

Amanuel_ACLU_FAV_SB 513

Uploaded by: Amanuel, Yanet

Position: FAV



**Testimony for the Senate Judicial Proceedings Committee
February 19, 2020**

**SB 513 – Criminal Procedure - Conditions of Pretrial Release
Home Detention Monitoring**

SUPPORT

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PUBLIC POLICY ADVOCATE

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The ACLU of Maryland supports SB 513. This bill would eliminate the fees imposed on pretrial defendants who qualify as an indigent individual under § 16-210 of Criminal Procedure Article and are required to be supervised by a Private Home Detention Monitoring Agency (PHDMA) as a condition of their release.

According to the fiscal note and policy note accompanying the 2019 introduction of this bill, very few pretrial defendants are placed on private home detention¹ and this typically occurs more in rural counties without pretrial service programs. Currently, there are seven PHDMAs licensed in Maryland and about 278 individuals being monitored.² The electronic monitoring equipment provided is purchased through third party vendors and requires the defendant to assume the cost of the equipment. PHDMAs have the right to refuse supervision and typically do so to individuals unable to pay for services.³

Supervision fees may amount to debtors' prisons

More than three decades ago, the U.S. Supreme Court clearly established that the promises of equality and fairness embedded in the Fourteenth Amendment to the U.S. Constitution protect against the jailing of poor people simply because of their inability to pay. Yet, for many defendants throughout the state, the fees associated with pretrial release may be prohibitively high, especially in programs run by PHDMAs. Consider for example, Alert Inc. which charges a defendant \$17 per day for GPS monitoring—that is about \$510 per month and A1 Trusted Monitoring, which charges defendants between \$14 to \$18 per day, or \$420 to \$540 per month for GPS monitoring.⁴

¹ HB 566 Criminal Procedure - Conditions of Pretrial Release - Home Detention Monitoring, Fiscal and Policy Note (2018).

² Department of Public Safety and Correctional Services (2019). *Private Home Detention Monitoring Agencies*. Towson Maryland, pp.1-6.

³ Id

An analysis of the 2016-2017 National Survey of Drug Use and Health data revealed that nationwide, 66% of the people on probation make less than \$20,000 per year. Compared to 28% of those not on probation who make at least \$50,000 per year.⁵

Families go into debt, bills go unpaid and groceries are foregone in order to pay fees for basic pretrial services. Failure to pay these fees may result in re-incarceration, and the resulting cycle of poverty and jail can be nearly impossible to escape. Worse, these are persons who the courts determined were safe enough to be released while they await their trial.

SB 513 would prevent indigent people from accumulating mountains of debt that they have little possibility of repaying. This debt not only interferes with effective re-entry and rehabilitation, but also interferes with other financial obligations that society has strong interests in seeing met, like child support and victim restitution.

For the foregoing reasons, the ACLU of Maryland urges a favorable report on SB 513.

⁵ Finkel, M. (2019). *New data: Low incomes – but high fees – for people on probation*. [online] Prisonpolicy.org. Available at: https://www.prisonpolicy.org/blog/2019/04/09/probation_income/

JOTF_FAV_SB513

Uploaded by: FRAZIER, DERRELL

Position: FAV

JOTF JOB OPPORTUNITIES TASK FORCE

Advocating better skills, jobs, and incomes

TESTIMONY IN SUPPORT OF SENATE BILL 513:

Conditions of Pretrial Release - Home Detention Monitoring

TO: Chairman William C. Smith, and Members of the Senate Judiciary Proceedings Committee

FROM: Derrell Frazier, Policy Advocate

DATE: February 19, 2020

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that develops and advocates for policies and programs to increase the skills, job opportunities, and incomes of low-wage workers and job seekers in Maryland. JOTF supports SB 513 as a means to ensure that un- and underemployed pretrial defendants are not pushed further into debt, which they simply cannot repay, in order to ensure their ability to access pretrial release through electronic monitoring.

For the 10 percent of Marylanders living below the federal poverty line, the management and repayment of even small debts can be a major challenge. This challenge is further exacerbated for those with a criminal record, a significant barrier to employment. However, despite these known obstacles, those who interact with the criminal justice system are levied with fees and other criminal justice system fines in order to access pretrial release. While Maryland has moved away from the “cash bail” system, other forms of release are still similarly situated. Simply put, there are still significant fees related to pretrial release and heavy fines allocated to those who fail to comply with their pretrial release conditions without any regard for the defendant’s ability to pay.

JOTF’s recently released report entitled, “The Criminalization of Poverty,” studies how the fines and fees related to the criminal justice system burden the poor, even once they are released. Studies show that 80 to 85 percent of those who are released have debt due to fees incurred while incarcerated, which includes fees for electronic monitoring, home detention monitoring and GPS monitoring. This estimates to approximately 10 million individuals who owe more than \$50 billion in debt that is likely to never be repaid due to financial circumstance. This debt further impoverishes already indigent individuals, who lack access to educational opportunity and are less employable due to their criminal record.

The assessment of fees onto those who are incarcerated, especially pretrial, creates an unbreakable cycle that can be fixed by assessing the ability to pay beforehand and granting waivers to defendants who show an inability to do so. An inability to pay is simply that, regardless of the amount or time given to pay it. Additionally, the costs, although insurmountable, place many defendants in the arduous position of choosing between compliance with their conditions to maintain their freedom or maintaining their households.

Senate Bill 513 seeks to address this issue by providing a fee waiver to pretrial “indigent defendants” for electronic monitoring for home detention. To be clear, this bill does not prohibit the collection of fees for everyone and still allows for those who have an ability to pay to do so. If enacted, this bill would simply prohibit the unnecessary levying of additional fees and fines on those who have the least capacity to pay

JOTF JOB OPPORTUNITIES TASK FORCE

Advocating better skills, jobs, and incomes

them. This kind of waiver is already offered for those who are on home detention monitoring for probation or parole. Therefore, it should be extended to those who are pretrial, which means these defendants have not been convicted.

JOTF strongly opposes any legislation that encourages a restructuring of the punitive criminal justice system that disproportionately impacts and punishes the low-wage job seekers of Maryland. We believe that what is proposed in SB 513 is a significant step towards ensuring that those who are released have a fighting chance at employment and working wages. For these reasons, we urge a favorable report of this bill.

KimberlyHaven_FAV_SB513

Uploaded by: Haven, Kimberly

Position: FAV

Kimberly Haven

February 19, 2020

Chairman Smith
Vice Chair Waldstreicher
Members of the Judicial Proceeding Committee

SB 513 – Conditions of Pretrial Release-
Home Monitoring
Position: SUPPORT

My name is Kimberly Haven and I am in support of SB 513.

As one of the leading criminal justice advocates in our State, I urge this committee to support this legislation.

As Maryland has continued to accommodate our bail reform efforts and address the issues with our pretrial systems, the use of home monitoring has become an option available to the courts and defendants.

Pretrial home monitoring allows an individual who has only been accused of an offense to remain in their community while still being accountable. This allows them to keep or get jobs, maintain family relationships and attend programs such as drug treatment or counseling. Being able to remain in the community also provides them the opportunity to participate in their defense.

At issue, however, is the defendant who is indigent and cannot pay the monitoring fee. These individuals will have no other option but to remain incarcerated until their trial date.

The State could realize significant cost savings by absorbing the cost of the home monitoring service versus the costs of incarcerating an individual while they await trial.

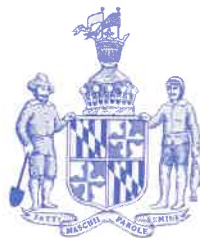
I urge a favorable report on SB 513.

Respectfully,
Kimberly Haven

Kemerer_FAV_SB513

Uploaded by: Kemerer, Hannibal

Position: FAV



FACSIMILE NO.

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

WRITER'S DIRECT DIAL NO.
410-576-6584

February 19, 2020

To: The Honorable William C. Smith
Chair, Judicial Proceedings Committee

From: The Office of the Attorney General

Re: Senate Bill 513 – Criminal Procedure – Conditions of Pretrial Release – Home Detention
Monitoring

Consistent with the Attorney General's on-going efforts to decriminalize poverty in Maryland, Senate Bill 513 will restrict the use of agency monitoring fees on detention monitoring devices that place individuals further in debt to the criminal justice system.¹

Senate Bill 513 amends Section 5-201 of the Criminal Procedure Code to establish 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 the individual qualifies as indigent, or the State or local jurisdiction provides the private home detention monitoring device or a global position device.

Under Maryland Rules, the court may require that as a condition of a defendant's pretrial release, that the defendant be monitored by a private home detention monitoring device, for which the individual must pay a fee for the use of the court-mandated device. The fees for a private home detention monitoring agency range from anywhere between \$10 to \$20 per day.² The use of these devices has more than doubled in the last decade,³ often placing already at-risk individuals thousands of dollars in debt, potentially placing individuals behind bars simply for a

¹ Ava Kofman, *Digital Jail: How Electronic Monitoring Drives Defendants Into Debt*, PROPUBLICA (July 3, 2019), <https://www.propublica.org/article/digital-jail-how-electronic-monitoring-drives-defendants-into-debt>.

² See, Fiscal and Policy Note SB 513, at 2, http://mgaleg.maryland.gov/2020RS/fnotes/bil_0003/sb0513.pdf.

³ James Kilgore, Emmett Sanders, "Ankle Monitors Aren't Humane. They're Another Kind of Jail," WIRED, (Aug. 8, 2018), <https://www.wired.com/story/opinion-ankle-monitors-are-another-kind-of-jail/>.



failure to pay the fees for the court-ordered devices.⁴ The privatization and profit-driven business of device monitoring fees penalize the indigent of Maryland, and place a heavier burden on those already facing an up-hill battle.

For the reasons stated above, the Office of the Attorney General urges the favorable report of Senate Bill 513.

cc: Members of the Judicial Proceedings Committee

⁴ Ava Kofman, *Digital Jail: How Electronic Monitoring Drives Defendants Into Debt*, PROPUBLICA (July 3, 2019), <https://www.propublica.org/article/digital-jail-how-electronic-monitoring-drives-defendants-into-debt>.

DPSCS_INFO_SB 513

Uploaded by: kahl, catherine

Position: INFO



Department of Public Safety and Correctional Services

Office of the Secretary Office of Legislative Affairs

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STATE OF MARYLAND

LAWRENCE J. HOGAN, JR.
GOVERNOR

BILL: SENATE BILL 513

BOYD K. RUTHERFORD
LT. GOVERNOR

POSITION: LETTER OF INFORMATION

STEPHEN T. MOYER
SECRETARY

EXPLANATION: 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 or (2) the electronic monitoring device can be provided by a State or local jurisdiction.

WILLIAM G. STEWART
DEPUTY SECRETARY
ADMINISTRATION

J. MICHAEL ZEIGLER
DEPUTY SECRETARY
OPERATIONS

RACHEL SESSA
ASSISTANT SECRETARY

COMMENTS:

CATHERINE KAHL
DEPUTY DIRECTOR

- Established under Title 20 of the Business Occupations and Professions Article, a Private Home Monitoring Agency (PHMA) 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 (PHDMA)
- Under current law, as a condition of pretrial release, a court may require a defendant be monitored by a private home detention monitoring company. The defendant must pay a monitoring fee directly to the monitoring company.
- 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.
- The State of Maryland has five private home detention monitoring agencies operating and monitoring over 246 court ordered individuals. If this bill is passed into law, a defendant who qualifies as indigent will not be required to pay a monitoring fee to a private home detention company. This will undoubtedly cause these companies to refuse to take indigent defendants as clients. As a result, more pretrial defendants will be detained by state and local detention centers in Maryland.
- The elimination of the supervision fee to a private home detention center could potentially put them out of business. Serving defendants in the community is far more cost effective than to hold them in jail.

CONCLUSION: For these reasons, the Department of Public Safety and Correctional Services respectfully requests this Committee consider this information as it deliberates on Senate Bill 513.

REVERSE