

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF GREENVILLE )

IN RE: )  
 )  
BAIL, RECOGNIZANCES, )  
 )  
THE HOME DETENTION ACT )  
& )  
ELECTRONIC MONITORING. )  
 )  
..... )

SUPERSEDING  
ADMINISTRATIVE ORDER

FEB 17 11 25 AM '95

Since April of 1993, Greenville County, through the Detention Center, has operated an electronic monitoring program, known as the Home Incarceration Program (HIP) pursuant to the enabling legislation of §§24-13-1510, *et seq.*, *Code of Laws of South Carolina* (1976, as amended), and an Administrative Order of this Court dated April 5, 1993. Primarily, the program has been used as an alternative to incarceration following sentencing of qualified offenders. These persons have been selected by detention personnel using guidelines established by the statutes and the administrative order. To date the General Sessions Courts have been slow to order participation in HIP as a part of any sentence. The most frequent use of Court ordered electronic monitoring has been as a condition of bail in bond orders.

Questions from various corners have arisen about the success of the program and how it is being administered by the Courts and Detention personnel. This trepidation prompts the Court to review the Home Detention Program as a sentencing alternative, the process of bail, and the roles of the ancillary agencies that support the Courts of General Sessions; giving effect to the orders and instruction of those Courts.

Under Greenville County's local program (HIP), detention personnel are authorized to screen and approve qualified offenders for house arrest/monitoring when the sentence is of a duration that will be served locally and the sentence is otherwise silent on any requirement for home detention and/or monitoring. On one recent occasion a qualified offender was properly enrolled in HIP by the detention

personnel and successfully completed his sentence on house arrest. Unfortunately, the change from weekend jail time to house arrest was discovered and brought to the Court's attention after the fact; the Court having intended that the defendant actually see the "jailhouse doors" for many weekends.

In scrutinizing the original Administrative Order that authorizes HIP, it appears that a future lapse in communications could be prevented by use of the attached form order ("Attachment B"). Use of this order provides a review of HIP candidates which allows the sentencing judge to reject an otherwise qualified candidate from consideration and enrollment in HIP. The Court therefore finds and concludes that execution of the attached order, "Attachment B," is required to enroll future candidates in HIP when the program is utilized as an alternative to the service of an active sentence.

With the Home Detention Act of 1990, §§24-13-1510, *et seq.*, *Code of Laws South Carolina* (1976, as amended), our State Legislature established a means of control and supervision of certain criminal offenders that were qualified under a stringent set of guidelines. In its pure form the act creates a new form of sentence available to the offender, a true alternative to active time in a jail or penitentiary cell. Such a sentence, standing alone, precludes home detention and/or electronic monitoring as an alternative for persons convicted of certain violent crimes and drug offenses. Provision was made however, in §24-13-1590, to ensure that when traditional sentencing of active time or probation was imposed, the sentence could include house arrest and/or monitoring as conditions of probation and parole.

While the Act also provides these methods of supervision as an alternative to pretrial detention for persons charged with all but certain violent crimes and drug offenses, it does not address use of home detention and/or electronic monitoring as an additional condition of bail for otherwise unqualified HIP candidates. Such conditions have been recently been ordered by the Courts of General Sessions in cases involving defendants with pending charges of violence and/or drugs. The apparent disparity between the Court ordered conditions of bail and local guidelines for direct release into HIP is another area of concern to be addressed.

§17-15-10 *Code of Laws of South Carolina* (1976, as amended) provides in part:

"Any person charged with a non capital offense triable in either the magistrate's, county, or circuit court, shall, at his appearance before any such courts, be ordered released pending trial on his own recognizance without surety in an amount specified by the court . . ."  
(emphasis added).

Only two exceptions to this requirement are set forth in the statute, ". . . 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 will result." The burden of establishing these exceptions necessarily falls to the State, either in the person of the arresting officer, prosecuting witness or solicitor.

The plain language of §17-15-10 permits use of surety bonds only in extraordinary circumstances based upon an affirmative showing of need. While acknowledging the long standing practice of a surety bond requirement as a matter of course in most cases, the law is to the contrary.

The Court therefore finds and concludes that a strict interpretation of §17-15-10 mandates a review of each defendant's case in a light that favors the grant of a personal recognizance bond pending disposition of the charges. Although no precise standard can be established for such a review, marginal cases can be adequately addressed through the use of additional conditions placed on the defendant as set forth in §17-15-10:

- " (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 travel, association or place of abode of the person during the period of release;
- (d) Impose any other conditions deemed reasonably necessary to assure the appearance as required, including a condition that the person return to custody after specified hours." (emphasis added).

The Court must review available information in the case of a defendant; taking into account the nature and circumstances of the offenses charged, the accused's family ties, employment, financial resources character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings; as required under §17-15-30 *Code of Laws of South Carolina* (1976, as amended). The Court then determines, in its discretion, if the State has made a showing of need for a surety bond and/or other additional conditions based on extraordinary circumstances.

Our Supreme Court has established various rules of construction that the Courts must use in construing the language of state statutes such as the home detention statutes and those related to the bail process. One such rule of construction requires courts to construe laws that are penal in nature strictly against the State and in favor of the accused. *Williams v. State*, 410 S.E.2d 563 (1991); *Hair v. State*, 406 S.E.2d 332; *State v. Cutler*, 264 S.E.2d 420, 274 S.C. 376; *State v. McCord*, 187 S.E.2d 654, 258 S.C.163.

Certainly, statutes related to the deprivation of liberty in a pretrial setting, where no adjudication of guilt has occurred, i.e. bail considerations, **MUST** be liberally constructed under our rules of construction. The home detention statutory scheme, as well as the bail statutes outlined above, are all penal in nature; thereby meriting liberal construction by the Court, in favor of criminal defendants.

§§17-15-10 *et seq.* and §§24-13-1510 *et seq.* make reference to similar subject matter, to wit: the regulation of persons charged with crimes in a pretrial setting and the manner and means of appropriate pretrial supervision. When provisions of law appear in conflict, while addressing similar subject matter, a second rule of construction is utilized to prevent disparity.

Such statutes stand in *pari materia* and must be read together and reconciled if possible so as to give meaning to each and avoid an absurd result. *Powell v. Red Carpet Lounge*, 311 S.E.2d 719 (1984); *State el rel McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964); *Stone & Clamp, General Contractors v. Holmes*, 217 S.C. 203, 60 S.E.2d 231 (1950).

The statutes relating to the courts' authority to set conditions of release upon application for bail by a criminal defendant are limited only by the court's determination of reasonableness in a given circumstance. In addition, §24-13-1590 provides, "[n]othing in this article: . . .(2) diminishes the lawful authority of the courts of this state . . . to regulate or impose conditions for probation and parole." When these statutes are read together, the regulation of bail matters under §17-15-10 must be appended to §24-13-1590(2) to avoid an otherwise absurd result.

The Court therefore finds and concludes that the statutes in question, relating to pretrial detention and bail, are in *pari materia*, and a consistent reading of these provisions empowers the Court to impose electronic monitoring as administered under the Home Detention Act as a condition of any defendant's bail; as this Court may determine from time to time.

THEREFORE, IT IS HEREBY ORDERED that the original Administrative Order creating the Greenville County Home Incarceration Program, of April 5, 1993, be and is hereby superseded by this Order and its attached documents.

IT IS FURTHER ORDERED that the following regulations be substituted under the authority of §§ 23-13-1510 *et seq.* and §§ 17-15-10 *Code of Laws of South Carolina* (1976, as amended); to provide for home detention and electronic monitoring of certain convicted offenders and persons charged with crimes as administered by the Greenville County Detention Center:

1. The Director of the Greenville County Detention Center, or his designee, shall be authorized to select candidates for HIP enrollment from pretrial detainees confined in the Detention Center pending admission to bail pursuant to the guidelines enumerated in §24-13-1530 and local guidelines appended to this Administrative Order as "Attachment A."

2. The Director of the Greenville County Detention Center, or his designee, shall be authorized to select candidates for HIP enrollment from those convicted offenders sentenced to incarceration that would otherwise be served at the Detention Center, pursuant to the guidelines enumerated in §24-13-1530 and local guidelines appended to this Administrative Order as "Attachment A."

3. Upon selection of a candidate, the screening personnel shall submit an Order of Enrollment for execution by the Court; the form order is appended herewith as "Attachment B."

4. Each enrollee shall execute an agreement, "Attachment C," with HIP personnel and an explanation of this agreement shall be a part of all training for the enrollee's participation in HIP. A copy of the executed agreement shall be delivered to the participant and a copy maintained for program use.

5. The HIP personnel shall coordinate placement with the charging law enforcement agency and the Solicitor's Office prior to execution of the Order of Enrollment to insure notice to all parties, including victims if necessary.

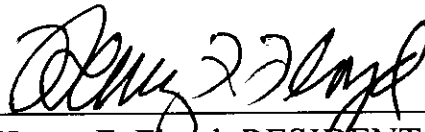
6. The Director of the Greenville County Detention Center, or his designee, shall be authorized to apply for an Order of the Court for issuance of a Rule to Show Cause and Bench Warrant for the immediate arrest of any HIP participant in the event of the violation of any condition of the HIP Agreement and/or violation of the requirements of any sentence or condition of bail ordered by the Court for the HIP participant. The application shall be made using the attached form "Attachment D."

7. The Court and /or the Director of the Detention Center shall convene a quarterly meeting of the following persons for a review of the procedures set forth in this Administrative Order, and the associated procedures of the HIP program, to insure the effective administration of justice. The reviewing panel shall consist of the Director of the Greenville County Detention Center or his designee, the Solicitor of the Thirteenth Judicial Circuit or his designee, the Sheriff of Greenville County or his designee, the Public Defender for Greenville County and the Chief Judge for Administration of the Court of General Sessions.

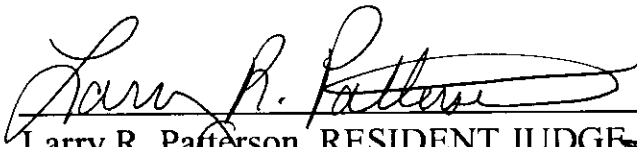
IT IS SO ORDERED.



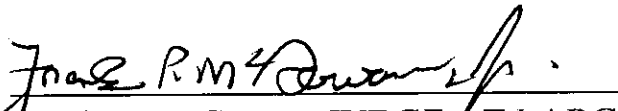
C. Victor Pyle, Jr., RESIDENT JUDGE,  
Thirteenth Judicial Circuit



Henry F. Floyd, RESIDENT JUDGE,  
Thirteenth Judicial Circuit



Larry R. Patterson, RESIDENT JUDGE,  
Thirteenth Judicial Circuit



Frank P. McGowan, JUDGE AT LARGE,  
At Chambers

Greenville, S.C.  
February 17, 1995.

GREENVILLE COUNTY CRIMINAL JUSTICE SUPPORT DEPARTMENT  
Greenville County Detention Center

HOME INCARCERATION PROGRAM (HIP)

Eligibility

PURPOSE: To provide eligibility and suitability requirements to be met by offenders considered for involvement in the Home Incarceration Program (HIP). To establish procedures for placement of offenders in the Home Incarceration Program (HIP).

POLICY: It is the policy of the Greenville County Detention Center to provide assigning agencies with eligibility and suitability criteria for placing offenders into the Home Incarceration Program (HIP).

PROCEDURE: The Greenville County Detention Center accepts offenders in the HIP as the result of a direct Court Order, or active screening of incarcerated inmates by the HIP Management Officer.

A. All offenders must meet the following criteria prior to HIP acceptance:

1. No detainers or other charges pending.
2. Not charged or convicted of a sexually oriented crime.
3. Not charged or convicted of a drug charge.
4. Not charged or convicted with a violent crime.
5. Not charged or convicted of a previous Failure To Appear (FTA) charge.
6. Not charged or convicted of a previous Failure to Comply (FTC) charge.
7. Not considered an escape risk.
8. Not previously revoked from the Program.
9. Must have a telephone at residence without Call Forwarding.
10. Volunteers to participate in the HIP.

B. Direct Court Order

1. The HIP Management Officer is responsible for obtaining and reviewing HIP court orders.

"ATTACHMENT A"

Home Incarceration Program  
Eligibility  
Page 2

2. After obtaining the Court Order and placing an inmate in the HIP, the Management Officer will insure all eligibility criteria are met.
  - a. If any items in the eligibility criteria are not met, the HIP Officer will notify the Detention Center Captain.
  - b. If found unsuitable for involvement in the HIP, the Director will notify the inmate's sentencing Judge and wait for final decision.
3. The inmate will sign, after having read or having had read to him/her, all appropriate HIP forms, to include:
  - a. Conditions of Agreement
  - b. Participant Information Sheet
  - c. Violation From Custody Statement
4. If the Court Order stipulates curfew hours, these hours will be reflected in the participant's Information Sheet. Otherwise, the HIP Coordinator will establish curfew hours in accordance with the inmate's work schedule.
5. Two photos of the offender will be obtained.
6. All relevant information regarding the HIP - the inmate's first counseling date and time, rules, equipment usage, jail telephone number, etc. will be explained to the offender in an initial orientation session and documented in his/her case folder.
7. HIP equipment will be assigned to the inmate and serial number recorded on the inmate's Information Sheet.
8. The inmate's (now considered an HIP participant) complete case folder will be given to the Detention Center Captain for final review and approval.
9. The HIP Management Officer or staff member will escort the participant to his/her place of residence and install the monitoring equipment. The monitoring device will be placed on the participant. The equipment will be tested for proper operation. (Documentation will be made regarding test upon staff's return to the Detention Center.)



C. Active Screening of Incarcerated Offenders

1. The normal HIP screening process will be used for pre-trial detainees.
  - a. Greenville County Detention Center will consider HIP involvement for appropriate inmates.
  - b. When the HIP is recommended, the Recommendation for HIP Involvement Form will be sent to the Detention Captain for review and approval.
  - c. Upon approval by the Captain, case folders will be completed by the HIP Management Officer and the inmate will be enrolled in the Program.
  - d. The HIP Management Officer will coordinate with the appropriate agency on the selection of participants.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF GENERAL SESSIONS

The State,

vs.

\_\_\_\_\_

Defendant.

DOB: \_\_\_\_\_ SSN: \_\_\_\_\_

.....)

ORDER OF ENROLLMENT  
HOME INCARCERATION PROGRAM

This matter is before me on application for enrollment in the Greenville County Home Incarceration Program (HIP). The Defendant is now confined in the Greenville County Detention Center: ( )pending release on bail; ( )serving an active sentence of \_\_\_\_\_.

It appears to the Court based on the attached program application that the defendant is a qualified candidate for HIP and release may be granted under the terms and conditions of the signed, attached agreement for enrollment in the program.

NOW THEREFORE, IT IS ORDERED on Motion of the Detention Personnel charged with screening, enrollment and supervision of HIP participants, that the Defendant be and is hereby granted release from incarceration upon completion of all HIP requirements and under the terms and conditions of any sentence or bond orders. IT IS FURTHER ORDERED, that the Defendant shall pay all costs and expenses for the monitoring program. The Defendant shall be permitted to work, attend church and school, and confer with his attorney while on house arrest and monitoring.

IT IS FURTHER ORDERED, that any violation of the terms and conditions of electronic monitoring or other aspects of this Order shall result in immediate revocation of bond and rearrest of the Defendant upon application by the Detention Center Staff or Solicitor's Office.

IT IS SO ORDERED.

\_\_\_\_\_  
JUDGE, THIRTEENTH JUDICIAL CIRCUIT

Greenville, S.C.

\_\_\_\_\_, 1995

"ATTACHMENT B"

13 JUDICIAL DISTRICT  
Greenville County  
Greenville, South Carolina

Home Incarceration Program  
Conditions of Agreement

I, the undersigned, have received a copy of the Order placing me into the 13th Judicial District Home Incarceration Program, (HIP), in which I voluntarily agree to participate. In order to participate in the HIP I agree to abide by the following rules and conditions of the program. Furthermore, I understand that violation of these rules and the conditions may result in revocation from this program and return to secure detention.

Rules and Conditions

1. I agree to abide by the curfew restrictions and to comply with the Court's Order in every respect.
2. I understand that my participation in the Program will be monitored by a tamper-proof, non-removeable anklet which I agree to wear at all times. I agree to notify Greenville County Detention Center staff immediately if the wristband is stretched or broken. I also understand that my location will be monitored by electronic equipment with daily status reports forwarded to the Greenville County Detention Center (GCDC), and immediate pager notification if any violation occurs.
3. I understand that it will be necessary for a monitoring device to be connected to my home telephone by officers of the Greenville County Criminal Justice Support Department, Detention Center. I agree to allow the officers to enter my home to install, maintain, and inspect this device.
4. I agree to remain at my residence at all times, except for those hours agreed upon to fulfill my employment and community program responsibilities.
5. The only exceptions to my being away from my residence, other than for employment or community program involvement, will be due to an emergency. In the event of an emergency, I will first try to contact the HIP Management Officer or the Detention Center Shift Commander and get permission to deviate from my established curfew hours. (Be sure to obtain the name of the officer you notify.) Also, I understand that I will be required to furnish documentation and verify any emergency that causes a departure from my curfew hours.
6. I understand that my curfew restrictions may also be monitored by telephone calls and personal visits to my residence by law enforcement personnel any time day or night. I also agree to provide a urine sample or breath test upon request during these home visits in order to determine any substance abuse involvement.

"ATTACHMENT C"

7. I understand that the monitoring equipment is expensive and I agree to return all equipment in the same condition as received. I agree to reimburse the Greenville County Detention Center for all damage sustained by this equipment, and that I am liable for additional criminal charges, ie. Destruction of Property.
8. I agree to comply with all specific and reasonable instructions of a HIP staff member.
9. I agree that the loss of a receiving signal or a receipt of a tamper signal by the monitoring device shall constitute prima facie evidence that I have violated my curfew and I further agree that the computer printout may be used as evidence in a court of law to prove that a violation occurred.
10. I understand that I am solely responsible for all telephone lines in my place of residence. I agree to limit all telephone calls to fifteen (15) minutes. I understand that a continuous busy signal or out of order signal may constitute a violation and a Notice to Show Cause Order may be obtained. I agree to furnish HIP staff personnel with documentation concerning my telephone at my residence if requested.
11. I agree not to threaten or verbally abuse anyone. I agree to abide by all laws of the State of South Carolina and the United States.
12. I agree to notify HIP staff personnel if I have any contact with a law enforcement officer. Also, I agree to inform HIP staff personnel of any future court date I may have.
13. I agree not to take any medication whatsoever without prior authorization from HIP staff (includes over-the-counter medication).
14. I agree that all expenses of special adapters necessary in the installation of the electronic equipment and/or the expense of telephone calls incurred to monitor this equipment shall be borne by me.
15. In order to defray the cost of the Program and monitoring equipment, I understand that I will be assessed a supervision fee set at \$6.50 per day, payable in advance. It is understood that payment of this fee is a condition of my participation in this Program.
16. I agree to report to the Greenville County Detention Center at least once per week to pay my supervision fee. Only cash, cashiers check, or U. S. Postal money order will be accepted. The supervision fee may be paid weekly, bi-weekly, monthly to the scheduled court date, or length of sentence, if continued Program participation is ordered by the Court.

17. I understand that should I fail to return to my residence within the prescribed time or leave this address at an invalid time, such action shall be deemed a violation and a Rule to Show Cause shall be obtained resulting in the immediate removal from the Home Incarceration Program and return to secure detention.
18. I understand that I will be required to report to the Greenville County Detention Center at the request of the HIP staff for the purpose of checking equipment tampering, substance abuse, payment of supervision fees, general counseling and Program progress discussions. Costs for drug abuse testing will be paid by me.
19. I understand that consumption of alcohol is prohibited. Also, the possession or use of any unlawful drug or narcotic is prohibited.
20. I agree to participate in any community program deemed appropriate by the Court and/or HIP staff personnel.
21. I understand that if I have any questions or concerns regarding this Program, I may call the HIP staff personnel for assistance any time of the day or night (Day 467-5121 or Night 467-5234/5236).
22. While employed I shall be covered by my employer's insurance and/or worker's compensation. I agree that all medical expenses incurred will be my responsibility.
23. In the event that I am ill, laid-off, fired, or my employment hours change I will notify HIP staff personnel immediately.
24. I further understand that a violation of any of these conditions of agreement may cause my removal from the Program.

THE ABOVE RULES AND CONDITIONS HAVE BEEN EXPLAINED OR READ TO ME, AND I HEREBY AGREE TO ABIDE BY THESE CONDITIONS.

\_\_\_\_\_  
PARTICIPANT SIGNATURE

\_\_\_\_\_  
STAFF SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF GENERAL SESSIONS

The State, )  
 )  
 )

vs. )  
 )  
 )

\_\_\_\_\_, )  
 )  
Defendant.)

APPLICATION  
RULE & BENCH WARRANT  
HOME INCARCERATION PROGRAM

DOB: \_\_\_\_\_ SSN: \_\_\_\_\_ )  
.....)

This matter is before me on application for a Rule to Show Cause and a Bench Warrant by personnel of the Greenville County Home Incarceration Program (HIP). It appears to the Court based on the attached violation report the defendant was released under the terms and conditions of the attached HIP agreement, pursuant to an Order of Enrollment. Subsequently, supervising personnel identified violations of the program as noted in the report.

The defendant has acknowledged in writing that he understood the participation agreement and that violations could result in issuance of a Rule to Show Cause and a return to the Detention Center.

NOW THEREFORE, IT IS ORDERED, on Motion of the Detention Personnel supervising HIP, that the Defendant be and is hereby ordered to show cause, if any he can, why release from incarceration under the HIP agreement and the terms and conditions of any sentence or bond orders should not be permanently revoked by the Court.

IT IS FURTHER ORDERED, that the Clerk of Court for Greenville County issue a Bench Warrant for the Defendant's immediate arrest and return to the Detention Center by any duly appointment and qualified law enforcement officer.

IT IS FURTHER ORDERED, that a violation and rule hearing shall be scheduled as soon as practical by the Solicitor's Office.

IT IS SO ORDERED.

\_\_\_\_\_  
JUDGE, THIRTEENTH JUDICIAL CIRCUIT

Greenville, S.C.

\_\_\_\_\_, 1995

"ATTACHMENT D"