply with the [NSW Health Privacy Manual for Health Information](#), as well as the [NSW Information Protection Principles](#).

Note: The patient's treating team and legal representative are to have access to the extracted data and information. The Mental Health Review Tribunal (Tribunal), Attorney General and Minister for Mental Health are to also have access to the monitoring data and information upon request.

5.1. General principles

General principles are as follows:

- Only monitoring data relevant to the purpose is to be extracted
- Monitoring data is to only be extracted from the approved device
- The patient must be informed that any monitoring data extracted is being collected (including how and why)
- Any extracted monitoring data and information is to be stored securely, protected from unauthorised access
- Any extracted monitoring data and information is to be accurate and up to date
- Any extracted monitoring data and information is to be rectified if it is incorrectly transcribed
- Storage and disposal of health records must be in accordance with the State Archives and Records Authority of New South Wales² disposal and retention requirements
- Patients and their legal representatives are to be able to access their monitoring information contained in the health record
- Extracted monitoring data and information is to only be disclosed with a lawful request.

5.2. Information sharing following a breach and/or patient apprehension

If a patient is breached and the Tribunal issues an order for their apprehension, any relevant extracted monitoring data and information can be passed onto the NSW Police Force if they are carrying out or assisting in the patient's apprehension. If the patient is suspected to be interstate and an interstate apprehension order is issued, any relevant extracted monitoring data and information may also be passed onto interstate Health and Police authorities if they are carrying out or assisting in the patient's apprehension.

6. REFERENCES

1. NSW Health. Mental Health Review Tribunal. A Review in Respect of Forensic Patients. Retrieved from <https://www.health.nsw.gov.au/mentalhealth/reviews/tribunal/Pages/mhrt-review-report.aspx>. Published 2018. Accessed June, 2021

2. State Archives and Records Authority of New South Wales. Retention and Disposal Authorities. Retrieved from <https://www.records.nsw.gov.au/recordkeeping/rules/retention-disposal-authorities>. Published 2019. Accessed July, 2022