



Law Office of the COOK COUNTY PUBLIC DEFENDER

69 W Washington, Suite 1600, Chicago, IL 60602 • (312) 603-0600
Sharone R. Mitchell, Jr. • Public Defender

September 21, 2022

Criminal Justice Committee
Cook County Board of Commissioners
118 N Clark St., Fifth Floor
Chicago, Illinois 60602
Sent via email to cookcounty.board@cookcountyil.gov.

Re: Written Comments September 21, 2022 Hearing on SCRAM

Dear Commissioners:

I write today to comment on the use of Secure Continuous Remote Alcohol Monitors, better known as SCRAM. These ankle monitors are ordered by court and can be ordered as a condition of pretrial release when someone is presumed innocent and awaiting trial or when someone has been convicted and sentenced to probation.

The Public Defender's Office represents more than 80% of people accused of felonies in Cook County, and we are appointed in over 70,000 cases annually. Everyone who receives representation from our office has been determined to be indigent and unable to afford a private attorney, so our clients are particularly vulnerable to financial penalties and costs. The use of SCRAM technology is extremely concerning to us for several reasons.

First, the current lack of oversight and effective privatization of SCRAM supervision functionally circumvents existing state and county rules and policy decisions. For years, the Illinois court system has been moving away from user fees and assessment of court costs, including passing a landmark reform in 2017: the Criminal and Traffic Assessment Act (the CTAA). This Act formalized a process to waive criminal court fees and costs that are assessed directly by the court when an accused person cannot afford to pay them. The current court practice of ordering SCRAM with payments directly to a private company thus undermines state laws and policy, placing an unaccountable corporation in charge of assessing fees against people who are court-mandated to their supervision.

This also creates a sharp contrast with other court-ordered forms of supervision that are conducted by Cook County. Cook County does not charge fees for pretrial electronic monitoring or GPS. General probation fees range from \$5-\$50 per month and can be waived for indigence or modified by a judge. SCRAM fees paid to the private corporation CAM Systems thus dwarf the possible fees imposed for probation itself.

Our attorneys report clients accruing outstanding balances of \$1,000-\$3,000 and being ordered to pay that amount to CAM Systems. Worse still, alleged violations of supervision or inability to pay these high fees can result in extensions of the time on the monitors—only increasing the



financial burden on already impoverished clients. This also keeps our clients on probation longer, increasing the cost to the county and increasing the likelihood of a possible failure with no benefit to the accused person or the community. In fact, these supervision requirements such as returning to court, checking in with Probation Officers, and traveling to SCRAM sites to download data threaten our clients' success by taking time away from work, family, and other necessary and pro-social activities.

We are also concerned about individual fairness, racial disparities, and arbitrary punishment through use of SCRAM monitors. *Injustice Watch's* investigation identified one judge responsible for assigning 44% of the 116 people on SCRAM monitors in June of this year. This sort of extreme outlier use by a single judge raises basic issues of equity and fairness for the court system in addition to a sort of Russian Roulette in which random courtroom assignment seems to dictate whether or not someone will be subject to months or years of 24/7 monitoring in their private lives. The cost of SCRAM also likely produces racial disparities. When so much of a person's success depends on their ability to pay high fees or use a flexible work schedule to comply with court orders, people with less accommodating employment and people from communities with less historical opportunity to accumulate wealth will be disadvantaged.

A third issue of grave importance for our office is the overall efficacy of SCRAM and whether it is appropriate for a court to impose at all. As the [story of our office's former client Anastasia Strauther](#) demonstrates, forcing people to choose between keeping their employment and not driving when only poverty keeps them from getting their licenses back is a losing proposition. Ms. Strauther's efforts to comply with the terms of SCRAM supervision—including traveling to one of a few remote physical locations to download data from the monitor—forced her to lose her job. *Injustice Watch* documented numerous stories of people who lost their jobs, and in some cases their homes, in part because of the onerous conditions of SCRAM. This suggests SCRAM is not only unhelpful in the goal of restoring people to success but actually counterproductive.

Furthermore, many people who have suspended driver's licenses are only unable to reinstate their licenses because they cannot afford to pay the necessary fees. Orders to SCRAM force our clients to pay this private company—under threat of incarceration if they do not—instead of paying to restore their licenses. This perpetuates a cycle of criminalization: people must drive to work and must work to stay housed and eat, but simple poverty makes driving illegal. There is a vibrant movement to address license suspensions due to unpaid fees, but until that practice is ended, we must not further punish people making this impossible choice.

Adding to the disturbing financial penalties imposed on people subject to SCRAM monitoring is the company's aggressive payment enforcement. According to *Injustice Watch's* investigation, "CAM Systems filed lawsuits against 40 people in Cook County between August 2020 and June 2021 for debts totaling more than \$165,000." When the company is successful in civil court, these outstanding balances become judgments against people that result in their future wages being garnished, further sabotaging their future success and stability, and increasing the chances they will be re-arrested.



On a basic level, SCRAM monitoring is also overstepping the appropriate and limited role of the criminal court system. While driving under the influence is illegal and we must continue to reduce its occurrence, simply drinking alcohol and not driving is not an illegal activity. Complete abstinence—especially from a legal substance—is not an appropriate goal for criminal courts to enforce. SCRAM claims its technology is most appropriate for people with multiple DUI convictions, but at least one judge in Cook County is ordering people to the monitors in cases that do not even allege alcohol use. Given the high stakes for people with pending criminal cases, we must be vigilant against this sort of net-widening. SCRAM monitoring doesn't focus on driving under the influence—a behavior that is illegal and subject to criminal prosecution—it monitors all consumption of alcohol (and use of mouthwash, perfume, and some household cleaners, which is a different issue). SCRAM monitoring effectively criminalizes a perfectly legal activity by seeping into the private aspects of someone's life: having a beer after work or drinking a glass of wine at dinner. This then results in the court punishing people for behavior that is not inherently anti-social or dangerous, and in fact not subject to criminal prosecution at all on its own. The fact this expansion of surveillance is even occurring in cases where DUI is not alleged and allowing it to continue unchecked sets a dangerous precedent for the courts.

To the extent SCRAM may support some people with substance use disorder, its use should be a clinical assessment that should be made by medical professional and not the courts.

SCRAM is an unproven technology with no independent studies showing that it works to prevent driving under the influence. That alone should be enough to prevent it from being ordered as a condition of probation or pretrial release—our clients are not guinea pigs for new technologies or treatments. On a basic level, judges are not qualified to make these sorts of assessments regarding substance use disorder, treatment, recovery, or abstinence. If addiction is a medical issue, it must be treated like one. Substance use disorder is a clinical diagnosis, and Illinois statutes require a clinical evaluation before sentencing in DUIs. What recent investigations of SCRAM usage have revealed is a court system that facilitates judges making clinical decisions about treatment issues.

The simplest way to understand this is that courts are not and cannot be treatment providers. Addiction may involve physical or biological dynamics, but there is no denying that it is driven by social and psychological factors, including shame, isolation, and economic hardship. Criminal prosecution and especially incarceration are not antidotes to shame, isolation, and economic hardship—they are multipliers of these causes of drug and alcohol use. Simply put, there is no evidence of SCRAM's efficacy in supporting people who do struggle with alcoholism.

In conclusion, the use of SCRAM in Cook County Criminal Courts must be reviewed.

When accused and even convicted people are ordered to pay private companies or service providers by the court, those arrangements must be subject to oversight and formal approval of contracts. Furthermore, extremely uneven use of SCRAM orders highlights the need for data collection and publication of conditions of pretrial release and probation conditions. Training and education should be provided to judges regarding the use of this technology and on evidence-based supervision and specifically on substance use disorder, the purposes of criminal sentencing, and standards for pretrial release.




Finally, what the use of SCRAM demonstrates is that our clients can and should be subject to less restrictive conditions of pretrial release and probation. The success of people on onerous SCRAM monitors actually demonstrates that our clients succeed when they are sentenced to community supervision such as probation and that they do not need to be and should not be sent to jail or prison. The takeaway should be promotion of even less restrictive conditions: If convicted, we want our clients to receive probation instead of being sent to prison, but probation without SCRAM is going to be better than probation with SCRAM.

To reiterate, the choice being made is not a choice between prison or jail and SCRAM. It is a choice between prison, SCRAM, and less restrictive forms of supervision. Any judge ordering someone to wear a SCRAM device has the same power to order that person released pretrial or sentenced to probation without SCRAM. Research shows that when people are subject to more restrictive conditions, it can actually increase failure rates without any other benefit. When SCRAM results in the loss of jobs and housing described earlier, it is not only not effectively accomplishing its stated goals, it is undermining our collective safety and community well-being.

Thank you again for holding this hearing and for the opportunity to testify. The Law Office of the Cook County Public Defender is happy to answer any additional questions the Committee may have and can be reached at 312-603-0600 at your convenience.

Sincerely,



Sharone R. Mitchell, Jr.
Cook County Public Defender

