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The State of South Carolina



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February 11, 1993

The Honorable Marshall B. Williams
Senator, District No. 40
P. O. Box 1084
Orangeburg, South Carolina 29116-1084

Dear Senator Williams:

In a letter to this Office you raised two questions:

1. Does a magistrate have the authority to provide for home monitored detention as a condition of bail?
2. Does a magistrate have the authority to provide for a portion of any sentence handed down in Magistrate's Court to be served through monitored home detention?

S. C. Code Ann. Sections 24-13-1510 et seq., the "Home Detention Act", provide for home detention and electronic monitoring programs for certain criminal offenders. Section 24-13-1530 states

Notwithstanding any provision of law which requires mandatory incarceration, electronic and nonelectronic home detention programs may be used as an alternative to incarceration for low risk, nonviolent adult and juvenile offenders as selected by the court, provided there is a home detention program available in the jurisdiction. Applications by offenders for home detention may be made to the court as an alternative to the following correctional programs:

- (1) pretrial or preadjudicatory detention;

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- (2) probation (intensive supervision);
- (3) community corrections (diversion);
- (4) parole (early release);
- (5) work release;
- (6) institutional furlough;
- (7) jail diversion; or
- (8) shock incarceration.

As referenced, such programs are available for "low risk, nonviolent adult and juvenile offenders as selected by the court." Section 24-13-1590 specifies that such programs are not available "... to a person, regardless of age, who violates the illicit narcotic drugs and controlled substances laws of this State" Moreover, Section 24-13-1530 emphasizes that home detention programs may be utilized provided such a program is available in a particular jurisdiction. Pursuant to Section 24-13-1540, before such a program may be implemented, regulations must be promulgated which will prescribe guidelines for a home detention program. I have been informed by individuals familiar with these statutes that presently only three counties have put such detention programs into operation.

As to your questions regarding a magistrate's authority to provide for home monitored detention, Section 24-13-1520 (2) defines "court" as used in the "home detention act" as

... a circuit or family court having criminal or juvenile jurisdiction to sentence an individual to incarceration for a violation of law, the Board of Probation, Parole and Pardon Services, Juvenile Parole, and the Department of Corrections.

Therefore, a magistrate is not included in the definition of a "court" for purposes of provisions of the "home detention act." Therefore a magistrate is without authority under the "home detention act" to provide home detention as a condition of bail or as a portion of a sentence imposed by the magistrate. Consideration could be given to amending the provision if it is desired that magistrates be given that authority. Of course, as a condition of bail generally, a court, including a magistrate's court, may impose conditions of release which include imposing restrictions "on the travel, association or place of abode of the

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person during the period of release." See: S.C. Code Ann. Section 17-15-10(c). However such is distinguishable from the provisions of the "home detention act."

With kind regards, I am

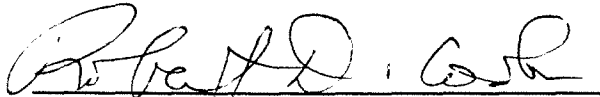
Very truly yours,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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