

**ABBOZZ TA' LIĠI**  
**msejjah**

*ATT biex tigi stabbilita sistema ta' monitoraġġ elettroniku għal persuni kkundannati bil-għan li tissorvelja l-movimenti ta' persuna soġġetta **għal ordni ta' moniteraġġ elettroniku** permezz ta' apparat elettroniku sigur u li jipprovdi għal miżuri relatati u anċillari.*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'liġi dan li ġej:

ARRANĠAMENT TAL-ATT

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## TAQSIMA I Dispożizzjonijiet Ġenerali

Titolu fil-qosor  
u bidu fis-sehħ.

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2021 dwar il-Monitoraġġ Elettroniku.

(2) Dan l-Att għandu jidhol fis-sehħ f'dik id-data jew dati li l-Ministru responsabbli għall-Intern jista' b'avviż fil-Gazzetta jistabbilixxi, u jistgħu jiġu hekk stabbiliti dati differenti għal dispożizzjonijiet differenti jew għanijiet differenti ta' dan l-Att.

Tifsir.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma teħtieġx xort'oħra:

"Att" tfisser l-Att dwar il-Monitoraġġ Elettroniku;

"apparat ta' monitoraġġ elettroniku" tfisser kull apparat, milbus jew xort' oħra, li permezz tiegħu l-movimenti tal-persuna konċernata jkunu qegħdin jiġu ssorveljati għall-finijiet tal-Att;

"awtorità emittenti" tfisser awtorità responsabbli għall-ħruġ ta' ordni ta' monitoraġġ elettroniku;

L.S. 595. 32

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"awtorità responsabbli" tfisser l-Aġenzija għas-Servizzi Korrettivi stabbilita bir-regolament 3 tal-Ordni għat-Twaqqif tal-Aġenzija għas-Servizzi Korrettivi; u;

Kap. 516

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"Bord tal-Parole" tfisser il-Bord stabbilit taħt l-artikolu 8 tal-Att dwar il-Ġustizzja Riparatriċi;

"ksur" u "ksur suspettat" tfisser kwalunkwe att li jikser jew jista' jikser il-kondizzjonijiet li jistgħu jiġu preskritti fl-ordni ta' monitoraġġ elettroniku, inklużi iżda mhux limitati għal:

(a) restrizzjonijiet ta' aċċess jew projbizzjoni għall-persuna kkonċernata li tidhol f'xi post identifikat fl-ordni; u,

(b) restrizzjonijiet fuq il-moviment tal-persuna kkonċernata, inkluż moviment f'hinijiet preskritti tal-ġurnata:

Iżda n-nuqqas min-naħa tal-persuna kkonċernata li ttrisspondi jew tikkuntattja lill-awtorità responsabbli għandu wkoll jikkostitwixxi "ksur" jew "ksur suspettat";

Kap. 586.

"Kummissarju" tfisser il-Kummissarju għall-Infurmazzjoni u l-Protezzjoni tad-*Data* stabbilit taħt l-artikolu 11 tal-Att dwar il-Protezzjoni u l-Privatezza tad-*Data*;

"Ministru" tfisser il-Ministru responsabbli għall-intern;

"ordni ta' monitoraġġ elettroniku" tfisser l-ordni maħruġ mill-Qorti, il-Bord tal-*Parole* jew l-Aġenzija għas-Servizzi Korretivi li tippreskrivi l-monitoraġġ tal-movimenti ta' persuna kkonċernata permezz ta' apparat elettroniku sigur, hekk kif stabbilit fl-Iskeda I;

"persuna kkonċernata" tfisser il-persuna li fil-konfront tagħha nħareġ ordni ta' monitoraġġ elettroniku taħt l-artikolu 4, 5 jew 6;

Kap. 164

"Pulizija" tfisser il-Korp tal-Pulizija ta' Malta kif stabbilit taħt l-artikolu 3 tal-Att dwar il-Pulizija;

"qorti" tfisser il-Qorti tal-Maġistrati fil-ġurisdizzjoni tagħha bħala Qorti ta' Ġudikatura Kriminali jew bħala Qorti Istruttoria, il-Qorti Kriminali u l-Qorti tal-Appell Kriminali;

"sistema ta' monitoraġġ elettroniku" tfisser is-sistema li biha l-movimenti ta' persuni meħtieġa li jilbsu jew iġorru apparat ta' monitoraġġ elettroniku għall-finijiet tal-Att jiġu rintraċċati fuq bażi ta' erbgħa u għoxrin (24) siegħa minn kamra tal-kontroll; u

""tbaġħbis" tfisser kwalunkwe att li jinterferixxi ma' jew huwa kapaċi li jinterferixxi mal-funzjonament xieraq tal-apparat elettroniku ta' monitoraġġ jew li jfixkel, jew huwa kapaċi li jfixkel, it-trasmissjoni tas-sinjal ta' monitoraġġ tal-apparat ta' monitoraġġ elettroniku.

Prinċipji ġenerali.

**3.** (1) Ordni ta' monitoraġġ elettroniku jista' jinħareġ minn Qorti wara sentenza jew wara l-ħruġ ta' miżura alternattiva ta' detenzjoni mill-Aġenzija għas-Servizzi Korrettivi jew il-Bord tal-*Parole*:

Iżda ordni ta' monitoraġġ elettroniku għandu jinħareġ biss jekk il-persuna konċernata taġħti l-kunsens taġħha u tiffirma l-formola preskrutta taħt l-Iskeda I.

(2) Kull fejn il-persuna konċernata tikser kwalunkwe mill-kundizzjonijiet marbuta mal-ordni ta' monitoraġġ elettroniku, l-ordni ta' monitoraġġ elettroniku taġħha jista' jiġi rivedut jew irtirat mill-awtorità emittenti skont il-gravità' tal-ksur.

ħruġ ta' ordni ta' monitoraġġ  
elettroniku  
mill-Qrati tal-Ġustizzja.  
Kap. 260.

**4.** Ordni ta' monitoraġġ elettroniku jista' jinħareġ minn Qorti lil persuna konċernata li tkun ingħatat sentenza ta' mhux aktar minn sena (1) ħabs:

Iżda dak l-ordni ma għandux japplika meta l-persuna konċernata tinstab ħatja ta' reat li jista' jkun soġġett għal aktar minn sentejn (2) priġunerija, jew huwa reat jew ċirkostanza elenkata fl-Iskeda II:

Iżda wkoll l-ordni ta' monitoraġġ elettroniku għandu, wara l-kunsens u l-firma tal-formola stabilita fl-Iskeda I, jissospendi lill-persuna konċernata milli tkun miżmuma l-ħabs.

ħruġ ta' ordni ta' monitoraġġ elettroniku  
mill-Uffiċjal Kap Eżekuttiv  
tal-Aġenzija għas-Servizzi Korrettivi.  
L.S. 260. 05.

**5.** Ordni ta' monitoraġġ elettroniku għandu jinħareġ mill-Uffiċjal Kap Eżekuttiv tal-Aġenzija għas-Servizzi Korrettivi fir-rigward ta' kull priġunier ikkundannat li jingħata *leave* mill-ħabs skont ir-regolament 61 tar-Regolamenti dwar il-ħabs:

Iżda l-ordni ta' monitoraġġ elettroniku jista' jiġi revokat mill-Uffiċjal Kap Eżekuttiv tal-Aġenzija għas-Servizzi Korrettivi li jaġixxi fuq il-parir ta' professjonist mediku kompetenti fir-rigward ta' priġunieri kkundannati li jkunu qegħdin taħt trattament fi sptar.

Hruġ ta' ordni ta' monitoraġġ elettroniku mill-Bord tal-*Parole*.  
Kap. 516.

6. Ordni ta' monitoraġġ elettroniku jista' jinħareġ mill-Bord tal-*Parole* fir-rigward ta' priġunier li jingħata *parole* skont l-Att dwar il-Ġustizzja Riparatrici.

Awtorità responsabbli.

7. (1) L-awtorità responsabbli għandha takkwista u żżomm apparat ta' monitoraġġ elettroniku u għandha tkun responsabbli:

(a) li tiġi żgurata sistema sigura ta' monitoraġġ elettroniku, fejn persuni mhux awtorizzati ma jistgħux jaċċessaw id-*data*;

(b) li tissorvelja l-persuna konċernata u tagħmel kuntatt immedjat ma' dik il-persuna skont ir-regolamenti rilevanti;

(ċ) għall-irkupru u l-analiżi tal-informazzjoni, f'każ li jkun suspettat li l-persuna konċernata kisret il-kondizzjonijiet ta' monitoraġġ, f'liema każ għandha taġixxi skont id-dispożizzjonijiet ta' dan l-Att, u tipprovdi informazzjoni lill-awtorità emittenti;

(d) li tiġbor informazzjoni, fuq talba tal-Pulizija, kull meta l-persuna konċernata tkun soġġetta għal investigazzjoni kriminali; u,

(e) tirrapporta kwalunkwe ksur suspettat tal-ordni ta' monitoraġġ elettroniku skont dan l-Att.

(2) L-awtorità responsabbli għandha tinstalla apparat ta' monitoraġġ elettroniku u tassigura li kull *tag* elettronika li għandha tintlibes mill-persuna konċernata tkun kif meħtieġ, filwaqt li tassigura li *tags* elettronici ma jikkawżawx uġiġh fiżiku jew dwejjaq.

(3) L-awtorità responsabbli tista' twettaq żjarat mhux mistennija fil-post ta' residenza jew kwalunkwe post tax-xogħol jew kwalunkwe post ieħor fejn il-persuna konċernata għandha twettaq kwalunkwe xogħol fil-komunità jew attività oħra, sabiex:

(a) tispezzjona *t-tag* u, jew kwalunkwe apparat ieħor relatat mal-monitoraġġ elettroniku;

(b) twettaq manutenzjoni tal-apparat imsemmi;

(ċ) tivverifika li l-kondizzjonijiet marbuta mal-ordni ta' monitoraġġ elettroniku qegħdin jiġu osservati mill-persuna konċernata; jew

(d) għal kwalunkwe skop ieħor relatat mal-ordni ta' monitoraġġ elettroniku.

Arrest jew detenzjoni tal-persuna konċernata wara  
sejha lura temporanja mahruġa  
skont ir-regolamenti.

**8.** Minkejja d-dispożizzjonijiet ta' kwalunkwe liġi oħra, il-persuna konċernata tista' tiġi arrestata mingħajr mandat mill-Maġistrat jew tinqabad u tittiehed il-ħabs minn uffiċjali tas-Servizzi Korrettivi, fil-każ li l-persuna konċernata ma tkunx tista' tiġi kkuntattjata mill-awtorità kompetenti, jew jekk il-ksur suspettat jipersisti.

Persuna  
konċernata.

**9.** (1) Il-persuna konċernata għandha tobdi kull ordni relatata mal-manutenzjoni tal-apparat ta' monitoraġġ elettroniku, bħall-iċċarġjar mill-ġdid tal-batteriji, skont l-istruzzjonijiet mahruġa mill-awtorità responsabbli.

(2) Il-persuna konċernata għandha tinforma lill-awtorità responsabbli jekk tkun taf jew tissuspetta li l-apparat elettroniku huwa difettuż.

Reati.

**10.** (1) Kull persuna mhux awtorizzata, inkluża l-persuna konċernata, li tipproma jew xjentement u deliberatament tbaġħbas jew tneħhi l-apparat ta' monitoraġġ elettroniku għandha titqies li tkun wettqet reat u tkun soġġetta, meta tinsab hatja, għal priġunerija ta' mhux inqas minn sitt (6) xhur u mhux aktar minn sentejn (2) u għal multa ta' mhux inqas minn tmien mitt euro (€800) u mhux aktar minn ħamest elef euro (€5,000) jew għal multa u priġunerija flimkien:

Iżda għandha tkun difiża għal persuna miġjuba quddiem il-Qorti għat-tneħhija tal-apparat tal-monitoraġġ elettroniku imsemmi, li tipproma għas-sodisfazzjon tal-Qorti li l-apparat tneħha f'sitwazzjoni ta' emerġenza.

(2) Kull persuna li taġixxi bi ksur ta' xi dispożizzjoni ta' dan l-Att li fir-rigward tagħha ma hemmx reat stabbilit taħt xi artikolu ieħor ta' dan l-Att tkun hatja ta' reat u tkun soġġetta għal terminu ta' priġunerija ta' mhux aktar minn sitt (6) xhur, jew għal multa ta' mhux inqas minn mitejn u ħamsin euro (€250) u mhux aktar minn seba' mitt euro (€700), jew għal multa u priġunerija flimkien.

Setgħa tal-Ministru  
sabiex jagħmel regolamenti.

**11.** Il-Ministru jista' jagħmel regolamenti biex jagħti effett aħjar lil xi waħda mid-dispożizzjonijiet ta' dan l-Att u għat-twertiq aħjar ta' xi waħda mid-dispożizzjonijiet ta' dan l-Att u, mingħajr preġudizzju għall-ġeneralità ta' dak imsemmi qabel, jista' b'dawn ir-regolamenti:

(a) jistabbilixxi proċeduri relatati mal-monitoraġġ elettroniku ta'persuni li fil-konfront tagħhom inħareġ ordni ta' monitoraġġ elettroniku;

(b) jippreskrivi aktar kondizzjonijiet li għandhom x'jaqsmu ma' persuni li fir-rigward tagħhom inħareġ ordni ta' monitoraġġ elettroniku; u

(ċ) jemenda l-Iskeda II billi jżid jew inaqqas reati.

## TAQSIMA II Regolatur tal-Monitoraġġ Elettroniku

Regolatur tal-monitoraġġ elettroniku.

**12.** (1) Il-President, fuq il-parir tal-Kabinett tal-Ministri, għandu jahtar Regolatur tal-Monitoraġġ Elettroniku, li jista' jkun:

(a) membru rtirat tal-ġudikatura, jew

(b) Avukat Ġenerali irtirat; jew

(ċ) impjegat tas-Servizz Pubbliku rtirat, li serva jew bħala Segretarju Permanenti jew Direttur Ġenerali, jew ekwivalenti, għal minimu ta' tliet (3) snin.

(2) Ir-Regolatur għandu jinħatar għal perjodu ta' tliet (3) snin u għandu jkun eliġibbli għal haħtra mill-ġdid. Ir-Regolatur għandu jibqa' fil-kariga sakemm jinħatar is-suċċessur tiegħu.

(3) Ir-Regolatur jista' jitneħħa mill-kariga biss mill-President li jaġixxi fuq il-parir tal-Kabinett tal-Ministri, jekk ikun ipprovat li mhuwiex f'pożizzjoni li jaqdi l-funzjonijiet ta' Regolatur jew imġieba hażina pruvata.

(4) Ir-Regolatur għandu jissorvelja l-implimentazzjoni tad-dispożizzjonijiet ta' dan l-Att u r-regolamenti tiegħu mill-awtorità responsabbli. Ir-Regolatur jista' jwettaq spezzjonijiet, inklużi spezzjonijiet għall-għarrieda, fi kwalunkwe post aċċessibbli għall-awtorità responsabbli, kif ukoll fil-kamra tal-kontroll u kull faċilità oħra mħaddma mill-awtorità responsabbli skont dan l-Att.

(5) Ir-Regolatur għandu jissottometti lill-Ministru, sal-aħħar ta' Ġunju tas-sena kalendarja ta' wara, rapport annwali dwar l-implimentazzjoni tad-dispożizzjonijiet ta' dan l-Att mill-awtorità responsabbli, liema rapport għandu jinkludi wkoll, fejn meħtieġ, rakkomandazzjonijiet għal titjib, liema rakkomandazzjonijiet jistgħu jkunu leġislattivi jew operattivi. Ir-rapport għandu jitressaq fil-Parlament mill-Ministru.

### TAQSIMA III Protezzjoni tad-*Data*

Protezzjoni tad-*data*.

L.S. 586. 08.

**13.** (1) Ebda haġa f'dan l-Att jew f'xi regolamenti oħra mahruġa tahtu ma għandha tippregudika l-applikabbiltà tar-Regolamenti dwar il-Protezzjoni tad-*Data* (Ipproċessar ta' *Data* Personali minn Awtoritajiet Kompetenti għall-Finijiet tal-Prevenzjoni, l-Investigazzjoni, is-Sejbien jew il-Prosekuzzjoni ta' Reati Kriminali jew l-Eżekuzzjoni ta' Pieni Kriminali) u d-drittijiet u l-libertajiet fundamentali tas-sugġetti tad-*data*.

L.S. 586. 08.

(2) Fejn l-awtorità responsabbli fil-kapaċità tagħha ta' kontrollur tad-*data* tipproċessa *data* personali tal-persuni konċernati, għandha tikkonforma mal-prinċipji marbuta mal-ipproċessar ta' *data* personali skont ir-regolament 4 tar-Regolamenti dwar il-Protezzjoni tad-*Data* (Ipproċessar ta' *Data* Personali minn Awtoritajiet Kompetenti għall-Finijiet tal-Prevenzjoni, l-Investigazzjoni, is-Sejbien jew il-Prosekuzzjoni ta' Reati Kriminali jew l-Eżekuzzjoni ta' Pieni Kriminali). Is-Sistema ta' Monitoraġġ Elettroniku għandha taħżen id-*data* indikata fl-**Iskeda III**.

(3) Il-kontrollur, b'kont meħud tan-natura, l-ambitu, il-kuntest u l-finijiet tal-ipproċessar kif ukoll ir-riskji ta' probabbiltà u gravità diversa għad-drittijiet u l-libertajiet tal-persuni konċernati, kemm fil-ħin tad-determinazzjoni tal-mezzi għall-ipproċessar u fiż-żmien tal-ipproċessar innifsu, għandu jimplementa miżuri tekniċi u organizzattivi adatti, b'mod effettiv u biex jintegraw is-salvagwardji meħtieġa fl-ipproċessar, sabiex tali miżuri jipproteġu d-drittijiet tal-persuni konċernati.



(4) Fejn l-ipproċessar għandu jitwettaq mill-proċessur f'isem il-kontrollur, il-kontrollur għandu juża biss proċessuri li jipprovdu biżżejjed garanziji biex jimplimentaw miżuri tekniċi u organizzattivi adatti skont is-subartikolu (3).

(5) L-uffiċjal tal-protezzjoni tad-*data* mahtur mill-kontrollur għandu jiġi kkonsultat fil-ħin qabel l-implimentazzjoni tas-sistema ta' monitoraġġ elettroniku u fil-ħin tal-operazzjonijiet tal-ipproċessar.

(6) Il-kontrollur għandu jiżgura li ssir valutazzjoni tal-impatt tal-protezzjoni tad-*data* qabel ma ssir l-implimentazzjoni tas-sistema ta' monitoraġġ elettroniku.

(7) Il-kontrollur għandu jżomm dokumentazzjoni relatata mas-sistema tal-ipproċessar, inklużi l-utenti u r-reġistri tas-sistema, u għandu jkun disponibbli, fuq talba lill-Kummissarju.

Żamma  
ta' *data* personali.

**14.** Id-*data* personali kollha pproċessata għall-iskop ta' dan l-Att u r-regolamenti maħruġa tahtu, għandha tinzamm għal perjodu ta' sena (1) mid-*data* tat-tmiem tal-ordni ta' monitoraġġ elettroniku.

Aċċess awtorizzat għas-sistema  
ta' monitoraġġ elettroniku.

**15.** (1) L-awtorità responsabbli għandha tiżgura li l-aċċess fiżiku u, jew elettroniku għas-sistema ta' monitoraġġ elettroniku jingħata strettament lil persuna awtorizzata mill-Uffiċjal Kap Eżekuttiv ibbażat fuq mekkaniżmu ta' kontroll ta' aċċess.

(2) L-awtorità responsabbli għandha tagħmel l-arranġamenti meħtieġa biex tippermetti lill-Pulizija, fit-twettiq tad-dmirijiet tagħhom, li jkollhom aċċess għall-informazzjoni li tinsab fis-sistema ta' monitoraġġ elettroniku għall-finijiet tal-prevenzjoni, investigazzjoni, sejbien u prosekuzzjoni ta' reati kriminali.

(3) Kwalunkwe aċċess għal u użu tas-sistema ta' monitoraġġ elettroniku għandu jiġi rreġistrat permezz ta' sistema ta' *audit trail*.

## Formola tal-Firma għall-Ordni ta' Monitoraġġ Elettroniku u Kondizzjonijiet

Data: Illum,

Ordni maħruġ bħala awtorita' emittenti

Ordni ta' monitoraġġ elettroniku qiegħed jigi maħruġ fir-rigward ta' ..... (isem u kunjom), ..... (Numru tal-ID/Numru tal-Passaport/ Numru tal-Permess ta' Residenza), hawn 'il quddiem imsejha l-persuna konċernata. Il-persuna konċernata hawn tagħti l-kunsens u taqbel ma' dan l-ordni u tintrabat li tirsipetta l-Liġijiet ta' Malta, id-dispożizzjonijiet tal-Att dwar il-Monitoraġġ Elettroniku, u kwalunkwe kondizzjoni rilevanti għall-ordni u l-kondizzjonijiet li ġejjin:

Li huwa ser joqgħod f'

Li ser jithalla jaħdem f'

Li għandu jmur lura fir-residenza indikata mhux aktar tard minn..... filgħaxija u ma joħroġx mir-residenza qabel..... ta' filgħodu

Li ma jersaqx lejn il-lokalitajiet

Li ma jitlaqx mill-gzejjer Maltin mingħjar il-kunsens minn qabel tal-awtorità emittenti.

Il-persuna konċernata tifhem ukoll, tagħti l-kunsens u taqbel, f'dan ir-rigward, li hija meħtieġa li twettaq kompiti ta' manutenzjoni tal-apparat skont l-artikolu 8 tal-Att dwar il-Monitoraġġ Elettroniku.

Il-persuna konċernata tifhem li tista' tinzamm taħt arrest jew tista' tiflew il-benefiċċji mogħtija bis-saħħa ta'din l-ordni fil-każ ta' suspett ta' ksur tal-kondizzjonijiet, sakemm tittiehed deċiżjoni dwar il-każ skont il-legislazzjoni applikabbli.

Iffirmat

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Awtorità Emittenti

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Persuna Koncernata

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SKEDA II  
(l-ewwel proviso tal-artikolu 4)

<b>Legislazzjoni</b>	<b>Kapitolu jew A.L</b>	<b>Dispożizzjoni/ Deskrizzjoni</b>
Kodiċi Kriminali	Kap. 9	artikolu 338 (z)
Kodiċi Kriminali	Kap. 9	artikolu 338 (ll)
Kodiċi Kriminal u Vjolenza a bażi ta' Ġeneru u Vjolenza Domestika	Kap. 9 u Kap 581	Kull reat li jaqa' taht it-tifsira tal-artikolu 2 tal-Kap 581 u kwalunkwe reat imwettaq kontra l-persuni elenkati fl-artikolu 202(h) u (i) tal-Kap. 9
Att dwar Reġistrazzjoni għall-Protezzjoni tal-Minuri	Kap. 518	Kull persuna li isimha huwa rreġistrat fir-reġistru mwaqqaf skont artikolu 3 tal-Kap. 518.

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SKEDA III  
(artikolu 13)

*Data* maħżuna fis-Sistema ta' Monitoraġġ Elettroniku:

- (a) Isem u Kunjom;
- (b) Numru tal-Karta tal-Identità, Numru tal-Permess ta' Residenza, jew Numru tal-Passaport jew Numru ta' Dokument ta' Identifikazzjoni ieħor;
- (ċ) Indirizz Residenzjali (fejn applikabbli);
- (d) Awtorità Emittenti;
- (e) It-Tul tal-Ordni;
- (f) Kondizzjonijiet li għandhom jiġu osservati (eż. *curfew*, postijiet li ma jistgħux jiġu avvicinati mill-persuna konċernata); u
- (g) *Data* dwar il-Lok:

Iżda minflok l-informazzjoni fil-paragrafi (a), (b) u (ċ), l-awtorità responsabbli tista' ddaħħal numru ta' identifikazzjoni uniku.

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**A Bill  
entitled**

*AN ACT to establish an electronic monitoring system for sentenced persons with a view to monitoring the movements of a person subject to **the electronic monitoring system** by means of a secure electronic device and to provide for matters connected therewith or ancillary thereto*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

ARRANGEMENT OF ACT

		Articles
Part I	General Provisions	1-11
Part II	Electronic Monitoring Regulator	12
Part III	Data Protection	13-15
	Schedule I	
	Schedule II	
	Schedule III	

Short title and commencement.

PART I  
General Provisions

1. (1) The short title of this Act is the Electronic Monitoring Act, 2021.

(2) This Act shall come into force on such date or dates as the Minister responsible for Home Affairs may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this Act.

Interpretation.

2. In this Act, unless the context otherwise requires:

"Act

" means the Electronic Monitoring Act;

"breach" and "suspected breach" mean any act that contravenes or may contravene the conditions that may be prescribed in the electronic monitoring order, including but not limited to:

(a) restrictions of access or a prohibition for the person concerned to enter any premises identified in the order; and,

(b) restrictions on the movement of the person concerned, including movement at prescribed times of the day:

Provided that failure on the part of the person concerned to respond or

contact the responsible authority shall also constitute a "breach" or "suspected breach";

Cap. 586.

"Commissioner" means the Information and Data Protection Commissioner established under article 11 of the Data Protection Act;

"Court" means the Court of Magistrates in its jurisdiction as a Court of Criminal Judicature and Court of Criminal Inquiry, the Criminal Court and the Court of Criminal Appeal;

"electronic monitoring equipment" means any equipment, worn or otherwise, by means of which the movements of a person concerned are monitored for the purposes of the Act;

"electronic monitoring order" means the order issued by the Court, Parole Board or Correctional Services Agency prescribing the monitoring of the movements of a person concerned by means of a secure electronic device, as established in Schedule I;

"electronic monitoring system" means the system whereby the movements of persons required to wear or carry electronic monitoring equipment for the purposes of the Act are tracked on a twenty-four (24) hour basis from a control room;

"issuing authority" means the authority which is responsible for issuing an electronic monitoring order;



"Minister" means the Minister responsible for home affairs;

Cap. 516.

"Parole Board" means the Board established under article 8 of the Restorative Justice Act;

"person concerned" means a person who has been issued with an electronic monitoring order under article 4, 5 or 6;

Cap. 164.

"Police" means the Malta Police Force as established under article 3 of the Police Act;

S.L. 595. 32.

"responsible authority" means the Correctional Services Agency established by regulation 3 of the Correctional Services Agency (Establishment) Order; and

"tampers" means any act that interferes with or is capable of interfering with the proper functioning of the electronic monitoring equipment or which disrupts, or is capable of disrupting, the transmission of the monitoring tracking signal of the electronic monitoring equipment.

General principles.

**3.** (1) An electronic monitoring order may be issued by a Court following a judgment or following the issuing of an alternative measure to detention by the Correctional Services Agency or the Parole Board:

Provided that an electronic monitoring order shall only be issued if the person concerned gives his consent and signs the form prescribed Schedule I.

(2) Wherever the person concerned breaches any of the conditions imposed in the electronic monitoring order, the electronic monitoring order may be reviewed or withdrawn by the issuing authority according to the gravity of the breach.

Issuance of an electronic monitoring order  
by the Courts of Justice.  
Cap. 260.

**4.** An electronic monitoring order may be issued by a Court to a concerned person who was sentenced for not more than one (1) year of imprisonment:

Provided that such order shall not apply where the person concerned is found guilty of an offence which is liable to more than two (2) years of imprisonment: or is an offence or circumstance listed in Schedule II:

Provided further that the electronic monitoring order shall, following the consent and signature of the form established in Schedule I, suspend the person concerned from being confined in prison.

Issuance of an electronic monitoring order by the Chief Executive Officer  
of the Correctional Services Agency.  
S.L. 260. 03.

**5.** (1) An electronic monitoring order shall be issued by the Chief Executive Officer of the Correctional Services Agency in respect of any convicted prisoner who is granted prison leave in terms of regulation 61 of the Prisons Regulations:

Provided that the electronic monitoring order may be revoked by the Chief Executive Officer of the Correctional Services Agency acting on the advice of a competent medical professional in respect of convicted prisoners who are under treatment in a hospital.

Issuance of an electronic monitoring order  
by the Parole Board.  
Cap. 516.

6. An electronic monitoring order may be issued by the Parole Board in respect of a prisoner who is granted parole in accordance with the Restorative Justice Act.

Responsible authority.

7. (1) The responsible authority shall procure and maintain electronic monitoring equipment and shall be responsible for:

(a) ensuring a secure system of electronic monitoring, whereby unauthorised persons cannot access data;

(b) monitoring the person concerned and make immediate contact with that person in accordance with prescribed regulations;

(c) retrieving and analysing information, in case it is suspected that the person concerned has breached monitoring conditions, in which case it shall act in accordance with the provisions of this Act, and provide information to the issuing authority;

(d) retrieving information, on a Police request, whenever the person concerned is subject to a criminal investigation; and,

(e) reporting any suspected breach of the electronic monitoring order in accordance with this Act.

(2) The responsible authority shall install electronic monitoring equipment and secure any electronic tags to be worn by the person concerned as necessary, while ensuring that electronic tags do not cause physical pain or distress.

(3) The responsible authority may conduct unexpected visits to the place of residence or any place of work or any other premises where the person concerned is to perform any community work or other activity, in order to:

- (a) inspect the tag and, or any other equipment relating to electronic monitoring;
- (b) carry out maintenance of the said equipment;
- (c) verify that the conditions associated with the electronic monitoring order are being observed by the person concerned; or
- (d) for any other purpose related to the electronic monitoring order.

Arrest or detention of the person concerned following a temporary recall issued pursuant to the regulations.

## **8.**

Notwithstanding the provisions of any other law, the person concerned may be arrested without a warrant by the Magistrate or apprehended and taken to Prison by Correctional Services officials, in the event that the person concerned could not be contacted by the competent authority, or if the suspected breach persists.

Person concerned.

## **9.**

(1) The person concerned shall comply with any order relating to the maintenance of electronic monitoring equipment, such as recharging of batteries, in accordance with the instructions issued by the responsible authority.

(2) The person concerned shall inform the responsible authority should he know or suspect that the electronic equipment is faulty.

Offences.

**10.** (1) Any unauthorised person, including the person concerned, who attempts to or knowingly or deliberately tampers with or removes the electronic monitoring equipment device shall be guilty of an offence and shall be liable, on conviction, to imprisonment of not less than six (6) months and not more than two (2) years and to a fine (*multa*) of not less than eight hundred euro (€800) and not more than five thousand euro (€5,000) or to both such fine and imprisonment:

Provided that it shall be a defence for a person brought before the Court for the removal of the said electronic monitoring equipment to prove to the satisfaction of the Court that the electronic monitoring equipment was removed in a situation of emergency.

(2) Any person who acts in contravention of any provision of this Act in respect of which an offence is not established under any other article of this Act shall be guilty of an offence and shall be liable to imprisonment of not more than six (6) months, or to a fine (*multa*) of not less than two hundred fifty euro (€250) and not more than seven hundred euro (€700), or to both such fine and imprisonment.

Powers of the Minister  
to make regulations.

**11.** The Minister may make regulations to give better effect to any of the provisions of this Act and for the better performance of any of the provisions of this Act and, without prejudice to the generality of the foregoing, may by such regulations:

- (a) set out procedures in relation to the electronic monitoring of persons issued with an electronic monitoring order;
- (b) prescribe further conditions pertaining to persons in respect of whom an electronic monitoring order has been issued;
- (c) amend Schedule II by adding or removing therefrom offences.

## PART II Electronic Monitoring Regulator

Electronic monitoring  
regulator.

**12.** (1) The President shall acting on the advice of Cabinet of Ministers appoint an Electronic Monitoring Regulator, who may be

- (a) a retired member of the judiciary, or
- (b) a retired Attorney General or
- (c) a retired Public Service employee, who served either as a Permanent Secretary or a Director General, or equivalent, for a minimum of three (3) years.

(2) The Regulator shall be appointed for a period of three (3) years and shall be eligible for reappointment. The Regulator shall hold office until his successor is appointed.

(3) The Regulator may only be removed from office by the President acting on the advice of the Cabinet of Ministers on the grounds of proved inability to perform the functions of the office of the Commissioner or proved misbehaviour.

(4) The Regulator shall oversee the implementation of the provisions of this Act and its regulations by the responsible authority. The Regulator may carry out inspections, including unannounced inspections, at any premises accessible to the responsible authority, as well as the control room and any other facility operated by the responsible authority in terms of this Act.

(5) The Regulator shall submit to the Minister, by the end of June of the following calendar year, a yearly report on the implementation of the provisions of this Act by the responsible authority, which report shall also include, where necessary, recommendations for improvement, which recommendations may be legislative or operational. The report shall be tabled in Parliament by the Minister.

### PART III Data Protection

Data protection.  
S.L. 586. 08.

**13.** (1) Nothing in this Act or any other regulations issued thereunder shall prejudice the applicability of the Data Protection (Processing of Personal Data by Competent

Authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties) Regulations and the fundamental rights and freedoms of the data subjects.

S.L. 586. 08.

(2) Where the responsible authority in its capacity of data controller processes personal data of the persons concerned, it shall comply with the principles relating to the processing of personal data pursuant to regulation 4 of the Data Protection (Processing of Personal Data by Competent Authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties) Regulations. The Electronic Monitoring System shall store the data indicated in **Schedule IV**.

(3) The controller, taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of the concerned persons, both at the time of the determination of the means for processing and at the time of the processing itself, shall implement appropriate technical and organisational measures, in an effective manner and to integrate the necessary safeguards into the processing, in order to protect the rights of the concerned persons.

(4) Where processing is to be carried out by the processor on behalf of the controller, the controller shall only use processors providing sufficient guarantees to implement appropriate technical and organisational measures pursuant to sub-article (3).

(5) The data protection officer appointed by the controller shall be consulted in a timely manner prior to the implementation of the electronic monitoring system and at the time of the processing operations.

(6) The controller shall ensure that a data protection impact assessment is carried out prior to the implementation of the electronic monitoring system.

(7) The controller shall maintain documentation relating to the processing system, including users and system logs, and shall be made available, upon request to the Commissioner.

Retention  
of personal data.

**14.** All the personal data processed for the purpose of this Act and the Regulations issued thereunder, shall be retained for a period of one (1) year from the date of termination of the electronic monitoring order.

Authorised access to  
the electronic monitoring system.

**15.** (1) The responsible authority shall ensure that the physical and, or electronic access to the electronic monitoring system is strictly granted to personnel authorised by the Chief Executive Officer based on a role access control mechanism.

(2) The responsible authority shall make the necessary arrangements to enable the Police in the exercise of their duties to access the information contained in the electronic monitoring system for the purposes of the prevention, investigation, detection and prosecution of criminal offences.

(3) Any access to and use of the electronic monitoring system shall be recorded by means of an audit trail system.

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SCHEDULE I  
(article 3)

Electronic Monitoring Order Signature Form and Conditions

Date: Today, the

Order made by \_\_\_\_\_ as Issuing Authority.

An electronic monitoring order is hereby issued in respect of ..... (name and surname), ..... (ID No/ Passport No/Residence Permit No), hereinafter referred to as the person concerned. The person concerned hereby consents and agrees to this order and undertakes to abide by the Laws of Malta, the provisions of the Electronic Monitoring Act, and conditions relevant to the order and to the following conditions:

That he shall be residing at \_\_\_\_\_

That he shall be allowed to attend work at \_\_\_\_\_

That he retires at indicted residence by not later than \_\_\_\_\_pm and that he does not leave the said residence before \_\_\_\_\_am.

That he shall not confine in the localities of \_\_\_\_\_

That he does not leave the Maltese Islands without prior consent of the Issuing Authority

The person concerned also understands, consents and agrees in this regard, that he is required to carry out equipment maintenance tasks in accordance with article 8 of the Electronic Monitoring Act.

The person concerned understands that he may be detained or lose the benefits incurred as a result of this order in the event of a suspected breach of conditions, until such time as a decision is taken on the case in terms of applicable legislation.

Signed

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Issuing Authority

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Person Concerned

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SCHEDULE II  
(first proviso to article 4)

<b>Legislation</b>	<b>Chapter or S.L</b>	<b>Provision/Description</b>
Criminal Code	Cap. 9	article 338(z)
Criminal Code	Cap. 9	article 338(ll)
Criminal Code and Gender-based Violence and Domestic Violence	Cap. 9 and Cap. 581	Any offence that falls under the definition of article 2 of Cap. 581 and any offence committed against the persons listed in article 202(h) and (i) of Cap. 9
Protection of Minors (Registration) Act	Cap. 518	Any person whose name is registered in the Register established in accordance with article 3 of Cap. 518.

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SCHEDULE III  
(article 13)

Data stored in the Electronic Monitoring System:

- (a) Name and Surname;
- (b) Identity Card Number, Residence Permit Number, or Passport or other Identification Document Number;
- (c) Residential Address (where applicable);
- (d) Issuing Authority;
- (e) Duration of the Order;
- (f) Conditions to be Observed (e.g. curfew, premises that may not be approached by person concerned); and
- (g) Location Data:

Provided that instead of the information in paragraphs (a), (b) and (c), the responsible authority may enter a unique identification number.

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