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POSITION ON PROPOSED LEGISLATION

BILL: SB0468 Criminal Law - Private Home Detention Monitoring - Notification

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/14/2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 468.

Home detention monitoring companies are already required to notify the court if someone under their monitoring has been missing for 24 hours. Currently, that notification must occur the next business day; this bill would shorten that timeframe to require immediate notification. More problematically, it would include law enforcement among those notified.

As an initial matter, the import of this bill will be substantially weakened if funding is not continued for home detention fees for indigent defendants. In 2021, the Administrative Office of the Court (AOC) established a process to pay for private home detention monitoring services for indigent individuals pursuant to Criminal Procedure Article § 5-201(b)(3). The AOC was provided with \$5 million that is expected to be spent out in the coming months. *See* Letter Without additional appropriations, Maryland will return to a class-based pretrial system in which individuals who are indigent remain detained based on their ability to pay for home monitoring services. While not directly a part of this bill, we urge the committee ensure that home monitoring services remain funded for indigent defendants who qualify.

On the substance of the bill, regardless of the timeframe required, the notification should include defense counsel and not law enforcement. In circumstances where the court seeks to modify pretrial release conditions, it must first provide a hearing. Md. Rule 4-216.3(b).

Providing defense counsel with notification at the same time as the court will better allow for sufficient preparation should a hearing be required. In addition to allowing counsel to verify information that may explain the absence, it can also provide time for resources and services that may facilitate a non-incarceral resolution.

A defendant may be missing due to hospitalization, family emergency, technology issues, or other crises. Defense counsel is often in the best position to potentially locate and help resolve any issues that may underlie their absence. At OPD, we have been able to facilitate resolving potential pretrial violations through proactive efforts, such as facilitating communication with the monitoring entity or securing placement into an appropriate treatment program.

While notifying defense counsel will encourage swifter resolution and timely representation, providing notice to law enforcement serves no lawful purpose. Being missing for 24 hours is not an arrestable offense. Nor does it amount to probable cause that criminal activity is afoot. Any police action based on this notice would amount to an illegal justification of an inappropriate stop. As noted above, there are often legitimate reasons for the absence, and the court may determine that home monitoring remains appropriate. As only the court is authorized to determine supervision status, the only entities requiring notice are the court and the parties that appear before it.

Finally, we want to caution about the impact that the immediate notification proposed under this bill may have in places with limited home detention options. Private home monitoring services rarely serve rural regions, and the geographic distance often requires slower processes. As obligations are increased, or the time frame for reporting decreased, we generally find that services available in rural communities decreases. We are concerned that this bill could further reduce the availability of home detention monitoring for individuals in the farther regions of the state.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 468.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.

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