



# THE ROLE OF INFORMATION TECHNOLOGY IN DEVELOPING INVESTIGATION AND MONITORING PROCEDURES IN JORDANIAN CRIMINAL LAW

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<b>Received:</b> September 7 <sup>th</sup> 2023 <b>Accepted:</b> October 6 <sup>th</sup> 2023 <b>Published:</b> November 10 <sup>th</sup> 2023	Scientific progress clearly affects the reality it encounters. This tremendous development that follows the communications system has had a great impact on reality and the law with regard to crimes, to the point that they have become of a special nature in terms of the means by which they are committed on the one hand and on the other hand the location in which they are located and in terms of the perpetrators who commit to them, until there has become a partnership between artificial intelligence and artificial intelligence. Human. Legislation has tried to benefit from technology by searching for alternatives to short-term custodial punishments in many contemporary penal systems, and shedding light on electronic monitoring as one of those alternative punishments, where the convict can carry out his sentence outside the penal institution through electronic monitoring, and thus we eliminate On the disadvantages resulting from his presence in the penal institution

**Keywords:** Investigation procedures / surveillance / electronic inspection / electronic bracelet / criminal law

## INTRODUCTION

Modern criminal policy is on its way to limiting the disadvantages of short-term sentences that deprive people of freedom during supervision, which are still applied in countries around the world without any concern for the negative effects that befall the convict. Therefore, the so-called electronic monitoring system was found to be the clearest alternative to short-term freedom-depriving punishments. Because it is linked to scientific and technological development, it is considered a big cry at this present time, because the convict can live among his family and colleagues, but with limited freedom of movement through a device placed on his leg or hand in the form of an electronic bracelet, so the convict spends his sentence in a free field in which he lives his life normally. He stays away from the environment that exists within the penal institution

### The problem research

Is electronic monitoring, using an electronic bracelet, an effective alternative to short-term custodial punishment? What are the problems that hinder its application?

Given that inspection, uh, is the procedure through which electronic evidence arrives, we find the next question: Has the Jordanian legislator allocated rules that address inspection of electronic means??

### Importance

The importance of researching the "electronic monitoring system via the electronic bracelet" is due to the advantages that this system has for both society and the accused. One of the most prominent features of the system is the protection of human rights, by keeping the accused away from bad penal institutions, many of which studies have confirmed have negative effects on The accused, whether the effects are psychological or physical.....etc (Al-Youssef, 2003, p. 71)

## RESEARCH METHODOLOGY

In this study, the researcher relied mainly on the descriptive analytical approach by analyzing legal texts and discussing the opinions of criminal law jurists.

## THE FIRST TOPIC

### Using technology in investigation procedures

There are many uses of communication technology and automated media, and it has several advantages and disadvantages in the context of combating terrorism.MTherefore, the judicial police worked to use this technology by



employing it properly and correctly within the framework of the investigation and search procedures for the crime, by controlling it in line with the general rules of investigation and research.

## **THE FIRST REQUIREMENT**

### **Electronic inspection as one of the investigation procedures**

Inspection is one of the most important procedures for investigating and investigating crimes. It is a traditional procedure, but it has undergone several developments in its application, especially in the presence of crimes characterized by a technical and electronic nature.

## **FIRST BRANCH**

### **The concept of electronic inspection**

Longer electron inspection A new procedure in electronic crimes due to the novelty of these crimes, but search remains a procedure that has been known since ancient times. We find the linguistic definition of search, which is derived from the verb search. In linguistic terminology, it means asking about something and investigating its request by seeking, researching, and exploring. In this sense, it refers to every search with human freedom. The terminological meaning is searching and extracting what has been hidden, including searching the house.(Al-Khathami, 2011, p. 20)

Definition of electronic inspection. Jurisprudence has differed over the term inspection in the virtual environment, as some considered it to be focused on software systems, websites and electronic pages, and therefore the more accurate term is access or access, while another direction went, which is what we support by keeping the term inspection. Being general, it includes traditional inspection and electronic inspection (Al-Mana, 2011, p. 299)

The purpose of the search is to search in the secret repository for facts that are related to the crime and that contribute to revealing its truth, that fact that may lead to proving the occurrence of the crime in the first place and then linking the crime to the perpetrator by proving his innocence or conviction. These electronic means may contain pictures and files... etc. The inspection and seizure of evidence contributes to the formation of...

Some examples of which I have already mentioned include a very large amount of images, files, etc. The inspection and seizure of evidence contribute to forming the emotional conviction of the judge, as the inspection has two goals: revealing the truth and ensuring the right to defence. This has prompted attention to this evidence that comes from these electronic means.

### **Second section**

#### **Inspection guarantees in the electronic environment**

Although inspection is considered one of the essential procedures in the process of investigating the truth of crimes, most procedural laws are keen to surround it with a set of legal guarantees, in order to avoid the arbitrariness of the search and reasoning authorities, and the assault that it could cause on the rights and freedoms of individuals and the sanctity of truth. The state, representing society, has the right to uncover the mystery of crimes in their homes and private lives on the one hand, and to follow up on their perpetrators and impose punishment on them on the other hand. We must not understand that inspection is arbitrary but rather subject to conditions, which are

In the absence of special and detailed provisions for the requirements and conditions for conducting electronic inspection, it is necessary to return to the general provisions for inspection

Implementing them, the conditions achieve two important goals: revealing the truth and achieving defense guarantees. These conditions include conditions such as the objectivity and formality of the inspection, which are:

1 - The occurrence of a crime: This condition is considered one of the most important conditions for inspection, as it is not permissible to search for crimes that may occur in the future.

The reason for this is that the inspection is an investigative procedure aimed at searching for evidence to prove a crime, not to reveal it (Al-Saeed, 2005, p. 449) (Namour, 2005, pp. 252-353). Articles 33 and 81 of the Code of Criminal Procedure 6 indicate

This condition applies when searching homes, and this legal rule also applies to searching electronic means, as a crime must have been committed and there is a reason to search for the truth in its secret repository (Tawalbeh, 2003, p. 58).

-The owner or person responsible for the electronic means must be suspected of being an actor, accomplice, or accomplice in a crime.

This condition leads to the confirmation that this evidence extracted from the inspection may be useful in revealing the truth about a crime committed, whether it is a traditional crime or an electronic and information crime. This requires that there be strong evidence and indications that the owner of these means or the person responsible for them has committed the crime. Or participate in it or interfere in it, and the matter of assessing these emirates is left to the competent court.



3 - The presence of signs and strong indications of the presence of things in electronic media that are useful in revealing the truth: This condition is linked to the previous one, as there must be signs and indications that there are intangible things in certain electronic media and means that may be useful in revealing the truth and may amount to being reliable evidence. He must prove the guilt or innocence of the accused. If there are no signs or indications that indicate the presence of things useful in the investigation, then what is the justification for searching and violating people's freedoms?

4 - That the inspection be carried out by the authority competent to do so: which is the Public Prosecution in Jordan as one of the investigation procedures. This authority may delegate the judicial police to carry out this inspection, provided that the judicial police employee adheres to the delegation order. We believe that this condition and stipulation explicitly state the role of the judicial police in electronic inspection. The importance and wisdom of inspecting electronic means requires certain experience that the public prosecutor may not have - who may elect someone who has experience to conduct this inspection - and the police services have created some sections concerned with electronic crimes and provided them with technical personnel who possess the experience that enables them to Carrying out electronic inspection with the experience they possess, reinforced by some of the devices available to them, and the practical reality shows that some cases in which inspection is carried out are conducted with the consent of the owner of the electronic means, as the defendant here has waived his freedom, and this is his right, and then the inspection has its legal effects (Numour (2005, p. 357). This does not negate the obligation to fulfill some conditions in consenting to the inspection so that its legal results can be relied upon, including that it be issued without permission. nHe owns these electronic means, and that

Consent must come from a free and clear will, as the defendant may consent to the electronic search because he is embarrassed by who is carrying it out, especially if he is a member of the judicial police. The search must also come from a legally recognized will. Finally, consent to the search should be issued by someone who knows that he has the right to refuse to carry out the search.

The rules imposed by the legislator for the presence of the suspect, the defendant, or his representative in any case apply to electronic inspection

Its absence, which is considered one of the most important inspection guarantees that achieves two purposes: Revealing the truth and defending the defendant, as the necessity of electronic inspection comes due to the susceptibility of this system to change, modification, and damage (Namour, 2005, p. 358), and thus its occurrence is a reason to challenge the integrity of the inspection procedures, and on the other hand, to acknowledge the interests of the defendant to defend himself.

Time for electronic inspection: The Jordanian legislator did not specify a time for conducting the inspection, leaving it at that. The public prosecutor is the one who makes the decision. With that

Organizing a report on the inspection incident: This rule was confirmed by Article 13 of the Cybercrime Law when it required the judicial police to prepare a report on the inspection, and this is nothing but an affirmation of the principle of recording investigation procedures.

He did not specify a form for the minutes, which requires that the general rules in the minutes be applied to it (Harwal, 2007, p. 263).

It should be noted that the person conducting the search must be committed to the purpose for which the search was conducted. If the search is for a photo that the accused took of his victim, the matter may not go beyond that to search for a sound file or something else, and he must stop once he finds what he wanted.

However, if by pure chance, before reaching the point of searching, for example, a file or image representing another crime appears to him, then it is subject to the rules of flagrante delicto and may be seized, while continuing the search after finding what is sought is an extreme transgression that results in its invalidation. The bottom line is that it is not permissible to exceed the purpose of the inspection.

One of the most important things that the inspection aims to do is search for what reveals the truth of the crime, whether by proving its occurrence and linking it to the perpetrator, and seizing the results of the inspection as evidence that can be used during the investigation, or by proving that there is no connection to it through the electronic means in which the search was conducted. This evidence is called Extracted from electronic inspection of digital evidence or electronic evidence, and this digital evidence is distinguished by a set of advantages over its counterparts, physical evidence, including that uploading and storing a copy of this evidence does not affect the original copy of it, and attempts to tamper with the evidence can be identified if they occur, and the relative difficulty in erasing Evidence, and it may be

The movements of the perpetrator to erase another evidence against him and the speed in seizing the evidence, which the virtual world is considered a stage for despite its presence in the farthest corners of the world spatially, and it may be extracted from the electronic means or the electronic medium depending on the movements and behavior of the perpetrator, and thus it may affect the amount of punishment decided by the court. This is from Side



On the other hand, there are disadvantages that are presented against digital evidence, the first of which is the ease of tampering with and erasing evidence, the suspicion of voluntary or involuntary distortion, and the lack of experience of the people involved in electronic inspection. However, despite these defects that may plague the evidence, the science of digital evidence is constantly evolving to keep pace with the means that criminals use to commit crimes.

### **The second requirement**

#### **Electronic inspection in Jordanian law**

The Jordanian legislator has authorized electronic inspection, and it should be noted that the Jordanian judiciary has not issued provisions dealing with electronic inspection, neither in light of the repealed Information Systems Crimes Law nor in the Electronic Crimes Law.

### **First branch**

#### **Definition of electronic inspection**

A side of jurisprudence has emerged (Al-Manasa, 2001, p. 164) that believes that inspection does not aim to collect physical evidence, which is not available in these means that consist of data and files located in a magnetic or electrical form. This side believes that legislative amendments must be made to include that. Means as a place for inspection, while the Jordanian legislator did not include any special texts for inspecting electronic means in the Code of Criminal Procedure, and these texts permitted the seizure of anything - in an absolute manner.

It can be a source of inference and has a link to the crime, and this term "things" includes material and moral things that lead to revealing the truth as long as it is mentioned in absolute terms. Among the moral things is what electronic media and means can contain. The Jordanian legislator increased the Electronic Crimes Law - which replaced the Information Systems Crimes Law. No. 30 of 2010, where Article 13/A permitted the inspection of electronic means. This article stipulates that:

The same article requires the person conducting the inspection to prepare a report, and this only confirms that this procedure must be recorded in order to be subject to discussion before the court.

The law punishes unauthorized entry into any website or information system, or even in excess of or in violation of the authorization, with imprisonment for a period not exceeding to for a period of one week and not to exceed three months, or to a fine not exceeding 300,000 to Less than 100 dinars and not more than 200 dinars, or both of these penalties. The penalty for the crimes stipulated in Articles 3 to 6 of the same law was doubled against anyone who commits any of them during the performance of his job or work or by exploiting any of them, which gives an indication of the importance that the legislator has attached to protecting these electronic means and what they contain, even if they exceed or Whoever performed his job violated the purpose required of him

Taking into account the terms and conditions stipulated in the legislation in force and taking into account the personal rights of the defendant, judicial police officers may, after obtaining permission from the competent public prosecutor or from the competent court, enter any place that evidence indicates that it will be used to commit any of the crimes stipulated in this law. They may also search. Devices, tools, programs, operating systems, the information network, and means that evidence indicates are used to commit any of these crimes. In all cases, the employee who conducted the inspection must prepare a report on this and submit it to the competent public prosecutor.

By analyzing this text, the researcher finds that it came to confirm the general provisions that came regarding inspection. It is understood from this article that the general rules for inspection extend to apply to electronic inspection, which can be replaced by devices, tools, programs, operating systems, the information network, and means. This article emphasizes the necessity of having evidence for their use in Committing crimes, indicating that this electronic inspection procedure is an investigative procedure within the jurisdiction of the Public Prosecution, and this is clear from the requirement that the judicial police obtain the permission of the Public Prosecution before carrying out this procedure.

### **Second section**

#### **Electronic monitoring**

The names given to the punishment of electronic monitoring differ depending on the point of view of the person speaking about it. Therefore, some call it electronic monitoring, others the electronic bracelet, and the last is imprisonment at home. The definition of electronic monitoring also varies according to the point of view of it. Some define it as "obliging the convict to reside in... His home or place of residence during specific hours so that the person under surveillance is monitored electronically. Others see it as "one of the innovative methods for implementing punishment or pretrial detention outside the prison walls, so that it allows those who are under surveillance to remain in prison."

His place of residence while imposing some restrictions on his movements through the electronic monitoring device (Barmawi, 2004, p. 372). It is also known as "a system based on leaving the convict sentenced to a short negative sentence freely in the free environment while subjecting him to a number of obligations, and monitoring his implementation electronically from a distance." Otani, 2009, p. 132) This is one of the consensual alternatives to short-





term custodial sentences, through which the convict can be followed up by the competent authorities outside the prison in specific places and times, subjecting him to a set of obligations, and electronic monitoring is implemented.

In three ways: - Electronic surveillance via satellite, which the United States of America took

Electronic monitoring is through a telephone call, which is done through an appeal

**Electronic phone** Repeatedly sent from the monitored person's residence where it is received by a voice code or speech identification (Papatheodorou, 1999, )

- The method of continuous broad casting, which is what France adopted, as this method is done through a device that allows the convict to be followed up to ensure his presence in the place designated for him. This method is based on placing an electronic bracelet on the wrist of the subject being monitored or on the bottom of his foot, which sends specific signals intermittently to a device. A reception connected to the telephone line in the place of residence of the person being monitored, and the receiving device sends specific signals to the entity supervising the monitoring, and in this way his presence in the geographical location specified for him is identified. Electronic monitoring takes three forms in French law, where it is considered:

A method of implementing custodial penalties based on the decision of the competent judge, considering that electronic monitoring is a legal and judicial technique to modify the implementation of the penalty.

B- A penalty pronounced by the court directly during the sentencing session, especially if the convict is a beginner and has committed a minor crime.

C- Arranging for the Judicial Oversight Secretary to ensure that this is confirmedDrTo achieve the desired purposes of this system (Otani, 2009, pp. 137-147).

### **The second topic**

#### **Electronic bracelet as an alternative to temporary detention**

Regarding the definition of the electronic bracelet, some legislation has been concerned with setting a definition for electronic monitoring in general, and considered the electronic bracelet to be one of the means through which electronic monitoring is implemented, when it addresses the amendment of the law regulating implementation.

### **The first requirement**

#### **Electronic bracelet concept**

It is worth noting that the French legislator introduced the electronic bracelet system to the penal system, through Law No. 97 - 1159 of 1997, where articles (723 bis 7 to 723 bis 14) of the Code of Criminal Procedure were allocated to it, and then the bracelet system became Electronic has a new method for implementing custodial punishment in a new way outside prisons

### **First branch**

#### **Definition of electronic bracelet**

As for the definition of the electronic bracelet among jurists, it has been defined as an electronic system for remote monitoring according to which the presence or absence of a person from the place designated for his residence can be confirmed according to a judicial ruling, whereby the convict is allowed to remain in his home, but his movements are limited and monitored with the help of a device installed on his wrist or the sole of his foot 61 ...The electronic bracelet is also known as a monitoring system through the use of modern technologies that enables law enforcement agencies to follow up on the convicted person outside the prison by submitting to a set of obligations and conditions, and violating these obligations results in the person being sent back to prison to complete the sentence imposed on him 62

It has distinctive characteristics that we will talk about in the second section

### **Second section**

#### **Characteristics of the electronic bracelet**

The bracelet is distinguished from others. Perhaps the first of these characteristics and features is that the electronic monitoring system through the electronic bracelet works on a continuous broadcast system through a device that allows the convict to be followed up to ensure his presence in the place designated for him. That is, the electronic bracelet system is of a technical nature, as it requires the presence of special technical devices to implement this. The method of electronic surveillance, such as special transmitting and receiving devices, tracking devices, and satellite communication devices.RIndustrial for some places

This system is also characterized by its consensual nature, as the law in the countries that adopted this system stipulates that the system may be implemented based on a request submitted by the convict or some other party such as the Public Prosecution, the investigating judge, or the punitive execution judge, but the law is in all cases. In addition, the consent of the person subject to the electronic bracelet procedure is requiredHTo the approval of the people surrounding him in the residence, such as the family and the owner of the property in which he is located

Finally, this system is characterized by its restrictive nature of freedom, as the bracelet system falls within the systems that restrict freedom for the convict, through what follows.BOn him who



Don't be confused. The conditions for applying the electronic monitoring system via the electronic bracelet are based on those conditions established for electronic monitoring in general, which were referred to in the second requirement of the first section. Therefore, in order for the decision to place the convict under the electronic monitoring system to be issued,

Using the electronic bracelet, the legal, technical, and material requirements necessary to implement this system must be completed, the first of which is the approval of the convict and everyone related to the matter, such as the family or cohabitant, in addition. To each other

### **The second requirement**

#### **Conditions and procedures for exercising electronic monitoring**

The technical and material requirements necessary to implement this system, as the convict's violation of the obligation entails. It is his responsibility to return him to prison again to serve his sentence depriving him of his original freedom. In order for this system to give the desired benefits, some technical and material requirements and legal conditions must be met.

The electronic monitoring system via the electronic bracelet requires that there be an electronic bracelet on the convict's wrist or lower leg, and this bracelet is linked to another device placed in a place designated for monitoring, so that the function of this device is to receive the wireless signals sent by the electronic bracelet installed on the hand or lower leg. The special device receives these wireless signals and then sends them in turn via a telephone line connected to a central area, where these wireless messages indicate the whereabouts of the convict in the designated place of his residence.

The bracelet. This system is considered a form of remote monitoring of the convict or subject in general. 67... The electronic bracelet sends signals every 15 seconds to a receiver connected to the telephone line in the person's place of residence, and these signals are automatically transferred to a central information system located in the entity that The convict is monitored and this system is equipped with technologies that can record these signs and information 68...

Through these signals and information, it is possible to confirm the operation of the device, verify the presence of the concerned person in the specified place, and verify his identity

The convict's commitment to the obligations imposed on him under the electronic monitoring system via the electronic bracelet, as the convict's violation of the period and obligations results in him being returned to carry out the negative penalty.

Many of the legislations that approved the electronic monitoring system using the electronic bracelet stipulated a set of legal conditions that must be met before issuing an order to place the accused or convict under electronic monitoring using the electronic bracelet, in order to spare those against whom this matter is decided from contact with the penal system. To ensure that they are not affected and that the negative effects of imprisonment are not transmitted to them, a set of legal conditions are required regarding individuals. An order has been issued to apply electronic surveillance by using an electronic bracelet on them, or to impose a penalty that deprives them of freedom, or in terms of the duration of the penalty, or that related to the body issuing the order to report electronic monitoring using the bracelet. Electronic and finally those conditions related to the consent of the subject of electronic monitoring to this procedure

The electronic monitoring system using the electronic bracelet can be applied to different people, whether they are adults or juveniles, and whether they are males or females 66...and this is what Article 327\_7 of the Code of Procedure indicates. The French amended penal code applies only to Sunday. Those between the ages of 13 and 18 years, the consent of the guardian or the person exercising parental authority over the juvenile is required in addition. To the consent of the juvenile himself, which is confirmed by Article 132\_26\_1 of the French Penal Code 70.

### **CONCLUSION**

After studying this research, we arrived at a set of results and recommendations

#### **RESULTS**

The legislator stated the possibility of electronic means being a subject for inspection, and this benefits from Article 13 of the Electronic Crimes Law.

The possibility of inspection of components of electronic means and media.

The general rules related to inspection apply to electronic inspection, as the legislator permits searching for anything to reveal the truth

Most Arab laws are devoid of any text related to the penalty of electronic monitoring, but the Jordanian legislator adopted it in 2017.

There are very few references that discuss the issue of electronic surveillance, despite the importance of the penalty and its stipulation and application in foreign laws.

### **RECOMMENDATIONS**



Qualifying judicial staff to recognize the nature of evidence extracted from electronic means - especially electronic inspection - to determine its importance as evidence and to avoid errors that may occur. It is necessary to establish more precise rules for electronic inspection in light of the massive and rapid technological development and as a guarantee to keep pace with developments. Modern technologies are now being used in criminal investigation and collecting evidence, so why are they not also used in imposing penalties? We recommend that the Jordanian legislator include other alternatives to short-term custodial sentences, as is the case with most legislation.

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