Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 643 (Senator Hough)
Judicial Proceedings Judiciary

Correctional Services - Division of Parole and Probation - Definition of Absconding

This bill modifies the definition of "absconding" to include leaving an inpatient residential treatment facility that an individual was placed in pursuant to a court order for drug or alcohol treatment without the permission of the administrator.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures for the Judiciary; potential minimal increase in general fund incarceration expenditures. Revenues are not affected.

Local Effect: Potential minimal increase in local expenditures for the circuit courts; potential minimal increase in local incarceration expenditures. Local revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: Under § 6-219 of the Criminal Procedure Article, a court may impose custodial confinement or imprisonment as a condition of probation before or after judgment. "Custodial confinement" means home detention, a corrections options program meeting specified criteria, or inpatient drug or alcohol treatment.

Under § 8-507 of the Health-General Article, a court is authorized to refer an individual to substance abuse treatment as an alternative to incarceration. A court that finds in a criminal

case that a defendant has an alcohol or drug dependency may commit the defendant to the Maryland Department of Health (MDH) for a drug or alcohol treatment program.

When a defendant is committed to a treatment facility pursuant to § 8-507 of the Health-General Article, the court must order supervision of the defendant by (1) the appropriate pretrial release agency, if the defendant is released pending trial; (2) the Division of Parole and Probation (DPP), if the defendant is released on probation; or (3) MDH, if the defendant remains in the custody of a local correctional facility. If a defendant leaves treatment without authorization, MDH's responsibility is limited to the notification of the court that ordered the defendant's treatment as soon as is reasonably possible.

Pursuant to Chapter 515 of 2016, commonly referred to as the Justice Reinvestment Act, the Department of Public Safety and Correctional Services established a program of "graduated sanctions" in response to "technical violations" of conditions of parole or probation supervision. DPP must provide notice to the court and the Maryland Parole Commission (MPC) regarding a technical violation and any graduated sanctions imposed as a result. The court and MPC may impose specified maximum sentences for a revocation of parole or probation due to a "technical violation" (1) for a first violation, not more than 15 days; (2) for a second violation, not more than 30 days; and (3) for a third violation, not more than 45 days. However, the court and MPC may depart from the limits if adhering to the limits would create a risk to public safety or to a victim or witness. For nontechnical violations, the court or MPC may impose any portion of the remaining suspended sentence when revoking an individual's parole or probation.

"Technical violation" means a violation of a condition of probation, parole, or mandatory supervision that does *not* involve (1) an arrest or a summons issued by a District Court Commissioner on a statement of charges filed by a law enforcement officer; (2) a violation of a criminal prohibition other than a minor traffic offense; (3) a violation of a no-contact or stay-away order; or (4) "absconding."

"Absconding" means willfully evading supervision. "Absconding" does not include missing a single appointment with a supervising authority.

In *Brendoff v. State*, No. 578, Sept. Term, 2018, the Maryland Court of Special Appeals ruled that when an individual is placed on supervised probation upon admission into a drug and alcohol treatment facility pursuant to § 8-507 of the Health-General Article, DPP is the individual's supervising authority for the purposes of ascertaining whether the individual has "absconded." Because the treatment facility is not the individual's supervising authority, when an individual leaves treatment prematurely and without permission, the individual cannot be presumed to have committed the nontechnical violation of absconding. Unless the court finds that the individual has willfully evaded

DPP's supervision, the court or MPC must treat leaving the treatment facility as a technical violation when choosing to revoke parole or probation.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 402 (Delegate Malone) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2021
an/jc Third Reader - March 16, 2021
Revised - Amendment(s) - March 16, 2021

Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510