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POSITION ON PROPOSED LEGISLATION

BILL: SB1095 Workgroup on Home Detention Monitoring

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 3/26/2024

The Maryland Office of the Public Defender (OPD) respectfully requests that the Committee issue an favorable report on Senate Bill 1095. A workgroup to study home detention monitoring is needed to ensure that this pretrial option is used equitably and appropriately.

OPD has been fighting for equitable pretrial options for decades. In addition to litigation at bail reviews, motions for modification, and habeas proceedings on behalf of our detained clients, we helped secure a court rule that limited the use of money bail and required its imposition to be affordable to the defendant. In response to the COVID pandemic, we also supported the home detention program in which the Judiciary covers the cost of private home detention fees for indigent defendants (“the Judiciary program”). While home monitoring remains a limiting form of detention – the individual on home detention cannot leave their assigned residence except for pre-approved allowances like work, doctor’s appointments, or court dates – we recognized the importance of this option for individuals who would otherwise remain in jail.

The availability of home monitoring for individuals who cannot afford to pay for it has proved a useful tool for commissioners and bail review judges to order release without requiring additional litigation. In addition to allowing for the most appropriate decision at the earliest instance, it has also reduced subsequent litigation. For example, a client with no prior arrests who was charged with a false statement to an officer and multiple criminal traffic infractions was

unable to afford private home detention. Without the Judiciary program, our office would have filed motions to reconsider while he remained incarcerated. The client, an 18 year old student, also would have had his education stymied, would have lost any part-time employment, and been separated from his family potentially for almost two months waiting for adjudication.

Aside from the statewide Judiciary program, home detention, like other pretrial options, is a patchwork across the state. Some jurisdictions provide home monitoring through their pretrial services, sometimes with a fee and with eligibility requirements that also vary by county. Other jurisdictions have no pretrial services or public home monitoring, either relying exclusively on costly private monitoring services or denying home detention altogether. The Judiciary program provides the only consistent option across jurisdictions and income levels.

A workgroup can identify the best available options for sustaining a program, and encourage its equitable and consistent use statewide. The Judiciary program began with federal funding that was [spent out without any plan for continued coverage](#) of the people compliant with their monitoring or for availability of monitoring for people held pretrial who could otherwise remain at home. [Funds were identified to continue the program through Fiscal Year 2025](#), after weeks of fear by people compliant with their monitoring conditions, disparities for people who were arrested after the Judiciary determined that the funds ran out, and confusion as to next steps by everyone involved. A workgroup is needed to ensure we are not in this situation again.

The workgroup can also examine the most cost efficient measure for the state to fairly ensure monitoring services are available regardless of income. Private companies have market efficiencies for serving Maryland's diverse counties, but also have profit margins. A comparison of this service versus the potential of a statewide public system is worthy of attention and study.

Finally, the workgroup can identify best practices for home monitoring to ensure that it is being utilized appropriately and effectively. As home monitoring became a consistent option for indigent defendants statewide, judges have increasingly relied upon it – even for people who could otherwise be released on their own recognizance. [Excessive monitoring of individuals who are a low risk can have negative outcomes, most notably creating technical violations that result in a revocation of release without any new offense](#). Studies also show that the racial disparities that pervade the criminal system are also present here, with [Black individuals more likely to be subject to monitoring as a condition of release than their white counterparts](#). The

workgroup can help ensure that monitoring is targeted to those who require it, in a manner that is equitable regardless of race, income, and geography; is limited to people who truly require it; and is cost efficient with a steady stream of needed resources.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 1095.

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

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