



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 97-006

OFFICERS:
Authority of County Sheriff
to Order a County Jail Inmate
to Electronic Home Detention
Without Leave of Court

Honorable Gary L. Spencer
State's Attorney, Whiteside County
Whiteside County Courthouse
Morrison, Illinois 61270

Dear Mr. Spencer:

I have your letter wherein you inquire: 1) whether a sheriff has statutory authority, without consent of court, to commit a county jail inmate to electronic home detention; and 2) if so, whether a judge may supersede that authority and prohibit the sheriff from releasing an inmate on an electronic monitoring device. For the reasons hereinafter stated, it is my opinion that a sheriff does not possess the unilateral authority to commit an inmate to electronic home detention; therefore, your second question is rendered moot.

The office of sheriff is provided for in article VII, section 4 of the Illinois Constitution of 1970. Section 4(d) of

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article VII provides that the sheriff has the duties, powers and functions derived from common law unless altered by law or by county ordinance. While the duties of the sheriff have been codified by statute, these statutory duties are to a great degree merely declaratory of the sheriff's common law authority.

(People ex rel. Reyses v. Cermak (1925), 239 Ill. App. 195.)

Pursuant to statute, the sheriff is entrusted with the care and custody of the courthouse and jail, as well as the prisoners of the jail. (55 ILCS 5/3-6017; 730 ILCS 125/2 (West 1994).) The sheriff is a proper custodian of prisoners sentenced to periodic imprisonment for the commission of a misdemeanor (730 ILCS 5/5-7-3(a) (West 1994)), and for current misdemeanor offenders sentenced to a straight term of imprisonment of less than one year. (730 ILCS 5/5-8-6(b) (West 1994).) Sheriffs are also entrusted with the temporary custody of convicted felons prior to their transfer to the Department of Corrections. (730 ILCS 5/5-8-5 (West 1994).) In every instance, the sheriff serves in a custodial capacity, without discretion to impose sentence or to modify one previously imposed.

In contrast, the trial court renders the judgment in a criminal case, which includes the pronouncement of sentence. (730 ILCS 5/5-1-12 (West 1994).) Imposing sentence to a penal institution is a purely judicial function, and that authority may not be delegated. (People v. Wills (1974), 23 Ill. App. 3d 25,

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39.) A person committed to electronic home detention is deemed to be committed to a "penal institution." People v. Moss (1995), 274 Ill. App. 3d 77, 80.

Section 8A-3 of the Electronic Home Detention Law (730 ILCS 5/5-8A-3 (West 1994)) provides, in pertinent part:

" * * *

(f) Applications for electronic home detention may include the following:

- (1) pretrial or pre-adjudicatory detention;
- (2) probation;
- (3) conditional discharge;
- (4) periodic imprisonment;
- (5) parole or mandatory supervised release;
- (6) work release;
- (7) furlough or
- (8) post-trial incarceration."

Section 8A-4 of the Electronic Home Detention Law (730 ILCS 5/5-8A-4 (West 1994)) provides, in pertinent part:

"Program description. The supervising authority [including a sheriff] may promulgate rules that prescribe reasonable guidelines under which an electronic home detention program shall operate. These rules shall include but not be limited to the following:

(A) The participant shall remain within the interior premises or within the property boundaries of his or her residence at all times during the hours designated by the supervising authority. Such instances of approved absences from the home may include but not be limited to the following:

- (1) working or employment approved by the court or traveling to or from approved employment;

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(2) unemployed and seeking employment approved for the participant by the court;

(3) undergoing medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the participant by the court;

(4) attending an educational institution or a program approved for the participant by the court;

* * *

(G) The participant shall not commit another crime during the period of home detention ordered by the Court.

* * *

(Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (People v. Robinson (1996), 171 Ill. 2d 207, 221.) Where statutory language is clear and unambiguous, it must be given effect as written. (Barnett v. Zion Park District (1996), 171 Ill. 2d 378, 389.) A criminal statute is not to be construed in a vacuum, but in conjunction with other related sections. (People v. Butler (1979), 78 Ill. App. 3d 809, 817.) It is presumed that statutes which relate to one subject are governed by one spirit and a single policy, and that the General Assembly intended enactments to be consistent and harmonious. People v. Maya (1985), 105 Ill. 2d 281, 286.

Under the plain language of these statutes, the sheriff has not been granted the independent authority to place jail

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inmates on an electronic monitoring device without an appropriate order of court. Indeed, subsection 8A-4(G) of the Act specifically refers to an order of court establishing the period of home detention. Although the supervising authority is delegated the power to prescribe the terms of the electronic home detention program, the authority to promulgate rules is not unfettered and is subject to the court's approval. Accordingly, it is my opinion that the court, and not the sheriff, is the ultimate arbiter of whether electronic home detention is appropriate for county jail inmates.

This conclusion would be mandated even if the statutory language were less certain. An examination of the several statutes relating to electronic home detention clearly illustrates that the use of this alternative for county jail inmates is reserved to the court. For example, in the pre-trial setting the trial court retains the sole authority to impose electronic home monitoring as a condition of bond. Section 110-10 of the Bail Act (725 ILCS 5/110-10(b) (West 1994)) provides, in pertinent part:

" * * *

(b) The court may impose other conditions, such as the following, if the court finds that such conditions are reasonably necessary to assure the defendant's appearance in court, protect the public from the defendant, or prevent the defendant's unlawful interference with the orderly administration of justice:

* * *

(14) [That the defendant b]e placed under direct supervision of the Pretrial Services Agency, Probation Department or Court Services Department in a pretrial bond home supervision capacity with or without the use of an approved electronic monitoring device subject to Article 8A of Chapter V of the Unified Code of Corrections; * * *

* * *

(Emphasis added.)

In the post-trial setting, as a condition of probation or conditional discharge, the court may require the defendant to serve a term of home confinement coupled with electronic monitoring. Section 5-6-3 of the Unified Code of Corrections (730 ILCS 5/5-6-3 (West 1994)) provides, in pertinent part:

" * * *

(b) The Court may in addition to other reasonable conditions relating to the nature of the offense or the rehabilitation of the defendant as determined for each defendant in the proper discretion of the Court require that the person:

* * *

(10) serve a term of home confinement. In addition to any other applicable condition of probation or conditional discharge, the conditions of home confinement shall be that the offender:

* * *

(iii) if further deemed necessary by the court or the Probation or Court Services Department, be placed on an approved

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electronic monitoring device,
subject to Article 8A of Chapter V,

* * *

"

(Emphasis added.)

Similarly, the court may impose electronic monitoring as a condition of periodic imprisonment. Section 5-7-1 of the Unified Code of Corrections (730 ILCS 5/5-7-1 (West 1994)) provides, in pertinent part:

"

* * *

* * * Unless the court orders otherwise, the particular times and conditions of release shall be determined by the Department of Corrections, the sheriff, or the Superintendent of the house of corrections, who is administering the program.

(b) A sentence of periodic imprisonment may be imposed to permit the defendant to:

* * *

(8) continue to reside at home with or without supervision involving the use of approved electronic monitoring device, subject to Article 8A of Chapter v; or

* * *

"

In a juvenile adjudication the court may also order, as a condition of probation or conditional discharge, that the minor serve a term of home confinement coupled with electronic monitoring. Section 5-24 of the Juvenile Court Act of 1987 (705 ILCS 405/5-24 (West 1994)) provides, in pertinent part:

" * * *

(2) The court may as a condition of probation or of conditional discharge require that the minor:

* * *

(q) serve a term of home confinement. In addition, to any other applicable condition of probation or conditional discharge, the conditions of home confinement shall be that the minor:

* * *

(iii) use an approved electronic monitoring device if ordered by the court subject to Article 8A of Chapter V of the Unified Code of Corrections;

* * *

"

In addition, the Prisoner Review Board has been granted the authority to order electronic detention for persons committed to the custody of the Department of Corrections. Section 3-14-2 of the Unified Code of Corrections (730 ILCS 5/3-14-2 (West 1994)) provides, in pertinent part:

"* * * (a) The Department shall retain custody of all persons placed on parole or mandatory supervised release or released pursuant to Section 3-3-10 of this Code and shall supervise such persons during their parole or release period in accord with the conditions set by the Prisoner Review Board. * * * Such conditions may include that the person use an approved electronic monitoring device subject to Article 8A of Chapter V.

* * *

"

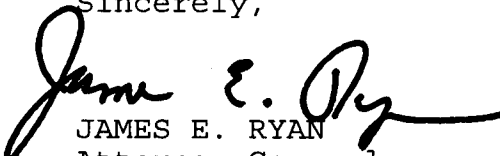
By granting the courts and the Prisoner Review Board the express statutory authority to order electronic detention, it

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must be assumed that the General Assembly did not intend by implication to grant that authority to sheriffs. Moreover, since electronic home detention clearly did not exist at common law, sheriffs cannot rely upon their common law powers in this regard.

In summary, it is my opinion that county sheriffs lack the unilateral authority to commit county jail inmates to electronic home detention.

Sincerely,


JAMES E. RYAN
Attorney General