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The State of South Carolina

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April 19, 1993

The Honorable James Cromer, Jr.
Member, House of Representatives
420A Blatt Building
Columbia, South Carolina 29211

Dear Representative Cromer:

In a letter to this Office you raised the following questions concerning this State's Home Detention Act, S.C. Code Ann. Sections 24-13-1510 et seq.:

1. Is the act applicable to local government, or does it apply only to the State penal system? If it does not apply to local government, may a County utilize the home detention system absent statewide enabling legislation providing for the use thereof?

2. If the Act applies to local government, does the definition of "law enforcement agency" cover a local detention facility, i.e., the Richland County Jail?

3. If the Act applies to local government, does the definition of "court" include magistrates court?

The Home Detention Act provides 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 incarcera-

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> tion 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);
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> (3) community corrections (diversion);
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> (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.

Concerning your question of whether the act is applicable to local governments, Section 24-13-1540 states:

> If a department desires to implement a home detention program it must promulgate regulations that prescribe reasonable guidelines under which a home detention program may operate.... (emphasis added)

Section 24-13-1520 (1) defines "department" as

> ... in the case of a juvenile offender, the Department of Youth Services and, in the case of an adult offender, the Department of Probation, Parole and Pardon Services, the Department of Corrections, and any other law enforcement agency created by law .... (emphasis added)

In the opinion of this Office, the term "law enforcement agency created by law" would include a local detention facility and, in particular, the Richland County Jail. As you stated in your letter, pursuant to S.C. Code Section 24-5-10, a sheriff is considered the jailer in many counties in this State. However, pursuant to Act No. 187 of 1951, the Richland County Jail was removed from the sheriff's control. See also: S.C. Code Ann. Section 24-5-12 ("... the sheriff of any county may, upon approval of the governing body of the county, devolve all of his powers and duties relating to the custody of the county jail and the appointment of a jailer on the governing body of the county ....") Pursuant to S.C. Code Ann. Section 23-1-145 employees of a county jail "while performing their officially assigned duties relating to the custody, control, transportation or recapture of any inmate or prisoner" have the status of a peace officer. As referenced in an opinion of this Office dated March 19, 1986, by having the status of peace officers, jail employees may make arrests. Further support for construing the definition of "department" to include a local detention facility is the reference in Section 24-13-1530 noted above which provides that home detention may be utilized as "an alternative to ... (7) jail diversion." Therefore, Sections 24-13-1510 et seq. would be applicable to local governments in the manner authorized by the legislation. I have been informed by individuals familiar with the Home Detention Act that three counties have put home 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." As a result, 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 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
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REVIEWED AND APPROVED BY:

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