

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 704

(Senator Hettleman)

Judicial Proceedings

Judiciary

Conditions of Pretrial Release - Home Detention Monitoring - Alterations and
Extension

This bill alters provisions of Chapter 597 of 2021, under which a pretrial defendant may not be required to pay a private home detention monitoring agency's (PHDMA) monitoring fee or pay for a home detention monitoring device or global positioning system device under specified circumstances. The bill (1) repeals the termination date for the payment-related provisions of Chapter 597; (2) adds codified language specifying that State payments for PHDMA costs and fees are subject to the availability of federal funding; (3) requires the State to use available federal funds to pay for PHDMA costs and fees; and (4) alters the voting membership, termination date, and reporting requirement of the Workgroup on Home Detention Monitoring. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: Under one set of assumptions, the continuation of PHDMA payments using federal funds is not anticipated to have an overall effect on State finances through FY 2024; to the extent that federal funds are available for this purpose in future years, federal fund expenditures increase correspondingly. Potential significant increase in general fund expenditures for additional contractual staff for the Judiciary. Potential decrease in general fund incarceration expenditures, as discussed below. Revenues are not directly affected.

Local Effect: Potential minimal decrease in local fee revenues. Local incarceration expenditures may decrease, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary/Current Law: Generally, 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 PHDMA 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 PHDMA.

As stated above, Chapter 597 of 2021 prohibits a pretrial defendant from being required to pay a PHDMA's monitoring fee or pay for a home detention monitoring device if the defendant (1) qualifies as indigent under § 16-210 of the Criminal Procedure Article (eligibility for services of the Office of the Public Defender) or (2) is provided a home detention monitoring device or global positioning system device by the State or a local jurisdiction. Instead, the State must pay a PHDMA for any costs or fees incurred by defendants who meet this criteria.

Chapter 597 specifies (in uncodified language) the intent of the General Assembly that the implementation of the aforementioned requirement be funded in fiscal 2022 by federal funds, subject to the availability of such funds. The bill removes the condition of the availability of federal funds and the reference to fiscal 2022 and specifies the intent of the General Assembly that *only* federal funds be used for implementation of the payment provisions. Furthermore, the bill adds codified language (1) specifying that State payments of PHDMA costs and fees for pretrial defendants are subject to the availability of federal funding and (2) requiring the State to use available federal funds to make these payments.

Chapter 597 took effect July 1, 2021, and the payment-related provisions remain effective until one year after the end of the Governor's proclamation of the COVID-19 Catastrophic Health Emergency/State of Emergency, as specified. (The referenced State of Emergency ended on August 15, 2021. Thus, the main provisions of Chapter 597 are set to terminate August 15, 2022.) The bill repeals this termination date.

Chapter 597 also established the Workgroup on Home Detention Monitoring, which must (1) study and make recommendations regarding the costs and availability of both publicly and privately provided pretrial home detention monitoring systems and (2) submit a report of its findings and recommendations to the Governor and the General Assembly by December 31, 2021. The workgroup is set to terminate June 30, 2022. The bill (1) reclassifies the two representatives of PHDMAs as *nonvoting* members of the workgroup; (2) extends the termination date of the workgroup to December 31, 2023; and (3) requires the workgroup to submit an annual report by December 31 each year.

State/Local Revenues: Local revenues may decrease minimally to the extent that the bill prohibits local jurisdictions from charging fees to pretrial defendants that would be charged absent the bill (due to the continuation of Chapter 597). The bill does not directly affect State revenues.

Based on information previously provided to the Department of Legislative Services (DLS), some jurisdictions do not charge fees to defendants in their pretrial services programs, and for those that do charge fees to pretrial defendants, the fees result in minimal revenues. (Many counties that charge monitoring-related fees also offer fee waivers to indigent defendants.) The Department of Public Safety and Correctional Services (DPSCS) operates the pretrial services program (PRSP) in Baltimore City. DPSCS has historically advised that PRSP participants are not electronically monitored and are supervised using other methods. PRSP does not charge fees to participants.

State/Local Expenditures: Assuming that existing budgeted (available) federal funding will be sufficient through fiscal 2024 (as discussed below), ongoing State-funded PHDMA payments are not expected to have an overall effect on State finances through fiscal 2024. To the extent that federal funds are available for this purpose in future years, federal fund expenditures increase correspondingly. Assuming the Judiciary continues to be responsible for administration of payments, general fund expenditures may increase significantly for the Judiciary to implement the bill. General fund incarceration expenditures and local incarceration expenditures may decrease due to pretrial defendants being monitored by PHDMAs instead of remaining in pretrial detention. DPSCS can staff the Workgroup on Home Detention Monitoring and prepare the required reports with existing resources.

Ongoing Funding for Private Home Detention Monitoring Agency Costs and Fees

The fiscal 2022 budget includes \$5.0 million in federal funds from the American Rescue Plan (COVID-19 relief funding) to implement the provisions of Chapter 597. These federal funds were appropriated to the Judiciary, as discussed below. The funds are to remain with the Judiciary until the end of fiscal 2022, at which point any unspent funds will be canceled and deposited into the Dedicated Purpose Account in the State Reserve Fund. However, the Department of Budget and Management (DBM) has the authority to transmit the funds again.

The payment provisions of Chapter 597 terminate August 15, 2022; the bill repeals the termination of these payments. For purposes of this analysis, it is assumed that absent the bill, any remaining federal funds (after the original termination date of Chapter 597) would have otherwise been spent on other purposes, thus negating an overall effect on State finances.

Due to the lack of data regarding the number of indigent pretrial defendants on PHDMA monitoring, the amount of time pretrial defendants currently spend and are projected to spend on PHDMA monitoring, future changes to pricing by PHDMAs, and the uncertainty around what (if any) effect the conclusion of the COVID-19 pandemic and the resumption of normal court operating procedures will have on this activity, a precise estimate of continued costs for PHDMA payments is unavailable. However, the Judiciary advises that from October 1, 2021, through March 23, 2022, it has issued \$16,545 in payments to one PHDMA and has \$557,077 in pending validated and non-validated invoices to another PHDMA. Assuming this represents the anticipated pace and volume of payments expected in the future, existing available federal funds may cover PHDMA payments through fiscal 2024. Should additional federal funds become available after fiscal 2024, federal fund expenditures increase. Any future availability of federal funds for this purpose is uncertain.

This estimate does not address what happens if available federal funds have been exhausted while a pretrial defendant is on State-funded PHDMA monitoring and the extent to which ongoing State payment obligations contribute to the addition of new pretrial defendants to State-funded PHDMA monitoring.

Judiciary – Administrative Costs to Administer Payments

Chapter 597 did not provide any guidance on the issuance of PHDMA payments or specify an entity responsible for the administration of the program. The Judiciary reports that it was contacted by DBM in July 2021 and informed that the \$5.0 million in federal funding for the payments had been appropriated to the Judiciary, thereby making the Judiciary responsible for the administration of PHDMA payments.

After developing and implementing procedures, the Judiciary was able to begin processing payments on October 1, 2021, which is the date from which PHDMAs could begin invoicing for qualified cases. Funding is currently provided through a federal pass-through grant from the State to the Judiciary. As such, in order to receive these federally funded payments, PHDMAs must be appropriately registered with the U.S. General Services Administration. According to DPSCS (the licensing agency for PHDMAs), there were three licensed PHDMAs in the State in January 2021; only one PHDMA has provided proof of federal registration to the Judiciary. The Judiciary advises of numerous challenges with implementation thus far, including timely receipt of accurate invoices from PHDMAs, lack of supporting documentation from PHDMAs, and the continuous receipt of revised invoices from PHDMAs. Existing Judiciary staff has been absorbing the workload in addition to their prior (and ongoing) responsibilities; in some instances, staff has been completely redirected to administration of PHDMA payments.

Although the bill does not specify an administrative agency, this analysis assumes that the Judiciary continues to administer PHDMA payments. Based on current workload constraints, the Judiciary advises that should it have to continue administering payments, it requires an additional eight clerks and one finance assistant, at a cost of \$685,000 in fiscal 2023 and at least \$616,800 annually thereafter. Statistics on the number of pretrial defendants assigned to monitoring by a PHDMA are not readily available. While DLS generally acknowledges the challenges to implementation and that the procedures involved are time consuming, DLS is unable to validate the specific staffing estimate provided by the Judiciary related to the need for additional clerks.

Thus, DLS advises that the Judiciary requires, *at a minimum*, one finance assistant to oversee and coordinate invoice validation and payment processing; additional clerks are likely needed in specific jurisdictions based on workloads and available resources. The cost associated with the contractual finance assistant is \$53,074 in fiscal 2023, which accounts for a 30-day start-up delay from the bill's June 1, 2022 effective date. The cost associated with each contractual clerk is \$55,804 in fiscal 2023. Future year expenditures reflect ongoing costs through fiscal 2024; it is assumed that contractual staff terminate by June 30, 2024, consistent with the assumption that available federal funds are exhausted at the conclusion of fiscal 2024. However, should State-funded payments continue consistently beyond this date, permanent personnel may be needed.

Department of Public Safety and Correctional Services – Workgroup Staffing Responsibilities

DPSCS staffs the Workgroup on Home Detention Monitoring. As of December 2021, the workgroup had not been fully appointed. This estimate assumes that DPSCS can continue to staff the workgroup and prepare the required reports with existing budgeted resources.

State and Local Incarceration Costs

Individuals in pretrial detention in Baltimore City are housed in State-operated facilities. Information is not readily available on the *per diem* variable costs for housing a pretrial defendant in Baltimore City. However, general fund incarceration expenditures may decrease to the extent more defendants are placed on electronic monitoring paid with federal funds instead of being detained in Baltimore City.

Likewise, to the extent that more pretrial defendants in jurisdictions other than Baltimore City are placed on electronic monitoring at the State's expense instead of being detained in local detention facilities, local incarceration costs may decrease. As noted above, information is not readily available on the number of pretrial defendants or indigent pretrial defendants being monitored by PHDMAs.

DPSCS has previously advised that PHDMAs in Maryland charge fees ranging from \$10 to \$18 per day. PHDMAs also charge equipment-related fees, activation fees, *etc.* *Per diem* operating costs of local detention facilities have ranged from approximately \$90 to \$300 per inmate in recent years. According to the Maryland Association of Counties, based on data from fiscal 2021, it costs \$216 per day for an incarcerated inmate versus \$29.71 for an offender on Community Corrections (home detention/day reporting). The cost per day noticeably increased between fiscal 2020 and 2021 due to a reduction in the inmate population and ongoing costs incurred regardless of fluctuations in the inmate population.

Small Business Effect: The bill has a meaningful effect on PHDMAs to the extent that the continuation of State-funded electronic monitoring of indigent pretrial defendants increases business for these agencies.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1011 (Delegate Smith) - Judiciary.

Information Source(s): Caroline, Howard, Montgomery, and Prince George's counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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