

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 932 (Senator Waldstreicher)
Judicial Proceedings

**Criminal Procedure - Conditions of Pretrial Release - Home Detention
Monitoring**

This bill establishes that a pretrial defendant being monitored by a private home detention monitoring agency as a condition of release may not be required to pay the home detention monitoring agency's monitoring fee or pay for a home detention monitoring device if (1) the defendant qualifies as an indigent individual under § 16-210 of Criminal Procedure Article (eligibility for representation by the Office of the Public Defender (OPD)) or (2) the State or a local jurisdiction provides the private home detention monitoring device or a global positioning device.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: Minimal decrease in local revenues from fees. Local expenditures for pretrial detentions may also be affected, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Under § 5-201 of the Criminal Procedure Article, in accordance with eligibility criteria, conditions, and procedures required under the Maryland Rules, the court may require, as a condition of a defendant's pretrial release, that the defendant be monitored by a private home detention monitoring agency licensed under Title 20 of the Business Occupations and Professions Article. A defendant placed in private home

detention must pay the agency's monitoring fee directly to the private home detention monitoring agency.

Background: As shown in **Exhibit 1**, as of October 2018, 15 jurisdictions in the State have a pretrial services program. The programs vary in scope and services offered.

Exhibit 1
Jurisdictions with Pretrial Services Programs

Jurisdictions with Pretrial Services

Anne Arundel County
Baltimore City*
Baltimore County
Calvert County
Carroll County
Dorchester County
Frederick County
Harford County
Kent County
Montgomery County
Prince George's County
St. Mary's County
Talbot County
Wicomico County
Worcester County

Jurisdictions without Pretrial Services

Allegany County
Caroline County
Cecil County
Charles County
Garrett County
Howard County
Queen Anne's County
Somerset County
Washington County

*Operated by the Department of Public Safety and Correctional Services

Source: Department of Legislative Services

State Fiscal Effect: The bill is not expected to materially affect State finances.

The Pretrial Release Services Program (PRSP), which is operated by the Department of Public Safety and Correctional Services (DPSCS), provides pretrial services in Baltimore City. PRSP advises that it does not charge any fees for services. According to PRSP, very few pretrial defendants are placed on private home detention, and the few that are placed on private home detention are usually placed at the request of the defendant's attorney. Payment for monitoring fees is typically worked out between the defendant and the private company. Assuming that indigent pretrial defendants are not being placed on private home detention at the request of their attorneys and that these private companies are not accepting indigent clients (since they do not have the financial means to pay for these services), the bill is not expected to affect pretrial detention rates in Baltimore City.

The Division of Parole and Probation (DPP) within DPSCS supervises pretrial defendants at the request of the court. As of January 30, 2019, there were 420 individuals under DPP pretrial supervision statewide. DPP does not charge fees for electronic monitoring.

OPD advises that (1) the bill is not expected to materially affect OPD operations; (2) the office is not aware of any other information that may be helpful in determining the fiscal effect of the bill; and (3) the office does not have any information of the effect the bill may have on local governments.

Local Fiscal Effect: Local revenues decrease minimally from a reduction in fees collected by pretrial services programs. The bill may affect local expenditures for pretrial detentions and pretrial release, as discussed below.

This estimate assumes that:

- counties are able to coordinate the flow of information from District Court commissioners (who conduct indigency determinations at initial appearances) to pretrial services units for purposes of determining fee exemptions under the bill;
- the bill prohibits a defendant from being required to pay a monitoring fee or pay for a home detention monitoring device if the State or a local jurisdiction provides a private home detention monitoring device or a private or county-owned global positioning device;
- counties without pretrial services programs do not provide any electronic monitoring devices or services to pretrial defendants;
- the bill does not apply to situations in which a county refers a pretrial defendant to a private home detention monitoring agency; and
- an indigent pretrial defendant is unlikely to be released on private home detention monitoring under current law due to the defendant's inability to pay the private home detention monitoring agency.

This estimate does not address (1) any issues with indigency determinations that are not finalized prior to a judicial bail review hearing where a home detention monitoring system is ordered for a pretrial defendant and (2) any potential increased costs should courts decide to order indigent pretrial defendants to be released subject to private home detention at the cost of the local jurisdiction as a result of the bill. While the bill specifies that an indigent defendant may not have to pay for private home detention monitoring, it does not specify if any other entity is responsible for these costs.

It appears that many counties that have pretrial services programs that offer electronic monitoring services do not charge pretrial defendants for these services. For those that charge a fee, the fiscal impact of the bill depends on the effect of the bill on pretrial

detention rates. If these counties decide to absorb the cost of lost fee revenue and provide monitoring at current levels, then the impact of the bill is a minimal loss of local revenues. However, if the loss of fee revenues results in a reduction in services offered and an increase in the number of pretrial defendants detained pending trial, then costs may increase for pretrial detentions in local jurisdictions, depending on the cost of detaining a defendant pretrial compared to electronically monitoring the defendant. St. Mary's County has historically advised that the per diem cost of monitoring a defendant through pretrial services is \$30, compared to a per diem detention cost of \$150.

Information is not readily available as to what happens when a pretrial defendant is eligible for release on electronic monitoring by the county but is unable to pay any service fees charged by the county (*e.g.*, a waiver of fees, imposition of alternative conditions not subject to fees, or pretrial detention). If these individuals are being detained in lieu of monitoring because of their limited financial means but are released on monitoring as a result of the bill, then local expenditures for pretrial detentions may decrease.

As for counties without pretrial services programs, if, as indicated above, pretrial defendants are placed on private home detention monitoring at their own request, then it is likely that these defendants are not indigent and are able to afford the monitoring service (since a private company is unlikely to accept a client that is clearly unable to pay for services), and the bill's provisions have no fiscal impact on local expenditures for pretrial detention.

Wicomico County advises that it is unable to quantify the impact of the legislation because it has no system to verify assets, and it is unclear from the bill's language if the county can pass on the cost of using a private vendor to the client. Wicomico County advises that considerable costs could be incurred as a result of the bill, since it has more than 50 clients on GPS monitoring at \$3.25 per day.

Harford County advises that the bill has little or no fiscal impact on the county. Montgomery County advises that the bill has no fiscal impact on the county, since the county assumes the cost of electronic monitoring in all cases where it is ordered by the courts or requested as a condition of public safety. The Maryland Association of Counties advises that it does not have specific information regarding the effect of the bill and that it has not found that the bill will have a significant effect on county governments.

In February 2018, in response to topically similar legislation, the Department of Legislative Services contacted each of the 13 jurisdictions that had a pretrial services program at the time. Most of the counties that responded indicated that the elimination of monitoring fees results in minimal or no impact on county revenues, as discussed below:

- Prince George’s County advised that county revenues decrease by \$34,237 annually from fees billed to participants in the county’s home detention alternative-to-incarceration program. Prince George’s County also mentioned the need for 2,080 hours of overtime for two officers each year, at a cost of \$244,608 per full year and \$726,108 per year in additional operating expenses. However, the county did not respond to a request for further explanation of these estimated expenditures.
- Calvert County reported that some of its pretrial population is monitored through the State’s DPP but did not indicate the use of private home detention monitoring of pretrial defendants. Pretrial defendants are subject to a GPS monitoring fee of \$5 per day. The county collected \$2,436 in fees (including urinalysis fees) from pretrial defendants in fiscal 2017. Funds are deposited into the county’s general fund to pay for testing of urine specimens and GPS monitoring.
- Pretrial defendants in Carroll County are not placed on private home detention monitoring. Monitoring is conducted through the county’s program. In fiscal 2017, the county collected \$5,067 in fees from program participants (\$2,849 up front and \$2,218 in arrears). Pretrial defendants in Carroll County are subject to fees of \$10 per month for testing and \$10 per day if the defendant is required to be monitored by a GPS unit or a Sobriotor unit. The county advised that while the impact of the bill was likely minimal, that may change if the volume of defendants on electronic monitoring continues to grow, as it has since the new Maryland Rules went into effect. At some point, the elimination of fees (and an assumption of these costs by the county) may result in a more significant fiscal impact.
- Frederick County advised that pretrial defendants in the county are not placed on private home detention monitoring, and the county does not charge for pretrial services.
- Kent County advised that its program became operational in September 2017, no pretrial defendants are placed on private home detention, and the county does not charge fees for services. However, program participants are responsible for any medical, dental, or counseling fees they incur while on the program.
- St. Mary’s County advised that its pretrial population is not placed on private home detention monitoring. Rather, the county rents electronic monitoring equipment from a vendor and does not charge pretrial defendants for pretrial services, including monitoring.

Small Business Effect: The extent to which pretrial defendants in the State are being monitored by private home detention monitoring agencies is unclear at this time. Assuming that private home detention monitoring agencies are not accepting indigent clients, then the bill's prohibition on the imposition of fees on this population does not materially affect small businesses. However, if there are situations that are occurring in which a local jurisdiction "*provides*" a private home detention monitoring device, then the bill may have a meaningful impact on these small businesses. The magnitude of the impact depends on whether local jurisdictions decide to pay these private agencies for their services (instead of the current situation in which a defendant pays these costs) or if local jurisdictions decide to end any agreements with these businesses and place defendants in pretrial detention. This estimate does not account for any impact from the rental of GPS equipment (not home detention monitoring) by local pretrial services agencies, as discussed above.

Additional Information

Prior Introductions: None.

Cross File: HB 566 (Delegate Mosby, *et al.*) - Judiciary.

Information Source(s): Calvert, Carroll, Frederick, Harford, Kent, Montgomery, Prince George's, St. Mary's, and Wicomico counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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