

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE
Revised

Senate Bill 633 (Senator Green. *et al.*)

Judicial Proceedings

Private Home Detention Monitoring Agencies

This bill provides for the licensure of private home detention monitoring agencies under regulations that must be adopted by the Secretary of the Department of Public Safety and Correctional Services.

Fiscal Summary

State Effect: Indeterminate increases in special fund revenues and expenditures for the Department of Public Safety and Correctional Services.

Local Effect: Indeterminate.

Small Business Effect: Indeterminate.

Fiscal Analysis

Bill Summary: This bill requires the licensure of persons who operate businesses that provide monitoring services for a fee to individuals who are under a court order that requires monitoring by a private home detention monitoring agency. The Secretary of the Department of Public Safety and Correctional Services (DPSCS) is required to license and regulate private “home detention monitoring agencies” on a two-year licensing cycle. The bill also provides that, in accordance with the Maryland Rules, a court may require that a defendant be monitored by a licensed private home detention monitoring agency as a condition of pretrial release.

The bill specifies that a nonrefundable application fee of \$500 is required of businesses seeking a license. The license renewal fee is required to be set by regulation. An applicant must also execute a specified bond of at least \$2,500. Minimum levels of general liability insurance are authorized to be set by regulation. As a condition of license renewal, a licensee must submit documentation of meeting certain obligations over the previous two years, including payment of all withholding and social security taxes, specified workers' compensation obligations, and State income taxes. The bill provides for a \$10 per day late fee charge applicable to license renewals.

A licensee must submit certain information to DPSCS, and satisfy minimum training and experience requirements provided in regulations adopted by DPSCS. The bill provides for the issuance of a license certificate to each licensed agency, and a branch office certificate for each proposed branch office. The bill specifies the circumstances under which a licensee may be reprimanded or have a license suspended or revoked. All such disciplinary measures are subject to specified hearing provisions.

Before an employee of an agency can begin working as a private home detention monitor, the person must apply for State and National Criminal History Records checks via the Criminal Justice Information System Central Repository. The bill limits the use and dissemination of the findings of these record checks, and establishes a procedure for challenging those findings.

The bill requires a person placed in private home detention to pay the agency's monitoring fee directly to the agency.

A person who willfully and knowingly violates these provisions is guilty of a misdemeanor and subject to maximum penalties of a fine of \$5,000 and/or imprisonment of one year. Private home detention monitoring agencies operating on July 1, 1998 must register with DPSCS before August 1, 1998. Agency operators registered during this period must be granted a waiver from licensing requirements until June 30, 1999.

This bill is effective July 1, 1998. The bill requires DPSCS to report to the Governor and the General Assembly on the cost of administering this licensure program by July 1, 2000.

Background: An incident in Prince George's County, whereby a private monitoring agent was caught in a scheme to provide lax supervision of an inmate in exchange for drugs, led to a county grand jury finding that private home detention companies were in need of regulation. The grand jury found, in part, that the lack of regulation, with accompanying rules and standards, limited the extent to which such a supervisor or inmate could be held accountable.

A recent survey by the Department of Fiscal Services (*Implementation of Alternatives to Incarceration at Local Detention Centers*, April 1997) showed that alternative-to-incarceration programs have been implemented by many local jurisdictions and that they have been expanding in recent years. However, the vast majority of home detention carried out in the local jurisdictions does not involve the use of private home detention companies.

The report concluded, in part, that local detention centers could improve upon recent expansions of alternative-to-incarceration programs, including electronic monitoring, intensive supervision, community service, and pretrial release. General inmate population increases combined with additional subsidies to local jurisdictions have led to increased operating and capital costs for both local jurisdictions and the State. A more extensive utilization of alternative-to-incarceration programs, including the use of private home detention operators, could lead to significant savings for local jurisdictions and the State.

State Effect: There are three inherent difficulties in determining the fiscal impact of this bill: (1) the number of companies or individuals currently operating in this “industry” is unknown; (2) DPSCS does not currently operate any licensing or certification programs; and (3) actual costs and, to some extent, revenues will depend on regulations yet to be developed by DPSCS.

DPSCS reports that, absent any reliable information as to the number of companies or individuals operating in the private home detention industry in the State (see Small Business Effect below), it is unclear how much resources would be necessary to administer the licensing and certification programs required under the bill. However, any such administrative responsibility might best be handled within the operations of the Commission on Correctional Standards or the Office of the Inspector General.

In any event, the initial costs associated with this bill could be handled with some minimal additional expenses until such time as it can be determined that there is a meaningful industry to regulate. Accordingly, special fund expenditures could increase by approximately \$87,955 in fiscal 1999, which accounts for the bill’s October 1, 1998 effective date. This estimate reflects the cost of hiring one Office Secretary and two contractual Investigators to initiate and operate the licensure program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Out-year costs for fiscal years 2000 through 2003, reflecting annualization and inflation, are respectively estimated to be: \$105,338; \$107,138; \$108,985; and \$110,878.

The total maximum cost of criminal history record checks and fingerprinting is \$52, which includes State and federal background checks. This cost would be borne by applicants for an agency license and their employees. Assuming that fewer than 10,000 applicants would

apply clearance, State expenditures would not be affected.

Since the bill does not require home detention businesses to have a license until fiscal 2000, it is assumed that no revenue would accrue to the State until that time. However, even though the bill sets the application fee at \$500 per applicant, without knowing the number of companies that would be regulated under the bill, it is difficult to reliably predict the amount of revenue that would accrue from this bill for fiscal 2000.

The amount of the two-year renewal fee would be set by DPSCS by regulation. Such fees are normally set to be cost recovery. Under this bill, it is assumed that a determination on where to set these fees cannot be done until the provisions of this are in place (but before the date by which monitoring agencies would have to be licensed). This is because of the relative paucity of information regarding the number of these businesses and their locations. Accordingly, revenue projections from license fees, including potential late charges, cannot be reliably projected at this time.

It is assumed that the bill's reporting requirement on administrative costs can be handled with existing budgeted resources. It is also assumed that this bill would have no measurable effect on the operations or funding of the Judiciary. The criminal penalty provisions of this bill are not expected to significantly affect State revenues or expenditures.

Local Effect: Since this bill provides for inmates to cover most of the costs of private home detention it is assumed that local government incarceration costs could be affected. If, for instance, this bill gives rise to more private monitoring companies, there could be a savings to local governments in incarceration costs for local detention center operations. The bill generally provides for home detention for lower risk inmates.

If, on the other hand, this bill either has no effect on the number of businesses operating, or provides a disincentive to enter the industry, this bill would tend to have little or no effect on costs since inmates would either continue to be housed in local detention centers or provided with county-run home detention.

In addition, expenditures could increase as a result of the bill's incarceration penalty for willful and knowing violation of these provisions depending upon the number of convictions and sentences imposed. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$23 to \$84 per inmate in fiscal 1999. The criminal penalty provisions of this bill are not expected to significantly affect local revenues or expenditures.

Small Business Effect: There are no known large private home detention operations or businesses in Maryland. It is assumed that such monitoring companies would normally fall

within the definition of small businesses. In July 1997, *The Washington Post* reported that three such businesses were then operating in Prince George's County, and only a small group of such businesses were believed to operate statewide. It is unclear whether those businesses still exist, or whether any additional monitoring companies can be readily identified. Thus, the actual size and strength of the home detention industry in Maryland is unclear.

In addition, the extent to which this bill's licensing and certification fees (as well as other statutory and future regulatory obligations) could encourage or deter entry into, or continuity in, the industry is also unclear. Accordingly, the impact of this bill on the private home detention industry in the State cannot be reliably assessed at this time.

Information Source(s): Judiciary (The District Court); Department of Public Safety and Correctional Services (Accounting Operations, Information Technology and Communications Division); Department of State Police; Department of Legislative Services

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