

RE: Court of Appeals Decision regarding Authority to Place an Inmate on an EM Program.

Kuglitsch, Paul

Tue 9/17/2019 2:31 PM

To: Hafemann, Michael <Michael.Hafemann@milwaukeecountywi.gov>; Daun, Margaret <Margaret.Daun@milwaukeecountywi.gov>; Kearney, Anne <Anne.Kearney@milwaukeecountywi.gov>
Cc: Koltun, Raisa <Raisa.Koltun@milwaukeecountywi.gov>; McLaughlin, Sarah Milnar <Sarah.McLaughlin@milwaukeecountywi.gov>

In a 2003 published Court of the Appeals case – not cited by Audit – *State v. Schell*, 2003 WI App 78, ¶ 12, 261 Wis. 2d 841, 850, 661 N.W.2d 503, 507, the circuit court gave the defendant 119 days in jail with Huber privileges. The sheriff determined that the defendant was appropriate for home monitoring and placed her in the program. Someone complained to the circuit court, who did not address home monitoring in its decision. The court ordered the sheriff to take the defendant **off** home monitoring. The defendant appealed and the Court of Appeals determined that “the plain language of WIS. STAT. § 302.425 allows the sheriff [or superintendent] to place persons on home monitoring when they are given jail time as a probation condition. Section 302.425(2) allows the sheriff to place on home monitoring “any person confined in jail who has been ... convicted of ... a crime.” The sheriff [or superintendent] must establish “reasonable terms of detention and ensure that the prisoner is provided a written statement of those terms,” etc. *Id.*

In the Connor decision cited by Audit, the Court of Appeals noted that “it is clear that once the trial court has sentenced an offender to jail, whether as a condition of probation or otherwise, the decision of who is to be electronically monitored is the sheriff's call. Indeed, the authority given the sheriff to place any person in home detention is broad, as it includes anyone “who has been arrested for, charged with, convicted of, or sentenced for a crime.”” *State v. Connor*, 2007 WI App 19, ¶ 7, 298 Wis. 2d 552, 727 N.W.2d 375.

It should be stated that a court can also impose a sentence of home placement, in lieu of a sentence to the county jail. Wis. Stat. 97.03(4). But the sentence is to the jail [or HOC], then it's the sheriff's [or superintendent's] decision.



Paul D. Kuglitsch | Deputy Corporation Counsel
 Milwaukee County Office of Corporation Counsel
 901 N 9th Street, Suite 303 | Milwaukee, WI 53233
Paul.Kuglitsch@milwaukeecountywi.gov
 (414) 278-4289 Office

From: Hafemann, Michael <Michael.Hafemann@milwaukeecountywi.gov>

Sent: Tuesday, September 17, 2019 11:36 AM

To: Daun, Margaret <Margaret.Daun@milwaukeecountywi.gov>; Kuglitsch, Paul <Paul.Kuglitsch@milwaukeecountywi.gov>; Kearney, Anne <Anne.Kearney@milwaukeecountywi.gov>

Cc: Koltun, Raisa <Raisa.Koltun@milwaukeecountywi.gov>; McLaughlin, Sarah Milnar <Sarah.McLaughlin@milwaukeecountywi.gov>

Subject: Court of Appeals Decision regarding Authority to Place an Inmate on an EM Program.

Hi Maggie, Paul and Anne;

Listed below is an excerpt from a 2013 audit conducted by Milwaukee County Office of Comptroller (I also attached the full audit report for your review). It appears to me I have the authority to place and supervise an inmate with Huber/work release privileges through an electronic monitoring (EM) program - and - I may do so even if the sentencing court objects to the assignment or placement in an EM Program. Can you please review this case to determine whether or not my interpretation is accurate? The excerpt begins on page #23 or the attached audit report. Thanks.

Mike

In 2006, the District I Court of Appeals issued a decision in the case of the *State of Wisconsin v. Lynda Marie Connor*, which further clarified the intent of 302.425(3), Wis. Stats. The defendant in the case appealed the judgment convicting her of operating a motor vehicle while under the influence of an intoxicant, fourth offense, arguing, in part, that the trial court exceeded its authority by ordering that she serve her sentence without electronic monitoring. The Court of Appeals agreed that it was beyond the authority of the courts to determine the status of electronic monitoring. The decision stated:

This Statute gives no authority to trial courts to determine which prisoners are to be electronically monitored, and indeed, directs that the sheriff or a superintendent of a house of correction make that determination.... Thus, it is clear that once the trial

court has sentenced an offender to jail, whether as a condition of probation or otherwise, the decision of who is to be electronically monitored is the sheriff's [superintendent's] call. Indeed, the authority given the sheriff [superintendent] to place any person in home detention is broad, as it includes anyone "who has been arrested for, charged with, convicted of, or sentenced for a crime."

Michael Hafemann, Superintendent
Milwaukee County House of Correction

