

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 859
Judiciary

(Delegate Smith, *et al.*)

Judicial Proceedings

Criminal Law - Private Home Detention Monitoring - Notification

This bill alters existing notification requirements for private home detention monitoring agencies (PHDMAs) when a monitored defendant on pretrial release or a monitored probationer has been missing for 24 hours. The bill also establishes that it is a misdemeanor for a person monitored by a home detention monitoring agency to violate a condition of pretrial release under specified circumstances. Finally, the bill establishes the Workgroup on Home Detention Monitoring, to be staffed by the Department of Public Safety and Correctional Services (DPSCS). The workgroup must (1) study the licensing, regulation, oversight, notification, and enforcement processes for home monitoring in the State and (2) make recommendations for a cost-effective and streamlined process for home monitoring in the State. The workgroup must report its findings and recommendations to the Governor and the General Assembly by December 31, 2024. Members of the workgroup may not receive compensation but are entitled to reimbursements for expenses. **Provisions pertaining to the workgroup terminate September 30, 2025.**

Fiscal Summary

State Effect: DPSCS can implement the bill and staff the workgroup with existing budgeted resources. Incarceration expenditures are not materially affected. Any expense reimbursements are assumed to be minimal and absorbable within existing budgeted resources. Revenues are not affected.

Local Effect: The bill is not expected to materially affect local finances or operations, including incarceration expenditures.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill requires a PHDMA to *immediately* notify the court that ordered private home detention monitoring as a condition of a defendant's pretrial release once the PHDMA has determined that the defendant has been missing for 24 hours. If the court that ordered the monitoring is not open for business when the notification is required, the PHDMA must notify the designated law enforcement agency in Baltimore City or the county where the court is located; the PHDMA must also notify the court immediately on the court opening for business. A PHDMA must *immediately* notify the Division of Parole and Probation (DPP) upon determining that a defendant who is subject to private home detention monitoring as a condition of probation has been missing for 24 hours.

A person monitored by a home detention monitoring agency may not violate a condition of pretrial release if the person is charged with committing (1) a crime of violence, as defined in § 5-101 of the Public Safety Article; (2) a crime involving a firearm, an antique firearm, a regulated firearm, or a handgun, as defined in § 5-101 of the Public Safety Article; (3) a crime against a victim who is a person eligible for relief (for a protective order) under § 4-501 of the Family Law Article; or (4) a violation of § 3-802 of the Criminal Law Article (stalking). Violators are guilty of a misdemeanor punishable by imprisonment for up to 90 days.

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. PHDMAs are licensed by DPSCS.

Upon determining that a defendant subject to private home detention monitoring under the provisions of § 5-201(b) has been missing for 24 hours, the PHDMA responsible for monitoring the defendant must, *on the next business day*, notify the court that ordered private home detention monitoring as a condition of the defendant's pretrial release. If the court that ordered private detention monitoring as a condition of a defendant's pretrial release requests that it be notified if the defendant violates any other conditions of pretrial release, the PHDMA responsible for monitoring the defendant must provide the court with the requested notice.

Upon determining that an individual who is subject to private home detention monitoring as a condition of probation has been missing for 24 hours, the PHDMA responsible for monitoring the individual must, *on the next business day*, notify DPP.

The Code of Maryland Regulations (COMAR 12.11.10.09) requires PHDMAs to have policies and procedures for the immediate notification to the local law enforcement agency,

and next working day notification to the court that ordered home detention, the State's Attorney, and the supervising probation agent, if applicable, when a monitored individual is determined to have escaped.

Under § 5-213.1 of the Criminal Procedure Article, a person may not violate a condition of pretrial or posttrial release prohibiting the person from contacting, harassing, or abusing an alleged victim or going in or near an alleged victim's residence or place of employment if the person is charged with committing (1) a violation of Title 3, Subtitle 3 of the Criminal Law Article (sexual crimes) against a victim who is a minor; (2) a crime of violence as defined in § 5-101 of the Public Safety Article; (3) a crime against a victim who is a person eligible for relief (for a protective order) as defined in § 4-501 of the Family Law Article; or (4) a violation of § 3-802 of the Criminal Law Article (stalking). Violators are guilty of a misdemeanor punishable by imprisonment for up to 90 days.

Chapter 597 of 2021 established the Workgroup on Home Detention Monitoring. DPSCS was required to staff the workgroup, and the membership of the workgroup was substantially similar to the identically named workgroup established under the bill. The workgroup was required to study and make recommendations regarding the costs and availability of both publicly and privately provided pretrial home detention monitoring systems. Chapter 544 of 2022 altered the workgroup's reporting deadline and extended the workgroup's termination date from June 30, 2022, to December 31, 2023. As of March 2023, the workgroup has not been fully appointed and has never met.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 853 (Senator McCray) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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