



**PAUL DeWOLFE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
DIRECTOR OF POLICY AND DEVELOPMENT

**KRYSTAL WILLIAMS**  
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

**ELIZABETH HILLIARD**  
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

## **POSITION ON PROPOSED LEGISLATION**

**BILL: Senate Bill 0704 - Conditions of Pretrial Release - Home Detention Monitoring – Alterations and Extension**

**FROM: Marianne Lima, 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 0704.

SB 0704 will extend the funding for pretrial home detention monitoring to be available across the state to appropriate defendants regardless of their ability to pay. A publicly-funded home monitoring system promotes justice, improves safety, and increases efficiency. As an Assistant Public Defender based in our Central Booking office in Baltimore City, I know first-hand how vital this program has been in reducing unnecessary court proceedings; addressing the overuse of pretrial incarceration that became more urgent with COVID; and ensuring that people who are presumed innocent can continue to care for their children, seek or maintain employment, receive appropriate community-based services, and avoid accumulating unaffordable debt.

Because of the high volume of clients incarcerated in Baltimore, line attorneys lack the capacity to fully represent all of their clients on reconsideration of the bail review process while also preparing for trials. My role is focused on the distinct pretrial challenges, but I am only able to represent a small percentage of the more than 1,800 people incarcerated by Department of Corrections while awaiting trial. On average, I respond to 8 to 15 referrals every week from attorneys asserting valid legal challenges to a client's bail review determination, in addition to requests for modification regarding home detention.

Inappropriate pretrial incarceration is among the most egregious violation to basic liberty interests. Consistent with constitutional principles, Maryland law limits pretrial incarceration to a last resort for people deemed to pose a safety or flight risk and for which there are no alternative options to reduce such risks. Examples of my OPD clients who would have been subject to continued incarceration were it not for the availability of publicly funded home detention are:

- An 18 year old student with no prior arrests was charged with false statement to an officer

and multiple criminal traffic infractions. But for publicly funded home detention, he and his family would be unable to afford home detention, and he would have been incarcerated for 57 days waiting for adjudication.

- A 38 year old woman with no prior convictions was charged with primarily conspiracy crimes in which she denies having any involvement. She suffers from such serious health diagnoses that she was medically deemed unable to work since 2013. But for publicly funded home detention, she would have been incarcerated for 35 days as of today.

While I focus on Baltimore City clients, the need for publicly funded home monitoring is statewide, and helps address unique jurisdictional challenges. For example,

- In some jurisdictions, before this payment system was established, judges would never consider home monitoring for someone who was deemed indigent and pretrial services are not available, so incarceration was automatic for anyone who was not released on their own recognizance.
- In jurisdictions along the state border, even if county-based programs are available they cannot always accommodate someone who would be appropriate but would require monitoring out-of-state. This system has allowed for at least one client to be on home monitoring in Delaware while awaiting trial in Maryland.

Given the devastating impact of incarceration and the fundamental liberty interests at stake, our professional legal ethics and our clients' constitutional right to effective assistance of counsel require that public defenders (and other defense attorneys) continuously and zealously challenge inappropriate pretrial incarceration. This requires filing habeas petitions, moving for reconsideration, and participating in hearings to address these concerns. The availability of home monitoring for individuals who cannot afford to pay for it has proved a useful tool for commissioner 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, prior to publicly funded home detention, a Public Defender client who had no prior convictions was granted home detention by the District Court. Although he had work permissions, he was unable to find employment as he was on lock-down other than leaving the home for work, making securing job interviews an onerous task. The costs were becoming prohibitive, as he had been on private home detention for over 5 months, paying approximately \$140 every 2 weeks. The OPD filed two motions for modification seeking relief, and, after a hearing, he was finally released from private home detention supervision, with his case ultimately *nol prossed* 4 months later. While continued funding may benefit from incorporating administrative costs in running the program, even its current iteration, the reduced detention and litigation has a net cost-saving for all of the criminal justice players, including the Judiciary, Public Safety, and county jail systems.

The over-incarceration of people accused (but not convicted) of crimes in Maryland has been a significant concern for many years, and have been further heightened during the pandemic, as the crowded confined conditions pose exceptionally dangerous conditions for COVID to spread. Among the greatest barriers identified by judges to release were the lack of available options. This bill adds a trusted option for all appropriate defendants, not just those with financial means.

While we are hopefully turning a corner on this world-altering pandemic, we must continue to commit to reducing pretrial incarceration and providing sufficient alternatives such as home monitoring.

For these reasons, the Maryland Office of the Public Defender respectfully urges a favorable report on Senate Bill 0704.

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

**Authored by: Marianne Lima, Assistant Public Defender, [marianne.lima@maryland.gov](mailto:marianne.lima@maryland.gov).**