

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

IN RE:

BAIL, RECOGNIZANCES,

SUPERSEDING
ADMINISTRATIVE ORDER

THE HOME DETENTION ACT

&

ELECTRONIC MONITORING.

.....

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. On February 2, 1998, Greenville County entered into an Electronic Monitoring contractual agreement to provide 24-hour monitoring services for electronic monitoring participants and other supervision programs. Though the program has been used as an alternative to incarceration, following sentencing of qualified offenders, it may also be used as a condition of bond. Detention personnel using guidelines established by the statutes and the Administrative Order have selected these persons.

Under Greenville County's program (HIP), if the sentence is silent on any requirement for home detention and/or monitoring, detention personnel are authorized to screen the offender(s) for house arrest with electronic monitoring. Due to the nature and technology of electronic monitoring, the sentence may be served in an approved jurisdiction other than Greenville County. Upon finding the offender qualified, detention personnel will submit an Order of Enrollment form (Attachment B) to the sentencing judge. 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 of 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 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 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 reasonable 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 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 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 is 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.

THEREFORE, IT IS HEREBY ORDERED that the original Administrative Order creating the Greenville County Home Incarceration Program, of February 17, 1995, 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 Jail Administrator 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 Jail Administrator 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.

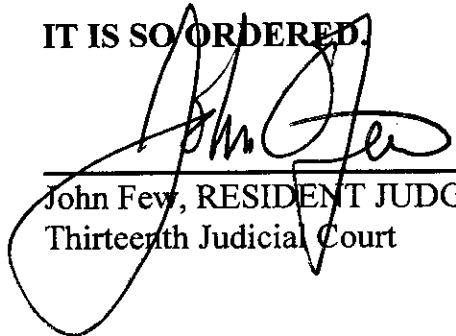
5. The HIP personnel shall coordinate placement with the charging law enforcement agency and the Solicitor's Office prior to execution of the Order of Enrollment to insure notice to all parties, including victims if necessary.

6. The Jail Administrator of the Greenville County Detention Center, or his designee, shall be authorized to immediately take into custody any participant enrolled in the Home Incarceration Program (HIP) in the event the participant violates the terms and conditions of the HIP program. The participant will be held in custody, without bond, pending a violation hearing. A violation hearing is to be heard within a reasonable time from the date of detainment. With serious violations or exigent circumstances, the Jail Administrator, or his designee, will apply for a Bench Warrant for the participant's arrest, whereas a violation hearing will be


scheduled within a reasonable time from the date of detainment. The application shall be made using the attached form "Attachment D."

7. The Court and/or the Jail Administrator 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 Jail Administrator 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.

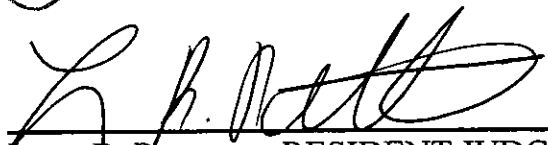
IT IS SO ORDERED.




John Fey, RESIDENT JUDGE,
Thirteenth Judicial Court



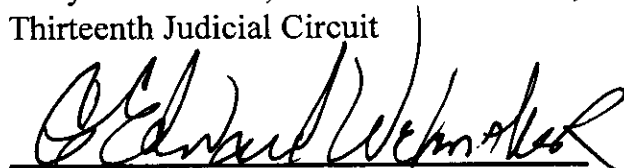
Garrison D. Hill, RESIDENT JUDGE
Thirteenth Judicial Circuit



Larry R. Patterson, RESIDENT JUDGE,
Thirteenth Judicial Circuit



Edward Miller, JUDGE AT LARGE,
At Chambers



Edward Wellmaker, RESIDENT JUDGE,
Thirteenth Judicial Court

Greenville, South Carolina

May _____, 2004