

Electronic Monitoring as an Alternative to Deprivation of Liberty in Jordanian and Emirati Law

Ali al-mahasneh¹, Mishael Al-Raggad²,
Nasir Albalawee³ & Odai Al Heilat⁴

Abstract

The study delves into the legislative and practical landscapes governing electronic monitoring within the legal frameworks of Jordan and the United Arab Emirates (UAE). It meticulously examines the similarities and disparities between the legislative strategies employed by both nations, delineating how the UAE's approach encompasses a wider array of applications and more stringent penalties for infringements, contrasting with Jordan's more discretionary stance, particularly emphasizing misdemeanor sentences. Despite these nuanced distinctions, both jurisdictions confront hurdles in the efficacious implementation and regulation of electronic surveillance. The study extends recommendations aimed at legislative enhancements and refinements in both countries to confront these challenges and bolster the efficacy of electronic monitoring systems.

Keywords: Electronic monitoring, legislative framework, practical implementation, Jordanian law, Emirati law, comparative analysis.

Introduction

In recent years, a discernible shift has occurred in the global legal landscape, marked by a growing exploration of alternative methods to traditional punitive measures and incarceration (White, 2018; Pakes, 2019). This transformation is particularly noteworthy in the domain of criminal justice systems, where there is a burgeoning emphasis on identifying innovative approaches that not only ensure public safety but also safeguard individual rights and freedoms (Elrick, 2021). Among these emerging alternatives, electronic

¹ Full-time Lecturer, the Department of Law, Jadara University, Jordan, Ali al-mahasneh a.mahasneh@jadara.edu.jo. Orcid no: <https://orcid.org/0009-0006-7520-3592>.

² Full-time Lecturer, the Department of Law, Jadara University, Jordan. Mishael Mohammad Al-Raggad m.alraggad@jadara.edu.jo. Orcid no: <https://orcid.org/0000-0002-1846-8969>.

³ Assistant Professor, the Department of Law, Jadara University, Jordan. Nasir Albalawee, nbalawi@jadara.edu.jo Orcid no: <https://orcid.org/0000000194973572>.

⁴ Full-time Lecturer, the Department of Law, Yarmouk University, Jordan, Odai Mohammad Ali Al Heilat, ptl_odai.hailat@yu.edu.jo Orcid no: <https://orcid.org/0000-0001-9186-4397>.

monitoring has garnered considerable attention. This technique utilizes advanced technology to supervise and track individuals, offering an alternative to physical confinement (Hucklesby et al., 2016; Abu Huson et al., 2024; Abu Orabi et al., 2023).

The present study seeks to delve into the viability of electronic monitoring as an alternative to imprisonment within the legal frameworks of Jordan and the United Arab Emirates (UAE). Positioned as prominent examples within the Middle East region, both countries boast distinctive legal systems and socio-cultural contexts. Despite their inherent disparities, both jurisdictions have increasingly acknowledged the potential benefits of electronic monitoring in addressing prevalent issues such as prison overcrowding, enhancing rehabilitation efforts, and upholding human rights standards.

Traditionally, prisons have been regarded as suitable environments for the execution of custodial sentences (Garland, 2018). The overarching goals of punitive measures encompass achieving justice and deterring future criminal behavior, both on a general and specific scale (Goodwin & Gromet, 2014; Andrews & Bonta, 2010; Albalawee et al., 2024; Al-Raggad et al., 2024). While prisons are designed to facilitate the rehabilitation and reformation of inmates, they also pose inherent risks. For instance, individuals serving short-term sentences may be exposed to hardened criminals, potentially exacerbating their criminal tendencies and placing further strain on the criminal justice system (Mauer & Epstein, 2012).

To mitigate the drawbacks associated with custodial sentences, modern penal legislation, including that of Jordan and the UAE, has endeavored to strike a delicate balance between enforcing sentences within closed environments and allowing individuals to retain a degree of freedom (Hudson, 2012; Al-Qudah et al., 2022; Huson et al., 2024; Qudah et al., 2024). This paradigm often referred to as "alternatives to punishment," encompasses electronic monitoring as a novel method for implementing short-term sentences (Sandøy, 2022; Huson et al., 2024; Huson, 2024). By restricting freedom without wholly depriving individuals of it, electronic monitoring enables offenders to fulfill their sentences in the comfort of their homes or workplaces (Davis, 2012).

Against this backdrop, the primary aim of this paper is to conduct a comprehensive analysis of the legislative and practical frameworks surrounding electronic monitoring in Jordanian and Emirati law. Specifically, the study endeavors to evaluate the application of electronic monitoring as an alternative to pre-trial detention and its efficacy in final judgments within the legal systems of

Jordan and the UAE. Additionally, the paper aims to elucidate the criminal liability of individuals who attempt to evade electronic monitoring.

Research Questions

RQ₁: To what extent is electronic monitoring considered an alternative system to short-term custodial sentences?

RQ₂: To what extent is electronic monitoring applied as an alternative to detention (pre-trial detention) in Jordanian and Emirati law?

RQ₃: What is the scope of the application of electronic monitoring in final judgments in Jordanian and Emirati law?

Research Methodology

This study follows the analytical approach, by analyzing the texts of the Jordanian and Emirati laws related to the topic of electronic monitoring as it appears in the Jordanian Penal Code and the Emirati Criminal Procedure Law. This is to clarify the approach adopted by the Jordanian and Emirati legislators in applying electronic monitoring as an alternative to custodial sentences. The study also follows the comparative approach to compare the Jordanian and Emirati laws to identify the points of agreement and disagreement between them on the topic of the study.

The study will use a variety of sources, including primary and secondary sources. Primary sources will include the Jordanian Penal Code, the Emirati Criminal Procedure Law, and other relevant legislation. Secondary sources will include books, articles, and other research materials.

Literature review

Electronic Monitoring as an Alternative to Deprivation of Liberty

Given the significance of electronic surveillance within contemporary penal policy and its emergence as a forefront tool in both substantive and procedural aspects, it becomes imperative to delve into its conceptual underpinnings and procedural implementations (Belur et al., 2020; Al-Billeh & Issa, 2022). This literature review aims to illuminate the concept of electronic surveillance and the procedural protocols surrounding its application within the legal frameworks of Jordan and UAE.

The Definition of Electronic Monitoring: In Jordanian legislation, electronic monitoring is conceived as an alternative to punitive measures that curtail freedom rather than being viewed as a punishment in itself. It is categorized among the alternatives to liberty-restricting penalties, as articulated in Article (25/1) BIS of the Penal Code. This provision allows for the placement of convicted individuals under electronic monitoring for a specified duration.

Furthermore, the Penal Code delineates the electronic bracelet as an instrument for electronic monitoring, describing it as an electronic device capable of tracking the individual's location without impeding their normal activities. While the legislation in Jordan lacks a specific definition of electronic surveillance, the incorporation of electronic monitoring within alternative penalties underscores its importance as an innovative method of sentence execution.

In contrast, the UAE's Criminal Procedure Law No. 38 of 2022 defines electronic monitoring as the restriction of the accused or convicted individual from leaving their designated place of residence or any other specified location during certain times. This restriction is enforced through electronic means and allows for activities such as professional endeavors, education, vocational training, or medical treatment, as determined by the public prosecution or competent court.

At the doctrinal level, various interpretations of electronic monitoring emerge. Some scholars define it as obligating the sentenced individual to remain at their residence during designated hours, facilitated by electronic monitoring. Others characterize it as an innovative method of executing short-term deprivation of liberty outside prison confines, often referred to as home imprisonment. Regardless of interpretation, electronic monitoring is unanimously recognized as an alternative to traditional forms of incarceration, serving to mitigate the drawbacks of custodial sentences while fulfilling the objectives of punishment in terms of rehabilitation and deterrence.

In conclusion, electronic monitoring represents a contemporary approach to addressing the complexities of criminal justice, offering a nuanced alternative to conventional punitive measures. While its implementation varies across legal jurisdictions, the overarching goal remains consistent: to balance the imperatives of justice and public safety with the preservation of individual rights and freedoms.

Electronic Monitoring Requirements

Implementing the electronic monitoring system necessitates adherence to various legal and technical prerequisites, as outlined below:

Legal Conditions for Electronic Surveillance: Legal stipulations govern the application of electronic monitoring, encompassing factors concerning the individual subject to monitoring and the nature of the sentence (De Hert, 2005). In terms of personal criteria, the gender of the individual under consideration is irrelevant; however, consent from the convict or their legal representative is imperative (Sloop, 2006). Electronic monitoring is contingent upon the convict's consent, ensuring compliance and responsiveness to monitoring authorities. This prerequisite is underscored in Article (12/A) of Jordanian regulations,

emphasizing the submission of an application for alternative sentencing. Moreover, electronic monitoring is generally not applicable to repeat offenders, as indicated in Article (25) of the Jordanian Penal Code.

Regarding juvenile offenders, Jordanian juvenile law prohibits their imprisonment but permits placement in juvenile detention centers for offenses committed at the age of twelve or older. Alternatively, juveniles may be subject to judicial supervision, allowing them to remain within their natural environment under court guidance. The implications of placing juveniles under electronic monitoring must be considered, as exposure to criminal influences could potentially exacerbate their delinquency.

Electronic Monitoring as an Alternative to Deprivation of Liberty: The Jordanian Penal Code, in Article (25/1) BIS, grants courts the discretion to replace custodial sentences with electronic monitoring for misdemeanor offenses. This provision allows for a broad application of electronic monitoring, irrespective of offense type. Additionally, in cases where the sentence has not reached a categorical level, the court may elect to apply electronic monitoring. However, the decision to accept the replacement request remains discretionary, subject to judicial evaluation.

Electronic Monitoring in Criminal Cases: Article (25/2) of the Jordanian Penal Code delineates the parameters for electronic monitoring in criminal offenses. Courts may opt for electronic monitoring as an alternative to custodial sentences for crimes against property, provided the sentence does not exceed one year and mitigating circumstances are present. Notably, electronic monitoring cannot be applied to offenses against individuals, even with reduced sentences, emphasizing its limited scope in such cases.

In reviewing the legislative framework, it becomes apparent that certain refinements may enhance the efficacy of electronic monitoring. For instance, extending the court's authority to replace custodial sentences with electronic monitoring in felony cases, even those reaching a categorical level, would ensure consistency across offense types. Additionally, mandating the cancellation of personal rights as a condition for accepting replacement requests in misdemeanor or property-related cases would prioritize victims' interests and alleviate the burden on civil courts.

Regarding the Emirati legislation, Article (397/1) of the Code of Criminal Procedure specifies that the court, when sentencing imprisonment for up to two years, may opt to implement electronic surveillance if deemed suitable given the circumstances of the convict. This decision may be influenced by factors such as the likelihood of the convict committing another offense, the presence of a stable residence or employment within the state, or the responsibility of being the

primary provider for their family, among other considerations. However, this provision does not apply to repeat offenders. Additionally, Article (408) of the same law allows individuals serving sentences of two to five years, who have completed half their term, to request release under electronic monitoring for the remainder of their sentence.

These articles illustrate the UAE legislator's broadening of electronic monitoring's applicability, particularly in cases where the sentence does not exceed two years, and providing courts with discretionary power to replace certain periods of imprisonment with electronic monitoring. Notably, this applies to offenses typically associated with lesser sentences. Furthermore, the legislation extends electronic monitoring to sentences lasting between two to five years, contingent upon the convict serving half their sentence and proving non-recidivism.

An important consideration arises concerning the imposition of fines alongside imprisonment. If the court elects to place the convict under electronic surveillance, does this negate the fine penalty, with electronic monitoring becoming the primary punishment? In response, it is posited that electronic monitoring serves as an alternative to custodial sentences and does not replace fines, which may either stand alone or complement imprisonment. Therefore, substituting imprisonment with electronic monitoring does not exempt the convict from fulfilling the fine obligation. Article (401) of the UAE Procedural Law affirms this stance by stating that electronic monitoring does not absolve the requirement to fulfill supplementary penalties, including fines and expenses.

Electronic Monitoring as an Alternative to Pre-trial Detention

Despite the necessity of pre-trial detention in certain cases for the sake of preserving evidence, preventing the accused from fleeing, influencing witnesses, or ensuring the safety of the complainant, it remains an exceptional measure that contradicts the presumption of innocence (Sola Martin, 2011). Often, individuals may spend prolonged periods in pre-trial detention only to be eventually acquitted. Recognizing this, the Jordanian legislator, aligning with modern penal policies, has introduced a paradigm that combines both closed and open penal environments. Consequently, the prosecutor general or the court, particularly in cases involving misdemeanors without felonies, may opt to replace arrest with alternative measures, including electronic monitoring.

Similarly, the UAE legislator has empowered the public prosecution to issue orders for placing the accused under electronic surveillance, contingent upon the consent of the accused and compliance with arrest conditions as outlined in Article (106) of the Criminal Procedure Code. Article (390) of the same law

further allows the public prosecution to impose temporary measures for the defender's security if investigative necessities demand it. Moreover, Article (392) provides discretionary authority to the Public Prosecution to temporarily subject the accused to electronic monitoring for up to thirty days, extendable once, if deemed necessary for the investigation. However, should the need for continued surveillance persist beyond this period, the case must be referred to the competent court for a decision on remand in custody.

It's noteworthy that the UAE legislation excludes certain serious crimes from the purview of electronic surveillance, including offenses punishable by death or life imprisonment, crimes against state security, and offenses mandating deportation from the country. These exclusions stem from the need for specialized deterrence to combat inherent dangers associated with such crimes and to facilitate the reformation, rehabilitation, and integration of offenders into society.

In terms of technical prerequisites for electronic monitoring, fulfilling these conditions is indispensable for its effective implementation. Key among these requirements is the electronic bracelet, securely installed on the individual's hand or leg, linked electronically to a modem device managed by the supervising authority. Signals transmitted by the bracelet indicate the individual's compliance with specified geographic restrictions or any attempts at tampering with the device. Additionally, the individual must have a stable and identifiable place of residence equipped with a functioning telephone line for communication with supervisory authorities.

Furthermore, the UAE legislation, as stipulated in Article (387) of the Criminal Procedure Code, grants the public prosecution the authority to appoint a specialist doctor to oversee the health condition of individuals under electronic surveillance, ensuring their well-being. Similarly, the Jordanian legislation mandates the submission of a medical certificate affirming the individual's health suitability for electronic monitoring, as indicated by the phrase "based on the report of the marital status" in Article (25/1) BIS of the Jordanian Penal Code.

Procedure for Implementing Electronic Monitoring

Competent Authorities for Issuing Electronic Monitoring Orders:

The legislative framework designates two bodies responsible for issuing electronic surveillance orders: the public prosecution and the competent court. Following interrogation by the public prosecution or upon possession of the case by the court, which could occur during the arraignment session, sentencing hearing, or even after the sentence becomes final, upon the convict's request for sentence replacement, the task of overseeing electronic monitoring implementation falls upon the public prosecution. This responsibility is outlined in Article (402) of the

UAE Code of Procedures and corresponds to Article (25/1) BIS of the Jordanian Penal Code, where the prosecutor general oversees placement under surveillance while the Ministry of Justice ensures its proper execution and technical efficacy.

Obligations Arising from Electronic Surveillance:

1. Remaining within Specified Geographical Limits: Electronic monitoring aims to restrict an individual's freedom within predefined geographic boundaries, though exceptions may apply for professional or medical necessities. This respect for individual dignity and privacy is evident in Article (355) of the UAE procedural law.
2. Notifying Authorities of Residence Changes: Individuals under surveillance must inform their supervisor of any changes in residence, provided legitimate justifications exist. While Jordanian legislation doesn't address the international travel desires of individuals under surveillance, UAE law requires individuals to seek court approval, as stipulated in Article (372) of the UAE procedural code.
3. Wearing an Electronic Bracelet: Individuals consenting to electronic surveillance must wear the electronic bracelet throughout the monitoring period. In Jordan, Article (8) of the Penal Alternatives System mandates installation by a designated officer under the judge's supervision, with proper documentation. Individuals must maintain the bracelet and avoid tampering, with violations leading to potential arrest by judicial officers, as per Article (25) BIS.
4. Receiving Periodic Monitoring Visits: Individuals must meet with supervisory staff at designated intervals to ensure compliance, device safety, and efficacy. Reports prepared by supervisory staff are submitted to the judge executing the sentence, as outlined in Article (7/E) of Jordan's penal system.
5. Restriction on Contact: Article (390) of the UAE procedural code allows the public prosecution or court to prohibit individuals under surveillance from contacting accomplices, co-defendants, or witnesses, while upholding the right to communicate with legal counsel. This ensures the accused's right to defend themselves within legal bounds, consistent with Article (390) of the UAE procedural code.

Cancellation of Electronic Surveillance: Jordanian and Emirati Law

In both Jordanian and Emirati legal frameworks, specific conditions govern the cancellation of electronic surveillance orders. Article (402) of the UAE Code of Procedures outlines cases mandating the withdrawal and cancellation of electronic surveillance status upon verification, while Article (403) provides discretionary grounds for cancellation. Similarly, Article (25/4) BIS of the Jordanian Penal Code grants discretionary power to the judge of execution or the issuing court in felonies to consider cancellation. Additionally, under Article (8/g)

of Jordan's Penal Alternatives System, tampering with the electronic bracelet warrants arrest by judicial officers for further legal action.

Cases Mandating Cancellation:

1. **Discovery of a Prior Final Sentence:** If, during surveillance, it's revealed that a prior final custodial sentence was issued against the individual, unknown to the court before the surveillance order, cancellation is mandatory. This applies irrespective of whether the sentence was for a preceding or subsequent crime to the one under surveillance. The UAE law under Article (397/2) similarly mandates cancellation if a verdict is issued against the person after the surveillance order.
2. **Medical Harm Due to Monitoring:** Upon proof via a medical report that electronic monitoring has or may harm the individual; they may request medical examination for verification. UAE law grants the public prosecution authority to appoint a specialist doctor for this purpose, ensuring the safety of the convict under surveillance, as outlined in Article (387).
3. **Request by the Individual:** As electronic monitoring is consensual, the individual can request its cancellation. Both UAE Article (389) and Jordanian Article (12/A) stipulate this, reflecting the penal policy of involving the offender in choosing their punishment.
4. **Impossibility of Implementation:** Various reasons, including execution of the sentence, amnesty, statute of limitations, or death of the convict, make electronic monitoring implementation impossible. Jordanian law, however, does not explicitly address conditions mandating cancellation, leaving discretionary authority to the courts, as specified in Article (25/4 TER) and Article (8/H) of the Penal Alternatives System.

While Jordanian law grants discretionary authority for cancellation, it lacks a clear delineation between cases mandating cancellation and those left to court discretion. Refinement in this aspect would enhance legal clarity and procedural consistency.

Crimes Arising from Violating Electronic Surveillance Conditions in Jordanian and Emirati Law

Non-compliance with electronic surveillance conditions carries consequences beyond merely canceling the monitoring decision. Article 6 of the Electronic Crimes Law No. 17 of 2023 in Jordan penalizes individuals who disrupt, jam, stop, or hinder electronic information system operations. Given that electronic surveillance relies on such systems, interfering with their functioning constitutes a breach.

In the UAE, Article 330 of Penal Code No. 31 of 2021 explicitly addresses escaping from electronic surveillance, whether it serves as an alternative

to pre-trial detention or punishment for deprivation of liberty. The second paragraph of the same article penalizes anyone under electronic surveillance who disables or obstructs surveillance devices. The Jordanian legislator diverges from the Emirati counterpart by not including a specific provision for the crime of escaping from electronic surveillance in Article 330 of the Penal Code.

Escaping Electronic Surveillance According to UAE Law:

Article 228/1 of the Jordanian Penal Code stipulates that anyone lawfully arrested for a crime and escapes shall face imprisonment, depending on the severity of the offense. On the other hand, Article 330 of the UAE Penal Code punishes with imprisonment those under electronic surveillance who escape from it.

To establish criminal responsibility for escaping electronic surveillance, two elements are necessary: material and moral, alongside a presumptive condition, which is the status of the perpetrator. Regarding the physical element, the offender must physically leave the designated area or their residence or workplace during the surveillance period. The moral element encompasses intentional or mistaken acts, as the legislation doesn't specify intent for this crime. Intentional acts involve directing one's will to cause a criminal result, while errors occur due to the perpetrator's negligence or disregard for laws and regulations. Punishment for escaping electronic surveillance involves imprisonment for a minimum of two years, added to the original sentence. Unlike the crime of escape of the accused and convicts, there are no aggravating circumstances specified for this offense in UAE law.

Regarding Jordanian law, there's no additional penalty for escaping electronic surveillance beyond the original sentence. The absence of a specific provision raises questions about the applicability of Article 228 of the Jordanian Penal Code to this crime. Furthermore, Article 6 of the Cybercrime Law No. 17 of 2023 penalizes actions that violate information system operations with imprisonment and fines. This provision aims to safeguard data integrity against remote malicious activities by obstructing, jamming, stopping, or disrupting information systems.

Regarding the UAE legislation, it explicitly prohibits the disruption or hindrance of electronic surveillance devices or damaging them. Article 330/2 of the Penal Code imposes a criminal penalty on anyone who disables or hinders the operation of remote monitoring devices, which track the whereabouts of individuals under surveillance. To delineate criminal responsibility for attacking the electronic surveillance system, the fundamental aspects of this offense under Jordanian and Emirati laws are as follows:

1. Location of the Offense: The crime of assaulting the integrity of an electronic surveillance system occurs only if the perpetrator targets the surveillance devices themselves (Gasson & Koops, 2013). It presupposes that the surveillance devices are intact and free of defects, and the attack occurs after the person is actually under surveillance. Therefore, actions taken before the implementation of electronic surveillance do not constitute this offense.
2. Physical Element: The criminal behavior involves introducing, disseminating, or using programs remotely to disable, hinder, disrupt, or stop the operation of the electronic surveillance system. The disruption may occur through various means, including planting viruses, tampering with logical components, or obstructing data flow to prevent tracking the convict's whereabouts (Smith, 2018).
3. Moral Element: The crime requires intentional conduct, as indicated by the term "intentionally" in the relevant legislation. The perpetrator must be aware of their actions and intend to hinder, disrupt, or stop the operation of the electronic surveillance system (Maguire, 2000).
4. Punishment: Under Article 6 of the Electronic Crimes Law, this offense carries a penalty of imprisonment ranging from six months to ten years, along with fines. Additionally, Article 27 of the same law penalizes those who participate, interfere with, or incite this crime. In the UAE, Article 330/2 of the Penal Code imposes imprisonment of up to two years, with more severe penalties if the disruption causes damage to the surveillance system.

In summary, both Jordanian and Emirati laws prohibit attacks on electronic surveillance systems and impose significant penalties for such offenses, underscoring the seriousness with which these violations are treated.

Discussion

The discussion revolves around the legislative frameworks of electronic surveillance in the UAE and Jordan. In the UAE, there's a broad application of electronic surveillance regardless of the severity of the offense, with discretion given to the court to order electronic monitoring for sentences ranging from misdemeanors to felonies. The court also has the authority to replace custodial sentences with electronic monitoring for terms between two to five years, subject to serving half the sentence. Conversely, in Jordan, electronic surveillance is predominantly applicable to misdemeanor sentences, with limited application to felonies, specifically for non-persons, and subject to the court's use of mitigating reasons.

Furthermore, the UAE legislation distinguishes between cases warranting cancellation of electronic surveillance and those where it's permissible. In contrast,

Jordan allows the court to cancel electronic monitoring if the convict violates obligations, resorting to traditional custodial punishments.

The UAE explicitly penalizes escaping from electronic surveillance and damaging surveillance devices, unlike Jordan, which lacks such provisions. Recommendations suggest broadening the scope of electronic monitoring in the UAE to include misdemeanors and providing more discretion to courts in Jordan to replace custodial sentences with electronic surveillance, particularly for non-person felonies. Additionally, legislative amendments in Jordan are proposed to specify conditions for canceling electronic surveillance orders and to introduce penalties for escaping surveillance or damaging surveillance equipment.

Conclusion

The study investigated the legal and operational frameworks governing electronic monitoring in Jordanian and Emirati jurisdictions. It found that while there are similarities and differences in the legislative approaches to electronic surveillance between the UAE and Jordan, each country has its unique characteristics. The UAE's legal framework allows for a wider application of electronic surveillance and imposes clear penalties for violations, whereas Jordan's legislation grants more discretion to courts, particularly focusing on misdemeanor sentences. However, both countries encounter difficulties in efficiently implementing and overseeing electronic surveillance systems.

Future research directions should explore the practical implications of electronic surveillance laws in both countries, including their impact on crime prevention, rehabilitation, and societal perceptions of privacy and security. Comparative studies can shed light on the effectiveness of different legislative models and inform policy-making decisions. Additionally, research is needed to assess the technological infrastructure and resources required for successful electronic surveillance implementation and to identify best practices for ensuring compliance and accountability. Finally, studies on the socio-ethical implications of electronic surveillance, particularly regarding human rights, privacy, and the potential for discrimination, are essential for promoting fair and just legal frameworks in both the UAE and Jordan.

Recommendations

The study anticipates that the UAE legislator will expand the application of electronic monitoring to include sentences issued for misdemeanors in general. Similarly, it is hoped that the Jordanian legislator will authorize the court, upon the request of the convicted individual in non-preemptory crimes, to substitute the custodial sentence, provided that half of the original term has been served and the

annulment of personal rights has been obtained. Furthermore, it is suggested that Article (25/2) of the Penal Code be revised to permit the court, except repeated offenses mitigated to one year, to replace the served sentence based on social status reports with alternatives such as electronic surveillance. In future legislative reviews, a specific provision outlining circumstances necessitating or permitting the cancellation of electronic surveillance decisions should be incorporated. Additionally, legislative amendments are recommended to prohibit and penalize acts of escaping, disrupting, hindering, or damaging electronic surveillance devices.

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