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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 1, 2001

The Honorable J. Al Cannon, Jr.
Sheriff, Charleston County
3505 Pinehaven Drive
Charleston Heights, South Carolina 29405-7789

Re: Your Letter of August 20, 2001
S.C. Code Ann. §24-13-1540 & Electronic Monitoring as Condition of Bail

Dear Sheriff Cannon:

In your above-referenced letter, you indicate that you intend to initiate a program providing for satellite monitoring as a condition of pre-trial release or bail for persons charged with certain offenses. You indicate that the program will be called the "Charleston Area Suspect Tracking Network" and will be known by the acronym "CASTNet." You describe CASTNet as follows:

> Suspects who are arrested for certain violent crimes, such as criminal sexual conduct, stalking, child molestation, criminal domestic violence, etc., would be placed on CASTNet as a condition of their bond. The program would not replace any type of bond as determined by a magistrate or circuit court judge; rather, it would be a stipulation the presiding bond court judge could employ. The defendant would then be fitted with an electronic device, before he leaves jail, which can be tracked through the Global Positioning System (GPS) satellite network. The defendant is advised which locations in the community are off-limits, such as particular proximity to the victim's residence, school or work. Otherwise, he is free to travel anywhere in the area he chooses. The program will be established through a county ordinance and administered through the Sheriff's Office.

You indicate that "it has been brought to [your] attention that the concept [CASTNet] may be in conflict with an existing statute: §24-13-1530 Correctional programs for which home detention may be substituted." You further indicate that it is your "contention that the [§24-13-1530] does not apply to the [CASTNet program]."

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Request Letter

Given this background, you ask this Office to issue an opinion on the following question:

> Does the CASTNet program, or similar programs utilizing satellite monitoring, fall within the definition of "electronic home detention" as presented in §24-13-1530?

In responding to your question, two groups of statutes must be analyzed and interpreted. Those statutes include S.C. Code Ann. §§24-13-1510 et al., the Home Detention Act, and §17-15-10 which allows the Court to impose conditions upon a defendant's release on bail. When interpreting statutes, the primary goal is to ascertain the intent the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Dept., 247 S.C. 132, 146 S.E.2d 166 (1966). Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law. Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 438 S.E.2d 273 (Ct.App.1993).

As you know, Section 24-13-1530 provides that "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 if there is a home detention program available in the jurisdiction ..." Such a home detention program may be used for, among other things, "pretrial or preadjudicatory detention" pursuant to §24-13-1530(A)(1). Further, as I am sure you are aware, Section 17-15-10 provides that:

> Any person charged with a noncapital offense triable in either the magistrate's, county or circuit court, shall, at his appearance before any of such courts, be ordered released pending trial on his own recognizance without surety in an amount specified by the court, unless the court determines in its discretion that such a release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community will result. If such a determination is made by the court, it may impose any one or more of the following conditions of release:
>
> (a) Require the execution of an appearance bond in a specified amount with good and sufficient surety or sureties approved by the court;
> (b) Place the person in the custody of a designated person or organization agreeing to supervise him;
> (c) Place restrictions on the travel, association or place of abode of the person during the period of release;
> (d) Impose any other conditions deemed reasonably necessary to assure appearance as required, including a condition that the person return to custody after specified hours (Emphasis Added).

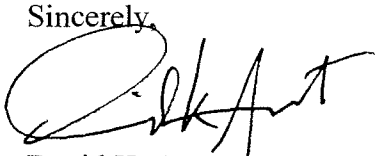
This Office has previously recognized the distinction between the Home Detention Act and imposing bail conditions pursuant to Section 17-15-10. See OPS. ATTY. GEN. (Dated April 19, 1993 &

February 11, 1993). In response to the question "[d]oes a magistrate have the authority to provide for home monitored detention as a condition of bail?" this Office opined in the February 11, 1993, opinion that, while such authority may not exist under the Home Detention Act, the authority of the magistrate's court to impose conditions of release pursuant to §17-15-10 "is distinguishable from the provisions of the 'home detention act.'" It is my opinion that this logic is applicable to the question you have presented.

It seems highly unlikely that the General Assembly would have intended to limit the court's access to a useful tool for insuring the safety of victims while an offender is out on bond. A more reasonable and practical construction of the law would be that the court's authority to "[i]mpose any other conditions deemed reasonably necessary" would include the ability to provide for electronic monitoring as a condition of bail. It is therefore my opinion that the court (magistrate or circuit) has the authority to impose electronic monitoring as a reasonable condition of bail pursuant to Section 17-15-10 notwithstanding the provisions of the Home Detention Act.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

DKA/an