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# Public Hearing

before

## SENATE LAW AND PUBLIC SAFETY COMMITTEE.

"To receive testimony on, and investigate the Electronic Monitoring/Home Confinement Program administered by the Department of Corrections, and the Intensive Supervision Program administered by the Administrative Office of the Courts"

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**LOCATION:** Freeholders' Meeting Room  
Passaic County Admin. Building  
Paterson, New Jersey

**DATE:** April 21, 1992  
12:30 p.m.

### MEMBERS OF COMMITTEE PRESENT:

Senator Louis F. Kosco, Chairman  
Senator John J. Matheussen, Vice-Chairman  
Senator Bradford S. Smith  
Senator John A. Girgenti

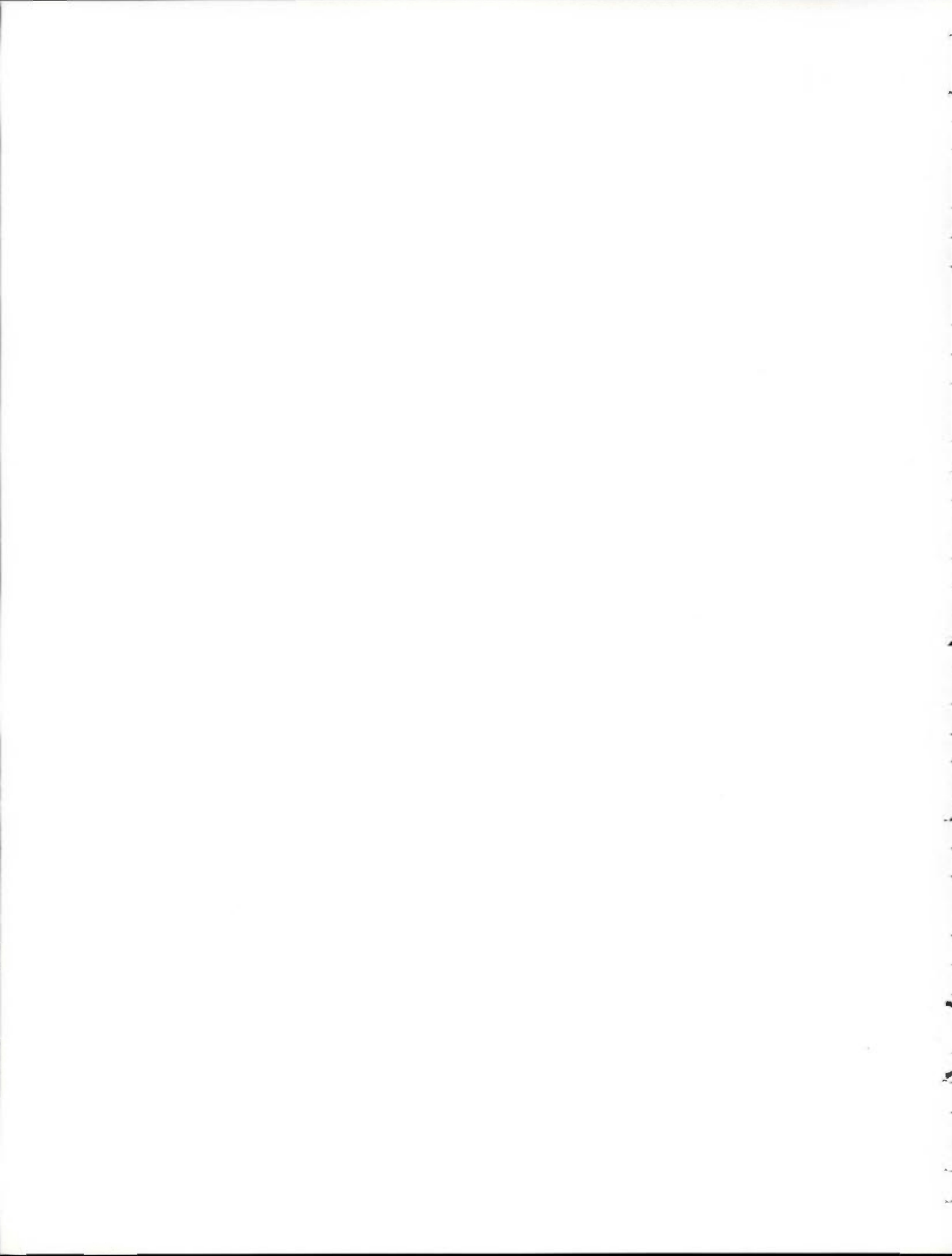


### ALSO PRESENT:

Assemblyman Frank Catania  
District 35

Aggie Szilagyi  
Office of Legislative Services  
Aide, Senate Law and Public Safety Committee

**Hearing Recorded and Transcribed by**  
The Office of Legislative Services, Public Information Office,  
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SENATOR  
JOHN MATTHEWSON  
Vice Chairman  
JOHN B. SCOTT  
STAFFORD S. SMITH  
THOMAS F. COWAN  
JOHN A. GIRGENTI

New Jersey State Legislature

SENATE LAW AND PUBLIC SAFETY COMMITTEE  
LEGISLATIVE OFFICE BUILDING, CN-068  
TRENTON, NEW JERSEY 08625-0068  
(609) 984-0231

NOTICE OF PUBLIC HEARING

The  
Senate Law and Public Safety Committee  
will hold a public hearing on  
Tuesday, April 21, 1992, at 12:30 P.M.

in the  
Freeholders' Meeting Room  
Passaic County Administration Building  
317 Pennsylvania Avenue  
Paterson, New Jersey 07503

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The purpose of this public hearing is to receive testimony on and investigate the:

- Electronic Monitoring/Home Confinement Program administered by the Department of Corrections, and
- Intensive Supervision Program administered by the Administrative Office of the Courts.

These two programs, which are alternatives to incarceration, use electronic monitoring systems for the surveillance and control of the criminal offenders in the program. Recently in the City of Paterson, a criminal offender in the Department of Corrections' home confinement program escaped by removing the electronic monitoring device. That offender has now been charged with murder for a fatal shooting which occurred during his escape.

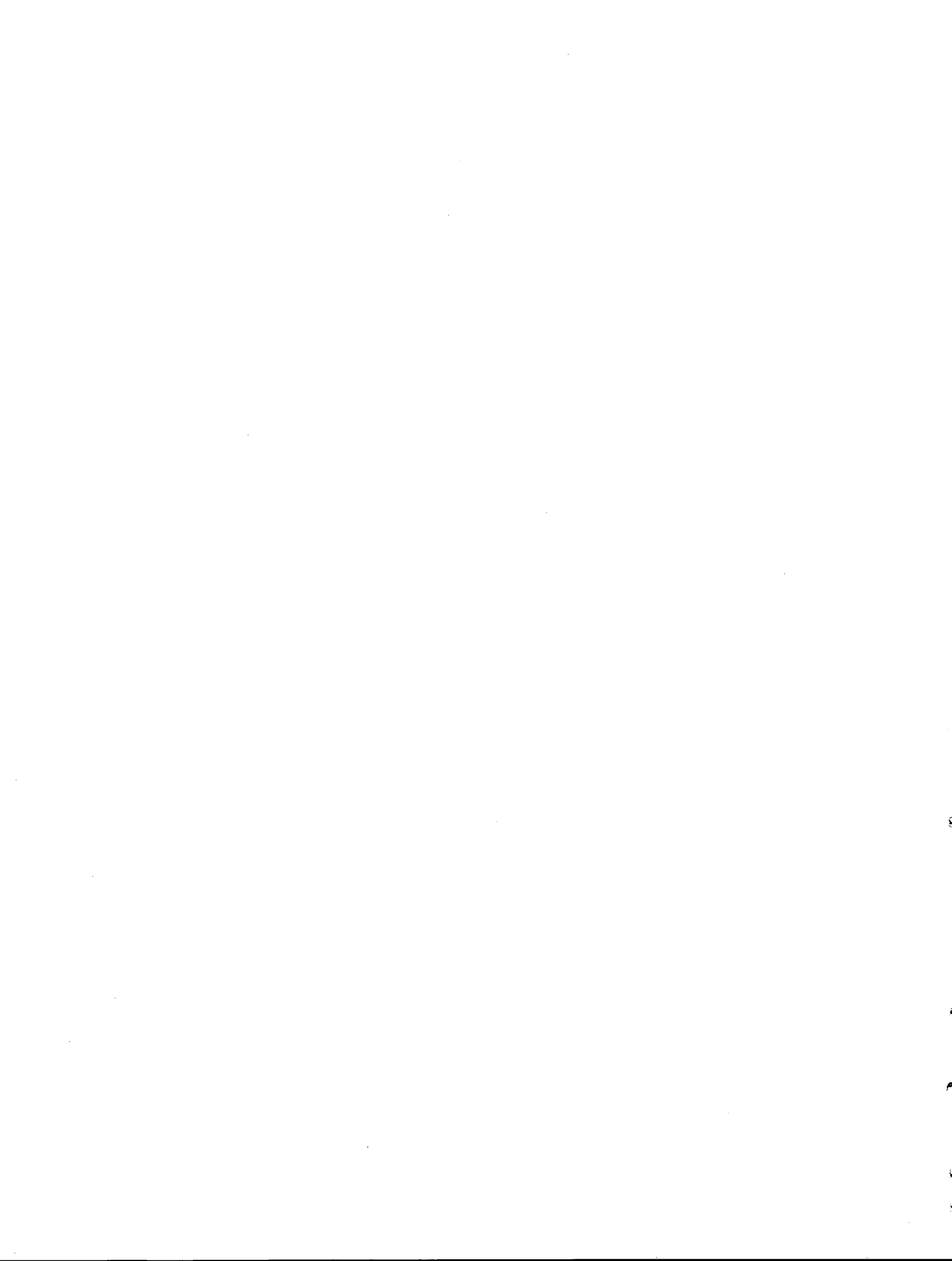
The committee will receive testimony from invited speakers and interested members of the public and will discuss program operations, the offender selection process, and the programs' security features.

*The public may address comments and questions to Aggie Szilagyi, Committee Aide, and persons wishing to testify should contact Cheryl Klemm, secretary, at (609) 984-0231. Persons presenting written testimony should provide 10 copies to the committee on the day of the hearing.*



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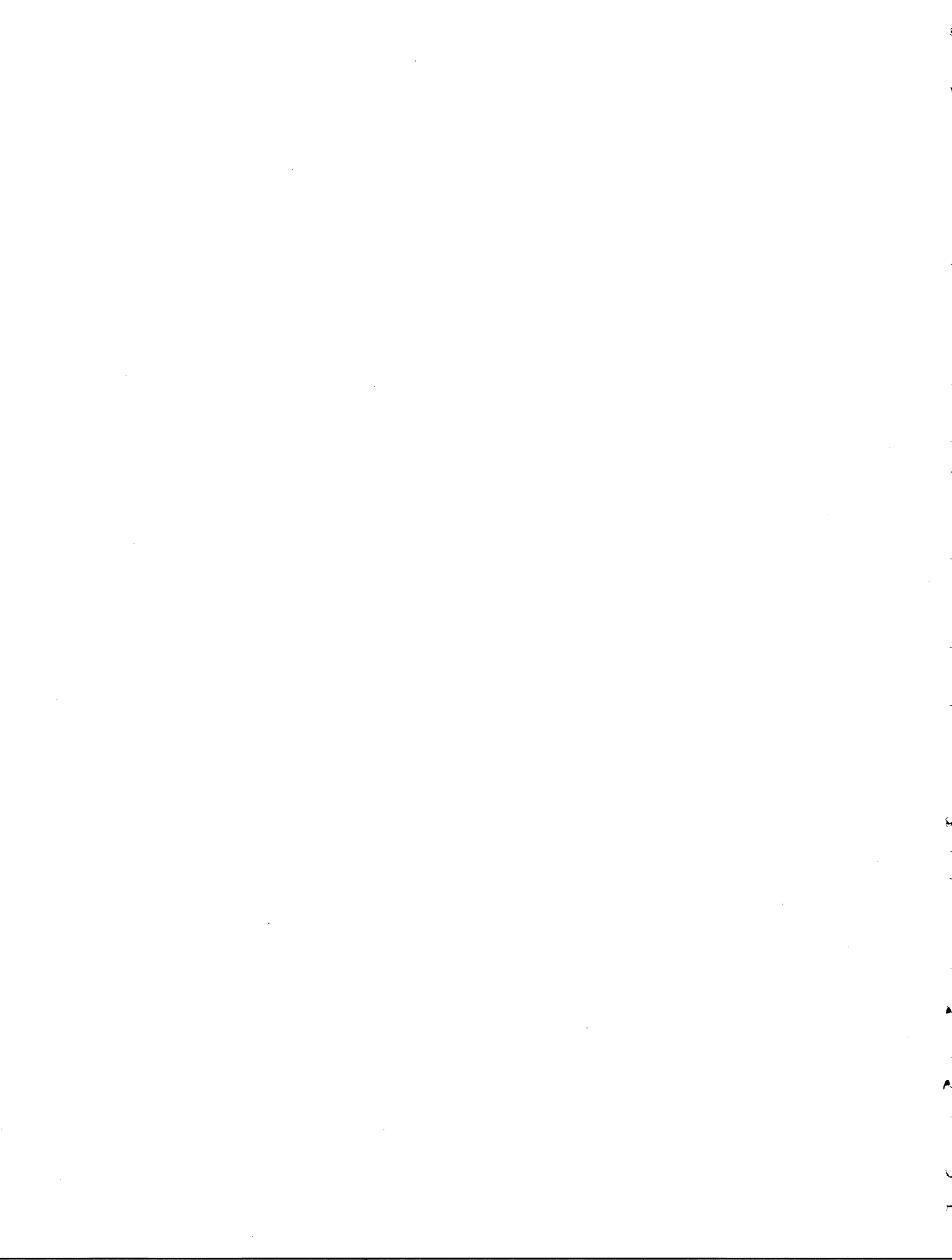


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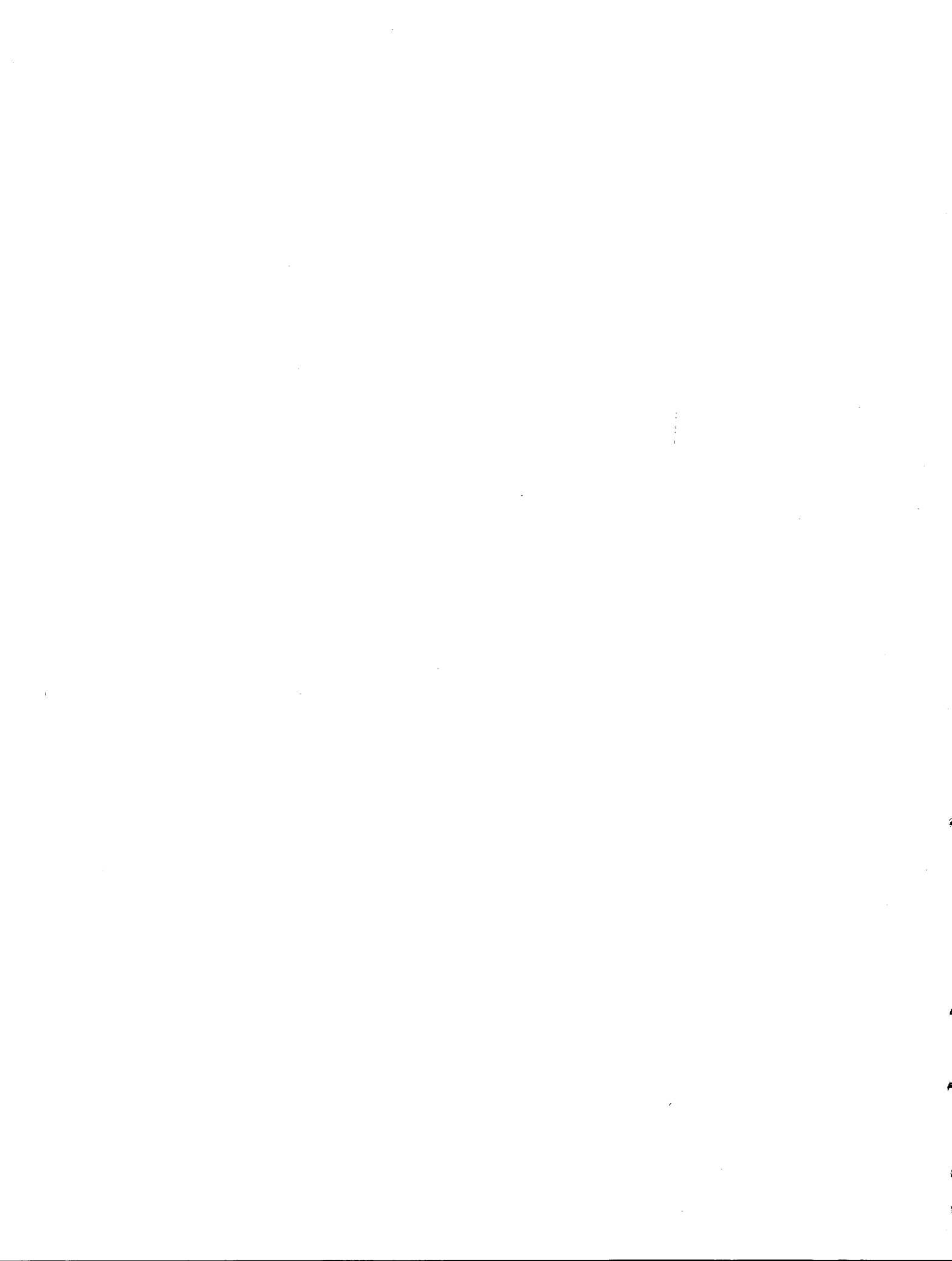
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"Ingredients for Success in  
Electronically Monitored Home  
Detention Programs" submitted  
by Jock Waldo

8x

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**SENATOR LOUIS F. KOSCO (Chairman):** We would like to call this hearing to order. If anyone who wishes to speak has not yet signed in, would you please do so -- we have these forms down here -- so we can set up some type of order? Let me get started here while everyone is completing their sign-ins and we're setting up our papers here. We will try to get some type of an order of how we are going to listen to your testimony.

First of all, I want to thank my Committee members for being here to participate in this most important discussion. It is certainly something that we are concerned about. I want to make something very clear: This is not any type of a witch-hunt. This is a very serious hearing to determine whether or not a project that we all feel is a very good, worthwhile project, can be made foolproof, and I mean that sincerely. We want to make it foolproof, because we are dealing with people and their futures and their lives. We are very concerned about the program being used to its full extent.

With that intent, because of a tragedy which took place on April 2, the Senate Law and Public Safety Committee scheduled today's hearing. The Committee members decided to investigate how well the New Jersey Electronic Monitoring/Home Confinement Program is administered by the New Jersey Department of Corrections. More importantly, we wonder, as a public policy -- as public policy leaders, whether the problem that prompted today's legislative inquiry has occurred nationally, or in any of the other states. We need to move cautiously as we evaluate how quickly the expansion of this Electronic Monitoring Device Program should proceed.

As leaders from other states debate the pros and cons of electronic monitoring devices, we, in New Jersey, are opening up an important informational resource which may help officials in deciding whether this house arrest option is the right one for a criminal justice system. The Department of

Corrections is planning to expand the Electronic Monitoring/Home Confinement Program. The Administrative Office of the Courts also intends to expand its Intensive Supervision Program. Both of these programs rely upon modern electronics, specifically electronic surveillance plastic anklets, a verifier that attaches to the prisoner's phone and a base station which allows monitoring of the whereabouts of the prisoner around the clock. Supposedly, if the prisoner moves outside a permitted area or tampers with the electronic anklet, it can be immediately detected.

Unquestionably, these programs hold the potential for substantial cost savings, since they can help to alleviate prison overcrowding, and some of the need to build new prisons. However, the programs are dependent upon the careful selection of nonviolent prisoners who are good security risks, and upon the infallibility of the electronic monitor.

On April 2, a prisoner in the Electronic Monitoring/Home Confinement Program somehow managed to remove his surveillance anklet undetected, and was involved in the shooting of a 19-year-old teenager. According to some news reports, the prisoner had been able to remove his electronic surveillance anklet without detection for some months prior to the fatal shooting.

The purpose of this special investigatory public hearing is to determine exactly what went wrong, for until it can be determined how this tragedy occurred, future plans for expansion of the Home Confinement and Intensive Supervision Programs must necessarily be put on hold. Was there a technical glitch in the system, a machine error, or can the tragedy be attributed to human error? People have a right to know whether this is the first known example of such a failure.

According to news stories following the fatal shooting, the Department of Corrections placed the blame on the electronic equipment for not transmitting properly. On the

other hand, the President of Digital Products, the Florida manufacturer of the electronic surveillance equipment which is used to monitor the 700 inmates in New Jersey, is quoted in the April 13 Star-Ledger as saying: "I think they" -- meaning the Department of Corrections -- "are unsure of how they should handle the case, and I think that is the easy thing to say. We are satisfied that there was no machine error." Hopefully, this Committee will be provided with clear, definite answers and explanations today by those testifying regarding how it is possible for a prisoner to remove his electronic surveillance anklet without being detected.

Since both the Home Confinement and the Intensive Supervision Programs have the potential for significant cost savings, as compared to incarceration in a correctional facility, I truly hope that an expansion of these programs can proceed as planned. However, expansion of these programs simply should not be allowed to proceed until we can be assured, as far as humanly possible, that the senseless tragedy of April 2 will not be repeated.

I will now ask my Committee members if they would like to add to, or make any specific comments about this hearing, or about anything that has taken place. Senator Girgenti?

SENATOR GIRGENTI: Yes. Thank you very much, Senator.

First of all, I want to commend you and the members of the Committee for coming up here because of the seriousness of this situation. As you know, there are a lot of questions that we hope will be answered here today at this hearing; namely, what type of clientele are in this type of program? I would like to know the criteria, and I hope that will come out. I understand that in some situations-- I always felt the criteria was that they were supposed to be nonviolent individuals.

Beyond that, I think this is a good way of looking at a program, as you mentioned-- Right now, because of the prison

overcrowding, we are looking for alternatives. If this is going to be used on a larger scale, then I feel we should look into this program thoroughly before that is going to happen. This certainly was a tragedy which occurred, as we all realize, and we should address it.

There are two things I want to say, Lou: First of all, number one, we should look at the entire program, as I said, as a long-range goal, and I know that is why we are here. Secondly, as you know, the other day I introduced a bill -- which I hope you will support me on -- which would say that anytime any of these individuals are released into the community, they should be-- The prosecutor should be notified, plus the local law enforcement people. I think that is something we can do as a short-range goal. I heard, from different comments, that they are notified, but my researchers told me that the chiefs of police and the county prosecutor in this particular incident were never notified.

Thank you.

SENATOR KOSCO: Okay, thank you. The first person we are going to call is Commissioner Fauver. Commissioner, I, and this Committee, certainly want, once again, to thank you for coming and providing us with some answers to some of our questions.

COMMISSIONER WILLIAM H. FAUVER: With your permission, I will bring these other people up and introduce them.

SENATOR KOSCO: Whatever you want. Commissioner, could you introduce the people who are with you so that our reporter--

MR. SALLACH (Committee Aide): And please spell the names.

COMMISSIONER FAUVER: Thank you, Mr. Chairman. I would like to introduce the people here at the table with me. To my far left is Steve Adams, who is one of the base station

operators in Trenton of the electronic monitoring. We have, as requested by the Committee, brought a sample of the wristlet, or the anklet. Steve can demonstrate that, if you desire.

To my immediate left is Terri Howard, Assistant Commissioner for the Division of Policy and Planning, under which the Bureau of Parole comes, and this program is a segment of that. And to my right is Mario Paporozzi, who is another parole supervisor who was instrumental in the starting of the wristlet program, and now is with the ISSP Program, which I know Senator Girgenti has some questions about, even though that is not the purpose of the hearing. But, trying to anticipate the Senator's questions, I brought someone who can answer them better than I.

Just a couple of comments, and then we will defer to any questions you people may have.

I want to tell you about, you know, where we are. I believe you have -- I hope you have, let's put it that way -- this material for the Committee, which I will be referring to. I think there are a couple of things here. One is the background on this, and then how we got to where we are. How did the event that happened -- this killing happen without us being aware of it, and what are we going to do to ensure that that does not happen again.

I think probably since most pressing at the moment is how did it happen and what went wrong with the system, I would like to say that in this case, Tony Palmer -- the person who is accused of the murder -- really did not beat the system. The system was never designed so that a bracelet, or wristlet, or anklet could not be taken off. It is designed so that when that happens, or when there is a tamper, that will be reflected in the electronic monitoring.

Now, Palmer had-- We do have recorded a note where Palmer did have a tamper with this right before this incident occurred, and it did work. To the best of our ability, what we

know happened, or believe happened-- I might point out that I went through the National Institute of Corrections and asked them if they had an expert in this field who they would send us for a few days to review our system. They did that. He was here over the weekend. I met with him briefly yesterday, and he will have a written report to us in approximately 10 days. When that report comes in, we will then make any changes I feel are necessary that are recommended by him.

One of the immediate steps that I took right after the incident was, we had each person out on the wristlets reviewed. Everyone was seen. They were, in a sense, what we call "locked into their homes." There were no reasons to go out over the weekend, and we had each one of those checked to make sure they were functioning.

The other recommendation he made was that he felt that part of this problem is that we grew too fast, and went from, really, almost a mom and pop operation of a year-and-a-half ago, to over 600 people out. He suggested that no more people be on until we review the report; until we can make sure there are no further bugs. That is one of the things I am doing right away, and that is to keep the level where it is, and not to do an increase. We do have, as you are aware, a request in for next year to be able to increase to 1000. At this point, I am confident we can do that, but I am not going to take the chance that this kind of thing could happen again until I am sure that it can't. We will continue the way we are, with the number we have, and not exceed that.

One particular incident with Palmer: At the time this happened, when this glitch first occurred -- which was in January of this year -- the equipment-- The manufacturer was doing an upgrade of the equipment. We were, at that point, reading a printout that came in constantly and was reviewed by our people in Central Communication -- or, excuse me, in Central Control. The upgrade was to now take this off of the

written printer and put it on a screen -- such as a computer screen -- so it could be read, and would be more easily noticeable. This upgrade was going on during the period from roughly the 1st of January, end of December, up until now. What had been the practice of reading this screen -- excuse me, reading the printout that came out of a printer -- was discontinued because this was supposed to show up on the screen.

In this particular case, this did not happen, so we did not continue to read these on a routine basis, only if there was some reason to believe there was something wrong. There was no reason to believe that, because what happens is, the electronic monitoring system printed for approximately five days that there had been a tamper with the system, but it never came onto the screen. If we had been reading those, as we had done originally, then that would have been picked up that there had been a tamper. Whether that tamper would have been seen as accidental, which can happen -- or which happens all the time -- or whether it was seen as deliberate in an attempt to evade, you know, we could only guess at this point.

That is oversimplifying, but that is kind of the quandary of what happened on that. We are now having-- The upgrade of the equipment has continued. The printout will now be referred to the screen -- to the computer screen -- and we are reviewing the printouts on a four-hour basis. We are going to have to put more people in, people to do that, to ensure that this doesn't happen until we are, you know, confident that the equipment is 100 percent.

I think, in effect, the statements you said were in the press-- I don't know. I don't think this is a case, in a sense, of either side being wrong. There were errors both ways. Why that happened-- From what the manufacturer tells me, it was a fluke that shouldn't have happened. It should have printed out, but it didn't. On our part, we should have continued to review. I think there was a mistake in

communication between the manufacturer and the people who are handling the program, on the basis that they didn't have to read this anymore.

SENATOR KOSCO: At that point, Commissioner, you say that this happened for a period of how long a time -- that this changeover took place?

COMMISSIONER FAUVER: The changeover started around the end of December, and was taking place gradually up until now. We are still doing it, which is one of the reasons why I had everything checked last weekend -- or the weekend before.

SENATOR KOSCO: Supposedly -- and again the main thing we have to go by is what we have been reading in the press -- this gentleman has tampered with this for four months, by his own admission.

COMMISSIONER FAUVER: Right.

SENATOR KOSCO: Is it possible he could have been doing it for four continuous months and this was never picked up?

COMMISSIONER FAUVER: Yes.

SENATOR KOSCO: Does that mean that someone didn't monitor it for four months?

COMMISSIONER FAUVER: No. It is not a question of it being monitored. The machine worked until around, I think it was the 15th of December, when there was a tamper. They went to check it out, and it appeared to be okay and it looked like it was accidental. They left him on the program.

Once this machine-- One of the flaws that is being corrected -- it is not a flaw, it is something that had to be upgraded-- Once this showed up on the printout for "X" number of days, which I believe was five, it then went off. It didn't show as a tamper anymore. So, he could have taken it off during this period of time, and it would not have shown up. That is what is referred to as a "tamper mode."

Now, to make sure that that -- to build in a more fail-safe kind of idea, the equipment-- Instead of just visually inspecting the equipment, the officers going out now will actually insert the wristlet we showed you before into the verifier, which is called a "reset," and if it has been tampered with it will show up at that point. Before, they were doing a visual inspection, and if it didn't look like anything, and it was not showing up as a tamper--

So, yes, in fact, he was out since January at least with this not showing up as a tamper. See, the machine already showed a tamper and the machine did not pick up because it was never reset. We had no reason to believe it was tampered. He was visited by his parole officer during that period of time. There is a log. The parole officer did check on him, but he had no way of knowing that this was the case.

As I indicate now, I realized after the fact, but, unfortunately, that happens in some cases like this. We really have a triple check. We read the screen every four-- Excuse me. The screen comes up from the printer automatically if there is a tamper. In case that doesn't happen, like it didn't in this case, we read the printout every four hours, which we had stopped doing. As a third thing, when they check they put the wristlet into the receiver and, if there has been a tamper, that will show at that point.

Having said that, I still put a hold on the expansion until we get some experience with doing it this way. I don't think there is any fault on the part of any parole officer involved in this. I think the fault, if there was one in this, was that we didn't continue to review the printer because we thought the screen was picking up everything, which is what was supposed to happen. I think that is something that happens. I have seen it happen with electronic surveillance in prisons, whether it be parameter guards or cameras. Something happens, but you can't do away with the human factor. You have to keep the human factor involved.

So that is on the incident itself. I will be glad to respond to anything on that.

SENATOR KOSCO: In other words, the new system you are going to use-- Step number one, the new system that you are going to use is to-- When the parole officer goes to the person's house, you are going to take the bracelet, or take the other receptacle--

COMMISSIONER FAUVER: The wristlet -- this, right.

SENATOR KOSCO: Hold that up, so the people can see what we are talking about, Commissioner, please. That is the bracelet that goes around the person's ankle.

COMMISSIONER FAUVER: Right.

SENATOR KOSCO: The other black piece of equipment is what is inserted together.

COMMISSIONER FAUVER: Right. This goes in here. (demonstrates)

SENATOR KOSCO: If he takes that box and inserts that into the bracelet, that could tell you on your computer whether it was tampered with?

COMMISSIONER FAUVER: That will tell you, back at the base station, yes, that this has been tampered with.

SENATOR KOSCO: If it was tampered with a week ago-- It has a memory in it?

COMMISSIONER FAUVER: Yes, it will show. It shows up on their screen as a reset, which means that it has been tampered with.

SENATOR KOSCO: All right. So what we have at this point is step number one of a change in the way it has been--

COMMISSIONER FAUVER: Well, yes, in a sense it is one.

SENATOR KOSCO: Well, as far as today is concerned.

COMMISSIONER FAUVER: Yes, yes, as far as today is concerned.

SENATOR KOSCO: Okay. Thank you.

SENATOR SMITH: Mr. Commissioner, I am a little confused about why this didn't show up on the screen during the changeover. Apparently, you were reviewing these printouts every four hours, and then there was a changeover in the system where any tampering was supposed to show up on a screen. Is that correct?

COMMISSIONER FAUVER: Yes. We were reviewing this-- I'm not sure whether it was every four hours or every day. I think it was once a day we were reviewing it. The purpose of the enhancement, or the upgrade of printing it, was so that-- Not everything gets printed onto the screen. The only things that come up are tampers or something like that, which would show. The rest is routine, like phone calls answered. When he answers the phone, he is there, and we can verify that he was there at 10:00 at night. He inserted the wristlet back. -

So, yes, we are now doing--

SENATOR SMITH: Why did it not show up on the screen in this particular instance, do you know?

COMMISSIONER FAUVER: Well, supposedly -- and again, this is one of the things I have asked the consultant to tell me for sure-- This works off of a telephone system, and it looks like it may have been as simple a thing as getting a busy signal into the computer, and not resetting, not reprinting, just going on to the-- I don't know that for sure. That is what it looks like preliminarily.

SENATOR SMITH: So this is a very serious glitch, so to speak, which has to be straightened out?

COMMISSIONER FAUVER: What would have to happen if that turns out to be the case, is, I think we need more access. We need another computer and another reader and all those things, so that there won't be any chance of that happening.

SENATOR SMITH: I assume you have had some tests on these bracelets since this incident, to see if tampering does show up on the screen?

COMMISSIONER FAUVER: Yes, we have. Every person who is on the program was-- They did just what I described to you. That insertion was done, not this weekend, but a week ago.

SENATOR SMITH: And they all worked properly?

COMMISSIONER FAUVER: They all worked properly, to the best of my knowledge. Steve, were there any--

S T E V E N A D A M S: No--

COMMISSIONER FAUVER: They all worked properly.

SENATOR SMITH: But at least with respect to this one piece of equipment, it wasn't working properly then. Is that a fair assumption?

COMMISSIONER FAUVER: Well, I am not sure. The equipment, see, would have triggered the phone call through the phone lines to the computer, which didn't respond; it didn't show. And as I said, that part I am not 100 percent sure of, but from what I have been told so far, it is analogous to getting a busy signal and then not having a way to repeat it.

SENATOR SMITH: Do you have this particular bracelet in your possession?

COMMISSIONER FAUVER: No, we don't. It is part of the evidence in the case. The Paterson police have it, or, I'm not sure, one of the attorneys or the prosecutor or someone.

SENATOR SMITH: So the manufacturer hasn't had a chance to examine that particular bracelet?

COMMISSIONER FAUVER: No, no.

SENATOR SMITH: The last question, if I may, the box you place this bracelet in-- Is that attached to the telephone in some fashion?

MR. ADAMS: Yes. This is a verifier. (demonstrating) This is a home monitoring unit. The unit is plugged into an AC outlet in the home. The phone goes into the unit. This verifier is attached to the box. The inmate wears the anklet. Through prompted phone calls, or whatever, from our base station, he is asked to verify. They are all

computerized and synchronized, serialized, matched up, so we know that the person we put this anklet on is the person who is actually verifying.

SENATOR SMITH: What prevents someone from moving the box to a different phone?

MR. ADAMS: From moving the box?

SENATOR SMITH: Yes.

MR. ADAMS: If he removed the plug, we would get a no AC power status in our base station, and that would be responded to by a parole officer.

SENATOR SMITH: And that would show up on your screen?

MR. ADAMS: Yes, it would.

SENATOR SMITH: Thank you.

SENATOR KOSCO: Any other questions?

SENATOR GIRGENTI: Yes. Commissioner, I have a lot of questions I would like to ask, but just for openers: What is the criteria for an individual to get into the Home Confinement Program?

COMMISSIONER FAUVER: For the Home Confinement, it's within six months of his parole date, and he has to be in minimum custody, which means he has been classified at one of the institutions -- he or she -- into a status that is, maybe on grounds, but somewhere outside of the security -- outside of the parameters of security. From this are precluded: murderers, rapists, arsonists, and sex offenders of any kind.

In the handout you have, Senator, there is a graph in the back, or a pie chart, which shows the breakout by offenses, compared to what is in the prison itself. It is primarily, as you can see-- Sixty-eight percent are for drug offenses; 14 percent property; and 18 percent person. The admissions, on page 2 of this, show you that the number of failures there have been in the system, obviously that we are aware of -- this is one we were not aware of, but it is listed here-- Out of 2215

-- and I don't mean to be redundant on this, but I just want to read it for the record-- Out of 2215 inmates released from prison to this program in a little over two-and-a-half years, or about two-and-a-half years, approximately 15 percent, or 328, were returned for violations of the program or for administrative reasons. This would be no new crime. It could be tampering with the bracelet, which we know they are doing intentionally. It could be failing a drug monitoring screen, or something like that. Also, that includes 24 arrests-- Excuse me. There have been only 24 arrests for new crimes, including 24 -- I'll get it right yet -- 40 new crimes, 24 being for drug offenses, 10 for persons, including the homicide, and six for property. This is less than 2 percent of the total program -- the total inmates who have been assigned to the program.

Again, the statistics are very good. I recognize that statistics mean very little when we are talking about a life that has been taken, so I am not trying to soft-pedal that. I mean, that is a tragedy that happened.

SENATOR KOSCO: Why would we use 70 percent? I think that is about the number. It is 70 percent effective; 30 percent of the people return back, right? Isn't that the number that I recall?

COMMISSIONER FAUVER: It includes program violations. Fifteen percent were returned for these program violations, which could be tampering with the bracelet, they failed a urinalysis, which showed up the use of drugs, or something--

SENATOR KOSCO: Why would that be considered a good average? Shouldn't it be closer to 100 percent, if we are really screening these people properly and letting only the real worthy people out on this program? Maybe the criteria should be changed to not putting certain people in jail in the first place, but keeping them out of jail on this program.

What I'm saying is, if you have a person-- This is just an example: I have a letter here someplace from a mother of two who is going to be going to jail because she and her husband were convicted of bank fraud. She expects to have to spend 16 months in jail. Wouldn't this person be better off in Home Confinement taking care of her family, than going to jail, where she certainly-- It wouldn't be a threat on society if she were confined to her home instead of being put into jail. Rather than taking someone who was convicted of selling drugs-- We know that the highest percentage of crimes certainly in the United States, and in the State of New Jersey, is related to drugs. In this particular case, we take a person who is convicted of, not using drugs, but selling drugs, and we let him out of jail six months before he has served his maximum period of time.

That person probably should not have been out of jail. The lady who was convicted of bank fraud -- I don't know whether it was bad checks, or whatever it was -- has, in my opinion, no business being in jail -- shouldn't be in jail. She should be out on this type of a program. Maybe we are putting people in jail and then letting them out, instead of not putting them in, in the first place; put the bracelet on them. Do you understand what I'm saying?

COMMISSIONER FAUVER: Yes.

SENATOR KOSCO: Does that make sense?

COMMISSIONER FAUVER: Well, let me comment on that: That is happening. I don't know the specific case you were talking about, but there are a number of programs. I mentioned before that I knew Senator Girgenti had questions about what we call the ISSP -- the Intensive Supervision Surveillance Program. That comes at the end of the sentence. It is generally for hard-to-place cases. The program has been in for about eight years, or nine years now. It is a condition of parole, in a sense, to go to this program.

The people you are talking about now would come under -- the example you gave -- the Intensive Supervision Surveillance Program, which is at the front end, people coming in. That is run by the Administrative Office of the Courts. I am not 100 percent sure of the criteria on that, but I am pretty sure they exclude violent criminals in that. I think they are automatically excluded. I know there is a representative here today from the AOC, who I am sure can talk about that much better than I.

SENATOR KOSCO: Maybe that is the subject for another sit-down with this Committee, where we could discuss it and maybe come up with criteria to keep people from going -- to keep nonviolent criminals from going to jail in the first place, and keeping those beds open for people who belong in jail for their full sentence.

SENATOR GIRGENTI: I don't want to interrupt, but I just want to pursue that a little further. Would you say that the categorization of nonviolent criminals is the criteria? Is that something that is used in this, in terms of the criteria?

COMMISSIONER FAUVER: In which of those three programs?

SENATOR GIRGENTI: For the Home Confinement Program.

COMMISSIONER FAUVER: For the Home Confinement-- For the most part, yes, but it excludes the -- what I indicated before are definite exclusions: any kind of sex offense, arson, or murder. There are crimes in here that are listed as against person, which would tend to be burglaries, thefts of different kinds, not necessarily armed robberies or anything like that. There is a fine line on some of these. I mean, even the case that the Senator just described. I mean, by all records, the selling of drugs is not listed as a crime against persons, but against public policy. Yet, in effect, it is, because--

SENATOR GIRGENTI: Commissioner, I have been doing a little research on this. One of the things I found is-- We

have three instances that I can bring out, which are all public record. One was a Bergen Record story. I don't know if you want me to give the name here, but the individual was serving a 15-year sentence for armed robbery, imposed in 1985. He was released to the Home Confinement Program in November of '91; escaped, or walked away on January 24, '92; was arrested on March 31, '91, during the course of an apparent attempted burglary. That was one.

Another is a Robert Damiano (phonetic spelling), which is a Corrections report I have -- which the Department of Corrections put out. This individual, on October 4, 1990 -- this inmate -- was sentenced to seven years for distributing drugs on school property, unlawful possession of weapons, and robbery. On June 21, '91, he was transferred to the Garden State Reception Unit in classification for institutional assignment at the Garden State Youth Correctional Facility at Yardville. On February 7, '92, the inmate was released to the Home Confinement Program and was confined to his address for supervision.

In the third case, the individual was sentenced in January 1991 to four years for burglary. In July '91, he was transferred to the Home Confinement Program, and escaped on October 6, '91. He was only serving a sentence for burglary, but he did have two prior convictions for robbery, one in '81 and one in '84.

Now, of course, I am picking out specific examples. I had them brought to my attention. Then there were another five individuals, four were serving sentences for drug distribution; one was serving a sentence for burglary. Where are these eight individuals in the program? But that leads me to, as you say, we really think this program has to be scrutinized, because an individual on an armed robbery-- These are pretty serious offenses. I don't know why this type of individual would be in the Home Confinement Program.

I realize the overcrowding situation, but I don't feel we should-- We are to, number one, protect the safety of the public. I don't know if you have any comments on that. I would be glad to share all the names with you. I assume they are a matter of public record, and they are all documented. You know, I don't know if there is anything you can add to that. I don't know if you have had all this information before you, but this is information that just got to me last night.

COMMISSIONER FAUVER: Yes, I would be glad to comment on it. I think one of the factors in those cases probably, without seeing them individually, is that they have been classified "institution for minimum custody" status, and have been in that minimum custody status for a period of time, with a good adjustment and probably a recommendation from their supervisors for the program. There has to be an up-to-date psychological on the cases before the person is released. You know, I don't know the specifics as to how much time they did in minimum, or anything, on these cases.

SENATOR GIRGENTI: I understand. But, Commissioner, the one was sentenced in January '91 to four years for burglary, and in July '91, he was transferred to the Home Confinement Program, and escaped on October 6, 1991. That's not a very long period of time -- January through July -- on a four-year term.

COMMISSIONER FAUVER: Well, on a four-year flat sentence with no mandatory minimum, and if he was considered a first offender, he would do roughly a third of his sentence, less work credits and good time credits. So probably he was very close to his eligibility date. I think that is one of the things that is not generally understood about sentencing structure: Unless there is a mandatory minimum, roughly you can figure a third of that sentence, less some time off, to be eligible for parole. So, though you may look at it as coming

in as a four-year sentence, his eligibility date was probably less than a year.

SENATOR GIRGENTI: That brings up another question: What about mandatory minimum sentencing? Are they paid attention to by the Department in terms of this program?

COMMISSIONER FAUVER: Well, I am not sure I know what you mean by "paid attention to."

SENATOR GIRGENTI: In other words, are they-- My impression of a mandatory sentence is that the individual is in prison if he commits certain acts. Therefore, I don't think, in my interpretation, that that person should be in the Home Confinement Program.

COMMISSIONER FAUVER: Well, in the initial program, the Intensive Supervision Program with the Courts, there is a prohibition against mandatory sentenced individuals being in there. There are some in the Home Confinement Program, which is run by the Department. We asked for an AG's opinion on this; if that satisfied the requirement. I don't have that in writing yet, but I have been told verbally that it does; that the place of confinement can be determined by my office, and that that is not considered a release.

SENATOR GIRGENTI: All right. What about if there is a mandatory period of parole ineligibility?

COMMISSIONER FAUVER: Well, the mandatory parole eligibility-- He would have to be within six months of that. That is basically when any of these would be -- the mandatory and then the mandatory parole eligibility, which are basically the same thing. You would have to be within six months of that, but not have completed it.

SENATOR GIRGENTI: Well, for instance, one of the eight that I mentioned-- A Passaic County Superior Court Judge complained about the fact that the defendant was arrested while on Home Confinement during a period of parole ineligibility.

COMMISSIONER FAUVER: What I am saying is, if he was arrested-- Let's say, if his eligibility was July of this year and he was out there now, he would fit the criteria of being within six months of his eligibility date. What I am saying is, the advice we have from the Attorney General's Office is that that fits the criteria for mandatory sentences -- mandatory ineligibility.

SENATOR GIRGENTI: Well, you know, I just have to tell you, as one of the sponsors of some of the mandatory sentencing legislation, there were two reasons for it: to protect the public from certain types of criminals by providing for their incarceration, as we know. The second is to create a strong deterrent for certain types of crimes by creating a stern, uniform, consistent, and predictable punishment for certain offenses. From some of this, I get the impression that the legislative intent -- that the Department is really defeating the purpose when it releases these people into the Home Confinement Program, who are serving these mandatory sentences, or court-imposed periods of parole ineligibility.

If you have some kind of a directive that tells you so, I understand that. But, basically, as a person who supported the legislation, that was not the intent of the legislation, as far as I am concerned, in terms of my supporting it and sponsoring it.

One other area I would like to ask you about: I have heard from the newspapers -- and I am not here to-- As Lou said, this is not a witch-hunt. I am just trying to take a situation which has become a volatile situation and trying to do something about it. One of the things I understand is that the local police departments and the county prosecutors, according to my information, were never notified of these individuals being put into the Home Confinement Program. That is why I put the bill forward. Is that a policy, or is that

something that was just not done? Our own prosecutor has told me that he was never notified.

COMMISSIONER FAUVER: To the best of my knowledge, the prosecutors have not been notified on this. The local police departments should have been notified. According to the record, in our log on the Palmer case, the local PD was notified in November of last year. We have no problem with the notification, and your bill would certainly be okay with the Department.

I think what we do-- I just want to mention, Senator: Where we have minimum security camps, for example, with the police departments in those areas, we give them mug shots of everybody in the camp. We let them know, so that they are aware. So I don't see that as much of a big step from what you are suggesting.

SENATOR GIRGENTI: All right. The only thing I--

SENATOR KOSCO: On that particular subject, Senator, one of the reports we read said that the reason you did not notify the local police departments or the county sheriffs' departments was because it would slow down the process, because they would probably object to certain people being released. It would seem to me that that would be one of the reasons why you should notify them, so they would have the opportunity to object. Who would better know a local criminal than a local law enforcement officer? Wouldn't it make sense to call the sheriff of Bergen County, or the sheriff of Passaic County, or the local police department, and say, "I have such and such a person who is from your municipality, or your county. We think he is a good risk. What do you think?"

COMMISSIONER FAUVER: Well, you know, I don't have a problem with necessarily doing that. I mean, I think it is still our judgment call whether we think he is a good risk or not. But I think, yes, as I was telling Senator Girgenti, I would, you know, certainly have no problem with his bill, which

would be notification. I think one of the things we should know is--

SENATOR KOSCO: Notification ahead of time.

COMMISSIONER FAUVER: --whom should we notify -- the local PD, the county prosecutor? I mean, communication is not always going to be the best between those organizations. I mean, I think the locals are probably the best, if we could get a designated person, which, I might point out, has happened now in Paterson. That would be the route to go.

We are not trying to sneak these people in somewhere under cover of night. There are home visits by the parole officer before they go to the place where they are going to be living. They have to have a phone. Those things are all checked out ahead of time. So it is not something where the decision is made today and the person goes tonight.

SENATOR KOSCO: Okay. Does anyone else have any more questions, because we have a number of people who would like to testify?

SENATOR SMITH: May I just ask a couple of technical questions to get something cleared up?

SENATOR KOSCO: Go ahead.

SENATOR SMITH: Commissioner, when a tamper incident shows up on the screen, how long does it stay on the screen, do you know?

COMMISSIONER FAUVER: I think now it stays on until we remove it. Is that right, Steve?

MR. ADAMS: Until an officer deals with the incident.

SENATOR SMITH: Okay. After it comes to the screen, and an officer deals with it, the incident is automatically transferred to hard copy. Is that correct?

COMMISSIONER FAUVER: It is simultaneous, yes; it is transferred.

SENATOR SMITH: Do you have any hard copy of incidents with respect to this particular individual?

COMMISSIONER FAUVER: Yes, we had the printed--

MR. ADAMS: That is how we found out that there was, in fact, a tamper back in December.

SENATOR SMITH: Yeah, but I mean, after that December tamper, did you have any in January show up on hard copy?

MR. ADAMS: Problems with him? There may have been some minimal sort of things, where we would say, "Left early," or, "Home late," where he returned home late five or ten minutes.

SENATOR SMITH: But no tamper incidents showed up on hard copy?

COMMISSIONER FAUVER: No.

MR. ADAMS: No. In fact, that is part of the problem with the software: Once the tamper occurred and was not reset by reset generator, any kind of fooling around with the anklet would not have shown up as a new tamper.

SENATOR SMITH: Why was it not reset?

MR. ADAMS: We were not aware of the tamper because it didn't show up on the incident monitor.

SENATOR SMITH: Did it show up on the hard copy?

MR. ADAMS: Once we ran back the hard disk, a full client report of his entire history. That was only after we went searching.

COMMISSIONER FAUVER: It showed up for only five days, too, wasn't it, Steve, or four?

MR. ADAMS: Right.

A S S T. C O M M I S S I O N E R T E R R I M. H O W A R D :  
May I clarify--

SENATOR SMITH: I think the Assistant Commissioner wants to--

ASSISTANT COMMISSIONER HOWARD: --for a second?

COMMISSIONER FAUVER: Yes, sure.

ASSISTANT COMMISSIONER HOWARD: There are a few different types of computers: One is an on-line printer, which prints out thousands of statuses on every inmate in the EM program all day long. That machine showed a tamper. Our new equipment, however-- We have an incident monitor which is designed to sort out problem incidents so we can deal with them -- the tampers, the no AC powers, the ins and the outs. Something happened between the on-line printer and the incident monitor. The signal never went to the incident monitor. Therefore, that is what we monitor. That is what the parole officers sit at and watch, and that never came up, so we never saw it.

SENATOR SMITH: And, since it was not reset after that incident, then further tampers didn't even show up on hard copy?

ASSISTANT COMMISSIONER HOWARD: Once you tamper with the anklet, it is in a tamper mode, and you get no further tampers. It stays--

SENATOR SMITH: So, if you miss a tamper incident, then the person has free rein to do whatever they want until you happen to find out about the incident?

ASSISTANT COMMISSIONER HOWARD: Well, that was correct a couple of months ago, but we have done some things to change our systems since then.

SENATOR KOSCO: Okay, that is what we are looking for. What was done? We are looking for some specifics as to why this could not happen again.

ASSISTANT COMMISSIONER HOWARD: Okay.

COMMISSIONER FAUVER: Well, what was done-- This hard copy now is read on a four-hour basis. The second thing that was done was what we demonstrated before, with the parole officer going on the home visit and testing the anklet. Even if it has not shown a tamper, it will be recorded in that if it has been tampered with. So we now have-- Whereas on this date

in question, we were only reviewing the screen, we are now reviewing the screen and there is an operator watching that. There is also a person reading all of these printouts every four hours, and we have the home visit with the wristlet. As I said, anything that the consultant suggests that would be more of an enhancement, why, we will do.

SENATOR KOSCO: All right. I would just like to sum up your testimony, Commissioner, with--

SENATOR GIRGENTI: Lou, just a couple of technical questions?

SENATOR KOSCO: Just a minute, Senator.

Right now, it is my understanding that you have made-- There are four things that are happening since this incident:

1) The program has been put on hold until we have made certain corrections.

2) The actual bracelet is being tested each time the officer goes to the home.

COMMISSIONER FAUVER: Yes.

SENATOR KOSCO: We have established that you are going to, even without the legislation we are going to be putting in, have early notification to the local police officers and the sheriffs' departments that someone is being released. And, we have a four-hour monitoring of the hard copy, which we were not doing before. So, right now, I have those four changes that have been in effect since the date of the occasion we are talking about.

Is there anything else you are going to be doing, other than those four things, prior to reviewing the recommendations from the people?

COMMISSIONER FAUVER: Well, prior to reviewing the recommendations, no, no. But one other thing we did do, was to check every bracelet that is out there. That was done about 10 days ago.

SENATOR KOSCO: Okay. Do you have something quick, Senator Girgenti, because I want to get on to some other people?

SENATOR GIRGENTI: Just a few things I want to ask the Department, because they would be the proper people to ask: The Department of Corrections -- your policy concerning violations committed by a prisoner while wearing a device-- How many times can he leave early, come home late, or go out when not permitted to do so, before he is in violation according to the Department?

COMMISSIONER FAUVER: Well, it is a judgment by the-- Steve, do you want to tackle that?

MR. ADAMS: Sure. Certainly depending on the length of time that someone would leave the home, or come home late. We respond to each incident, each occurrence. If a fellow comes home, for example, a half an hour late, and our base station gets a violation status on that, we would: call him up, ask him why he was late -- maybe he missed the bus, home late from work, or whatever; check with his assigned field parole officer; do an assessment of how long he has been on the program; and have him put in his anklet verifier to make sure it is him, and that everything is status quo. We would make a hard copy of that incident and log it.

On the other hand, if somebody is gone for two, three, four hours, that certainly is a more serious problem. It is a judgment call by the field officer, our staff, and the supervisor.

SENATOR GIRGENTI: All right. How many times can a defendant not respond to a random computer call before he has violated--

MR. ADAMS: Again--

SENATOR GIRGENTI: It is a judgment call.

MR. ADAMS: Exactly.

SENATOR GIRGENTI: Okay. Then, my last question is: How many hours or days will pass with the prisoner having left until someone is sent to his home?

MR. ADAMS: There is an immediate response by a base station staff person to investigate the situation. If he has left the home-- We call the home and try to determine if he is there. If our radio frequency shows that he has, in fact, left, we proceed with an investigation, contacting the field officer, having him go to the home, and finding out where the gentleman is, as best we can determine. If he is not locatable, he is declared an escapee.

SENATOR GIRGENTI: Fine. How many are in the program right now?

COMMISSIONER FAUVER: Around 700 -- roughly.

SENATOR GIRGENTI: Roughly 700. How often are these individuals checked?

MR. ADAMS: By their parole officers?

SENATOR GIRGENTI: Home visits?

ASSISTANT COMMISSIONER HOWARD: At least once a week.

MR. ADAMS: Probably weekly, I would say, with most officers.

ASSISTANT COMMISSIONER HOWARD: At least once a week, Senator.

SENATOR GIRGENTI: Okay. Thank you.

SENATOR KOSCO: Brad, you had one other question?

SENATOR SMITH: Yes, Mr. Chairman. With respect to the visual inspection of these bracelets, that would have occurred approximately once a week with this particular individual -- in the Palmer case? There would have been a visual inspection of the bracelet at least once a week?

ASSISTANT COMMISSIONER HOWARD: Yes.

COMMISSIONER FAUVER: One of the problems we see with the equipment is, the washer, in a sense, that goes over the -- on the back of the bracelet-- It is put on, but it is very difficult to detect visually if that is all that has been tampered with. That is why we went to inserting them every time, instead of-- See, before they were making a judgment.

If it looked like it was tampered with, then they would try this receiver. But if not, they didn't. Now we are saying, no more visual, just looking at this. This is in reverse. This washer would be on the inside. (holds up device) It is locked like this, and the parole officer has to, like, bend it back and see. It's really a very, almost nondiscernible difference in the type of equipment.

SENATOR SMITH: One of the newspaper reports I read indicated that this guy had purchased replacement ribbons at a hardware store. Was that actually the case when you inspected the bracelet; they were different than what is provided by the manufacturer?

COMMISSIONER FAUVER: The parole officer in question-- His parole officer saw the bracelet, but we have not seen it. As I said, it is part of the evidence in the case. Nor has the manufacturer seen it, to the best of my knowledge.

SENATOR SMITH: My last question: How are these people trained who go out and inspect these bracelets?

COMMISSIONER FAUVER: Well, they spend roughly about a week in training. They spend some days in the base station. They then spend a couple of days with one of the inspectors -- one of the parole officers who is already in the program. That is kind of an OJT for a five-day period before they-- Is that right -- five?

ASSISTANT COMMISSIONER HOWARD: Yes, five

COMMISSIONER FAUVER: Then there is monthly training for everybody -- or, retraining.

Senator, if I may -- Mr. Chairman -- just make a comment: I know you will want to have more information on this. I would like to invite the Committee to have a meeting at our headquarters so you could see the screens, and be there during the day to see how it works.

SENATOR KOSCO: We are going to have our people set that up. We'll take a tour down there.

COMMISSIONER FAUVER: Good.

SENATOR KOSCO: That would be a very informative thing for all of us, and we would like to follow through on it. Thank you very much.

COMMISSIONER FAUVER: Thank you, Senator.

SENATOR KOSCO: I would like to how ask Senator Jack Terhune--

MR. SALLACH: You got him a new job.

SENATOR KOSCO: --I mean, Sheriff Jack Terhune, of Bergen County, to come forward. Welcome, Jack. Sheriff Jack Terhune, I think out of all the people we have had from the Bergen County jails-- If my memory serves me correctly, you have only had two problems, I think it was?

S H E R I F F J A C K T E R H U N E: That is correct, Mr. Chairman. I would like to introduce--

SENATOR KOSCO: My question to you would be, why has your program been successful, and what have you done to make it that way?

SHERIFF TERHUNE: Well, I would like to take credit for that, quite frankly, Mr. Chairman, but before I do I would like to introduce to the members of the Committee, Sergeant Debra Lennon, to my right, who is the Deputy Work Release Administrator and Coordinator of our Home Confinement Program in Bergen County.

A couple of things by way of introduction, if I might, Senator: Please, members of the Committee, be reminded that the inmates who are eligible for Home Confinement at the county level, are only those sentenced to a term of imprisonment of less than one year. Typically, those inmates are sentenced for disorderly persons offenses, motor vehicle offenses, violations of domestic violence law, and the like.

The program in Bergen County has been in place since September of 1990, and to date we have placed 171 inmates into home confinement status. Of those 171, only two have violated the rules and regulations. One was an inmate sentenced to confinement for failure to pay child support, who had an outstanding criminal matter and was removed because of it, unrelated to the child support matter. The second individual was incarcerated for a motor vehicle offense, and was arrested for a subsequent motor vehicle offense while in home custody.

The equipment we use in Bergen County is identical to that which was described previously by Commissioner Fauver. It is supplied by the same manufacturer. We do not buy it; we lease it on a daily basis from the company. We have other safeguards in place which I think might be of interest to the Committee.

For every inmate who is placed into Home Confinement from the Bergen County Sheriff's Department, certified letters are sent to the municipal police chief of the community in which the inmate is going to reside. A second certified letter is sent to the sheriff of the county in which the inmate is going to reside. A certified letter is sent to any employer where the inmate may be employed. If the employment is in a community in addition to, or different from the community in which the inmate is going to reside, a fourth certified letter is sent to that municipal police chief, notifying him or her that the inmate will be employed within their community. We also delineate the name of the place of employment, and the hours of work that they are permitted to be at that place of employment.

With regard to the bracelets, we have not had one instance of any tampering with the equipment. Our system is set up similarly, but somewhat different from that described by the Commissioner. As I said, we use the same on-site equipment, in terms of the bracelet, the home receiver, and the

monitor. We also, in addition to getting a hard copy of any activity which occurs for any particular inmate, have a beeper system. Any time there is any violation-- For the Committee's benefit, there are 52 program violations in the system which would activate a notification of the monitoring officer. When such a notification is received, a remote beeper is activated. Our officers carry these beepers 24 hours a day, seven days a week, and are aware of any violation, whether it be the AC power on or a malfunction of the equipment.

The officers then follow up with a phone call to determine if, in fact, it is a violation, or whether there is a technical difficulty with the equipment, which, quite frankly, gentlemen, sometimes happens. If an inmate walks into a coffee table or leaves it emerged in a bathtub too long, sometimes you will get a technical violation of the equipment.

We respond immediately to any such notifications. We do not wait a period of time to investigate any alleged violations of the Home Confinement rules. Furthermore, in an effort to ensure that there is no tampering with the device itself, we visually inspect the bracelets twice a week, on every inmate that is assigned to our Home Confinement Program. What we normally do is order the inmates to report to the institution twice a week, rather than do on-site visits. In addition to the two mandatory inspections, we will make random on-site inspections for not only the purpose of inspecting the device, but also for the purposes of obtaining urine samples and ensuring compliance with NA meetings, AA meetings, and the like.

I, for one, am very supportive of home confinement, at least at the county level. I know this Committee is well aware of the fact that our correctional institutions statewide are severely overcrowded. The Bergen County jail -- and it is not the worst -- is presently at 233 percent of its capacity. Home Confinement, as well as other proposed programs -- alternatives

to incarceration -- are certainly more cost-effective than the construction of additional jail cells, at roughly \$75,000 to \$100,000 per cell. We are now in the process of attempting to expand the program so we may work in conjunction with the Bergen County Probation Department, in an effort to perhaps maybe place some probation violators on the Home Confinement Program.

SENATOR KOSCO: Thank you.

At this point, I would just like to invite Deputy Speaker Frank Catania to join us here.

ASSEMBLYMAN CATANIA: Thank you, Senator.

SENATOR KOSCO: Deputy Speaker of the lower House.  
(laughter) Welcome.

Does anyone have any questions of the Sheriff?

SENATOR MATHEUSSEN: Sheriff, you mentioned something before in your opening remarks about the people who are eligible under the County program. You mentioned something about domestic violence -- people convicted of domestic violence. Are they eligible under the program?

SHERIFF TERHUNE: Not domestic violence, but failure to make child support payments under the Title 4-D program, where persons are incarcerated for arrearages in child support. Sometimes those individuals are placed in the Home Confinement Program, which gives them an opportunity to continue to work to provide income to the children, who are truly the victims of the entire program.

SENATOR MATHEUSSEN: Is the reverse true, then, the domestic violence candidates--

SHERIFF TERHUNE: No. Domestic violence, just by virtue of its title, Senator, is a violent crime, and therefore they would be immediately ineligible for our program, as well.

SENATOR KOSCO: Anyone else have any questions?  
Senator Girgenti?

SENATOR GIRGENTI: Just one question, Sheriff: Obviously you do not deal with some of the clientele we have talked about and some of the cases I mentioned. Do you feel that that type of individual that I brought out belongs in that type of a program?

SHERIFF TERHUNE: Well, obviously, Senator, each individual would have to be reviewed on a case-by-case basis. I think all too often in the criminal justice field, we tend to stereotype. That is one of the pitfalls we fall into on either side of the argument. For example, burglary offenders perhaps maybe should be eligible for home confinement, whereas--

SENATOR GIRGENTI: How about armed robbery?

SHERIFF TERHUNE: --armed robbery should not. Burglary, from my background, is probably one of the most heinous crimes that one can commit. Coming from the old school of common law, if you will -- "A man's home is his castle" -- the invasion of one's home, I think, is perhaps, as I said, one of the more heinous offenses that one could commit.

SENATOR GIRGENTI: Thank you.

SENATOR KOSCO: Does anyone have any more questions? (no response) Assemblyman, do you have any questions you would like to ask?

ASSEMBLYMAN CATANIA: No, thank you, Mr. Chairman.

SENATOR KOSCO: Okay. Thank you very much.

SHERIFF TERHUNE: Senator, thank you for your kind invitation. Thank you for the promotion, as well. (laughter)

SENATOR SMITH: I'm not sure it was a promotion.

SENATOR KOSCO: Frank, would you like to speak before I introduce the next witness, or would you just like to join in?

ASSEMBLYMAN CATANIA: May I, Mr. Chairman?

SENATOR KOSCO: Sure.

ASSEMBLYMAN CATANIA: From here?

SENATOR KOSCO: If that mike is working.

HEARING REPORTER: I'm sorry, I can't pick you up unless you are on our system.

ASSEMBLYMAN CATANIA: I thought I would come down here to speak. (referring to witness table) It will make it a lot easier.

Mr. Chairman, first, I would like to thank you and your Committee for taking the time out to have this very, very important hearing in the City of Paterson, part of the 35th District, and to discuss the recent problem associated with electronic monitoring devices.

Although there has only been one reported case of an individual misusing the device while under house arrest, we must determine if there is an ongoing problem with these electronic devices around the country, and what must be done to eliminate any individual problems, or additional problems, should they arise.

The New Jersey Department of Corrections spends a large amount of money on this program each year, and inmates involved in this program should not be able to remove these devices and leave their premises so easily.

I would like to compliment The Star-Ledger, and Passaic County reporter Evette Mendez, who has done extensive research regarding this story, which brings to light a very serious matter that must be rectified before other crimes are committed.

This program provides individuals who are to be paroled -- who are within six months of their release -- to be placed in home confinement with these electronic devices. This program alleviates the overcrowding in prisons, but I am concerned that situations such as the murder that happened here in Paterson may duplicate itself some other time down the road. I know the Committee members are in agreement that these problems should be solved and corrected, if the Home Confinement Program is going to continue in New Jersey.

As a member of the Assembly Judiciary Committee, I am hoping that the testimony today will provide us with those answers, and will restore our faith in allowing potential parolees and their apparatus to be confined to their homes, without further worry about heinous acts of crime.

Again, thank you, Mr. Chairman, and I thank the Committee, for allowing me to speak and for bringing this hearing to Paterson.

SENATOR KOSCO: Next we are going to hear from the Attorney General's Office, Assistant Attorney General John Holl. Thank you for being here, and thank the Attorney General for sending a representative to us.

A S S T. A T T O R N E Y G E N. J O H N G. H O L L: Thank you, Senator. The reason I came here today is because the Attorney General has asked me to oversee the review that the Attorney General's Office is undertaking of this whole program. The Passaic County Prosecutor's Office has asked us to look at the policies and procedures that are being employed by the Department of Corrections in connection with the Home Confinement Program, and how it worked in this particular case.

This investigation we are doing is still ongoing. It has not yet been completed. Therefore, I can't really talk about the specific details of the Palmer case. However, I can, on behalf of the Attorney General, speak in general about the program. After I am finished with that, I would be happy to answer any questions you may have, which I am able to answer.

The one thing that I think is very clear is that the Home Confinement Program, and similar types of programs that are operated on the county level -- operated in, I think, four or five counties throughout the State -- have become necessary because of the tremendous growth in our prison population from 1979, at the time that Title 2C became the law -- and there have been some changes in the law since that time -- until now. We have seen a growth that has been essentially unmatched in the history of this State.

We have reached a consensus, I think, in the criminal justice system, between the courts and law enforcement people, including corrections administrators, that some kind of an intermediate sanctions program has to occur, and they have to be developed. However, at this point, I don't think that the parameters of that consensus have been developed to the point where there is broad agreement on a particular program.

One of the areas that we all agree on is that any system of intermediate sanctions must first and foremost take into account the public safety and public welfare. Violent offenders should not be in these programs. Further, individuals who get into these programs, even if they are not violent offenders, should be individuals who are not prone to escape. This program cannot serve the function of a jail cell. It simply is not designed to do that. It can have very positive benefits, in the sense that you can have someone who is serving his debt to society-- He can continue to be employed. He can contribute to society at the same time he is paying his debt. But the people have to be very carefully screened.

I think there is a tendency -- and there has been a tendency, and there will continue to be a tendency -- because of the tremendous growth in prison population, to expand the reach of these programs perhaps to include individuals who should not be included. That is a danger that we have to be very vigilant of.

A further caveat, and something that has to be done is, these programs have to be adequately staffed. The whole purpose of them is to provide an alternative, I think, to what we think of as traditional probation, which has essentially, in this State, come to mean that you are unsupervised; that you may report, perhaps, once a month. Everybody recognizes that that is not any form of punishment. If these Home Confinement Programs reach a point where the individual caseloads of the

parole officers and the probation officers-- If it gets beyond control, then we will have problems, perhaps, such as the one we saw in Passaic County here.

In my mind, Senator, the other key thing here is that these kinds of programs should be developed as a result of a consensus; as a result of receiving the input of the various policymakers in the State, including the Legislature. The Attorney General has supported, and it is my understanding that you have introduced, a Senate joint resolution which would call for the creation of a Sentencing Policy Study Commission. We feel that that Commission should, in particular, look at the area of electronic bracelets used in home confinement. We have to look at the area of how many people are in jail pursuant to mandatory sentences: How long are they serving on these sentences? How many of those people could serve shorter sentences, and how many, perhaps, could be eligible for these kinds of programs? So, we would think that the creation of this Commission is a very important step, and we support the rapid passage of this Senate joint resolution.

That being said, if you have any questions, I would be happy to answer them.

SENATOR KOSCO: Does anyone have any questions for the Assistant Attorney General? Senator Girgenti?

SENATOR GIRGENTI: Just one question: What would be the position of the Department in terms of the legislation that I put in the other day about notifying local law enforcement authorities and the county prosecutors?

ASSISTANT ATTORNEY GENERAL HOLL: Speaking off the top of my head, essentially since I haven't seen the bill--

SENATOR GIRGENTI: Well, it just says that 48 hours ahead of time they would have to be notified that they are going to be put into the community.

ASSISTANT ATTORNEY GENERAL HOLL: It seems to me that if the Department doesn't object, it doesn't seem to me that we would have any particular reason to object.

SENATOR GIRGENTI: Don't you think it is necessary that they know that these individuals are in the community?

ASSISTANT ATTORNEY GENERAL HOLL: To be honest, that may not solve as many problems as it could solve. For example, I served as a county prosecutor in Bergen County for two years. You know, there are a number of laws that we had to receive notice of. The thing is, you receive notices of so many things, that after a time it can become a situation where you are drowning in paperwork. But, it certainly can't hurt.

SENATOR GIRGENTI: I just think the information is certainly, in my opinion, a necessity. Our County Prosecutor now happens to agree. I know because he has spoken to me about it.

All right, thank you.

SENATOR KOSCO: The investigation you are involved in now -- your Office is involved in now -- of this particular incident-- This has been going on since day one, correct -- since it started?

ASSISTANT ATTORNEY GENERAL HOLL: Yes, that is correct, Senator.

SENATOR KOSCO: Do you have specific people who are assigned to this investigation, or is it just an "also ran," as far as your Department is concerned? My question is: How serious are you about this investigation?

ASSISTANT ATTORNEY GENERAL HOLL: This is not an investigation of the underlying criminal charges. That is being done by the Passaic County Prosecutor's Office.

SENATOR KOSCO: No, no, I'm talking about, how did it happen? I'm talking about the fact that a person was able to undermine the process; not the criminal act involved after he did it, but how he was able to be in a position to do it in the first place. I assume that is what you are investigating, correct?

ASSISTANT ATTORNEY GENERAL HOLL: Let me clarify what it is we are investigating. We are investigating the procedures and policies of the Department of Corrections, in general, concerning this program and, in particular, how they were applied in this case. Okay? But this does not have to do with the criminal charges, or anything.

SENATOR KOSCO: That is exactly what we are looking for. So my question is: Do you have a specific team of people involved in this, or is it just something that is being done as you go along?

ASSISTANT ATTORNEY GENERAL HOLL: There is a team involved, Senator, and I am in charge of that team. The team has the very high priority of the Attorney General.

SENATOR KOSCO: Okay. My next recommendation is going to be that-- I would like to ask you if you could provide this Committee -- and send it to my office -- a 10-day report, each 10-day period of time as your investigation proceeds, so we can share what is going on. We don't want this to be a dragged out process, because we don't want to hold up this program and keep it from taking place. We don't want to hold it up from expanding to the point where we think it is going to expand, because we are so concerned about this program as it pertains to our budget. You have to understand, if we are going to put \$4 million into the Corrections budget for this particular issue, and then not be able to do it, we would just as soon take that \$4 million and put it somewhere else. We're looking for money right now, for example, in the Corrections Department, as to how we can keep a juvenile school open. We are trying to find \$6 million to keep the McCorkle School open, which is a school/detention center for young people.

If we are not going to put that money -- that \$4 million -- into this program, because we are not going to go ahead with it, maybe we can divert that money to keep another plan that was working well, working well. So, if we could get

a report on this thing, say, a 10-day report, updated each 10 days, from your Office, we would appreciate that.

ASSISTANT ATTORNEY GENERAL HOLL: Senator, let me see what I can do on that. I would be happy to accommodate you, if I can.

SENATOR KOSCO: Well, let me suggest that you do a lot on it, because I would hate like hell to have to pass a bill that says you have to give me a report every 10 days. Did I make myself clear?

ASSISTANT ATTORNEY GENERAL HOLL: Yes, Senator.

There is one other thing I think should be clarified: To my knowledge, the Department of Law and Public Safety and the Attorney General's Office have not get given the Department of Corrections a formal opinion concerning their authority to put people who are serving a mandatory minimum into these programs. There is a draft opinion that is being circulated around, and perhaps there has been some talk about it. But our Department has not yet advised the Commissioner concerning that issue. I just thought, since that is something that Senator Girgenti raised earlier, that, you know, I should clarify it.

SENATOR GIRGENTI: I thank you. I was going to ask you that question, because I wasn't aware of that as policy at the present time. Thank you very much for clarifying that.

SENATOR KOSCO: Okay, John, thank you very much.

ASSISTANT ATTORNEY GENERAL HOLL: All right. Thank you, Senator.

SENATOR KOSCO: Now, from the Administrative Office of the Courts, Harvey Goldstein and Richard -- is that Talty?

H A R V E Y M. G O L D S T E I N: Talty.

SENATOR KOSCO: Talty, all right.

MR. SALLACH: Here is his printed statement for you.

SENATOR KOSCO: Thank you. Richard Talty is the Director of the Intensive Supervision Program. Does everyone

have a copy of Mr. Talty's statement, so I can refer to it?  
(affirmative response)

MR. GOLDSTEIN: Senator, if I may, I would like to just touch on some of the high points of the testimony we have submitted to you.

In terms of talking about the Intensive Supervision Program, the genesis of that program was the 1982 Judiciary Conference, which began in 1981, where the Supreme Court took a very serious look at the probation services in the State. Among the large number of different approaches that that conference took, they looked at the possibility of trying an experiment -- the Intensive Supervision Program -- taking a very serious look at the reduced caseloads and a very strong, tough-minded program to deal with some selected cases as an alternative to incarceration.

About six months after the Judicial Conference occurred, the Legislature voted initial funding for the program, and starting in March of 1982, the Chief Justice appointed an Advisory Board which actually developed the components of the program. The Advisory Board consisted of representatives from the Attorney General's Office, county prosecutors, the judiciary, probation, the Department of Corrections, and the Legislature as well.

In September of that year, the program actually began. I would like to first address the selection process. It is basically a nonviolent program we are talking about. Persons must be sentenced to a State prison term and must have started to serve that State prison term. Persons convicted of homicide, robbery, any sex offense, or any person who has a mandatory period of parole ineligibility, are not allowed to participate in the program. In fact, even if they have served the mandatory minimum time, because they received a mandatory minimum sentence, they are not eligible for consideration in ISP.

Within this process, the offender must make application to the program, staffs do an assessment report, and all the materials are then forwarded to a Screening Board. The Screening Board consists of a representative of the program, a representative of the Department of Corrections, and a citizen member appointed by the Chief Justice. That Screening Board actually reviews the materials and meets with the applicant, and makes a unanimous determination as to whether or not that person should proceed to the next step, which is the Resentencing Panel.

The Resentencing Panel is composed of three judges appointed by the Chief Justice who sit as a panel. Persons invited to testify there include: the chief of police of the proposed residence, the county prosecutor, victims, and other individuals who may be associated with the case. It is held in open court. Questions are asked; positions are taken; and ultimately the Resentencing Panel makes a determination as to whether or not people will be enrolled in the ISP.

Basically, in addition to the four elements that would preclude somebody from eligibility, the reasons for exclusion from the program would consist generally of: an extensive criminal history, a violent offense, involvement in organized crime, a serious offense where enrollment in the program would deprecate the seriousness of that offense, or any reason where the panel would believe that the person would not make it within the program, which generally lasts from 18 to 24 months.

Because of the selection process, less than 20 percent of the people who apply make it into the program. In fact, some people have made it as far as the Resentencing Panel, and backed out at the last minute.

Part of the report that goes to the Resentencing Panel and to the Screening Board is a plan that has been developed by the offender and reviewed by an ISP officer. Within that plan they must identify a community sponsor who will take some

responsibility for supervising the person, network team members who may drive the ISP person to a job, to community service, or any other responsibility, and a detailed plan that will lay out what that offender is going to do: what type of employment, how they are going to deal with their problems, how they are going to deal with their court-ordered obligations.

Program Elements: Of course, the first one is that it is an Intensive Supervision Program. It is not a Home Confinement Program. The minimum requirements call for 20 contacts between an ISP officer, who has a caseload running from about 15 to 20 participants-- The minimum requirements are 20 contacts a month on a case. We have been averaging, since the inception of the program, more than 30 per month. At a basic minimum, each offender is required to do 16 hours of community service each month. Community service is used as a sanction for minor program violations.

Each enrollee has a curfew. They must prepare a budget, which is reviewed by the Resentencing Panel, which reviews the case every 90 days. They must keep a daily diary of their activities. There is a high emphasis on the fact that they must be employed, and we are very proud of the fact that since the beginning of the program, with a very difficult population, we have maintained about a 95 percent employment rate.

The people who enter the program are subject to searches at any time. Indeed, the officers do that with some regularity. There is a heavy emphasis on drug monitoring. Persons who are suspected, or are known to have been involved in drug use, who are in the ISP program, are subject to two to three drug monitors each week that they are in the program. And, of course, they have to pay any of the obligations ordered by the court, including the Violent Crimes Compensation Board penalty assessment, forensic lab fees, deterred penalty assessments, and any fines.

Since the beginning of the program, we have been fortunate enough to be involved with a large number of researchers and evaluators of the program. At the same time the Legislature provided funding for the program, the National Institute of Justice provided funding to the Institute of Criminological Research at Rutgers University to work with us on the program. They studied the program for five years, and the two basic conclusions were: that we were living up to the requirements of the program, and that essentially we have the recidivism rate for a similar population of individuals who stay in State prison and go out on parole.

In fact, it has been renewed by a 1990 recidivism study that we ourselves conducted, and of the graduates, the people who made it through the program for a period of from 18 to 24 months, and sometimes longer, 4.3 percent have been convicted of an indictable offense, and 4.7 percent have been convicted of a disorderly offense, over a period of roughly four-and-a-half years.

As I said, the basic intent of the program is an Intensive Supervision Program. We do use tools to help us out with various components. For example, on drug monitoring, we do both a urine analysis and, in some instances, hair testing. We have a number of methodologies used to detect whether or not a person is using alcohol. Within the program, we do have a curfew element that is varied based upon the decisions of the Resentencing Panel and the individual officer. We monitor that in person in a number of different ways.

I have asked Dick Talty to join me here today to share with you some of the different approaches we use to check curfew. I didn't want to mislead the Committee by implying that this is a home detention program. It is not, although there are times that we do impose home detention. It is an Intensive Supervision Program where we use tools to help the officers to monitor curfew. It is the officers' responsibility

to do it. They are out in the field most of the time. The majority of officer time is spent in what we consider nontraditional time, which is evenings and weekends. The various approaches we take in helping them to monitor curfew, Dick will talk about.

SENATOR KOSCO: Does anyone have any questions at this point? (no response) When you say that this is not a Home Confinement Program, where do these people stay?

MR. GOLDSTEIN: Well, they stay at home, but it is not meant to be used in lieu of a jail. They have spent time in a State prison, typically as a minimum--

SENATOR KOSCO: They have already spent time in a State prison?

MR. GOLDSTEIN: Absolutely.

SENATOR KOSCO: Now they are released, so they are home. Assuming that they do not violate their parole--

MR. GOLDSTEIN: They are not on parole; they are on Intensive Supervision.

SENATOR KOSCO: But for all intents and purposes, they are out on parole.

MR. GOLDSTEIN: Parole is within the executive branch, Senator.

SENATOR KOSCO: Okay. To the average person on the street, when someone is supposed to be in jail and they are not, they are out on parole. Okay? So, they are not in jail. Now we have an empty bed in jail and this person is staying at home. So it is a home program.

MR. GOLDSTEIN: It is a home program.

SENATOR KOSCO: How do you come up with a 95 percent success rate in your program, and the program we just finished discussing, which is a different program, only has approximately a 70 percent success rate?

See, I am concerned that the program is only 70 percent. I don't consider that good. I think if you are

playing baseball and 70 percent of the time you hit the ball, that's great. But I don't think that 70 percent, when you are dealing with persons who are supposed to be incarcerated, is a good rate. I think 95 percent is an acceptable rate. I think there is something between the program that you are using to come up with a 95 percent rate and the evaluation program we are using for the other system to come up with only a 70 percent-- There is something wrong with the evaluation system, which is what I think we are coming to at this hearing; that the evaluation system has to be scrutinized, modified, and really, really worked on.

MR. GOLDSTEIN: Senator, I think we have to be careful when we talk about the different numbers. They refer to different populations and different ways of looking at a program. With ISP, every violation, no matter what it is -- a curfew violation, dirty urine, failure to get a job, failure to pay child support -- every violation is responded to punitively. The punitive responses can take the form of changes in curfew, greater use of electronic monitoring, or longer periods within the program. Ultimately, somebody who maintains a position of violating the requirements of the program, is sent back.

We send back to prison -- we return to prison -- about 35 percent of the persons who are let out into the program. The 5 percent indictable conviction rate is for the people who have actually graduated the program. If you want a basis to compare that, perhaps-- The Bureau of Justice Statistics put out a report -- I believe it came out last year -- on the 1988 population of prisons throughout the country, and documented a 63 percent recidivism rate over a period of three years. So, when we are looking at these things, we have to be careful that we are comparing the appropriate elements.

We think that the people who come out, and the judges say it at the time of the panel-- When they come out into the

program, it is a last chance for them. If they live up to the program, they can get a job; they can become responsible members of the community; they can become responsible family members. If they don't, we will send them back, and we send them back substantially prior to them committing offenses, in the majority of cases.

SENATOR KOSCO: Thank you.

Do you have anything new to add to our hearing, Mr. Talty? I don't want to be redundant.

R I C H A R D B. T A L T Y: Yes, I do, but just briefly. I shared my written comments with you.

We use electronic monitoring only as an adjunct to the program. Most of the contact is face to face or telephone contact by the officer at the offender's home. We use electronic monitoring only to assist in monitoring curfew, but I don't think the human element can ever replace -- or, you know, the electronic monitoring can never replace the human element. I think it just gives us information, and we have to decide what to do with that information. It would be a mistake, I think, to feel we could take the human element out of it and rely on technology to make decisions for us.

The rest of my comments I have already shared with the Committee in writing, unless there are any questions.

SENATOR KOSCO: Thank you. Does anyone have any questions? (no response) All right, thank you very much.

MR. TALTY: Thank you, Senator.

SENATOR KOSCO: Now I am going to call on Richard Angulo. Is Richard here, and anyone you want to bring with you? Richard is from Digital Products Corporation in Florida, which is the company that makes the device we are talking about -- the bracelet and the unit.

R I C H A R D A N G U L O: How are you doing? I'm sure there are going to be some questions you might want to ask more specifically about the equipment, so what I would like to do is

just make a brief statement generically about the market and other agencies, and then allow you to ask some questions about the--

SENATOR KOSCO: Will you please tell us who the gentleman is who you have with you?

MR. ANGULO: Oh, Steve Zimko, who is our Director of Technical Services. My name is Richard Angulo. I am Director of Marketing and Sales for Digital Products Corporation.

The fact that the Committee has called for these hearings, I think, is a positive step in making sure that more facts are known about the programs in existence around the country. The fact of the matter is, unfortunate situations like the incident that is the subject for today's hearing, have happened elsewhere. This is something that the agencies that are running these programs throughout the country will have to live with and work with and try to prevent.

What you are talking about here is merging technology with the operations of a program. How that program operates, and the types of offenders it is going to monitor, vary widely throughout the country. We are involved in-- I know there is one other manufacturer represented here today. Between the two of us -- BI, Inc. and ourselves, Digital Products -- you can probably see that over 90 percent of the market is represented here today. We have just over a third of the marketplace, and we support over 320 agencies: Federal, state, county, and municipal. They range from probation pretrial to parole to work release to the DUI programs, so the mixture of offenders we monitor varies, including several juvenile programs around the country.

One thing we try to make all agencies understand -- and I think it has been said here already once today -- is that electronic monitoring is not a replacement for a jail. It is not really an alternative to incarceration for those individuals who need to be incarcerated. Public safety is the

primary concern, and electronic monitoring and offender monitoring services are a tool that agencies can use, depending upon their objective, to increase the level of supervision and the accountability these offenders have once they are released back into the community.

There have been several issues today that have been discussed on ways to improve that. These are things that we try to network with our users throughout the country to be more aware of, because these agencies are faced with a challenge. On one hand, you've got your jails and your prisons, which are extremely overcrowded, but on the other hand, you have your parole and probation caseloads, which, in many instances, are just as overcrowded. Your officers need ways to provide greater levels of supervision, but that should not be done at the risk of public safety.

I think the State of New Jersey's program is one of the programs that rates right up there with the State of Michigan Department of Corrections' program, the State of Florida Department of Corrections' program, and the State of North Carolina Department of Corrections' program, as agencies that have taken the initiative to prove that electronic monitoring is a valid tool, and that these programs can expand. The key is controlling that growth in a way so that the expansion is maintained so that all of the issues and concerns are addressed, both technically and procedurally.

With that being the opening statement, I thought I would answer some questions you might have about the equipment first, if there are any specifically about how our equipment operates in general. Between myself and Steve, we have limited information on this particular incident, but our equipment would operate the same, whether it be this incident or any other, as far as the particular system that is in question.

SENATOR KOSCO: I have a very direct question.

MR. ANGULO: Sure.

SENATOR KOSCO: Is this bracelet foolproof?

MR. ANGULO: No. There is nothing in the marketplace that we are aware of, including our technology, that is foolproof. Any system on the market can be defeated. Anything that man can engineer, another man can defeat. That is one of the things you have to accept. That does not mean that these programs cannot grow and cannot provide valid controls. Remember, what we are talking about here is not so much an alternative, but an intermediate form of sanction; an increased level of supervision. Just as there are people coming out of prisons and jails who should stay in prisons and jails, there are people already out on probation or parole who need stronger levels of supervision. It is a tool. How you use it is what we are here discussing today. That is one of the things that agencies are constantly working to improve.

SENATOR KOSCO: When this piece of equipment, and when the bracelet rivets--

MR. ANGULO: Right.

SENATOR KOSCO: --on the equipment are tampered with--

MR. ANGULO: Right.

SENATOR KOSCO: --how does that signal the telephone? Are there wires in the straps?

MR. ANGULO: There is circuitry in the strap and in the transmitter housing, so that if the housing is opened up or broken into-- The housing itself is tamper alert and tamper resistant. When we refer to those two terminologies being tamper resistant, it is the physical evidence that would be visible upon an on-site inspection either at the offender's home or when the offender reports into the office. We have many agencies around the country that do not make site visits into the home. They have the offender report into their office once a week. Tamper alert is the electronic circuitry, which varies from manufacturer to manufacturer. When the unit is tampered, cut, or removed, it will allow the agency to

determine that it has been tampered with. The majority of the technology operates in one of two ways: It either tampers and has to be reset, which is the way our technology operates, which means the unit, once it tampers, remains in tamper mode. Or, there is at least one system that I am aware of on the marketplace that has the capability of automatically resetting a tamper.

There are pros and cons to each technology. The features of the technology must be based upon the benefits that the agency is looking to get out of it and the way they are going to run their program. It has to do with staffing and the amount of field support. There are a lot of issues there to be dealt with.

Security: I would say that there are at least three or four technologies in the marketplace that are proving that they can provide a satisfactory level of security for these programs, and we feel ours is one of them.

SENATOR KOSCO: Does anyone have any questions? Go ahead, Senator.

SENATOR SMITH: With respect to the tamper mode, when a unit goes into the tamper mode, what happens at the base station?

MR. ANGULO: There are two things happening at the base station. Whenever an event happens in the home which is between the transmitter and the receiver, that event is reported to the central station within a time frame. It can range anywhere from immediately, within one to two minutes, to a window of between seven to 10 to 15 minutes, depending upon how that particular system is configured. When that event is received at the central station, the software within the central station, depending upon the event, decides whether it is a violation, in the event of a tamper-- Each event has its particular code. If it is that a client left home early, it will--

SENATOR SMITH: Specifically address a tamper mode.

MR. ANGULO: I am going to. It will determine if it is a violation of curfew or not. In the event of a tamper, that event is reported into the central station. When it is received, an on-line printout prints out that the unit was tampered with. The software that is in place now, what was referenced as being upgraded, was designed to make that review of the on-line printout more of an automatic process by taking that status of a tamper and bringing it also to the screen. So the operator, rather than having to look at hundreds of events--

SENATOR SMITH: Let me stop you there for a second. As of December 15, it did not show up on the screen. It simply showed up on a printout. Is that correct?

MR. ANGULO: Yes. On the exact dates, I don't know that we can answer. It was during the time frame, as the Commissioner mentioned, starting with mid-December, or early December, that this upgrade was put on. It was basically the result of programs like the State of New Jersey's growing rapidly and coming to the realization that to expect somebody to manually review the report, was unrealistic. The review of prioritizing the violations automatically by bringing them to a screen and forcing somebody to deal with it, had to be automated further, and those steps were implemented to automate that process.

SENATOR SMITH: The one thing I have trouble understanding in this whole scenario, is that once this went into the tamper mode, which everybody apparently agrees with, as of about December 15--

MR. ANGULO: Right.

SENATOR SMITH: Presumably you have two or three months that went past before it was discovered. So presumably this bracelet was in the tamper mode, yet when he was asked to check in, it registered as a proper check in. Now, how can that happen?

MR. ANGULO: I don't have a unit with me, but the tamper circuit has nothing to do with the circuitry that is involved with the wristlet component of our transmitter case identifying itself. What you have there are several technologies backing each other up. The fact that it tampers can only be corrected by resetting it. In order to reset it, it requires that the unit be inspected. We request that the strap be taken off, changed, new fasteners put on, and the unit reset.

SENATOR SMITH: But you can still check in?

MR. ANGULO: You can check in, right, but whenever you have a tamper, you must get a reset. If you do not get the reset, you know the unit is still in tamper. So there are two events you are looking for: the tamper and the reset.

SENATOR SMITH: But the way it was designed as of December 15--

MR. ANGULO: Right.

SENATOR SMITH: --if there was a tamper, it showed up on your printout at the base station, and if someone misses that, you could continue to report in by simply checking in and identifying yourself as normal, and it could remain in tamper mode forever, if nobody ever goes back and picks up that--

MR. ANGULO: Right.

SENATOR SMITH: --printout.

MR. ANGULO: But the reporting in is separate from the tamper. It is a separate function. The fact of the matter is, yes, it will stay in tamper. Now, there are other software things Steve can mention that are in place to allow you to catch it.

SENATOR SMITH: In other words, changes have been made since this incident.

STEPHEN ZIMKO: Well, there have been changes made, but also at the time-- There are two different reports. One is by each person being monitored. A history can be run on

that person to show every event that occurred with that person -- every time he came, left, tampered, or was reset. That would appear on that report for a period of five days. There is also a daily report, which purpose is to indicate any unresolved tampers or power outages or any unit that failed to report within its specified period of time. So, in other words--

SENATOR SMITH: That is a report that is used now. Was it used back in December?

MR. ZIMKO: What I think happened is-- I believe--

SENATOR SMITH: I want you to answer the question.

MR. ZIMKO: To be honest, I am not sure. The report was in place at the time.

MR. ANGULO: All of the events that are reported to the central station, that are reported real time, can also, at any time, be generated on request. Many of the agencies, depending upon the size of the program and the staffing available, will develop procedures for double checking the on-line results.

The upgrade that was talked about that began in December, was a means of automating that. That is where the reference came to the fact that it may not have gotten reported on the screen, but it did appear on the printout.

SENATOR SMITH: The way it is done now it will show up on the screen?

MR. ANGULO: Yes.

SENATOR SMITH: And it will remain on the screen until someone physically does something to take it from the screen?

MR. ANGULO: Right. It separates that incident to its own report, that must be dealt with and cleared up, versus an event of one of many on a long printout.

SENATOR KOSCO: It won't show two at the same time?

MR. ANGULO: You have to deal with them.

SENATOR KOSCO: In other words, when they do a check in -- when he touches the bracelet to the verifier--

MR. ANGULO: Right.

SENATOR KOSCO: --that shows that he is checking in at 3:00 in the afternoon.

MR. ANGULO: If he has been called, right.

SENATOR KOSCO: It will not automatically show that there is a tamper mode in effect?

MR. ANGULO: No.

SENATOR KOSCO: Why would that not be?

MR. ANGULO: Because the--

SENATOR KOSCO: I mean, you know that someone is going to be looking at it at 3:00.

MR. ANGULO: Because the tamper circuit is separate, and it reports when the event happens.

SENATOR KOSCO: Couldn't they be hooked together?

MR. ANGULO: There are two separate functions: the aspect of the verifier from the tamper circuitry. The tamper circuitry-- You want it to report that event immediately. What normally happens at the monitoring stations is, when that event is received, it is immediately acted upon. The fact that he comes home at 3:00 in the afternoon and gives us-- That is just an additional level of supervision. The tamper circuit is designed to be a security feature; it is to be reported immediately. You don't want to wait until 3:00 to report that event.

SENATOR KOSCO: No, I didn't say that. It shows immediately, but somebody didn't see it.

MR. ANGULO: Right.

SENATOR KOSCO: Let's use the worst case scenario in this particular incident. Someone didn't see it when it showed that it was tampered with. That mode is there, but it has to be called on--

MR. ANGULO: Right.

SENATOR KOSCO: --in order to see it. At 3:00, when someone is going to be there for sure, to check in, to see if that person is checking in, wouldn't it make sense to have -- if there was a tamper at 1:00, to automatically show up when they do a check in?

MR. ANGULO: In some instances, it seems it would make sense, but it also has to deal with the level of the programs, and the intended level of supervision. The fact of the matter is, what we are really doing here is managing a lot of different communications. You've got to be able to report them real time. Every time you save that tamper and then there is any event and you report two statuses, you are really going to begin, sooner or later, to bog down the system because you've got so many different levels of communications coming across. You are really trying to manage these events in the best possible way. The decision has been with our system, based upon user feedback, which goes back--

SENATOR KOSCO: John, do you have any questions?

SENATOR MATHEUSSEN: Yes, I have a couple of questions: The tamper mode itself, does it work when the unit is -- when the individual is away from the unit itself, from the home base?

MR. ANGULO: The fact of the matter is, when the transmitter is in tamper mode, the minute it comes back within range of the receiver, it will report the tamper. So if it has been tampered away--

SENATOR MATHEUSSEN: So a tamper can be done away from home base then?

MR. ANGULO: It can be done, but when they come back within range it will be detected and reported. In other words, the receiver will only detect the tamper when the transmitter is within range. Okay? Once again, the way we manage these events is really a result of our users. The software is constantly being upgraded, based upon how they want to manage

the different particular events. It is a software function. The hardware reports it, and it is up to the software to manage what you do with that event.

SENATOR MATHEUSSEN: So then, therefore, we wouldn't know immediate detection if they are away from home base, if, in fact, they violated -- or tampered with the unit itself? We wouldn't know about that if they were away from home base?

MR. ANGULO: No, you wouldn't.

SENATOR MATHEUSSEN: For hours, until they come back.

MR. ANGULO: That is one of the misperceptions about the electronic monitoring from the tamper point of view. If the offender really wants to defeat the system, as I mentioned earlier, nothing is foolproof. More importantly, they are allowed to leave in many of the programs, and tampering it away from the receiver-- You would not know it until they are due to come back home, the fact that they didn't come home.

SENATOR MATHEUSSEN: If these candidates were literally home arrest candidates, in other words, if they were not allowed to leave their homes, then we would know that. But a lot of these candidates are, in fact, on some type of temporary supervision, where they are leaving their homes and doing a work program, or something along those lines.

MR. ANGULO: Exactly. I think one of the goals of the program here in New Jersey, as in many of the programs-- It is true we want public safety to be the primary issue, and we want to control these offenders, but the fact that these programs-- The way they are structured does have a positive impact on many of these individuals, getting them back into a positive form of life and making them more responsible for their own actions. That aspect, allowing them to go to work and go to other events, is part of these programs, but there are some programs where they will vary the level of supervision.

If you get a person who is coming home late, they may put them under a 24-hour lockdown. That is the flexibility

that is built into the technology and the programs to allow them to manage it based upon the individual.

SENATOR MATHEUSSEN: These seem, perhaps, to be very trite questions, but does it work during a power outage?

MR. ANGULO: The receiver has battery backup. As long as you have telephone service from the home, the receiver will be able to report in. So the absence of AC power will not stop us from being able to report in the events, as long as their telephone-- If telephone power is lost, once it is restored, the events will be reported, with the date and time that they occurred.

SENATOR MATHEUSSEN: All prior events will be recorded, then?

MR. ANGULO: Yes.

SENATOR MATHEUSSEN: Including tampers?

MR. ANGULO: Yes.

SENATOR MATHEUSSEN: How do we know -- going back to the incident that brought this hearing-- How do we know that other applicants have not committed similar offenses during this period of time? Is there any way of verifying that?

MR. ANGULO: Well, if it is, like, the perfect crime, you are not going to know about it because it was perfect. They got away with it. The fact of the matter is, right now we have shipped over 15,000 units within these 320-plus agencies throughout the country. Most of the time, the individuals who get caught, as in this instance, if they have tried to do it before, that is when they are going to get caught. You do not find situations where the percentage of tamper is less than 1 percent of the hundreds of thousands by now of people we have had come through our technology. You survey our users, and you will see that the attempts of individuals to try and tamper with the equipment is less, probably, than 1 percent. You will find them trying to discredit it, but you will not find them trying to tamper with it.

The fact of the matter is, we do not see evidence of that. So, if it has happened, it has gone undetected. But what we have seen that was detectable, is that it is very minimal. It is less than 1 percent, when you look at all of the people who have come through the programs.

SENATOR KOSCO: Senator Girgenti?

SENATOR GIRGENTI: Just a couple of questions: You said that this program can be beaten?

MR. ANGULO: When you say the program, the technology. The programs can be structured to where they have a very high level of reliability, as I think is in place here, and in some of the other programs I have mentioned, where even though the technology may have-- You are talking about the program and the technology coming together and compensating each other. When done right, you are going to have a high level of security; you are going to catch anybody trying to circumvent the system. But, it is possible for any system to be circumvented.

SENATOR GIRGENTI: All right. The whole program, I guess-- The idea behind it is that it is a deterrent. If they can be beaten without detection, then you have provided them, really, with an ironclad alibi for a crime.

MR. ANGULO: Well, again, it depends on how the program is structured and designed to be interpreted. We would not look at the fact that the technology says the person is home, as being an electronic alibi. You have other events that could be taking place. That is one of the reasons why we have an integrated technology, where we make, in addition to the RF technology, which shows presence-- We also make random calls, which require interaction. Those random calls are all recorded on a cassette tape, depending upon-- You would not want to listen to the tapes for all 700 people, but if you had a particular offender who you felt was high risk, considering your caseload, you may want to listen to his tapes.

So, the system has a fail-safe mechanism built in to take human operations and back up the technical, and then take the technical to back up the human. We try to get the best possible marriage.

SENATOR GIRGENTI: Just one final thing: I remember reading in the paper, too -- and we referred to it earlier -- the fact that-- Can someone go to the local hardware store and buy these rivets and hook them back in?

MR. ANGULO: We have not found that it has worked for us. In other words, we have agencies that have told us that they have detected that whenever the unit -- that that has happened. In other words, these fasteners we use are not commercially available. I think the only evidence of that would be for you to take a look at the unit in question, and look at the fasteners we ship with the unit, and tell me if you would be able to detect the difference. Our opinion is that it can be detected, but you've got to understand, going into these homes is not the easiest thing for parole and probation officers to have to do. So to expect that in any given incident a particular thing should have happened, might be putting a little bit too much emphasis on the parole and probation officers' ability there to look at it.

We feel that if we were to bring the two units in here, you would obviously see, yes, there is a difference. But given the real world, where that participant lived, and the family environment-- I'm telling you, I have been to some of these locations. You are not always in there looking to stay there and looking into a lot of detail. You're in and you're out. That is one of the human elements that is there, but we believe the technology is such that there is a high level of confidence that it can be detected, and we have detected it elsewhere. We do not know of situations where an individual has been able to get our fasteners, because they are not commercially available. We have to go through certification to

verify that we are the ones who are using these for criminal justice application.

SENATOR KOSCO: Based on the information we have in this particular incident that we have just gone through in Paterson, in your opinion-- We have listened to opinions that said the reason this happened is because we were in-between a process of converting from a screen to the hard copy. We listened to a number of reasons that, you know, Murphy's rule had to come into effect in order for this to happen. The fact of the matter is, it has happened.

Do you have any instances throughout the country where something similar to this has happened, where a person has tampered with a device for four months and it went undetected?

MR. ANGULO: When you say, "tampered with a device," I cannot be that specific. I can tell you that there have been instances--

SENATOR KOSCO: What can be not specific about tampering with a device?

MR. ANGULO: There have been offenses committed by individuals under different forms of electronic supervision where one would say it should have been detected. Whether it was tampered, or the fact that they were there or not there, is a separate issue.

SENATOR KOSCO: I want to be specific. I don't want a vague answer.

MR. ANGULO: Yes, I am aware of the situation.

SENATOR KOSCO: I am trying to ask you a specific question, and it takes, like, a yes or a no answer. We have a specific case where your device was tampered with for four months, admittedly by the person who did the tampering.

MR. ANGULO: Right.

SENATOR KOSCO: He said, "I played with this for four months. I have been taking it off any time I felt like it, and

I put it back on whenever I felt like it. I have been doing it for four months."

Now, is this the only place in the United States that this has happened?

MR. ANGULO: With our equipment, to the best of our knowledge, yes.

SENATOR KOSCO: Okay. Then my second question would be: How could it happen without it being detected? Is it possible? I don't want some pie in the sky idea that, you know-- Is it possible that if someone was looking at this device 24 hours a day, looking at the screen 24 hours a day, that someone could tamper with this particular thing for four months straight, and not be detected?

MR. ANGULO: We don't feel it is that likely.

SENATOR KOSCO: So it is your feeling that you have not had the opportunity, as I think one of the Senators asked before, to inspect this particular bracelet?

MR. ANGULO: No. To the best of my knowledge, we have not seen the unit.

SENATOR KOSCO: So, you have no way of knowing whether there was something wrong with this particular bracelet--

MR. ANGULO: Exactly.

SENATOR KOSCO: --which is always another possibility, correct?

MR. ANGULO: Yes, yes. We are assuming that everything was functioning properly here.

Now, there have been incidences-- Again, everything that we can do technically-- We are aware of incidences where products have been in similar situations, maybe not for four months -- okay? -- but where the individual was apprehended, and after the fact -- and it was within a week, two weeks, three weeks-- I think the furthest I am aware of gets into the neighborhood of between two and three weeks, where you would have thought it would have been detected immediately, but it

was not. It wasn't until the individual was apprehended that it was determined.

Now, again, most of that that happens, we are aware of. Even if it is not with our equipment, the industry -- the users network with each other to try and pass along helpful information, to make these programs more secure. The fact of the matter is, in most instances what we have seen, the tamper circuitry operated; in other words, the event was reported, but it is the managing of all of these events and the development of the software which is where our challenge has been for the last 24 months as an industry, as the market has continued to grow. So, the event being reported has nothing to do with it being sent from the transmitter. That is where I think, in this instance, we had the problem.

SENATOR SMITH: If I may, one more question: How does the removal of a rivet -- the rivet that holds this bracelet on-- How does that trigger the tampering signal, or mode?

MR. ANGULO: In a public forum, I would not want to get into the specifics. Basically, though, if the rivets are removed from the strap -- okay? -- you would detect it. In other words, we have a closed circuit, as well as a capability within the strap, to detect that the rivets have been removed.

SENATOR SMITH: All right. But if I went out of the range of the receiver--

MR. ANGULO: Right.

SENATOR SMITH: --removed the rivets and replaced them before coming back into the range of the receiver, would there be a tampering incident that showed?

MR. ANGULO: If you tampered away from the receiver, it still locks in tamper. When it comes back in the tamper, it should be reported.

SENATOR SMITH: Even though the rivets have been replaced?

MR. ANGULO: Even though you put them back. It would be like cutting any of the straps and then jumpering them, which, you know, you would figure you could just cut it and then rejoiner it, to try to complete the circuit again. The fact that you have done that away-- Once you tamper it, it locks in the tamper mode, so the offender cannot reset it. It has to be reset with a device.

SENATOR SMITH: I think some changes are going to have to be made in each area. Some have been made, I think, by the Department of Corrections, but I think one of the key flaws in this thing is that you can continue to report and check in once the tampering has been set off. If you miss that -- if somebody misses that somewhere along the line -- they can still continue to check in forever, successfully.

MR. ANGULO: Well, that is where the software -- the upgrade that was mentioned earlier when the Department spoke about it, has helped them as their program grew. These events that are left in the system unresolved now are easily tracked, much more easily than when they were just on a printout. So, the managing of the events is where the effort has been in the last -- since December when they spoke about the upgrade taking place, to allow for them to be easier. You would have to look at the number of events. When you make your visit to the facility, you will see, on a given night, how many incidences come in reporting. If you have 700 people under monitoring, you are probably going to have at least 1000 events a night coming in within a given time period, especially when everybody is home between 5:00 -- coming home between 5:00 and 8:00 at night. You are going to have pages and pages of events coming in. So, managing those events in a way where you can prioritize them and allow them to be tracked until they are resolved, is where the effort was made and the enhancement.

SENATOR SMITH: I think that is even more reason, though, why you have to have an interconnection between the check in and the tampering.

SENATOR KOSCO: It shows me that there is more of a reason why we need an intensive program to study who goes out on this program in the first place. I think that is probably the key we are going to be working on.

MR. ZIMKO: One thing that may be misunderstood: In the reporting of the tamper, initially the unit will report the tamper into the base station once. What will happen after that is, there is a report which I believe the Department of Corrections now runs six times a day, which will print on that report each and every time the tamper has occurred and has not been reset. That will continue to appear on that report for five days, so it is not a one-time occurrence.

SENATOR SMITH: All I'm saying is, once there is a tamper, you shouldn't be able to check in.

SENATOR KOSCO: Well, when you do check in, it should show that it was--

MR. ANGULO: But, see, the fact of the matter is, again, you have to realize you are talking about technologies that are doing several things. If the tamper, which sometimes can happen accidentally, disables the unit, then you lose all capabilities of supervision.

SENATOR KOSCO: That is not what we're saying. You're losing it. What we're saying is: I have a television set where I can watch the main show, and then I can push a button and watch something up here in this corner.

MR. ANGULO: Right.

SENATOR KOSCO: So I can do two things at the same time. Why can't this piece of equipment be made to show that it is checking in and show that it was tampered with an hour ago? Somebody should be able to do that.

MR. ZIMKO: Actually, what is a little simpler, and what we are moving towards with our new software, is, once the tamper is detected, it will be noted in that person's log record that he is in tamper, and--

SENATOR KOSCO: The problem we are having with this particular case is that the tamper was not noted, and the person was able to check in and check in and check in. By the time the four days -- or whatever it was -- went by that it continued, that tamper was taken away and somehow it was reset without somebody diagnosing that it was tampered with. I don't know if it was for four days -- but, for four months.

MR. ANGULO: We still feel you will see that the method in which we are proposing to handle it, which is managing the event which is still in the system, is going to be much more reliable on an operational basis than continuing to report the events from the transmitter.

SENATOR KOSCO: I have one more question, and then we--

SENATOR GIRGENTI: Are you saying now that this thing would not happen again according to this new technology?

MR. ANGULO: What happened should not happen again.

MR. ZIMKO: Given the current procedures in the Department of Corrections and the current software, that incident would not occur again.

SENATOR KOSCO: Thank you.

Next we will have, from the P.B.A., Local No. 326, Tony Sgro.

T O N Y S G R O: Good afternoon. As the President of the New Jersey State Parole Officers Local P.B.A. 326, I would like to make a brief statement.

I want to assure this Committee and the citizens of New Jersey that our officer did his job, and nothing humanly possible could have prevented this incident from occurring. Furthermore, we would appreciate any support that this Committee could give our Commissioner in making this and other Bureau of Parole programs even better.

The parole officers in the State of New Jersey will work with the Department of Corrections to make certain that the public safety remains our top priority.

I want to assure this Committee of a couple of things, which probably you are well aware of: First off, parole officers do an excellent job. They are out all hours of the night, sometimes working 70 hours to maintain this electronic monitoring program. It also should be noted that parole officers go into these communities at 2:00, 3:00, 4:00 in the morning, unarmed, no radios, no backup whatsoever, to make sure that each one of the individuals who are on this program are doing what he or she is supposed to be doing.

Thank you very much for your time. Thank you.

SENATOR KOSCO: Do you want to introduce who you have with you?

MR. SGRO: Oh, yes.

S T E V E P A P A R O Z Z I: My name is Steve Paparozzi. I am the State Delegate. I don't have a statement to read to you, or to talk about with you, but if you have any questions, we will be glad to entertain them.

We just wanted to reaffirm that our officer did everything he could possibly do. We don't want to rely on human examination to prevent this from reoccurring. We do not feel that that is feasible.

SENATOR KOSCO: Okay. What extra can we do, in your opinion, as legislators, to see that the Corrections Department has the capability of making sure that this program works properly?

MR. PAPAROZZI: Well, from what I have heard today, and from some of the procedures that have been implemented, we feel comfortable that the incident won't reoccur. This particular Committee has done a lot already -- and I don't want to address that agenda -- toward making our job more doable. Senator Girgenti has introduced a bill which will provide safer guidelines and more awareness in the law enforcement community as to who is released. We feel that once that goes through, that will also ensure public safety to a higher degree.

We just felt we should come here in case you did have any questions that we might address.

SENATOR KOSCO: Okay, thank you. Does anyone have any questions?

SENATOR SMITH: Are these gentlemen familiar with this particular system?

MR. PAPAROZZI: Yes, we are.

SENATOR SMITH: The check-in calls-- Who makes those check-in calls, an individual parole officer located somewhere?

MR. PAPAROZZI: Do you mean a spot-check after there is a violation?

SENATOR SMITH: Yes, a spot-check.

MR. PAPAROZZI: Yes, a parole officer is dispatched. The senior parole officer is dispatched.

SENATOR SMITH: No, not when there is a violation, a routine check. Who does that?

MR. PAPAROZZI: The senior officers at the base station monitor computers which advise them.

SENATOR SMITH: It is at the base station.

MR. PAPAROZZI: Yes, it is, Senator.

SENATOR SMITH: So it is the same people who monitor the reports who do the check-in calls?

MR. PAPAROZZI: Yes.

SENATOR SMITH: Okay. Thank you.

SENATOR KOSCO: Thank you.

Next we are going to have Jock Waldo, from BI, Inc., Boulder, Colorado, which also makes the same device; not the one that we specifically used.

J O C K W A L D O: Mr. Chairman, members of the Committee: Thank you very much. It is an honor to be here today. I have given you all packets and I have prepared some remarks. However, in light of the time, and moving forward this afternoon, I am going to briefly summarize my remarks.

SENATOR KOSCO: Good.

MR. WALDO: I was sure you would appreciate that. Everything is in the packets.

Some tough questions have been asked today about the New Jersey Department of Corrections' Home Confinement Program. As a representative of BI, Inc. of Boulder, Colorado, I am here to give you some background information about the electronic monitoring industry and the types of technology available. This packet on information will lead me to the discussion of the ingredients and hard work that go into making an electronic monitoring program safe and a success.

Home arrest, home detention, house arrest, whatever it might be called, is certainly not a new concept. It has been used successfully in many countries around the world for generations. In fact, it has been in use in the United States for over 15 years. What technology has brought to the table and, in fact, was developed by BI, Inc., is the automation of home arrest by means of very sophisticated radio-frequency based real time hardware and software.

As a catalyst for this vital industry, BI, Inc. is today responsible for manufacturing approximately 65 percent of the home arrest units in the field. In our 14 years, with eight years in the home arrest industry, that translates to over 25,000 units shipped.

Before we address how the system works, it is appropriate to review why such a system is critical to the health of our penal system. According to recent Bureau of Justice statistics, 804,000 people are incarcerated in prisons and jails around the United States. An additional 3.2 million are on conditional release; in other words, supervised on probation and parole.

Since BI pioneered electronically monitored house arrest in 1984 and 1985, the population of people under supervision or incarceration has increased a staggering 44

percent. If one considers that prison facilities cost more than \$75,000 per bed to build, and up to \$120 per day--

SENATOR KOSCO: Excuse me. I don't want to be-- We all know all this. We are talking about-- This hearing is to try to find out what possibly went wrong with this program we are presently using. Okay? We know all the information you are giving us, but that does not pertain to what we are here for. We are here to decide what went wrong with this system, if anything went wrong with the system, and if it can be corrected. Any input you can give us to that, that is what we are here for; not to listen to statistics.

MR. WALDO: Yes, sir. I was actually-- When I was invited to be here today, the nature of my presentation was to be along the lines of electronic monitoring in general. I'm sorry--

SENATOR KOSCO: No, that is not what this hearing is about. This is a hearing about a specific incident that happened, why it happened, and what we can do to keep it from happening again.

MR. WALDO: Well, quite simply then I will--

SENATOR KOSCO: Get to the point.

MR. WALDO: You bet. I'm sorry that I went in that direction, but again, I was invited to speak and I prepared those remarks.

The BI home escort system is a radio frequency-based system. The offender wears an ankle transmitter that transmits a radio frequency signal to a receiver unit that sits in the offender's home. It can easily be considered, or equated to this being a small radio station and this being a receiver in a person's car.

As far as a tamper is concerned, the home escort system utilizes a multiple tamper indicator that both indicates that in the event that the transmitter is removed or cut off from the offender, or in the event that the band itself is

intact and slipped off the person's ankle, we get an indication, as was described earlier by Mr. Angulo from DPC, that a tamper has occurred. Along with Mr. Smith's questioning, if this does occur away from the offender's home, or away from the receiver, the minute the person comes back into the range of the receiver, that indication of tamper is evident.

Based on that, quite simply I would be pleased to answer any questions anyone might have with respect to either the equipment or the technology.

SENATOR KOSCO: The one you have there doesn't have any rivets to it?

MR. WALDO: No, sir, it does not. They are internal screws.

SENATOR KOSCO: How does that go onto the person's--

MR. WALDO: When it is placed on the individual, the probation officer/parole officer/sheriff's department employee/whomever, actually fits the screws internally, so it is virtually impossible for an offender to get inside this and remove the screws. Really, the only way a person could do it would be to cut the ankle bank, and obviously, as I said a few seconds ago, if they were to cut the ankle bank, you would get an immediate notification of a tamper. Also, if they were to slide the bank off, lubricate their ankle or something and slide the bank off intact, you would also get an indication of that tamper.

SENATOR KOSCO: How is that verified? The other one has a small -- the hand-held piece--

MR. WALDO: The home escort system does not utilize-- In the context of my speech it reviews that, but in short, the BI home escort system relies strictly on a radio frequency, what we call a link. The ability of this device to communicate with this device. (demonstrates) In over eight years of building these units, and with 25,000 or more in the field, to

our knowledge, we have never had a situation where something like that would occur undetected to this unit. We are very confident and we feel very strongly that the ability of this device to communicate its radio frequency signal, which is uniquely encoded only that this device will pick up-- It is a very strong link, if you will. Consequently, we don't feel it is necessary, with this device, to have a verifier or a backup.

SENATOR KOSCO: Anyone have any questions?

SENATOR MATHEUSSEN: Do you also utilize the system of them calling in frequently to check with people at home base?

MR. WALDO: I'm not sure if I understand your question.

SENATOR MATHEUSSEN: There are other ways of monitoring these people who are at home, and that is by a call-in process from the probation officer or--

MR. WALDO: BI does manufacture a voice verification system that can be used in conjunction, so that rather than inserting something, the offender would actually speak a series of words verifying that he or she is at home.

But again, going back to the Chairman's question, our belief is that when this device says you are at home, you are at home; and when it says you are gone, you are gone. We don't feel the need for a backup in that event.

SENATOR KOSCO: And the monitoring device, as far as when it has been tampered with, uses basically the same show-up -- it would show up the same way on the screen?

MR. WALDO: Yes, sir, it does. We get both an indication on the actual monitoring screen for the individual doing the monitoring, in addition to a violation printout that would come out right beside it. So, there are two methods to be identified: One that is right in front of their face -- and again, once it is on there, it will stay on there and this unit will continue to broadcast-- Right now the way it works basically is, if it is not tampered, it kind of says, "I'm here, I'm here." Every so many seconds it sends out that

signal, which is picked up. In the event of a tamper, it begins to say, "I'm here, and I'm tampered." That signal continues indefinitely until it is repaired, or until an officer actually goes out and does something -- as was mentioned earlier again -- uses a physical tool to reset it electronically.

SENATOR KOSCO: Okay. In other words, this system here, if someone tampered with it while they were away from the receiver, the minute they came back in it would start to broadcast--

MR. WALDO: It would say, "I have been tampered with," and it would continue to say, "I have been tampered with," theoretically, for months.

SENATOR KOSCO: Now, the discussion we had before was that unless you specifically called in the mode -- that tampering mode -- you didn't know it was tampered with -- with the system we were talking about. Is that the same with this system?

MR. WALDO: Not really, sir, because there is no verifying technology to be physically doing at the home. Once this unit is in the tamper mode -- much like what was described earlier -- it will transmit that tamper signal on a consistent basis until an officer goes out to the home and resets the device.

SENATOR KOSCO: In excess of the four or five days?

MR. WALDO: Absolutely, indefinitely. Obviously, at that point it is the responsibility of the monitoring center to get someone out there to do something. But it will continue to broadcast that.

SENATOR KOSCO: Does anyone have any other questions? John?

SENATOR GIRGENTI: Just quickly: Can your system-- Do you feel it can be beaten?

MR. WALDO: Just like Mr. Angulo said, I would have to agree 100 percent that any system can be beaten. We happen to feel very strongly that our tamper features are the most secure in the industry, but, nonetheless, you can always find an electronics wizard who may be able to do something to defeat these systems.

SENATOR GIRGENTI: See, what concerns me, again, is the fact that you are providing an ironclad alibi for a lot of these people, because they could be under home confinement and they could be committing a crime. That is the concern. If it can be beaten, obviously that is the problem.

MR. WALDO: Our position, sir, would be that in our experience, in our eight years of manufacturing, never have we had something like that occur undetected. I am not saying it doesn't occur, because it certainly does. But when it does occur, we know about it, or the department that is doing the monitoring knows about it.

SENATOR GIRGENTI: Okay. Thank you.

SENATOR KOSCO: Thank you very much.

MR. WALDO: Thank you, sir.

SENATOR KOSCO: Karen Spinner, from the New Jersey Association on Correction.

K A R E N S P I N N E R: Good afternoon, Senators. Thank you for the opportunity.

SENATOR KOSCO: Excuse me. John has to leave. Senator Matheussen, thank you very much for being here. I appreciate it.

SENATOR MATHEUSSEN: Thank you, Senator.

MS. SPINNER: My name is Karen Spinner. I am with the New Jersey Association on Correction. We are a statewide citizen-based organization that is concerned with the enormous costs of criminal justice and corrections in New Jersey.

Throughout our 30-year history, we have consistently advocated for the utilization of the least restrictive forms of

punishment consistent with the goal of public safety. We have advocated for work release, community release, direct court commitments to halfway houses, community service and restitution, and the establishment of Intensive Supervision Programs.

It is our belief that New Jersey has skewed its correctional resources to institutional corrections to the detriment of public safety through the overreliance on prison construction. In our attempts to be tough on crime, we have tough laws with mandatory sentencing, which has resulted in massive overcrowding. Our probation and parole caseloads have grown also, but the money committed to them has not kept pace to allow them to do the job they need to do. Consequently, with caseloads of 120 to 160 people, the public has no faith in traditional parole and probation.

We wholeheartedly support the Intensive Supervision Program of the AOC and the Intensive Supervision and Surveillance Program and Electronic Monitoring Program of the Department of Corrections. We believe that these programs can provide a level of punishment for offenders, making them accountable for their crime by requiring them to live responsibly in the community, dealing with their problems. They also have a far less negative impact on the offenders themselves in terms of crippling their social and human relationships.

We do not advocate these kinds of programs merely because of the economics involved. It is true that they are less expensive than incarceration, but their real promise is in the potential to reconstruct damaged lives and teach them the skills they need to live conventionally acceptable life-styles. We know there are offenders who choose not to go into these kinds of programs because they are too hard. Some of them like to stay in jail because they don't have to do

things. I know that sounds strange, but being on these community programs is harder than doing time in jail.

We have been somewhat critical in the past of AOC's Intensive Supervision Program because they are so restrictive. However, you cannot argue with their success, and we do support their efforts. We feel it continues to be a great program and it does protect society and allows the inmate, or the offender, to change his or her life in a positive way.

It is a little difficult to compare ISP with ISSP and electronic monitoring because they are not really comparable. The types of individuals who get to be on these programs are different. The people in the Home Confinement and in the ISSP have spent more time in institutions and have more serious records.

SENATOR KOSCO: Excuse me, Karen. I am going to have to stop you again right there, because you are telling us things that we already know. Again, that is not the purpose of this hearing. If you have something to add on how we can enhance the program we already have, or what we can do to make sure that what happened in this particular case will not happen again, then we will be glad to sit here all night. But to just sit here and have you tell us what we already know is not the purpose of this Committee.

So, as I told the gentleman before, who traveled all the way from Colorado, we want to be specific about this hearing. It is not just a vehicle so people can get up and voice their opinions on other things.

MS. SPINNER: I have two issues that I--

SENATOR KOSCO: Specific about the incident that happened and how we can correct it.

MS. SPINNER: There are two issues that need scrutiny. I think the efficacy of the equipment is one of them for home confinement. We have been led to believe that there has been a history of problems with false readings on

tampering. We feel that needs to be taken care of. We need to deal with it with the manufacturers.

SENATOR KOSCO: How do you have this information that we have not gotten so far from anyone else? Where does this history come from?

MS. SPINNER: I have been told by probation officers and parole officers that they do have a problem sometimes with false negatives. So, there is the issue of whether we need to be looking at improvements in the equipment. Researchers, in doing studies of home confinement nationally, have suggested that if there are problems with monitoring equipment, then the contracts that the departments have with the manufacturers should allow for them to be voided, if that is a continual problem. Merely replacing malfunctioning equipment is not going to solve our problem.

The other issue, of course, deals with human error. From all the accounts we have heard today, what happens is that someone didn't fall back and check on the materials that might have been available. We are always going to have a problem with human error. Our concern is that we don't restrict these programs because of this major problem we have had. We do need improvements. We would like to see them worked towards.

As I said, we support these programs. If there is a problem, we want to work with it, but we don't want to see the programs shrunk into nothingness because of one serious -- albeit one very serious -- problem.

SENATOR KOSCO: That is the intent of this Committee also. We want this program to work so we can continue the expansion plan.

Now, do you have anything specific you could give us about people telling you that there have been a lot of negatives, -- lot of false negatives? This is the type of thing we are trying to get to. Just saying it doesn't make it happen. How can we get to the bottom of that? The people who

told you that they had a number of false negatives-- How can we get to them? How come they aren't here today to speak to us about it?

MS. SPINNER: That, I can't tell you, Senator.

SENATOR KOSCO: Could you provide me with the information of who--

MS. SPINNER: I could provide you with the information from the person I received it from.

SENATOR KOSCO: Okay. That I would appreciate, because if we don't-- If we have people coming in from the sheriff's department and the probation department telling us that the system is good, that the system works, and someone from the Corrections Department says, "We have made corrections A, B, and C," and then suddenly you come in and say that these same people told you that there are problems-- Now we have a contradiction. If that is the case, then it is up to this Committee to search it out and get to the real reason why something like this happened.

We have the manufacturer saying, "It is not our fault." We have the probation department saying, "It is not our fault." We have the Corrections Department saying, "It is a little bit of each." And we are sitting up here, as elected officials, trying to determine whether or not we are going to put \$4 million-plus into a program that should or should not have the money put into it.

So, if you have any more information that you would like to share with this Committee, if you could get it to me, I would certainly appreciate it.

MS. SPINNER: I will certainly do that.

SENATOR KOSCO: Okay, thank you.

Does anyone have any questions?

SENATOR SMITH: If I may, Mr. Chairman-- BI is still here. If I may ask him a question? The receiver in your system is hooked to the telephone line?

MR. WALDO: That is correct.

SENATOR SMITH: When a person at the base station dials that telephone number he gets some sort of a signal that indicates that either the person under supervision is within the range of the receiver, or is not within the range of the receiver?

MR. WALDO: Yes, sir. It is an "exception only" reporting schedule. Basically, as long as you don't hear anything, that unit is there. It does do regular call-ins, where the unit itself calls in to the host computer. We call it "callback." Depending on the level of security required, that callback can be as frequently as every 20 minutes. It could be as infrequently as every 24 hours, depending on what the department says they want -- how closely they want to keep tabs on an individual. But there is not a person on the other end calling into that home. The unit -- the host computer at the monitoring center -- does call in to verify that that unit is in the home and it is supposed to be in. The guy didn't pick it up and carry it to his girlfriend's house.

SENATOR SMITH: That would be detected?

MR. WALDO: Yes, sir, it would.

SENATOR SMITH: Thank you.

SENATOR KOSCO: Okay, thank you.

Dan Lombardo, President and CEO of Volunteers of America Delaware Valley, Inc.

DANIEL L. LOMBARDO: Mr. Chairman and members of the Committee: Nationally, electronic monitoring has been able to demonstrate long-term effectiveness when implemented in conjunction with a strong case management component supported by accessibility to a full range of treatment options tailored to the specific needs of the offender.

To be effective in changing behavior and reducing crime, alternative programs must assure accessibility of the offender to ancillary treatment services, individual and family

counseling, job training and employment assistance, drug and alcohol programming, and the development of basic life skills. As presently structured, EM does not address those issues.

Electronic monitoring has not been effective when established as a stand-alone program. Data supports that such programs only operationalize the goals of surveillance and offender accountability, and have little impact on reducing crime or changing criminal behavior. Conversely, when electronic monitoring is conceived as part of a comprehensive, integrative approach, electronic monitoring programs have been successful in reducing crime and maintaining public safety, while representing substantial savings to the taxpayer.

Members of an organization that I am part of, known as the Coalition of Community Corrections Providers of New Jersey, have always been dedicated to providing quality services to the Department of Corrections. We have the background and expertise necessary to understand the needs of the Department, its diverse body of constituents, as well as the unique needs of the residents coming through our programs. We have an established reputation for responsible community correctional program management which responds to the mission of the criminal justice system.

Presently, there are some electronic monitoring programs where the only focus is on surveillance. Where technology is not undergirded by a solid treatment philosophy, programs fail. The Coalition of Community Corrections Providers of New Jersey works with the Department of Corrections, and has recommended to the Department of Corrections to privatize and to fund an expanded array of services or intermediate sanctions which can be provided through our community-based programs already under contract with the Department. In other words, after a person comes from the community halfway house type of program, put them on a program of electronic monitoring that would have a case

management component supporting that electronic monitoring program, very similar to the ISP program and to the ISSP program that you have heard of.

Specifically, we have found that by doing this particular program-- The Volunteers of America runs electronic monitoring all across the country. We have found that electronic monitoring, supported by case management services, and, as you heard earlier, having the actual bodies getting out there and having direct contact with the people on a very active routine basis of 20 and 30 times a month, can prove to be very effective.

If there are any questions, I would be glad to respond to them. Thank you for the opportunity to appear before this Committee.

SENATOR KOSCO: Thank you. Does anyone have any questions? (no response) I have just one question.

MR. LOMBARDO: Yes, sir?

SENATOR KOSCO: You mentioned for this program to be used as an integrated program.

MR. LOMBARDO: Yes, sir.

SENATOR KOSCO: What did you mean by that -- integrated with what other type of a program?

MR. LOMBARDO: Well, currently, the only services that are available in the community when folks come directly from prison on a pre-parole status, in other words, before their actual parole date, there are two options available: Community-based programs, which are what my agency provides, as do several other agencies across the State, commonly called "halfway houses." The other option is the electronic monitoring program. What we would like to do is integrate those two programs together to create an array of services where you would have the community correctional program -- the halfway house -- and then an intermediary step, which would be a case management individual program plan designed for an

offender. He would go onto the electronic monitoring program with a specific case manager, and that person would be responsible for making sure that that person not only meets the mandates of electronic monitoring, but the mandates of an individual program plan that would be designed for that person. Then, following his successful completion of that particular component, there would be a third component which would be exclusively electronic monitoring, because that person had earned some credibility in performing employment mandates, dealing with drug and alcohol issues that they may be facing, or dealing with things like various mandated services and programs that they must comply with. By that time he has earned a track record, and he can go on to a less structured form of electronic monitoring.

The process would take a year, but you would have a heck of a lot more success if you put a structured program together with an inmate, rather than just discharging him directly to a program without the appropriate intensive supports.

SENATOR KOSCO: Thank you very much.

MR. LOMBARDO: Thank you.

SENATOR KOSCO: Ladies and gentlemen, that will conclude our hearing -- our formal hearing. The next step we are probably going to take with this Committee is going to be to physically visit the center in Trenton where the monitoring is taking place, and spend some time down there going through the program.

I thank everyone for participating. Thank you, Senators, for being here.

(HEARING CONCLUDED)

**APPENDIX**



ADMINISTRATIVE OFFICE OF THE COURTS  
STATE OF NEW JERSEY

ROBERT D. LIPSCHER  
ADMINISTRATIVE DIRECTOR OF THE COURTS

HARVEY M. GOLDSTEIN  
ASSISTANT DIRECTOR FOR PROBATION

RICHARD B. TALTY, DIRECTOR  
INTENSIVE SUPERVISION PROGRAM



CN-987  
TRENTON, NEW JERSEY 08625  
TEL: 609-392-1176

COMMENTS OF RICHARD B. TALTY  
DIRECTOR OF THE INTENSIVE SUPERVISION PROGRAM  
TO THE  
SENATE LAW AND PUBLIC SAFETY COMMITTEE HEARING  
APRIL 21, 1992

## ELECTRONIC MONITORING WITHIN ISP

ELECTRONIC MONITORING (E.M.) TECHNOLOGY IS ONE OF AMERICA'S GENUINE GROWTH INDUSTRIES. RARELY A MONTH PASSES WITHOUT SOME NEW WRINKLE IN ELECTRONIC MONITORING BEING INTRODUCED. BUT E.M., FROM THE MOST SOPHISTICATED TO THE MOST RUDIMENTARY, PROVIDES ONE THING AND ONE THING ONLY -- INFORMATION!

E.M. IS NOT A REPLACEMENT FOR HUMAN DECISION MAKING OR HUMAN INVOLVEMENT. THERE IS NO MAGIC OR MYSTERY IN E.M. WE COULD RECEIVE THE SAME RESULTS AS E.M. IF WE WERE TO STATION A PROBATION, PAROLE OR ISP OFFICER OUTSIDE OFFENDERS HOMES 24 HOURS PER DAY. WE USE E.M. BECAUSE IT IS MUCH LESS LABOR INTENSIVE AND MORE COST EFFECTIVE.

BUT THE INFORMATION PROVIDED BY E.M. DOES NOT TELL US WHAT TO DO. IT PROVIDES DATA THAT THEN REQUIRES A HUMAN BEING TO MAKE AN INFORMED DECISION. THE HUMAN ELEMENT PRESENTLY, AND IN THE FUTURE,

WILL REMAIN THE CRITICAL FACTOR IN DECIDING WHEN AND IF CERTAIN ACTIONS ARE TAKEN.

DUE TO THE STRUCTURE OF THE INTENSIVE SUPERVISION PROGRAM (ISP), E.M. IS USED ONLY AS AN ENHANCEMENT TO OUR PRIMARY SUPERVISION TOOL WHICH IS THE DIRECT CONTACT BETWEEN ISP PARTICIPANTS AND OFFICERS. MR. GOLDSTEIN SHARED WITH YOU THE TOTAL NUMBER OF CONTACTS WITH ISP PARTICIPANTS. TO PLACE THIS DATA IN A DIFFERENT PERSPECTIVE, ISP OFFICERS AVERAGE OVER ONE CONTACT PER DAY WITH PARTICIPANTS, FAMILY, EMPLOYERS OR TREATMENT AGENCIES.

ISP USES E.M. FOR TWO PURPOSES:

- [1] FOR OFFENDERS ENTERING THE PROGRAM WHOM THE RESENTENCING PANEL OF JUDGES OR STAFF FEEL ARE AT RISK FOR VIOLATING THEIR CURFEW OR FOR WHOM THE PANEL FEELS THE WEARING OF A WRISTLET WILL BE AN ADDED PUNISHMENT. OFFENDERS DO PERCEIVE THE WEARING OF A WRISTLET (OR AN ANKLET) AS PUNITIVE.

[2] E.M. IS ALSO ONE IN A CONTINUUM OF PROGRESSIVE SANCTIONS FOR VIOLATIONS OF PROGRAM CONDITIONS SUCH AS CURFEW, FAILURE TO COMPLETE COMMUNITY SERVICE, ATTEND A TREATMENT MEETING AND SO FORTH.

ISP OFFICERS CAREFULLY MONITOR COMPLIANCE WITH E.M. BY REVIEWING COMPUTER DATA AND BY FREQUENT PHYSICAL INSPECTION OF THE EQUIPMENT WORN BY THE OFFENDER TO INSURE THAT THE EQUIPMENT HAS NOT BEEN DAMAGED OR TAMPERED WITH. E.M. ENABLES OFFICERS TO RECEIVE ADDITIONAL INFORMATION WHICH ASSISTS IN THEIR OVERALL SURVEILLANCE, MONITORING AND CONTROL ACTIVITIES.

I HAVE BROUGHT TWO EXAMPLES OF E.M. SYSTEMS PRESENTLY IN USE WITHIN ISP AND SOME DESCRIPTIVE LITERATURE ON A SYSTEM PRESENTLY UNDERGOING FIELD TRIAL. I AM SURE WE WILL CONTINUE TO CAREFULLY LOOK AT E.M. AND RE-EVALUATE ITS APPROPRIATE USE WITHIN ISP.

My name is Karen Spinner and I am Director of Public Education and Policy for the New Jersey Association on Correction. The Association is a state-wide citizens organization which is concerned with the enormous social, economic and human costs of the criminal justice and corrections systems in New Jersey.

Throughout our thirty year history, we have consistently advocated for the utilization of the least restrictive forms of punishment consistent with the goal of public safety. We have advocated the use of work release, community release, direct court commitments to halfway houses, community service and restitution and the establishment of intensive supervision programs.

It is our belief that New Jersey has skewed its correctional resources to institutional corrections to the detriment of public safety through overreliance on prison construction. In its attempts to be tough on crime, tough laws with mandatory sentences have flowed out of the legislature resulting in massive overcrowding. Probation and Parole caseloads have also grown but the money committed to them has not kept pace, decreasing the public's faith in these community based punishments. Caseloads with 120 to 160 clients are not uncommon. There can be no serious expectation that the clients will be given quality services to improve his/her life under those conditions.

We wholeheartedly support the Intensive Supervision Program of the Administrative Office of the Courts and the Intensive Supervision and Surveillance Program and Electronic Monitoring Program of the Bureau of Parole. We believe that these kinds of programs can provide a level of punishment for offenders, making them accountable for their crime, by requiring them to live responsibly in the community, (working, paying taxes and dealing with problems such as substance abuse or mental health issues) within strict guidelines that do not cost taxpayers excessive amounts of money and have a far less negative impact on their lives in terms of crippling human and social relationships.

<b>PRESIDENT</b> — Rev. David H. McAlpin, Jr.	<b>BOARD OF TRUSTEES</b>	
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We do not advocate these kinds of programs merely on the issue of economics. It is true that they are less expensive than incarceration but their real promise is in the potential to reconstruct damaged lives or to teach skills to offenders who have never learned how to live the conventionally acceptable lifestyle. We know that there are some offenders who choose not to participate in this type of programming because they perceive that it is too hard. They prefer the irresponsible lifestyle of prison where everything is provided for them and they do not have to prove themselves each day by working and taking control of their lives.

We have been somewhat critical in the past that the AOC's Intensive Supervision Program because of their restrictive criteria which excludes anyone serving a prison term with a parole ineligibility, even though many drug offenders would otherwise fit the criteria. We cannot, however, argue with their success rate, an enviable 9% recidivism rate. (4.3% convicted of indictable offenses; 4.7% convicted of disorderly persons offense).

ISP in all respects has been and continues to be a program that can turn around an individual and help protect public safety in the long run because of the life style changes that the program engenders. It is an example of how a well designed, adequately funded program dealing with low to moderate risk offenders can be a success story.

The Intensive Supervision and Surveillance Program and the Electronic Monitory Program operated by the Department of Corrections Bureau of Parole are not comparable programs to ISP. While the basic elements of ISSP maybe comparable in terms of client/officer ratio and referral to treatment and drug screening, the clients are not. Participation in ISSP is not voluntary; it is a condition of the grant of parole. It is designed to provide a higher level of support to offenders who have greater needs than the ordinary parolee. While an ISP client is selected because of things he/she has going for him in the community, ISSP is imposed on an offender because he/she does not have the social supports in the community that will help him make a successful transition to living on the outside. Without a doubt, these clients need more services.

Unfortunately, there is no way to ascertain who will or will not become a program failure. Clients who fail to comply with program rules are promptly removed from the program. However, there is no crystal ball which allows you to know who will commit another violent act even under intensive supervision. Educated judgments about how individuals will behave are just that - judgment calls. Because human behavior is not always rational, we cannot predict how an offender will act or react on a given situation.

Despite the terrible recent experiences with two ISSP/HCP clients, many individual have benefited from these programs. It would be a travesty to eliminate or greatly reduce the eligibili-

ty of inmates for these special programs based on these occurrences.

There are some issues, however, which deserve scrutiny. In particular, the efficacy of the equipment utilized by the home confinement program is called into question. It is our understanding that the equipment has a history of malfunction which, perhaps caused a level of laxness in responding to a monitoring report which indicated tampering with the bracelet. If this is the case, then steps should have been taken to deal with the manufacturer/supplier of the equipment. Some researchers suggest that contracts for monitoring equipment should include clauses that permit the voiding of a contract if there are persistent equipment problems. Merely replacing malfunctioning equipment will not solve the problem.

There is also the issue of human error. If everyone knows that the equipment is a problem, then it should be incumbent on an officer to check out all reports of tampering, even if it is a false alarm. Electronic monitoring is just a tool. Human beings are essential to ensure that an offender is where he/she is supposed to be at a given time. It does not work unless the people charged with monitoring do their jobs in providing social supportive services and the surveillance piece.

The ISSP and Home Confinement Programs are valuable programs within the range of sanctions that the community can impose on those who break laws. We as citizens and legislators must come to an understanding about the role of each sanction and where it fits in the total correctional scheme.

The recent Judicial Conference on Sanctioning and Probation has called for implementation of a system of intermediate sanctions as a way to improve punishment and public safety. In order for this to work, there must be broad consensus on their use and serious involvement and commitment by the community.

This factor of community involvement is the key to making programs like ISP, ISSP and home confinement work. For too long, the community has been excluded from the process of sanctioning resulting in the development of a "us vs them" mentality. The public has not cared about what happens in corrections as long as everything is going well but if anything goes wrong - watch out.

It is time to allow the public to engage in a dialogue on criminal justice goals. Not just as reaction to program failure but as an integral partner in the public policy arena. We hope that today can be a start in that process.

5.1

**Ingredients for Success in  
Electronically Monitored Home Detention  
Programs**

**Remarks of Mr. Jock Waldo  
Regional Representative  
BI Incorporated**

**to the Senate Law and Public Safety Committee  
of the  
New Jersey State Legislature**

**Tuesday, April 21, 1992**

Thank you Mr. Chairman.

Some tough questions about the New Jersey Department of Corrections Home Confinement Program will be asked today. As a representative of BI Incorporated of Boulder, Colorado, I am here to give you some background information about the electronic monitoring industry and the types of technologies available. This background information will lead me to a discussion of the ingredients and hard work that go into making an electronic monitoring program safe and a success.

Home arrest, home detention or house arrest -- whatever it may be called -- is not a new concept. It has been used successfully in many countries around the world for generations, and in fact has been used in the United States for more than 15 years. St. Paul the Apostle, Galileo, Nicholas II, if they were living today, according to Mr. Larry Meachum, Director of the Oklahoma Department of Corrections, would all testify that the concept was around in their days, because each of them was under house arrest for one reason or another. What technology has brought to the table, and in fact was developed by BI Incorporated, is the automation of home arrest by means of very sophisticated, radio frequency based real-time hardware and software.

As the catalyst for this vital industry, BI Incorporated is today responsible for manufacturing approximately 70 to 75 percent of the home arrest units in the field. In our 14 year history, with eight in home arrest, that translates to over 25,000 units shipped.

Before we address how the system works, it is appropriate to review why such a system is critical to the health of our penal system. According to the Bureau of Justice Statistics', 804,000 people are incarcerated in the prisons and jails around the United States. An additional 3.2 million people are on conditional release, in other words, supervised on probation and parole. Since BI pioneered electronically monitored house arrest in 1984 - 1985, the population of people under supervision or incarcerated has increased a staggering 44%. Furthermore, jails in 47 states were under court order or consent decree to limit the number of inmates held.<sup>2</sup>

Suffice it to say, the nation's penal institutions and infrastructures are clearly in a state of crisis. And answers do not come easily. Overcrowding in the prison, parole and probation systems creates pressure both within the confines of the system as well as throughout the community. An increasing number of convicted felons have been going free or serving reduced sentences, which of course increases the rate of crime.

Our penal system is in nationwide chaos looking for answers to what appears to be an overwhelming problem. Indeed, if one considers that prison facilities cost more than \$75,000 per bed to build and up to \$120 per day per prisoner to run, the problem seems to be insurmountable.

Over the past eight years, and largely due to the efforts of reputable manufacturers, the concept of electronically monitoring people sentenced to home arrest has emerged as at least one answer to an otherwise dismal set of circumstances.

Because it is an interesting story, let me tell you about the origins of the concept of electronic monitoring. If we look back to 1983 in Albuquerque, New Mexico, Judge Jack Love, a circuit court judge, got the idea for a monitoring device from a Spiderman cartoon. About the same time, a number of petty offenders were killed in a New Mexico State Penitentiary riot. Judge Love, believing that their punishments (i.e. death) clearly did not fit their crimes, created the concept of sentencing petty offenders or low-risk misdemeanants and felons to time at home on an electronic shackling device.

Today, the BI Home Escort™ is the direct descendent of Judge Love's idea.

Let me digress a little and explain some of the technical jargon used today in the electronic monitoring industry. BI Home Escort is an "active" or "continuous signalling" system. The transmitter worn by the offender continuously sends out a radio frequency signal that is in itself tamper resistant because it is uniquely encoded. It communicates with a receiver installed in the offender's home. You can think of it as your car radio picking up the signal from your favorite station's transmitter, albeit on a much smaller scale. Another kind of system is known as a "passive" or "programmed contact" system. It requires that the offender respond to a telephone call placed by a computer. This response, which indicates the offenders presence or compliance with curfew, can take the form of voice verification, electromagnetic wristlet, or video confirmation. Passive systems are considered to be significantly less secure than active systems. That leads me to describe the third type of system you might encounter

which is called a "hybrid" system or "active-passive combination." These systems back up their active technology with a passive component.

The BI Home Escort system has a variety of failsafe, high-security features that make it unique and the most secure product of its kind. These unique features are found in its electronics, its firmware, its housing, its strap, its radio signal, its receiver, its power interface, its software, and its multi-tasking host computer. Many of these features are redundant. Many of them are patented. Most importantly, the level of sophistication has been earned through years of experience and millions of dollars of research and development. In fact, based on information we received from the press, the electronic monitoring equipment used in Paterson may not have notified the monitoring center of a tamper violation. We feel that had the equipment been BI Home Escort, proper notification would have occurred.

Ever since that unfortunate incident here in Paterson, we have been answering numerous inquiries from the press, competitors' customers and the general public about tamper technology. To our knowledge, no one being supervised with the BI Home Escort system has ever slipped away undetected in the eight years we've been committed to this business. Why? BI Home Escort is the only product on the market today that has multiple ways of detecting — electronically — that a person has tampered with his or her transmitter. The BI Home Escort knows if the offender cuts the strap. It also knows if the offender manages to slip the transmitter off of his ankle. In other words, the BI Home Escort actually knows if it is on a person. No other manufac-

turer can match BI's patented, proprietary tamper technology.

It is features like these that have led more than 300 jurisdictions nationwide to choose BI Home Escort. Furthermore, in 1989 BI Home Escort received the coveted Computerworld Smithsonian Institution award for the innovative use of technology. BI Home Escort systems are the only electronic house arrest systems displayed at the Smithsonian's Information Age Exhibit and the History of Prisons exhibit at Alcatraz.

We've talked about the technology behind monitoring equipment. Now let me tell you a little bit about what makes a home detention program succeed. First of all is careful consideration of the type, or classification, of offender to be placed on electronic monitoring. Proper selection criteria are a critical component of successful electronic monitoring programs. Potential participants must be screened, and questions asked such as: is the offender a good candidate for working in the community while serving his sentence? Does the court think the offender is a candidate? What is the jail or prison population? What is the overall risk?

Risk is a topic on all of our minds today. Risk assessments usually focus on an individual's past behavior and the nature of his or her contact with the criminal justice system. These assessments are usually the responsibility of the court and its officers. Unfortunately, such assessments are not always 100% accurate and occasionally an offender's behavior goes far beyond what an agency anticipates. Those of us experienced in the electronic monitoring industry know that there are differences in security

based upon differences in technology, and if you leave today with no other message, please remember that there is a direct correlation between technology and security.

Using an unsecure electronic monitoring system such as a programmed contact system, or a continuous signalling system with poor or non-existent tamper-alert technology exposes agencies to a level of risk unacceptable to the general public.

The solution? Select a system with multiple levels of electronic tamper-sensing devices. Select a system with advanced radio frequency technology that does not need back-up from a programmed contact device. Select a system that notifies authorities of violations by pager. Or fax. Or telephone.

The second characteristic of successful home detention programs involves agency policies and procedures. Agencies that do their homework up front and establish policies and procedures for handling violations will always be one step ahead of the offenders sentenced to home detention. Actions taken in response to violations must be swift and certain, each and every time. Offenders must know what to expect if they violate the terms of their release. Once you have invested in a truly secure system, one that immediately alerts you to each and every violation, you must be prepared to react in a consistent, forceful manner.

Thirdly. No less important than using sound selection criteria and putting policies and procedures into place, is the careful selection of a company to provide electronic monitoring equipment and/or complete, 24-hour a day electronic monitoring service. What

should the government look for in an electronic monitoring vendor?

**Experience.** Does the company have the practical experience necessary to provide you with time-tested equipment? Does it possess the wherewithal to assist you in making the equipment and your program run smoothly? Has the company been in the electronic monitoring business long enough to truly understand the needs of corrections professionals? The safety of the general public? Does the company monitor over 4000 offenders a day?

**Financial Stability.** Does the company have the resources to be a major force in the electronic monitoring industry -- not only today, but in years to come? Does the company consistently invest millions of dollars in research and development to keep the products you purchase up to date? Does the company employ experienced people, many of whom are corrections professionals, who are motivated by the success of the programs they work on? Do these people have integrity?

**Service and Support.** Here are some more hard questions. Does the company provide customer support around the clock? Do the customer support personnel have the experience and knowledge necessary to provide real answers? Is customer support prompt and courteous? Can a person be at your site within four hours to fix computer hardware? Does the company provide, at no cost, professionals with corrections backgrounds to assist you in both developing and maintaining a successful program?

In closing, I'd like to point out some of the benefits to society provided by successful electronic monitoring programs. Offenders can work. In fact, a job is often a prerequisite of participation. Offenders pay taxes. Many offenders pay their own way on electronic monitoring -- an average of \$10.00 a day. Offenders become productive and develop positive self-worth. For instance, there are indications that people forced to reconcile themselves with positive influences (i.e., family, friends, work associates) have less recidivism than people forced to reconcile themselves with negative influences (i.e. other prisoners). I'd like to cite a statistic just released by the Bureau of Justice Statistics. In a statistically accurate sample, the bureau looked at state courts in 32 counties across 17 states that had sentenced 79,000 felons to probation in 1986. Within three years of sentencing, while still on probation, 43% of these felons were rearrested for a felony or for violating the terms of their probation. A separate unrelated study that also used 1989 figures, indicated that 4% of individuals on electronic monitoring committed a crime while under surveillance.<sup>5</sup>

Our corrections system is in crisis. Virtually every news medium in the country has alerted us to this fact. Not only is the system overcrowded, it is incredibly expensive. We could send every prisoner to Princeton University for the cost of keeping that person in prison. Not only is the current penal system expensive, it is ineffective as a means to rehabilitation. In fact, if you go to prison, you stand a better chance of learning how to get away with a crime the next time than how to set yourself on the straight and narrow. We as a society have found an alternative that works. Electronic monitoring programs free prison beds for those people assessed to be a risk, or who have

committed crimes warranting more severe punishment.

The electronic monitoring program in New Jersey is certainly facing a tremendous amount of scrutiny today. It is too bad that a tragedy had to happen to call attention to the difference between successful programs and unsuccessful programs. Our hearts go out to the families involved. But should the New Jersey home confinement program be ended as a result of the recent tragedy? No. That would be extreme. Should the program be evaluated? Yes. And I hope I have given you some tools today that will help you ask some tough questions. Questions, frankly, that should have been asked last May when the equipment bids were evaluated.

<sup>1</sup>Bureau of Justice Statistics National Update, Volume I, No. 3, January 1992, page 2.

<sup>2</sup>Kathleen Maguire and Timothy J. Flanagan, eds., Sourcebook of Criminal Justice Statistics - 1990, U.S. Department of Justice, Bureau of Justice Statistics. Washington, DC: USGPO, 1991, page 85.

<sup>3</sup>George M. and Camille Graham Camp, The Corrections Yearbook, The Criminal Justice Institute. South Salem, NY, page 35.

<sup>4</sup>Kathleen Maguire and Timothy J. Flanagan, eds., Sourcebook of Criminal Justice Statistics - 1990, U.S. Department of Justice, Bureau of Justice Statistics. Washington, DC: USGPO, 1991, page 87.

<sup>5</sup>Bureau of Justice Statistics, National Criminal Justice Reference Service, Bulletin on Recidivism, 1989. By phone, April 20, 1992 (Lisa Rubinstein, research specialist), (301) 251-5500.

