



Testimony for the Senate Judicial Proceedings Committee  
February 3, 2021

**SB 23 – Conditions of Pretrial Release - Home Detention Monitoring**

**FAVORABLE**

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The ACLU of Maryland supports SB 23. This bill will require the State to pay a private home detention monitoring agency (PHDMA) for the monitoring fees or device-related costs incurred by a pretrial defendant who qualifies as an indigent under §16-210 of the Criminal Procedure Article (eligibility for representation by the Office of the Public Defender (OPD)). This bill will render qualified defendants placed under private home detention exempt from paying monitoring fees assessed by a PHDMA directly to the agency. Additionally, the bill authorizes the Pretrial Services Program Grant Fund to cover these costs and fees.

Because most of those involved in the criminal justice system are indigent, the bill will prevent indigent people from accumulating mountains of debt that they have little possibility of repaying. This debt not only interferes with effective reentry and rehabilitation but also interferes with other financial obligations that society has strong interests in seeing met, like child support and victim restitution. The U.S. Department of Justice urges governments to eliminate such fees precisely because they interfere with important societal financial obligations like child support and victim restitution.<sup>1</sup> For these reasons, the bill should receive a favorable report.<sup>2</sup>

The financial penalties imposed, directly or indirectly, as a result of a criminal conviction, are among the least considered or analyzed of the collateral consequences. Driven by a combination of philosophical purposes – punishment, reparation, cost recovery, revenue production, and cost-shifting – local

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<sup>1</sup> See Policy Statement #5: “Make certain that new fines, fees, and surcharges do not reduce the ability of people returning from prisons and jails to pay child support and restitution.” From Repaying Debts, U.S. Department of Justice, Bureau of Justice Assistance and the Council of State Governments Justice Center, 2007.

<sup>2</sup> See generally Alan Rosenthal & Marsha Weissman, “Justice Strategies, Sentencing for Dollars: The Financial Consequences of a Criminal Conviction” (Feb. 2007), available at <http://www.communityalternatives.org/pdfs/financial%20consequences.pdf> (documenting growing use of financial penalties in New York) (last visited February 14, 2010); Rachel L. McLean & Michael D. Thompson, Council of State Governments Justice Center, “Repaying Debts” (Working Paper, 2007), available at [http://tools.reentrypolicy.org/repaying\\_debts/](http://tools.reentrypolicy.org/repaying_debts/) (making policy recommendations to rationalize the collection of debts from the formerly incarcerated) (last visited February 14, 2010); Rhode Island Family Life Center, Court Debt and Related Incarceration in Rhode Island from 2005 through 2007, at 4 (Apr. 2008), available at <http://www.ri-familylifecenter.org/pagetool/reports/CourtDebt.pdf>. (analyzing the cost of Rhode Island’s incarceration of individuals for court debt, finding that in 13% of cases the incarcerations cost the state more than the amount owed by the individuals); David Weisburd et. al., *The Miracle of the Cells: An Experimental Study of Interventions to Increase Payment of Court-Ordered Financial Obligations*, 7 Criminology & Pub. Pol’y 9 (2008) (studying the effect of an increased threat of possible incarceration on the collection of fees from New Jersey probationers).

For an earlier study on the reform of a financial penalty system in one Arizona county, see Susan Turner & Judith Greene, *The FARE Probation Experiment: Implementation and Outcomes of Day Fines for Felony Offenders in Maricopa County*, 21 Just. Sys. J. 1 (1999-2000).

governments, states, and the federal government have come to impose a vast array of fines, fees, costs, penalties, surcharges, forfeitures, assessments, reimbursements, and restitutions that are levied against people convicted of criminal offenses. Currently, these financial penalties are created and imposed in a vacuum with each new fee viewed as a solitary cost. The cumulative impact of piling on each new financial penalty is ignored and the roadblocks to reintegration are often unrecognized. When viewed in isolation, these penalties may appear to be a good source of revenue and a way to shift costs from the “taxpayer” to the “offender.” Financial sanctions may also give the appearance of being “tough on crime.” However, these penalties look quite different when considered in their totality and the context of their impact on the person convicted and his or her family.<sup>3</sup>

Over the past decade, we have become increasingly aware of the challenges faced by people reentering the community from prison and the challenges faced by communities and families receiving formerly incarcerated people. We know that the numbers of people returning home are staggering and we also know that the challenges they face are daunting and include poverty, health and mental health problems, lack of education and employment experiences, and collateral consequences that impede access to jobs and education. The hurdles to reintegration caused by the financial consequences of criminal convictions are among the least recognized but may have some of the most far-reaching impacts as these debts become civil liabilities, and are entered onto credit records that are increasingly accessible to employers.

Currently, pretrial defendants most likely are not charged monitoring fees for electronic monitoring devices by local jurisdictions or DPSCS. This bill targets the most vulnerable, the indigent, who cannot afford to be charged fees for monitoring devices. As such, there is no anticipated material impact on local and state finances.<sup>4</sup> Additionally, incarceration costs are expected to decrease as defendants are placed on pretrial detention as opposed to local detention facilities.

Authorizing the Pretrial Services Program Grant Fund to pay monitoring fees and costs to PHDMA’s on the behalf of indigent defendants we are removing debt, an obstacle to employment, housing, and education, and the ability to fulfill other social obligations like child support and victim restitution. These measures help make reentry into the community a financial reality for indigent defendants and their families.

This bill helps remedy these ills. For the foregoing reasons, the ACLU of Maryland urges a favorable report on SB 23.

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<sup>3</sup> This discussion is drawn largely from Alan Rosenthal & Marsha Weissman, “Justice Strategies, Sentencing for Dollars: The Financial Consequences of a Criminal Conviction” (Feb. 2007), “Executive Summary,” available at <http://www.communityalternatives.org/pdfs/financial%20consequences.pdf> (last visited February 14, 2010).

<sup>4</sup> Conditions of Pretrial Release – Home Detention Monitoring, Fiscal and Policy Note (2021)

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