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POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 704– Criminal Procedure 5-201– Conditions of Pretrial Release- Home Detention Monitoring- Alterations and Extension

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: March 8, 2022

The Maryland Office of the Public Defender (OPD) respectfully requests that the Committee issue a favorable report on Senate Bill 704.

No one awaiting trial, presumed innocent, should be incarcerated based on their financial circumstances. Period. Maryland’s existing piecemeal pretrial home detention system, in actuality, is no system at all. Case in point, if the legislature does not take action as it did last year, individuals who cannot afford home detention will remain incarcerated before being convicted of any crime. Under the current system, many counties throughout Maryland depend on private companies to provide GPS tracking and monitoring services for individuals awaiting their court dates who are ordered by judges to be released with such restrictions. These services cost money. Additionally, some counties provide home detention services but charge fees. Simply put, if a person cannot afford the home detention fees, especially in the jurisdictions using private companies, that person cannot be released on home detention. Worse, if a person is released, and struggles to make home detention payments, that person can be rearrested for violating the conditions of your release. The legislature recognized the inherent inequities in this system and crafted a fix in 2021, which must be renewed and extended in Senate Bill 704 this year.

In 2017, the Maryland Court of Appeals promulgated landmark bail reform through the framework of its Rules of Court. The Rules, of course, carry the weight of laws in Maryland. Essentially, the Rules now disfavor the use of cash bail and guide judges towards using the “least onerous” conditions of release during bail review hearings. The Rule (4-216.1) says “preference should be given to additional conditions without financial terms.” The net effect has been the overall decline in the use of cash bail as a condition of release. Consequently, the OPD finds fewer individuals stuck in jail pretrial with unattainable bails. To be clear though, bail is still legal in Maryland- it’s just used less frequently.

Along with bail, pretrial supervision, stay away orders, curfews, and personal recognizance comes

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the possibility of release on home detention. Dorchester, Somerset, Wicomico, Worcester, Kent, Charles, Harford and Howard Counties along with Baltimore City allow pretrial home detention, but require fees. This means that a judge can order someone released either on private or public home monitoring (depending on the place), but a defendant would have to pay for it. Neither the companies nor the public option will permit the individual to be placed on home monitoring without the ability to pay, and if payment ceases, the individual is subject to re-arrest. The OPD views this as a bail system in disguise. Essentially, if a judge orders you to be released and you can afford it, you can get out. However, if you cannot, you stay in jail. Not only does this contradict the spirit of the Rules of Court and both the statewide and national movement against predatory cash bail systems, it's unconstitutional.

Thankfully, last year, the legislature, through this committee, enacted key legislation to provide funding for private home detention for indigent defendants when ordered for pretrial release with such by a judge. Though the bill was due to provide funding beginning in July of 2021, the money was unavailable until October of last year. Despite the delayed start, the impact has been tremendous. Pretrial home detention, when ordered by a judge, is now a viable option for anyone, regardless of their income throughout the state, as it should be. The funding has allowed people to keep their jobs, support their families and maintain some semblance of life while awaiting their cases, which more often than not don't result in incarceration when concluded.

SB 704 continues the successes of last year's stopgap fix to the aforementioned pretrial detention problems in several respects. First, it provides relief by offering funding to indigent individuals to pay either private home detention fees or requires local jurisdictions to waive or cover fees for public home monitoring programs. This is huge. Make no mistake about it, home detention is still a version of incarceration. An individual on home detention is not permitted to leave their assigned residence except for any pre-approved allowances like work, doctor's appointments, or court related activities. Every exception is programmed into a GPS device. Any violation is reported to the court. Many people on home detention are on "24/7 lockdown" with no exceptions. However, home detention is still preferable to being in jail. One can have some normalcy while on home detention. In these times, home monitoring can also be the difference between life and death as COVID-19 continues to affect our jails and prisons. Moreover, Marylanders have seen unprecedented delays in trials across the state, which could stretch out to beyond two years in older cases once courts fully open again in March. So, SB 704 should, first and foremost, be regarded as a humane response to excessive pretrial incarceration.

SB 704 is also an extremely important step for the legislature to take towards reworking the uneven pretrial system throughout the state. It's arguable that people arrested in jurisdictions like Kent County or Baltimore City (without free home detention) are subjected to Equal Protection violations because they are deprived of the same options for release available to individuals arrested in localities like Montgomery, St Mary's, Anne Arundel or Prince George's Counties where home detention is local and, most importantly, free. Providing funding begins to level the playing field between fee-based and free jurisdictions. It is also of great significance that OPD clients across the state that struggle with home detention costs tend to be people of color. Neither a person's place of arrest, financial circumstances, nor race should determine whether a person will be held in jail while awaiting their court date.

In conclusion, it only makes sense to continue the successful efforts of this legislature and provide

funding to pay for pretrial home detention for those who have been granted it, but cannot afford it across the state.

For these reasons, the Maryland Office of the Public Defender respectfully urges a favorable report on Senate Bill 704.

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

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