

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 23

(Senator Hettleman)

Judicial Proceedings

Conditions of Pretrial Release - Home Detention Monitoring

This bill establishes that a pretrial defendant may not be required to pay a private home detention monitoring agency's (PHDMA) monitoring fee or pay for a home detention monitoring device if the defendant (1) qualifies as indigent under § 16-210 of the Criminal Procedure Article (eligibility for services of the Office of the Public Defender) or (2) is provided a private home detention monitoring device or global positioning system device by the State or a local jurisdiction. The bill requires the State to pay a PHDMA for any costs or fees incurred by defendants who meet this criteria. The bill states the intention of the General Assembly that, subject to the availability of federal funds, the implementation of this requirement be funded in fiscal 2022 using federal funds. The bill also establishes the Workgroup on Home Detention Monitoring. **The bill takes effect July 1, 2021, and generally remains effective until one year after the end of the Governor's proclamation of the COVID-19 Catastrophic Health Emergency/State of Emergency, as discussed below. Provisions regarding the workgroup terminate June 30, 2022.**

Fiscal Summary

State Effect: Federal/general fund expenditures increase in FY 2022 and general fund expenditures increase annually thereafter for payments to PHDMAs and for potential administrative costs. General fund expenditures may be at least partially offset to the extent State incarceration costs decrease. Revenues are not materially affected.

Local Effect: Local incarceration expenditures may decrease, as discussed below. Revenues are not materially affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Workgroup on Home Detention Monitoring

The bill establishes the Workgroup on Home Detention Monitoring, to be staffed by the Department of Public Safety and Correctional Services (DPSCS). The President of the Senate and the Speaker of the House of Delegates must select two co-chairs from among the workgroup's members. A member of the workgroup may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations.

The workgroup must (1) study and make recommendations regarding the costs and availability of both publicly and privately provided pretrial home detention monitoring systems and (2) submit a report of its findings and recommendations to the Governor and the General Assembly by December 31, 2021. The workgroup terminates June 30, 2022.

Duration of the Bill

The bill takes effect July 1, 2021. The bill's monitoring payment provisions remain effective for one year after the expiration or rescission of the Governor's proclamation of March 5, 2020 "Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19" or the expiration of any renewal of the state of emergency declared by the Governor in the proclamation of March 5, 2020. The bill generally terminates one year after the expiration of the state of emergency or any renewal of the state of emergency; as noted above, provisions regarding the workgroup terminate June 30, 2022.

Current Law:

Payment of Fees to Private Home Detention Monitoring Agencies

Under § 5-201 of the Criminal Procedure Article, in accordance with eligibility criteria, conditions, and procedures required under the Maryland Rules, the court may require, as a condition of a defendant's pretrial release, that the defendant be monitored by a PHDMA licensed under Title 20 of the Business Occupations and Professions Article. A defendant placed in private home detention must pay the agency's monitoring fee directly to the PHDMA.

State/Local Expenditures: State (federal/general fund) expenditures increase in fiscal 2022 for payments to PHDMAs; general fund expenditures continue in future fiscal years until the termination of the bill, the timing of which cannot be reliably predicted

at this time. State expenditures (federal/general funds in fiscal 2022 and general funds annually thereafter) likely increase further for administrative costs. This estimate assumes that in the absence of available federal funds in fiscal 2022, general funds are used to implement the bill; however, to the extent that federal funds are available in fiscal 2022, the impact on the general fund is mitigated. State and local incarceration expenditures decrease to the extent that the bill results in pretrial defendants being monitored by PHDMAs at the State's expense instead of remaining in State or local detention facilities.

To the extent any federal funding that may be made available for the bill's purpose in fiscal 2022 would have been expended anyway, the bill may only affect the timing or purpose of such expenditures.

Payments to Private Home Detention Monitoring Agencies

A PHDMA is a private business that provides monitoring services for a fee to individuals who are under a court order that requires monitoring by a PHDMA. PHDMAs are licensed by the Secretary of Public Safety and Correctional Services. Orders for electronic monitoring of a pretrial defendant come from a judge at a judicial bail review; District Court commissioners do not have this authority. According to DPSCS, the request for placement under supervision by a PHDMA is typically made by *the defendant* and granted by *the judge*. The judge has the ability to stipulate the terms of the supervision, and the PHDMA selected has the right to refuse supervision. According to DPSCS, three companies currently provide these services in Maryland; the companies charge fees ranging from \$10 to \$18 per day.

The bill requires the State to pay PHDMAs for the monitoring fees or device-related costs incurred by pretrial defendants who qualify as indigent. Information is not readily available on (1) the number of individuals currently being monitored who qualify as indigent under the bill and (2) the maximum monitoring capacity for these PHDMAs. However, this analysis assumes that:

- most individuals currently being monitored by PHDMAs are not indigent due to PHDMAs likely requiring a demonstrable ability to pay for services;
- PHDMAs will supplement, rather than supplant their clientele under the bill;
- the bill does not alter local pretrial services programs or the availability of monitoring in local programs, and pretrial services programs that currently do not charge fees for monitoring of participants (as discussed below) will continue that practice; and
- judges will not alter the circumstances under which they order PHDMA monitoring.

Without actual experience under the bill, it is unknown how the availability of State-funded home detention monitoring will impact the number of defendants who request (and are subsequently approved for) private home detention monitoring. However, it is assumed that some defendants who would potentially be approved by a judge for private home detention services are not currently requesting it due to an inability to pay and that more indigent defendants will request home monitoring (and be approved) once it is available at no cost. The average statewide processing time for criminal cases in fiscal 2018 was 85 days in the District Court and 114 days in the circuit courts. *For illustrative purposes only*, for each indigent defendant who is monitored by a PHDMA for 100 days with a monitoring fee of \$15 per day and an equipment and installation charge of \$250, State expenditures increase by \$1,750; State expenditures increase to \$2,950 per defendant if the defendant is monitored for the entire 180-day caseload time standard for criminal cases in the trial courts.

Administrative Costs

The bill does not specify how State payments will be administered. While the bill requires the State to pay PHDMAs for specified cost and fees, it is unclear how this payment arrangement will operate. PHDMAs will likely want guaranteed payment in a timely manner before agreeing or continuing to monitor defendants under the bill. It is likely that the entity ultimately responsible for ensuring payment (*e.g.*, potentially the Judiciary or DPSCS) will incur *at least* minimal one-time administrative costs, such as computer programming costs, to do so. However, without further specificity regarding how the payments will be administered, a reliable estimate of any potential administrative costs cannot be provided.

State and Local Incarceration Costs

Information is not readily available on the per diem variable costs for housing a pretrial defendant in Baltimore City. Depending on how the costs of monitoring compare to the costs to maintain a pretrial defendant in Baltimore City, general fund expenditures may be partially offset. Likewise, to the extent that more defendants are placed on electronic monitoring at the State's expense instead of being detained in local detention facilities, local incarceration costs decrease.

State and Local Pretrial Services Programs

If the State or a local jurisdiction provides a monitoring device to a pretrial defendant, it is through the jurisdiction's pretrial services program. As noted below, many of these programs do not charge fees to participants.

Based on information received by the Department of Legislative Services (DLS), as of January 2021, all but four jurisdictions in the State (Allegany, Charles, Garrett, and Howard counties) currently operate pretrial services programs. The programs vary in scope and services offered. Many counties do not charge fees for participation in pretrial services programs. For instance, Anne Arundel, Montgomery, and Prince George's counties advise that they do not charge any fees to pretrial defendants. Baltimore County advises that it eliminated fees for participants in its home detention program in January 2021. DPSCS operates the pretrial services program (PRSP) in Baltimore City. DPSCS advises that PRSP participants are not electronically monitored and are supervised using other methods. PRSP does not charge fees to participants.

This estimate assumes that the main source of costs for the State under the bill is requests by indigent pretrial defendants for electronic monitoring that are granted by a court, as discussed above. As noted above, several local jurisdictions do not charge fees or costs to pretrial defendants for publicly provided electronic monitoring. Furthermore, based on information previously provided to DLS, fees and costs from pretrial defendants do not appear to be a significant source of local revenue. For example, Calvert County collected \$2,436 in fees from pretrial defendants during fiscal 2017; Carroll County collected \$5,067 in pretrial defendant fees during this time. Therefore, the bill's provision exempting indigent defendants from being charged fees for home detention monitoring devices provided by the State or a local jurisdiction is not anticipated to have a material impact on State or local finances.

Workgroup on Home Detention Monitoring

DPSCS can staff the workgroup using existing budgeted resources. Any expense reimbursements for workgroup members are assumed to be minimal and absorbable within existing budgeted resources.

Small Business Effect: The bill has a meaningful effect on PHDMAs to the extent that State-funded electronic monitoring of indigent pretrial defendants increases business for these agencies.

Additional Information

Prior Introductions: Similar bills regarding monitoring fees and costs have been introduced during previous legislative sessions. HB 1377 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 513, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. SB 932 of 2019 received a hearing in the Senate Judicial Proceedings Committee, but no

further action was taken. Its cross file, HB 566, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: HB 316 (Delegate Smith) - Judiciary.

Information Source(s): Allegany, Anne Arundel, Baltimore, Charles, Frederick, Garrett, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; *Baltimore Sun*; *ProPublica*; Department of Legislative Services

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