



POSITION ON PROPOSED LEGISLATION

BILL: SB 23 – Criminal Procedure 5-201/ Public Safety 4-1102 – Conditions of Pretrial Release- Home Detention Monitoring

POSITION: SUPPORT

DATE: February 1, 2021

The Maryland Office of the Public Defender (OPD) respectfully requests that the Committee issue a favorable report on Senate Bill 23. The OPD supports the bill.

No one awaiting trial, presumed innocent, should be incarcerated based on their financial circumstances. Period. Maryland’s piecemeal pretrial home detention system, in actuality, is no system at all. Yet, it manages to keep individuals who cannot afford home detention in jail before being convicted of any crime. Many counties throughout Maryland depend on private companies to provide GPS tracking and monitoring services for individuals awaiting their court dates who are ordered by judges to be released with such restrictions. These services cost money. Some counties provide home detention services but charge fees. Simply put, if you can’t afford the home detention fees, especially in the jurisdictions using private companies, you cannot be released on home detention. Worse, if you’re released, and struggle to make home detention payments, you can be rearrested for violating the conditions of your release.

In 2017, the Maryland Court of Appeals promulgated landmark bail reform through the framework of its Rules of Court. The Rules, of course, carry the weight of laws in Maryland. Essentially, the Rules now disfavor the use of cash bail and guide judges towards using the “least onerous” conditions of release during bail review hearings. The Rule (4-216.1) says “preference should be given to additional conditions without financial terms.” The net effect has been the overall decline in the use of cash bail as a condition of release. Consequently, the OPD finds fewer individuals stuck in jail pretrial with unattainable bails. To be clear though, bail is still legal in Maryland- it’s just used less frequently.

Along with bail, pretrial supervision, stay away orders, curfews, and personal recognizance comes the possibility of release on home detention. Dorchester, Somerset, Wicomico, Worcester, Kent, Charles, Harford and Howard Counties along with Baltimore City allow pretrial home detention, but require fees. This means that a judge can order someone released either on private or public home monitoring (depending on the place), but a defendant would have to pay for it. Neither the companies nor the public option will permit the individual to be placed on home monitoring without the ability to pay, and if payment ceases, the individual is subject to re-arrest. The OPD views this as a bail system in disguise. Essentially, if you are ordered to be released and you can afford it, you can get out. However, if you cannot, you stay in jail. Not only does this contradict the spirit of the Rules of Court and both the statewide and national movement against predatory cash bail systems, it’s unconstitutional.

SB 23 offers a stopgap fix to the immediate problem in several respects. First, it would provide quick relief (when enacted, which is still months away) by offering funding to indigent individuals to pay either private home detention fees or require local jurisdictions to waive or cover fees for public home monitoring programs. This is huge. Make no mistake about it, home detention is still a version of incarceration. An individual is not permitted to leave their assigned residence except for any pre-approved allowances like work, doctor's appointments, or court related activities. Every exception is programmed into a GPS device. Any violation is reported to the court. Many people on home detention are on "24/7 lockdown" with no exceptions. However, home detention is still preferable to being in jail. One can have some semblance of a regular existence while on home detention. In these times, home monitoring can mean the difference between life and death as COVID-19 makes its way through our jails and prisons. Being at home allows one to properly sanitize, mask and socially distance. We have also seen unprecedented delays in trials across the state, which could stretch out to nearly two years in older cases once courts fully open again. So, HB 0316 should, first and foremost, be regarded as a humane response to the pandemic.

SB 23 is also an extremely important step for the legislature to take towards reworking the uneven pretrial system throughout the state. It's arguable that people arrested in jurisdictions like Kent County or Baltimore City (without free home detention) are subjected to Equal Protection violations in that they don't have the same options of release as individuals arrested in localities like Montgomery, St Mary's, Anne Arundel or Prince George's Counties where home detention is local- and, most importantly, free. Providing funding begins to level the playing field between fee-based and free jurisdictions. It is also of great significance that OPD clients across the state that struggle with home detention costs tend to be people of color. Neither your place of arrest, financial wherewithal, nor race should determine whether you will be held in jail as you await your court date.

While supportive of SB 23, The OPD has several suggestions for the Committee. First, regarding the effective date of the bill, we ask for the law to be enacted as soon as possible or June 1, 2021, to most benefit those incarcerated individuals who cannot afford home detention during the pandemic. Second, we want to ensure that the Department of Juvenile Services is utilized as an agency which provides free electronic home monitoring services to equally support indigent juveniles and, in turn, help lessen the reliance on private home detention companies. Third, to prevent private home detention companies from discriminating against individuals whose fees would be paid from the "Pretrial Fund", we propose the inclusion of anti-price gouging language. With these proposals, our focus still lies in the efficient passage and implementation of the bill and thus, these suggested amendments do not change our overall support of SB 23.

In conclusion, it only makes sense to use funding already available in the "Pretrial Fund" to pay for home detention for those who have been granted it, but cannot afford it across the state.

For these reasons, the Maryland Office of the Public Defender respectfully urges a favorable report on Senate Bill 23.

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