

2024.02.27 Letter to the Senate Judicial Proceedin

Uploaded by: Elizabeth Rossi

Position: FAV



Senator Chair William C. Smith, Jr.
 Miller Senate Office Building, 2 East Wing
 11 Bladen St., Annapolis, MD 21401

Senator Vice Chair Jeff Waldstreicher
 Miller Senate Office Building, 2 East Wing
 11 Bladen St., Annapolis, MD 21401

Chief Justice Matthew Fader
 Maryland Supreme Court
 Robert C. Murphy Courts of Appeal Building
 361 Rowe Blvd., Annapolis, MD 21401

Chief Judge John P. Morrissey
 District Court of Maryland
 Maryland Judicial Center, 187 Harry S.
 Truman Parkway, Annapolis, MD 21401

Judge Audrey J. S. Carrion
 Chair, Conference of Circuit Court Judges
 Elijah E. Cummings Courthouse, East
 111 North Calvert St., Baltimore, MD 21202

February 27, 2024

Dear Chair Smith, Vice Chair Waldstreicher, Members of the Senate Judicial Proceedings Committee, Chief Justice Fader, Chief Judge Morrissey, and Judge Carrion:

We, the undersigned organizations, write to address an unfolding crisis that demands the judiciary’s and General Assembly’s prompt attention. Private companies are sending threatening messages to our clients and communities, telling them they need to send the companies money or they may be jailed. Although we urge the Judicial Proceedings Committee to vote YES on SB1095, a task force is not enough. We ask that you take immediate steps to stop being complicit in the companies’ extortionate practices and clarify that no one will be sent to jail—or remain stuck in jail—because they can’t pay home detention or electronic monitoring fees.

L.C. is just one person caught in the crosshairs of the current crisis.

In 2022, a judge ordered L.C. released on private home detention. At her initial meeting with the private monitoring company, L.C. was told that because she received public assistance, she would not have to pay for monitoring. That was a relief—she couldn’t possibly afford the monthly \$400 payment the company otherwise would have charged her. For the next 18 months, L.C. followed each and every condition of her release. So she was shocked when, just over a week ago, she received a threatening letter from the company in charge of her supervision. Dated Friday, February 16, 2024, the letter informed L.C. that her supervision was no longer free: she would now have to pay the company

for monitoring her. The company said this was because it was no longer receiving state funds, an explanation that meant little to L.C. The letter instructed L.C. to make arrangements to start making payments by the following business day, February 20. If she didn't, the letter continued, the company would seek termination of her release, possibly sending her back to jail.

L.C. was deeply distressed. She has a 12-year-old son, as well as an adult daughter and grandchild. She has no income and relies on public assistance to support herself. She struggles to pay her bills and her electricity could be shut off at any moment. L.C. cannot possibly afford to pay a private company to stay out of jail. After 18 months during which she had done everything the state asked of her—demonstrating beyond any doubt that jailing her was plainly unnecessary—L.C. trembles at the thought of being arrested and sent back to the county jail.

L.C. is not alone. Maryland's private monitoring companies have sent similar threatening letters to hundreds of other people on pretrial release, causing immense distress and anxiety. The message to each is the same: pay up or you could be locked up.

This crisis demands a continuation of the state's efforts to protect the constitutional rights of indigent people arrested and accused of crimes. Decades ago, the United States Supreme Court articulated two principles that undergird pretrial justice throughout the country, including in Maryland: First, that equal protection and due process forbid jailing a person solely because they cannot make a monetary payment, *Bearden v. Georgia*, 461 U.S. 660, 665 (1983), and, second, that pretrial detention is a last resort, permissible only when necessary to prevent a person from intentionally fleeing prosecution or causing physical harm to another person. *United States v. Salerno*, 481 U.S. 739, 755 (1987). Maryland's appellate court made an analogous ruling almost 20 years ago under the state constitution, holding in *Wheeler v. State*, 160 Md. App. 566, 579 (2005), that a judicial officer lacks "discretion" to detain a person unless the judge first finds by clear and convincing evidence that alternatives are unavailable. In short, pretrial detention is constitutional only if it is absolutely necessary. Being poor is not a good reason.

Recognizing these fundamental principles—and that this state's pretrial system was failing to meet them—in late 2016 and early 2017, the Maryland judiciary engaged in the commendable process of amending its bail rules to ensure that they comport with both the state and federal constitutions. Chief Judge Morrissey personally sent a letter to all judges and bail commissioners in the state in October 2016 reminding them that financial conditions of pretrial release must not be used to detain people who can be safely released, and that people accused of crimes may be detained only when necessary.

Now, hundreds if not thousands of people across the state fear being sent back to jail because they can't afford to pay fees to the private companies that have been "supervising" them on home detention or electronic monitoring. And there are hundreds more people arrested every day in Maryland who face detention rather than release solely because they cannot afford to pay the private companies' fees.

Over the past week, there has been a tremendous amount of finger-pointing about who put the state in this financial mess. It's a question we demand answers to: just how did we come to rely on private "monitoring" companies that profiteer off of our jail overcrowding crisis to plunder the state (i.e. taxpayers) for millions of dollars, all to provide a "service" that is excessively punitive if not completely unnecessary. After all, data shows that most of the people these companies are monitoring will see their cases dropped or dismissed entirely.¹

However, the blame game can wait. One thing is indisputable: whether the financial condition of release is a secured bail amount or a requirement to pay monitoring fees, a poor person's inability to make that payment must never result in their pretrial detention. The judiciary, led by Chief Judge Morrissey and Judge Adam M. Wilner, Chair of the Standing Committee on Rules of Practice and Procedure, made this point crystal clear in 2016 and 2017. Where is that clarity and leadership now?

Our clients and community members are terrified. They were told they could remain among their families and loved ones. Now, they are opening their mail to find letters from private companies threatening that if they do not pay, they will be required to appear in court for a hearing and may be sent to jail. The companies, having already pocketed millions of taxpayer dollars, are coercing our clients—and their moms, partners, cousins, and friends—to pony up cash for payment plans they can't afford. Meanwhile, the legislature is twiddling its thumbs, planning for yet another task force that may or may not materialize, and that offers no relief to the immediate problem at hand anyway.

This is the moment for the state's leaders to act. Rather than wringing their hands, the judiciary and the legislature should be reassuring the public that the law has not changed: that anyone arrested in Maryland need not fear being detained due to inability to pay, that people who have been compliant on home detention or electronic monitoring will not be handcuffed and sent to jail just because they can't pay the ransom demanded by these private companies, and that newly arrested people who can be safely released will not be stuck in jail because they can't afford the price tag these companies set on monitoring.

None of these principles are new. The judiciary incorporated each of them into the bail rule it passed in 2016, and which went into effect in 2017.

Whatever the solution to the financial dilemma, poor people who are presumptively innocent must not be threatened with bearing the consequences of bureaucratic ineptitude and corporate greed. We are hopeful that judges throughout the state will protect the rights of indigent people charged with crimes, even as the companies begin sending violation letters to the courts. But a strong reiteration of these principles from the highest echelons of the state's judiciary would provide much-needed

¹ In April 2022, movement-lawyering organization BALT released a report showing that the vast majority of people charged with crimes in Baltimore are never convicted of anything. *See* Baltimore City District Court 2019 Bail Hearings and Case Outcomes (published April 13, 2022), available at <https://www.baltimoreactionlegal.org/new-blog/2019pretrialdatareport>.

reassurance that the chaos in Annapolis will not impact our loved ones' ability to remain in their community: to hug their children, attend school, go to work, and fight their case.

A public statement from the Maryland judiciary is a crucial first step. We also ask that the judiciary and the legislature demand additional transparency and accountability from the private companies, which have received millions of taxpayer dollars. Specifically, we request a full-scale investigation of the costs and benefits of state-funded private supervision, including the following information:

- How much money has the state of Maryland paid to the companies?
- How many private companies are authorized to provide for-profit supervision?
- How many people have had their supervision fees paid for by the state?
- What were the outcomes of their cases? More specifically, after sending hundreds of thousands of dollars to companies to supervise people who were supposedly too dangerous to be released without supervision, how many of those individuals had their cases dismissed or were acquitted?

People like L.C. should not live in fear that they are going to be jailed because they can't afford to pay fees to a private company. The judiciary has already announced that such a system—one that makes release and detention decisions based on how much cash a person has in their pocket—violates basic notions of civil rights and human dignity.

We urge you to vote YES on SB1095. But we also ask you to do what is most necessary and urgent, to reiterate what the judiciary stated so clearly just over seven years ago: that when you are summoned before a court of justice in this state, your fate will depend on the law and the facts—not how much you can pay.

Sincerely,

Qiana Johnson, Founder and Executive Director
LIFE AFTER RELEASE

Iman Freeman, Executive Director
BALTIMORE ACTION LEGAL TEAM

Heather Warnken, Executive Director
David Jaros, Faculty Director
Center for Criminal Justice Reform
UNIVERSITY OF BALTIMORE SCHOOL OF LAW

Elizabeth Rossi, Director of Strategic Initiatives
Cody Cutting, Staff Attorney
CIVIL RIGHTS CORPS

Katie Kronick and Jonathan Kerr
Criminal Defense and Advocacy Clinic
UNIVERSITY OF BALTIMORE SCHOOL OF LAW

SB 1095 - home detention monitoring workgroup favo

Uploaded by: Melissa Rothstein

Position: FAV



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB1095 Workgroup on Home Detention Monitoring

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 2/27/2024

The Maryland Office of the Public Defender (OPD) respectfully requests that the Committee issue an favorable report on Senate Bill 1095. A workgroup to study home detention monitoring is needed to ensure that this pretrial option is used equitably and appropriately.

OPD has been fighting for equitable pretrial options for decades. In addition to litigation at bail reviews, motions for modification, and habeas proceedings on behalf of our detained clients, we helped secure a court rule that limited the use of money bail and required its imposition to be affordable to the defendant. In response to the COVID pandemic, we also supported the home detention program in which the Judiciary covers the cost of private home detention fees for indigent defendants (“the Judiciary program”). While home monitoring remains a limiting form of detention – the individual on home detention cannot leave their assigned residence except for pre-approved allowances like work, doctor’s appointments, or court dates – we recognized the importance of this option for individuals who would otherwise remain in jail.

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, a client with no prior arrests who was charged with false statement to an officer and multiple criminal traffic infractions was

unable to afford private home detention. Without the Judiciary program, our office would have filed motions to reconsider while he remained incarcerated. The client, an 18 year old student, also would have had his education stymied, would have lost any part-time employment, and been separated from his family potentially for almost two months waiting for adjudication.

Aside from the statewide Judiciary program, home detention, like other pretrial options, is a patchwork across the state. Some jurisdictions provide home monitoring through their pretrial services, sometimes with a fee and with eligibility requirements that also vary by county. Other jurisdictions have no pretrial services or public home monitoring, either relying exclusively on costly private monitoring services or denying home detention altogether. The Judiciary program provides a consistent option across jurisdictions and income levels.

A workgroup can identify the best available options for sustaining a program, and encourage its equitable and consistent use statewide. The Judiciary program began with federal funding, and [recently spent out the remaining funds without any plan for continued coverage](#) of the people compliant with their monitoring or for availability of monitoring for people held pretrial who could otherwise remain at home. While a workgroup will not be able to address the immediate needs, it can ensure we are not in this situation again.

The workgroup can also examine the most cost efficient measure for the state to fairly ensure monitoring services are available regardless of income. Private companies have market efficiencies for serving Maryland's diverse counties, but also have profit margins. A comparison of this service versus the potential of a statewide public system is worthy of attention and study.

Finally, the workgroup can identify best practices for home monitoring to ensure that it is being utilized appropriately and effectively. As home monitoring became a consistent option for indigent defendants statewide, judges have increasingly relied upon it – even for people who could otherwise be released on their own recognizance. [Excessive monitoring of individuals who are a low risk can have negative outcomes, most notably creating technical violations that result in a revocation of release without any new offense](#). Studies also show that the racial disparities that pervade the criminal system are also present here, with [Black individuals more likely to be subject to monitoring as a condition of release than their white counterparts](#). The workgroup can help ensure that monitoring is targeted to those who require it, in a manner that is

equitable regardless of race, income, and georgraphy; is limited to people who truly require it; and is cost efficient with a steady stream of needed resources.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 1095.

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

**Authored by: Melissa Rothstein, Chief of External Affairs,
melissa.rothstein@maryland.gov, 410-767-9853.**

MCPA-MSA_ SB-1095_Workgroup-on-Home-Detention-Moni

Uploaded by: Andrea Mansfield

Position: FWA



Maryland Chiefs of Police Association Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William Smith, Jr., Chair and
Members of the Judicial Proceedings Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 28, 2023

RE: **SB 1095 – Workgroup on Home Detention Monitoring**

POSITION: SUPPORT WITH AMENDMENTS

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) SUPPORT SB 1095 WITH AMENDMENTS. This bill establishes a Workgroup on Home Detention Monitoring to study and make recommendations regarding the costs and availability of both publicly and privately provided pretrial home detention monitoring systems.

As introduced, SB 1095 allows for one representative from the Maryland Chiefs of Police Association and Maryland Sheriffs' Association. As individuals who will be responsible for implementing the recommendations that result from the workgroup, MCPA and MSA respectfully request that a MSA representative and a MCPA representative be added to the composition of the workgroup.

MCPA and MSA support all efforts to improve pretrial detention monitoring systems; and respectfully requests both the MSA and MCPA be represented as a part of this conversation. For this reason, MCPA and MSA SUPPORT SB 1095 WITH AMENDMENTS.

sb1095.pdf

Uploaded by: Linda Miller

Position: FWA

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 1095
Workgroup on Home Detention Monitoring
DATE: February 15, 2024
(2/28)
POSITION: Support with amendment

The Maryland Judiciary supports Senate Bill 1095 with amendments.

The Judiciary believes that home detention monitoring needs study and reform. The private home detention monitoring agencies (PHDMAs) are licensed by the Department of Public Safety and Correctional Services (DPSCS) and there are approximately five currently active statewide. There is little uniformity statewide and often no ability for DPSCS to know whether the PHDMA is compliant with their responsibilities. Chapter 597 of 2021 established a Workgroup on Home Detention Monitoring which was tasked with studying and making recommendations regarding the costs and availability of both publicly and privately provided pre-trial home detention monitoring systems. The Judiciary was not part of the workgroup and to our knowledge the workgroup never formed, met, or submitted a report of its findings and recommendations to the General Assembly.

Under this legislation, however, the Judiciary is not a member of the Workgroup. The Judiciary respectfully requests that a representative of the Judiciary, appointed by the Chief Justice of the Supreme Court, be included in the Workgroup.

cc. Hon. William Smith
Judicial Council
Legislative Committee
Kelley O'Connor

MCAA SB 1095 Workgroup on Home Detention.pdf

Uploaded by: Mary Ann Thompson

Position: FWA

SB 1095_MNADV_FWA.pdf

Uploaded by: Melanie Shapiro

Position: FWA



BILL NO: Senate Bill 1095
TITLE: Workgroup on Home Detention Monitoring
COMMITTEE: Judicial Proceedings
HEARING DATE: February 28, 2024
POSITION: **Favorable with Amendments**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Judicial Proceedings Committee to issue a favorable report with amendments on SB 1095.**

MNADV would request that the bill be amended to include “The Executive Director of the Maryland Network Against Domestic Violence, or their designee.”

Senate Bill 1095 establishes the Workgroup on Home Detention Monitoring to study and make recommendations regarding the costs and availability of both publicly and privately provided pretrial home detention monitoring systems.

Notably missing from the composition of members of the Task Force are members and representatives of the victim community. MNADV believes that it is imperative that a workgroup studying home detention monitoring include representation from the communities directly impacted by the crimes that necessitate the need for home detention monitoring. MNADV represents the nineteen comprehensive domestic violence programs in Maryland. These programs are required to provide abuser intervention services to those who have committed violence and could be on home detention monitoring. The programs we represent offer services to those that are victims of domestic violence, those who have committed domestic violence, and victims that are criminalized. It is crucial that these voices are at the table.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report with amendments on SB 1095.**