

Department of Legislative Services  
Maryland General Assembly

FISCAL NOTE

House Bill 46 (Delegate Hubbard. *et al.*)

Judiciary

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**Home Detention - Private Monitoring Companies and Agents - Licensing and Regulation**

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This bill provides for the regulation and licensure of private home detention monitoring companies and certification of home detention monitoring agents.

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**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.

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**Fiscal Analysis**

**Bill Summary:** This bill provides the conditions under which an inmate committed to the custody of a local detention center may be placed in home detention. The term “inmate” is used to include individuals incarcerated pretrial or presentence and individuals in a work release or prerelease center.

An inmate placed in home detention must live in an approved private dwelling and be supervised by employees of a monitoring company by electronic means or direct contact. An inmate may be placed in home detention only: (1) by court order if prior to trial or, by court order on recommendation of the chief administrator of a local correctional facility if committed after conviction; (2) if the inmate agrees to waive the right to contest extradition; and (3) after the inmate has served any statutorily imposed minimum sentence, less diminution credits.

The bill specifies that inmates serving a life sentence or convicted of specified offenses,

including escape, may not be placed in home detention. The bill also specifies the conditions that must be met before a court may order an inmate placed in home detention. A monitoring company must follow specified requirements immediately after a court has ordered a person to its custody. A monitoring company must provide quarterly reports on inmate compliance.

Inmates are responsible for all living expenses, including those for food, clothing, shelter, and utilities. Inmates are also required, as specified, to make court-ordered support payments for dependents and restitution through the chief administrator of the correctional facility. Chief administrators are also required to determine and collect reasonable fees from inmates to cover the costs of electronic monitoring.

The bill provides procedures for monitoring companies and monitoring agents to follow if a signal is received from an electronic monitoring device that an inmate is away from the approved dwelling without approval. If the company is unable to locate the inmate, a court is authorized to issue a bench warrant for arrest. An inmate who willfully violates the conditions of home detention is subject to maximum imprisonment of one year. The commission of a crime while in home detention is considered a violation of the terms and conditions. An inmate who willfully violates specified provisions relating to authorized release from the approved dwelling is guilty of escape and subject to maximum imprisonment in a Division of Correction (DOC) facility of 10 years, and liable for all expenses incurred in the return of the escapee.

In addition, the bill requires the DOC to establish, with approval of the Department of Public Safety and Correctional Services (DPSCS), a licensing and certification program applicable to home detention operators by:

- establishing eligibility requirements for operating home detention monitoring services as a monitoring company;
- providing certification for monitoring agents, who must be employees of licensed monitoring companies;
- establishing fees to cover the administrative costs of licensure and certification; and
- adopting regulations to carry out these provisions.

The bill defines “home detention monitoring services” as supervision of an inmate who has been placed in home detention by means of direct contact and the use of “electronic monitoring systems”. A monitoring company is defined as a person licensed to provide home detention monitoring services. The bill requires a monitoring company, as a condition of licensure, to: (1) be equipped with active and passive electronic monitoring capabilities; (2) have 24-hour beeper and fax capabilities; (3) have “sufficient personnel” for random visits to inmates in home detention; and (4) submit with a license application a surety bond

conditioned on the faithful and honest conduct of the applicant and its employees.

Monitoring agents must be certified by the DOC in order to personally provide home detention services as an employee of a monitoring company. A monitoring agent must: (1) submit to fingerprinting, a criminal history record check, and drug screening; and (2) satisfactorily complete training required by the Correctional Training Commission. A certified monitoring agent in the employ of a monitoring company is granted arrest powers over inmates they are monitoring, and are authorized to obtain and execute search warrants for approved dwelling of inmates.

An inmate's placement in home detention does not affect eligibility for parole, diminution credits, or other available privileges. A court may revoke a home detention order at any time and for any reason.

**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, including electronic monitoring, have been implemented by local jurisdictions and that they have been expanding in recent years. However, the use of electronic monitoring, by itself, had actually declined by 8% between fiscal 1992 and fiscal 1996. 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 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 \$47,863 in fiscal 1999, which accounts for the bill's October 1, 1998 effective date. This estimate reflects the cost of hiring one contractual Administrative Specialist for the Commission on Correctional Standards to assist in the planning and initial operations of a licensure and certification program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including \$25,000 for consultant services to survey other states for information on companies and individuals currently in this industry, and to provide detailed recommendations for the adoption of regulations required under the bill. Fiscal 2000 costs could fall to approximately \$24,200 without the need for a consultant. It is assumed that an initial two-year experience, during which regulations are adopted and licensing opportunities commence, would be sufficient to determine the long-term needs of DPSCS to properly administer this program. The bill does not specify a renewal cycle for either licenses or certifications.

DPSCS advises that, if a significant number of businesses seek licensure, additional administrative costs could run as high as approximately \$100,000 annually. DPSCS bases this estimate on a possible need for permanent administrative positions that could include one Administrative Officer, one Administrative Specialist, one Fiscal Clerk, one Office Secretary, and four contractual Field Investigators. In any event, since the bill requires the establishment of fees to offset administrative costs, it is assumed that any greater need for resources can be handled by the agency with special fund revenues generated by licensure and certification fees.

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 certification as monitoring agents. Assuming that fewer than 10,000 applicants would apply for certification and clearance, State expenditures would not be affected.

Without knowing the number of companies or individuals who would be regulated under the bill, it is difficult to reliably predict the amount of either licensure or certification fee revenue.

It is assumed that this bill would have no measurable effect on the operations or funding of the Judiciary.

General fund expenditures could also increase as a result of the bill's maximum 10 year incarceration penalty for escape due to more people being committed to a DOC facility and increased payments to counties for reimbursement of inmate costs, depending upon the number of convictions and sentences imposed. Persons serving a sentence longer than one year are incarcerated in a DOC facility. In fiscal 1999 the average monthly cost per inmate is estimated at \$1,500. The Baltimore City Detention Center (BCDC), a State operated facility, is used primarily for pretrial detentions.

**Local Effect:** A brief survey of local jurisdictions provided a variety of inconclusive opinions as to the effect this would have on their operations and finances.

However, since the bill provides for inmates to cover most of the costs of private home detention, including the costs of the electronic monitoring devices, 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 violation of the conditions of home detention 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 \$83 per inmate in fiscal 1999.

**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.

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**Information Source(s):** Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services (Division of Correction, Division of Parole and Probation, Baltimore City Detention Center); Office of the Public Defender; Kent County; Prince George's County; Washington County

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