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AMENDMENTS
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BY: Senator Bailey
(To be offered in the Judicial Proceedings Committee)

AMENDMENT TO SENATE BILL 457

(First Reading File Bill)

On page 1, in line 15, strike “District Court of”; and in line 16, after “Maryland” insert “Court of Appeals”.

SenatorBailey_FWA_SB457.pdf

Uploaded by: Jack Bailey

Position: FWA

JACK BAILEY
Legislative District 29
Calvert and St. Mary's Counties

Judicial Proceedings Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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February 16, 2022

Senate Bill 457 – Workgroup to Study Trial in Absence

Dear Chairman Smith and Members of the Committee,

I am writing to introduce Senate Bill 457 – Workgroup to Study Trial in Absence. This bill would create a workgroup to study the possibility of allowing individuals who fail to appear in court for minor offenses to be tried in their absence.

The Workgroup would consist of two members of the Senate, two members of the House, the Public Defender or their designee, and the President of the Maryland State's Attorneys' Association or their designee. In addition, I am submitting an amendment to this bill so that one member will be appointed by the Chief Judge of the Court of Appeals rather than the Chief Judge of the District Court. This Workgroup will be tasked with studying other jurisdictions where this practice is used and the feasibility of implementing trial in absence in Maryland. It would also determine which minor offenses would be eligible for trial in absence, the conditions under which a trial in absence would be authorized, and determine how any penalties incurred through a trial in absence would be collected.

During my 30 years of service as a police officer I attended court in multiple jurisdictions both in this State and in others, including Virginia. In Virginia, I saw many times when a defendant accused of a non-violent criminal misdemeanor was tried in their absence. In the same scenario in Maryland, a failure to appear results in a warrant being issued for the defendant's arrest. From discussions with members of the Judiciary, a large part of the administrative work in the courts is the result of processing failure to appear warrants. If implemented, this may give our State one option to limit interactions between law enforcement and individuals charged with very minor crimes who fail to appear for their court dates, which would also allow our police to focus on more serious offenses.

The Workgroup's report would be due on December 1, 2022, and the bill sunsets on June 30, 2023. I respectfully request a favorable report with amendments on Senate Bill 457. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Bailey".

Senator Jack Bailey

MOPD Unfavorable SB 457.pdf

Uploaded by: Elizabeth Hilliard

Position: UNF



PAUL DEWOLFE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
DIRECTOR OF POLICY AND DEVELOPMENT

KRYSTAL WILLIAMS
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

ELIZABETH HILLIARD
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

POSITION ON PROPOSED LEGISLATION

BILL: SB 457 -- Workgroup to Study Trial in Absence

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/15/2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 457.

The Maryland Office of the Public Defender has sincere concerns about the constitutional and practical implications of permitting trials in absence.

First, the impact on represented and unrepresented individuals could be significantly different. If a person is absent, but an attorney proceeds on their behalf, there may be post conviction, attorney grievance commission, or other proceedings generated due to concerns over the attorney's efficacy. If neither an attorney nor the accused appear, there is a possibility that a warrant would be issued without notice to the accused person. Moreover, if an accused person is absent but an attorney is present, the entry of a plea – guilty, not guilty, or nolo contendere – may be left up to the attorney, despite the fact that the entry of a plea is a decision in the purview of the accused alone.

Second, if an accused person is unable to receive contact from the Court, the 30 days to file an appeal may come and go without that person having an opportunity to exercise their right to that appeal.

Third, practically, an empty defense table, or one with only an attorney, has a significant impact on a trier of fact. Even the most “minor” misdemeanor could have large impacts on someone's life and thus must be handled cautiously and fairly. The trier of fact should observe the accused person as they evaluate the case, not just a name on a docket entry.

Moreover, should a trial in absence be permitted for misdemeanor offenses, there is a strong argument that it would need to be limited to offenses with maximum sentences of 90 days or less because the accused person, proceeding in absentia, would likely have to waive right to jury trial.

Finally, and arguably most importantly, proceeding with a trial in the absence of the accused conflicts with critical constitutional and statutory protections afforded to someone when facing a criminal trial. A trial proceeding without the accused person would be contrary to the right of a criminal defendant to be present at every critical stage of a trial, provided by Article 5 of the Maryland Declaration of Rights, and the right of a defendant to confront their witnesses, provided by the Sixth Amendment to the U.S. Constitution and Article 21 of the Maryland Declaration of Rights. *See also State v. Hart*, 449 Md. 246, 264-65 (2016). In addition to constitutional protections, trials proceeding without the accused would be contrary to the guarantee of Maryland Rule 4-231 that a criminal defendant has the right to be physically present in person at a preliminary hearing and every stage of a trial, except at a conference or argument on a question of law or when a *nolle prosequi* or stet is entered. Currently, there are only three circumstances that now permit a determination that the right to be present has been waived by the accused: (1) when the accused person is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain; (2) when the accused person engages in conduct that justifies exclusion from the courtroom; or (3) when the accused person, either themselves or through counsel, agrees to or acquiesces in being absent. There is far too much at risk during any criminal proceeding to expand these circumstances.

For these reasons, the Maryland Office of the Public Defender urges an unfavorable report on Senate Bill 457.

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

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Uploaded by: Sara Elalamy

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

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 457
Workgroup to Study Trial in Absence
DATE: February 2, 2022
(2/16)
POSITION: Oppose, as drafted

The Judiciary opposes Senate Bill 457, as drafted. This bill creates a workgroup to study trial in absence. Among its proposed members is one member appointed by the Chief Judge of the District Court.

While the Maryland Judicial Conference appreciates the Judiciary's consideration in the formation of this task force, membership of judges on such bodies can raise separation of powers and dual office issues. Participation by judges in extra-judicial activities, such as statutorily created workgroups, commissions, and task forces, is limited by Rule 3.4 of the Code of Judicial Conduct and by Article 8 of the Maryland Declaration of Rights. To ensure uniformity in the administration of justice throughout the state, judges are advised not to participate in the policy development functions of the Judiciary's executive and legislative partners. While the Judiciary always makes itself available for questions on a case by case basis, the Judiciary respectfully requests not to be included on this task force. In addition, the Chief Judge of the Court of Appeals is the administrative head of the Judicial Branch and, therefore, it is he who should make such an appointment.

In addition, the Judiciary believes it is not appropriate for the Administrative Office of the Courts to be staffing a legislative task force.

cc. Hon. Jack Bailey
Judicial Council
Legislative Committee
Kelley O'Connor

