

SB287 (absconding) AG Testimony in Support.pdf

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State of Maryland
Office of the Attorney General

February 8, 2022

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

FROM: Carrie J. Williams, Assistant Attorney General

RE: Attorney General's Support for SB 287

The Attorney General urges the Judicial Proceedings Committee to report favorably on SB 287. SB 287 expands the definition of “absconding,” for purposes of determining whether a violation of probation is non-technical, to include leaving a residential drug treatment facility without permission.

This amendment solves a statutory issue identified by the Court of Special Appeals’ opinion in *Brendoff v. State*, 242 Md. App. 90 (2019). Brendoff was serving an eight-year prison sentence for multiple burglary convictions when the circuit court suspended his sentence in lieu of a Health General § 8-507 order committing Brendoff to 120 days of in-patient substance abuse treatment. *Id.* at 100-02.

Less than 30 days into his treatment, Brendoff left the residential treatment facility without permission. *Id.* at 103. He began out-patient treatment, but was discharged from that program several months later for attendance issues. *Id.* at 103-04. Seven days before his discharge from the out-patient program, Brendoff was charged with attempted murder base on a drug deal gone bad. *Id.* at 103.

The State alleged that Brendoff had violated his probation by absconding from the treatment facilities and failing to obey all laws. *Id.* at 105-06. The violation for failing to obey all laws was dismissed for technical reasons, leaving the absconding charges. The circuit court found that Brendoff had absconded and was not amenable to treatment and sentenced him to 10 years’ incarceration.

The Court of Special Appeals reversed Brendoff’s sentence. The Court held that, based upon the plain language of Correctional Services Art., § 6-101(b),

absconding requires willfully evading the supervision of a probationer's "supervising authority." *Id.* at 99-100. When a defendant is released from incarceration and committed to a drug treatment facility, the Court held, the "supervising authority" is the Department of Parole and Probation, not the treatment facility. *Id.* at 113.

Because Brendoff did not willfully evade the supervision of his probation agent (he did not fail to miss any appointments with his probation agent), the Court held that he had not "absconded." His violations were thus technical in nature, and the limits on incarceration for technical violations applied.

The trouble with the Court's finding that the probation agent is the "supervisory authority" when a probationer is committed to drug treatment is that probation agents do not schedule in-person appointments with probationers in in-patient drug treatment centers because the probationers are not allowed to leave the facility. A probationer who leaves an in-patient treatment center without permission will therefore not ordinarily be able to be charged with absconding. He or she will be charged with the technical violation of failing to complete drug treatment and subject to the presumptive limits on incarceration.

Inmates who have their sentences of incarceration suspended in lieu of in-patient treatment should be able to be charged with absconding if they leave the in-patient treatment facility without permission. SB 287 amends the definition of absconding so that these probationers can be properly charged. The Attorney General urges a favorable report on SB 287.

cc: Members of the Committee

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cc: Members of the Committee

Absconding.pdf

Uploaded by: joseph riley

Position: FAV



TO: MSAA Legislative Committee
FROM: Joseph Riley, State's Attorney Caroline County
Legislative Committee Chair
DATE: October 9, 2020
RE: Legislative Proposal

Maryland's recent adoption of Justice Reinvestment Act (JRA) had as one of its primary goals, "to reduce selectively Maryland's prison population and use the resultant monetary saving to provide treatment to offenders before, during, and after incarceration." *Conaway v. State*, 464 Md. 505, 523 (2019). In simpler terms the underpinning of the JRA is "a shift in philosophy from the jail bed to the treatment bed."ⁱ

In the years following the JRA becoming law, we in the Maryland State's Attorney's Association have seen a pattern in incarcerated individuals being placed in treatment facilities pursuant to *Maryland Health General* §8-507 and those individuals "walking off" from the treatment facility. Due to how the sentences are modified the incarcerated individual when they are placed in a facility are under the supervision of the Department of Parole and Probation not the Health Department. *Maryland Health General* § 8-507 (f)(2). In a recent case, the Court of Special Appeals has defined such actions as "technical violations" as defined by the JRA and subject to the sanction limits described in *Maryland Criminal Procedure* §6-223 (d)(2)(i).

This creates a perverse incentive to the incarcerated individual who has been given the option of treatment. They can stay in a placement and continue the hard work of sobriety or they can walk off and be subject to a 15 day maximum penalty, be continued on supervised probation, and not have to return to the treatment facility.

This proposal will change the definition of "Absconding" as defined in *Maryland Correctional Services* § 6-101 (b) to include leaving a *Maryland Health General* § 8-507 placement without the permission of the facility. The definition of absconding has only been in the Maryland Code since 2016 with the passing of the JRA.

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CURRENT CORRECTIONAL SERVICES § 6-101 (b)
PROPOSED LEGISLATIVE CHANGES

Md. CORRECTIONAL SERVICES Code Ann. § 6-101

Copy Citation

Statutes current through legislation effective October 1, 2020

- [MD - Annotated Code of Maryland](#)
- [CORRECTIONAL SERVICES](#)
- [TITLE 6. PAROLE AND PROBATION](#)
- [SUBTITLE 1. DIVISION OF PAROLE AND PROBATION](#)

§ 6-101. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Absconding. --

(1) "Absconding" means willfully evading supervision.

(2) "Absconding" does not include missing a single appointment with a supervising authority.

PROPOSED CHANGE

(b) Absconding. --

(1) "Absconding" means willfully evading supervision.

(2) "Absconding" does not include missing a single appointment with a supervising authority.

(3) ***"Absconding" includes leaving a treatment facility that the probationer or defendant was placed in pursuant to Maryland Health-General §8-507 for drug or alcohol treatment without the permission of the Administrator as defined in Maryland Health-General § 8-101(d).***

ⁱ Steve Lash, "Justice Reinvestment Faces Implementation Challenges, Lawmakers Told" The Daily Record Jan. 19, 2017.

sb 0287 MOPD oppose.pdf

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Position: UNF



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POSITION ON PROPOSED LEGISLATION

**BILL: SB 0287 - Correctional Services - Division of Parole and Probation -
Definition of Absconding**

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 02/08/2022

The Maryland Office of the Public Defender respectfully requests that this Committee issue an unfavorable report on Senate Bill 287.

This bill would codify the definition of absconding to include “leaving an inpatient residential treatment facility that an individual was placed in under a court order for drug or alcohol treatment without the permission of the administrator, as defined in § 8–101 of the health – general article.”

Absconding is currently defined as “willfully evading supervision,” though it “does not include missing a single appointment with a supervising authority.” Md Code, Corr Svcs § 6-101(b)(1)-(2).

There are numerous reasons why a person may leave treatment, and those reasons should be subject to the discretionary consideration of a judge, not statutorily defined as “absconding.” If an individual leaves a facility and “willfully evades” their supervising authority following that departure, there are mechanisms in place to permit a court to properly weigh that action against the existing definition of absconding, the nature of the violation, the facts of the underlying case, a the person’s history, and impose the proper sentence. *See* Md. Code, Crim Proc § 6-223. If, on the other hand, an individual leaves only briefly, realizes their mistake and returns, the court

should similarly have the authority to permit reentry into the program and an imposition of a minimal – if any – sentence.

This discretion has been recognized by the Court of Special Appeals. For example, in *Brendoff v. State*, 242 Md. App. 90, 108 (2019), the Court of Special Appeals, determined that the court had improperly deemed the drug treatment facility the “supervising authority.” But instead of determining that therefore, the person had not absconded, the Court of Special Appeals remanded the case for a determination of whether the person had willfully evaded the supervision of the Division of Parole and Probation (which was the supervising authority for the probation) as opposed to the drug treatment facilities. The court further explained that “when there is an allegation of a non-technical violation of probation by ‘absconding,’” the trial court must first determine “whether the probationer willfully evaded his or her supervising authority.” *Id.* The legislature should continue to permit courts to make this determination based on the individual facts of the cases before them. If Senate Bill 287 was passed it would improperly deny courts this discretion.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 0287.

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