

**BRIAN E. FROSH**  
Attorney General



**ELIZABETH F. HARRIS**  
Chief Deputy Attorney General

**CAROLYN QUATTROCKI**  
Deputy Attorney General

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

443-463-0751

March 2, 2022

To: The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee

From: Hannibal G. Williams II Kemerer  
Chief Counsel, Legislative Affairs, Office of the Attorney General

Re: SB 897 – Courts and Judicial Proceedings – Court Fines – Payment– **Support**

---

The Office of Attorney General urges this Committee to favorably report SB 897 with the amendment discussed below. If passed, the bill would accomplish three important goals. First, it would grant the court the ability to investigate a defendant's ability to pay court fines. Second, it would alter an authorization for a court to order an individual committed to a correctional facility for nonpayment of court fees. Finally, it would permit the court to authorize the clerk of the court to approve a payment plan under certain circumstances.

This bill is consistent with the OAG's fines and fees advocacy. In *Bearden v. Georgia*, the United States Supreme Court held that imprisonment for unpaid fines or fees without a hearing to determine ability to pay is unconstitutional under the due process clause of the Fourteenth Amendment. 461 U.S. 660 (1983). Additionally, *Bearden* has been cited in cases in both the District Court of Maryland and in the Fourth Circuit. See *Miranda v. Barr*, 463 F.Supp. 3d 632 (2020); see also *United States v. Boyd*, 935 F.2d 1288 (1991). These cases have relied on *Bearden* to determine when it is justifiable for a defendant to not pay a fine or fee. As determined in *Bearden*, if a defendant has made all reasonable efforts to pay the fine and cannot do so through no fault of her or his own, it is unfair to revoke probation. See *Boyd*, 935 F.2d 1288.

This bill would require the court to determine the defendant's ability to pay the fees before imposing a punishment on the defendant. If the reason for nonpayment is indigence, the bill requires the court to work with the defendant to reduce the fine or implement a payment plan. This makes the bill consistent with the Supreme Court holding in *Bearden*. See 461 U.S. 660.

The OAG believes that Senate Bill 897 would help to accomplish the three important goals. However, the OAG believes that there should be one amendment to Senate Bill 897:

- On Page 2, Line 4 the OAG suggests that the Committee strike “contumacious and is not due to indigence” and insert “intentional or willful and not due to indigence.”

For the foregoing reasons, the Office of the Attorney General urges a favorable report of Senate Bill 897 with the above amendment.

cc: Committee Members