

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1377
Judiciary

(Delegate Mosby, *et al.*)

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 a 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, as discussed below.

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

Small Business Effect: None, as discussed below.

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: A private home detention monitoring agency (PHDMA) is a private business that provides monitoring services for a fee to individuals who are under a court order that requires monitoring by a private home detention monitoring agency. PHDMAs are licensed by the Secretary of Public Safety and Correctional Services and are audited by the Maryland Commission on Correctional Standards. According to the Department of Public Safety and Correctional Services (DPSCS), the request for placement under supervision by a PHDMA is typically made by the defense attorney and the defendant and granted by the judge. The judge has the ability to stipulate the terms of the supervision and the PHDMA selected has the right to refuse supervision.

DPSCS advises that, as of July 2019, there are five licensed PHDMAs who provide services to 246 offenders across Maryland. PHDMAs provide the electronic monitoring equipment, which is made available through contracts with third-party vendors. The offender assumes the cost of the equipment. PHDMAs do not use equipment provided by the State or a local jurisdiction. The per diem fees for PHDMAs range from \$10 to \$20.

As shown in **Exhibit 1**, based on information received by the Department of Legislative Services (DLS), as of January 2020, 19 jurisdictions in the State have a pretrial services program. The programs vary in scope and services offered. Two counties do not have a pretrial services program, but did receive grant funding from the Governor's Office of Crime Control and Prevention and may be in the process of establishing a program. For example, Howard County advises that its program will likely begin in April 2020.

Exhibit 1
Jurisdictions with Pretrial Services Programs

Jurisdictions with Pretrial Services

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

Jurisdictions without Pretrial Services

Allegany County
Charles County
Garrett County
Howard County*
Washington County*

*Received a Pretrial Services Program Grant from GOCCP.

^Operated by the Department of Public Safety and Correctional Services.

Source: Governor's Office of Crime Control and Prevention; Department of Legislative Services

State Fiscal Effect: 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 materially affect State finances and pretrial detention rates in Baltimore City.

While the bill prohibits an indigent defendant from being required to pay a home detention monitoring agency's monitoring fee or pay for a home detention monitoring device, it does not require any alternate entity to pay these fees and costs. Thus, this estimate assumes that the bill maintains the status quo and indigent defendants will not be placed on private home detention monitoring under the bill, since a PHDMA will likely refuse to accept an indigent defendant as a client.

The Pretrial Release Services Program (PRSP), which is operated by DPSCS, provides pretrial services in Baltimore City. PRSP does not charge any fees for services. The Division of Parole and Probation (DPP) within DPSCS supervises pretrial defendants at the request of the court. DPP does not charge fees for electronic monitoring.

OPD advises that the bill may result in operational efficiencies by eliminating the need for OPD to request second bail reviews for clients who are not released because of their inability to pay for monitoring and a reduction in violation hearings for clients who can no longer afford to pay for monitoring. However, OPD advises that any reduction in workload for these efforts is likely redirected to other responsibilities.

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; 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.

In February 2018, in response to topically similar legislation, DLS contacted each of the 13 jurisdictions that had a pretrial services program at the time. Many of the respondents

indicated that pretrial defendants are not placed on private home detention monitoring. However, multiple counties do offer GPS/electronic monitoring.

It appears that many counties that have pretrial services programs that offer GPS/electronic monitoring services do not charge pretrial defendants for these services. For instance, Montgomery and Prince George's counties advise that they do not charge fees for pretrial defendants to be electronically monitored.

For those counties that do charge a fee, the fiscal impact of the bill depends on the effect of the bill on pretrial detention rates. Information is not readily available as to what happens when a pretrial defendant is eligible for release on GPS/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 counties that charge fees 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. Most of the counties that responded indicated that the elimination of monitoring fees results in minimal or no impact on county revenues. The maximum amount of fees collected by any of the DLS survey respondents in fiscal 2017 was approximately \$5,100.

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.

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 the bill's provisions have no fiscal impact on local expenditures for pretrial detention because (1) it is likely that the currently monitored defendants are not indigent and are able to afford the monitoring service and (2) PHDMAs will likely refuse indigent pretrial defendants as clients absent a clear indication of who is to pay for their services.

Small Business Effect: Assuming that private home detention monitoring agencies are not currently accepting indigent clients and will refuse to monitor indigent defendants under the bill absent a clear indication of who is to assume payment for services, then the bill's prohibition on the imposition of fees on this population does not materially affect small businesses. This estimate does not account for any impact from the rental of GPS equipment (not home detention monitoring) by local pretrial services agencies.

Additional Information

Prior Introductions: SB 932 of 2019 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 566, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: SB 513 (Senator Waldstreicher, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore City; Montgomery and Prince George's 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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