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POSITION ON PROPOSED LEGISLATION

BILL: SB0853 Criminal Law - Private Home Detention Monitoring - Notification

FROM: Maryland Office of the Public Defender

POSITION: Informational

DATE: 2/28/2023

The Maryland Office of the Public Defender provides this information to address the importance of notifying defense counsel whenever the court is informed that a defendant subject to private home monitoring has been missing. We also seek to highlight the impact that this bill may have on the availability of monitoring in rural areas

Home detention monitoring companies are required to notify the court if someone under their monitoring has been missing for 24 hours. Currently, that notification must occur the next business day; this bill would shorten that timeframe to require immediate notification. Regardless of the timeframe required, defense counsel should be included in the notice. A defendant may be missing due to hospitalization, family emergency, technology issues, or other crises. Defense counsel is often in the best position to potentially locate and help resolve any issues that may underlie their absence. At OPD, we have been able to facilitate resolving potential pretrial violations through proactive efforts, such as facilitating communication with the monitoring entity or securing placement into an appropriate treatment program.

Early notice to defense counsel often allows for resolution of the pretrial issue without significant court involvement. However, in circumstances where the court seeks to modify pretrial release conditions, it must first provide a hearing. Md. Rule 4-216.3(b). Providing defense counsel with notification at the same time as the court will better allow for sufficient preparation should a hearing be required. In addition to allowing counsel to verify information

that may explain the absence, it can also provide time for resources and services that may facilitate a non-incarceral resolution.

While we believe that any notice provided to the court about a defendant should include notice to defense counsel, we do want to caution about the impact that the immediate notification proposed under this bill may have in places with limited home detention options. Private home monitoring services rarely serve rural regions, and the geographic distance often requires slower processes. As obligations are increased, or the time frame for reporting decreased, we generally find that services available in rural communities decrease. We are concerned that this bill could further reduce the availability of home detention monitoring for individuals in the farther regions of the state.

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

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