

County of Santa Clara
Office of Pretrial Services Surveillance Use Policy

Electronic Alcohol Monitoring Devices (EAMD)

1. Purpose

During the pretrial phase of criminal proceedings, a Superior Court judge may order an individual facing criminal charges to submit to various conditions in order to obtain pretrial release from custody. One potential condition is abstaining from alcohol use. For an individual ordered by the court to use an Electronic Alcohol Monitoring Device (EAMD), the individual takes the monitor home and must comply with court-ordered sobriety conditions by submitting to testing as determined by the court. The tests may be random or scheduled.

For an EAMD device assigned to an individual, Pretrial Services staff members receive confirmation by an image of the individual or through transdermal testing notification by the vendor. These confirmations are designed to prevent circumvention of court-ordered conditions by, e.g., having a family member or other individual take the test on their behalf or removing the EAMD. The Office of Pretrial Services currently utilizes SCRAM Systems CAM® (continuous alcohol monitor) and Remote Breath® devices for electronic alcohol monitoring.

2. Authorized and Prohibited Uses

EAMD and the data from those devices shall be used only for the purposes of the court-ordered electronic alcohol monitoring described in Section 1 of this Policy. All Pretrial Services staff members who access data from the EAMD shall do so while under the supervision of Pretrial Services. Authorized Pretrial Services personnel shall use data collected from EAMD to determine compliance with pretrial-release conditions, and to assist the Office of Pretrial Services in related law enforcement and court proceedings, including reporting a wearer's data or violations to the Superior Court.

EAMD shall be used in a legal manner, and shall not be used to harass, intimidate, or discriminate against any individual or group. EAMD and the data collected from EAMD shall not be used for personal reasons or any purposes unrelated to court-ordered monitoring or an authorized law enforcement purpose.

3. Data Collection

EAMD shall collect information on an individual's alcohol levels, as well as an image of the individual or the transdermal testing notification by the vendor.

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4. Data Access

Data access from EAMD shall be limited to the following:

- Pretrial Services personnel who have a business need to access the data, including Pretrial Services Officer IIIs and Supervisors, after completing required training by the vendors and the electronic monitoring supervision unit officer;
- The vendors for the data management system, who shall be required to keep the data confidential.

5. Data Protection

EAMD shall collect and process data and communicate it via cellular or internet connections, which shall occur to a secure data management system operated on a propriety encrypted secure website by County vendors. Vendors shall be required to ensure that all session data is encrypted and all host communication information is confidential. The entire perimeter shall be protected and monitored by high-availability firewalls and intrusion-detection/intrusion-prevention systems. Data sent by the EAMD to the vendor's centralized online collection system shall be maintained on a secure web-based system that can be accessed only through a password-protected internet website using password-protected computers. Accessed data entered into the Pretrial Services case management system shall be encrypted and password-protected as well.

Authorized Pretrial Services Officers who do not have access to the vendor's online system may keep hard copies of data from the EAMD in case files, which shall be stored in the Office of Pretrial Services' secure facility.

6. Data Retention

For data collected regarding individuals whose matters are adjudicated to conclusion (e.g., appeal concluded or time to appeal expires following a guilty verdict, not-guilty verdict, or plea reached), the data collected by the EAMD shall be retained for at least one year post-adjudication and shall be destroyed no later than 18-months post-adjudication. For data collected regarding individuals whose matters are not adjudicated to conclusion (e.g., charges are dismissed but subject to refile; a trial results in a hung jury and the prosecutor may pursue an additional trial), the data collected by the EAMD shall be retained for at least three years (36 months) from the date of the alleged offense, and destroyed no later than 42-months from the date of the alleged offense. It shall be permissible for the retention and destruction periods to be extended pursuant to a court order or if the specific case or alleged offense is subject to a statute of limitations that is longer than three years. This data retention period relates only to the Office of Pretrial Services; it does not bind third parties who obtain the data lawfully, such as through a court order or through lawful receipt of a Pretrial Services report referring to information collected by the EAMD. (See Section 7 of this Policy).

7. Public Access

The public shall not have access to EAMD data within the Office of Pretrial Services, but the public may access data from court that is presented in court in a public criminal proceeding or that becomes part of a court file that is accessible to the public.

8. Third-Party Data-Sharing

Third-party data-sharing of EAMD data regarding a specific individual shall be limited to the Superior Court, District Attorney's Office, and defense attorney or defendant subject to the EAMD monitoring. For example, if a subject of EAMD monitoring violates his or her conditions of pretrial release, a Pretrial Services report regarding the violation, which generally will contain information collected by the EAMD, shall be submitted to the Superior Court with copies provided to the District Attorney's Office and the defense attorney. The County's vendors for EAMD online collection system shall also have access to this data, but that access shall be subject to confidentiality obligations.

9. Training

Pretrial Services Officer IIIs and Supervisors who will be provided access to the EAMD shall be trained regarding the EAMD, data collection, and this Use Policy.

10. Oversight

The Office of Pretrial Services management team shall oversee compliance with this Policy. As part of that oversight, the management team or written designee shall review the Office's case management database activity log to ensure compliance. Any employee found to have violated this Policy shall be subject to possible discipline.

Approved as to Form and Legality

 11/29/18

Rob Coelho
Office of the County Counsel