

# **SB897 Maryland Volunteer Lawyers Service - Favorab**

Uploaded by: Amy Hennen

Position: FAV



MARYLAND SENATE JUDICIAL PROCEEDINGS COMMITTEE  
TESTIMONY OF MARYLAND VOLUNTEER LAWYERS SERVICE  
IN SUPPORT OF SB897: COURTS AND JUDICIAL PROCEEDINGS –  
COURT FINES -PAYMENT  
WEDNESDAY, MARCH 2, 2022

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Chair Smith and distinguished members of the Committee, thank you for the opportunity to testify in support of Senate Bill 0897.

My name is Amy Hennen and I am the Director of Advocacy and Financial Stabilization at the Maryland Volunteer Lawyers Service (MVLS). MVLS is the oldest and largest provider of pro bono civil legal services to low-income Marylanders. Since MVLS' founding in 1981, our statewide panel of over 1,700 volunteers has provided free legal services to over 100,000 Marylanders in a wide range of civil legal matters. For the reasons below, MVLS respectfully request the committee return a favorable report on SB897.

In my position at MVLS, I manage our consumer and housing as well as our workforce development programs. This means working with clients living near the poverty line who are being sued for debt collection and eviction, or individuals who are receiving job training, often after returning from incarceration. I have also overseen our work with the Baltimore Health Corps, the project initiated by the Mayor's Office of Employment Development to hire contact tracers during the pandemic. A large portion of this work, and our workforce development program generally, involves criminal record expungement and dealing with court debt. Court fines and fees too often hold back people in poverty. I have personally seen clients across all the programs I manage who struggle week by week to make ends meet, and for whom accumulating debt to the court system is the breaking point of their financial stability. An ability-to-pay inquiry is necessary for our courts to maintain equity and justice for all those who interact with the judicial system.

One of MVLS' clients, a Baltimore Health Corps employee, initially reached out for assistance with expunging his criminal record. While working with him, he revealed that he had incurred thousands of dollars in fines and fees from court-ordered home monitoring. He had completed his court-mandated requirements, paid his debt to society, and had re-entered the workforce in an attempt to turn his life around. At the time, he was only working part-time, making about \$13 an hour, and was behind on his child support payments. Our client stated that he nearly lost his license because of his growing debt to the State of Maryland. It ultimately took our client

more than three years to pay the fees, while trying to keep up with his other expenses. He ultimately decided to focus on paying the court fees and neglected his child support payments.

For people like our clients who are living on the edge of poverty, trying to make ends meet, a missed payment can spiral into additional criminal penalties, loss of their driver's license, loss of job opportunities, and having to choose between paying fines and fees or being able to pay for the necessities like rent, food, and

childcare. This bill would eliminate these fees, ensuring a just system where people are not punished for the level of income they earn.

MVLS has been fighting to even the playing field for Marylanders facing economic hardships for decades and most of our clients live at or below the poverty line. Because of our work serving Marylanders with low or no income, we support this bill. We recognize that when a person is arrested or incarcerated, they can find themselves drowning in fines, fees, and costs to various institutions during pretrial, sentencing, incarceration, and post-conviction, including home detention, probation and parole fees, and fees for work release programs. This bill, which would help stop the cycle of poverty and indebtedness, is necessary. We know that these community members face significant obstacles when putting their lives back on track. Lessening the burden of court-related fines and fees will help people to avoid the consequences as described above, to enter the workforce and become productive members of society. We respectfully request a favorable report on Senate Bill 897.

Mister Chair and member of the committee, thank you for the opportunity to testify.

**SB0897\_FAV\_JOTF.pdf**

Uploaded by: Caleb Jasso

Position: FAV

# JOTF JOB OPPORTUNITIES TASK FORCE

*Advocating better skills, jobs, and incomes*

## TESTIMONY IN SUPPORT OF SENATE BILL 897:

### **Courts and Judicial Proceedings - Court Fines - Payment**

TO: Hon. William C. Smith, Jr., and Members of the Senate Judicial Proceedings Committee

FROM: Caleb Jass, Policy Advocate

DATE: March 2nd, 2022

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that develops and advocates policies and programs to increase the skills, job opportunities, and incomes of low-skill, low-wage workers and job seekers in Maryland. We support **Senate Bill 897** as a means to establish that an individual installment plan agreement may be approved for a defendant who is required to pay one or more court-ordered fines of any type in order to lessen the financial burden of such payments.

In 2018, JOTF released a report called "[The Criminalization of Poverty](#)" which dissects the pathways in which Maryland residents from impoverished communities unjustly encounter the Criminal Justice System. Part II of the report goes forward to outline how extensive fines and fees related to interactions with the criminal justice system impoverish Marylanders, specifically lower-income communities of color. These "fees for service" include court-related fees (administrative, jury, and restitution), home detention, parole and probation, public defender representation (application and reimbursement), jail room and board (especially for pretrial), mandatory drug and alcohol testing, vehicle interlock devices, criminal record expungement, as well as interest and late fees from the Central Collections Unit (CCU). The goal of fees is often to recoup costs and generate revenue.

Marylanders from low-income communities, especially communities of color, find themselves often strapped with gratuitous criminal-justice-related debts. In 2018, Alexis Harris, a sociologist at the University of Washington, estimated that 80-85% of incarcerated persons now leaving prison owe criminal justice costs. This is estimated to amount to some 10 million Americans who owe more than \$50 billion in criminal justice debt.

The Department of Parole and Probation also reports that they charge a monthly fee of \$40 for every individual on parole and \$50 to every individual on probation. These fees are used to reimburse the department for services rendered and are assigned by either the judge (probation), commissioner (parole), or another judicial official that the court deems suitable. [Data](#) from the National Institute of Corrections reports that as of December 31, 2018, the Maryland Department of Corrections had 70,248 persons on probation and 10,338 on parole. When applying the probationary fee of \$50 to this population for that month (December 2018), we arrive at a grand total of over \$3.5 million to the state. Expanded annually, the total cost to individuals on probation would be over \$42 million. Considering Parole, the monthly intake is \$413,520 or nearly \$5 million annually. Using the December numbers as an experimental basis, it is safe to assume that the state collected \$47 million annually from this program.

The dire concern with Parole and Probation fees revolve around the consequences for an individual that does not have the ability to pay. Non-payment counts as a violation of probation which risks incarceration and the fee is sent directly to the Central Collections Unit which adds on average 17% to the debt. In certain circumstances, the judge, commissioner, or leading judicial official can waive payments but this does not happen often. As such, the current system is essentially a debtor's prison which is illegal under section 38 of the Maryland Constitution.

# JOTF JOB OPPORTUNITIES TASK FORCE

*Advocating better skills, jobs, and incomes*

Next for consideration is possible reimbursement fees for the use of a public defender. A public defender is allotted by constitutional mandate to any individual facing a trial that could potentially lead to incarceration. The vast majority of individuals who use the services of a public defender qualify as indigent under Criminal Procedure §16–210 and are supposed to receive this service for free. However, data is mixed on defendants owing reimbursement fees throughout the state. Some counties have charged individuals post-trial reimbursement fees if the trial ended in a guilty disposition.

The bill establishes that if a defendant fails or is unable to pay a fine as ordered by a court, the court must investigate the reasons for the failure or inability to pay the fine. Additionally, the bill expands the provision of the current law of approving an individual installment plan agreement for the payment of court-ordered fines, for a defendant who is required to pay a fine for one or more traffic offenses, to include the offering of an installment plan agreement for the payment of one or more court-ordered fines of **any type**. This would allow for many incurring significant legal fees associated with the already existing fines they may have acquired, to pay their debt in a manner that takes the immediate financial burden off of them. For these reasons, we strongly urge a favorable report on **Senate Bill 897**.

**SB 897 MOPD favorable.pdf**

Uploaded by: Elizabeth Hilliard

Position: FAV



**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: Senate Bill 897- Courts and Judicial Proceedings - Court Fines - Payment**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: 03/02/2022**

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report on Senate Bill 897.

This bill establishes that if a defendant fails or is unable to pay a fine as ordered by a court, the court **must** investigate the reasons for the failure or inability to pay the fine. Currently, the court is not required to do so. The bill further alters Md. Code, Courts and Judicial Proceedings Article § 7.504 by specifying that a court may order that the individual be committed to a correctional facility if the court finds that the nonpayment of the fine is **contumacious and is not due to indigence**. Thus, ensuring due consideration is given to a person's financial situation. Further, repealing the general provision authorizing the court to direct that an individual be imprisoned until the fine, or part of the fine, is paid. Moreover, the bill extends the current provision, under § 7-504.1, which permits the court to authorize the clerk of the court to approve an individual installment plan agreement for the payment of court-ordered fines, from just traffic fines to all court ordered fines and fees.

The Maryland Office of the Public Defender urges this Committee to consider the import and alleviating undue financial hardships on those in the criminal system. Unfortunately, those hardships have unfairly impacted generations of individuals and families for nearly as long as the criminal justice system has existed. In 1971, Maryland created its Public Defender's Office to assist indigent individuals facing criminal prosecution with the assistance of counsel. A necessary, yet small, step to aid Marylanders experiencing financial strain. Maryland must do



more to address the historically imbedded and vast pathways that continue to cripple indigent individuals and families.

In 2018, JOTF released a report called “The Criminalization of Poverty” which dissects the pathways in which Maryland residents from impoverished communities unjustly encounter the Criminal Justice System. Part II of the report goes forward to outline how extensive fines and fees related to interactions with the criminal justice system impoverish Marylanders, specifically lower-income communities of color.

Marylanders from low-income communities, especially communities of color, often face gratuitous criminal-justice-related debts. These “fees for service” include court-related fees (administrative, jury, and restitution), home detention, parole and probation, public defender representation (application and reimbursement), jail room and board (especially for pretrial), mandatory drug and alcohol testing, vehicle interlock devices, criminal record expungement, as well as interest and late fees from the Central Collections Unit (CCU). The goal of fees is often to recoup costs and generate revenue. A burden that should not fall on Marylanders already experiencing financial strain.

In 2018, Alexes Harris, a sociologist at the University of Washington, estimated that 80-85% of incarcerated persons now leaving prison owe criminal justice costs. This is estimated to amount to some 10 million Americans who owe more than \$50 billion in criminal justice debt. These costs serve to further impoverish already indigent individuals leaving them in a spiral of debt. This bill is a necessary step to improve the way that our courts give due consideration to a person’s financial hardship.

Given that Maryland’s criminal justice system disproportionately, and often unnecessarily, burdens lower-income communities of color, Senate Bill 897 is an important step towards alleviating the damaging financial debts arising from court-related fines and fees. This Bill is especially critical to alleviate the burden these fees have on indigent communities, especially communities of color.

For these reasons, we strongly urge a favorable report on Senate Bill 897.

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

**2022-03-02 SB 897 (Favorable with Amendment).pdf**

Uploaded by: Steven Sakamoto-Wengel

Position: FWA

**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**

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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

**sb897.pdf**

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 897  
Courts and Judicial Proceedings – Court Fines - Payment  
**DATE:** February 23, 2022  
(3/2)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 897. The bill makes it mandatory for the court to investigate the reasons for a defendant’s failure or inability to pay a fine ordered by court, including the defendant’s financial and family situation and whether nonpayment of a fine is contumacious or due to indigence. If after investigation the nonpayment is contumacious and not due to indigence, the court may order the individual committed to a correctional facility. The proposed legislation also allows the Clerk of Court to approve an individual installment plan for the payment of the fine.

The proposed legislation makes it mandatory for a judge to investigate a defendant’s ability to pay a fine. This is an imposition upon the separation of powers and adds the role of investigator to the judge’s duties which is inappropriate and potentially unethical (*see* Article 8 of the Maryland Constitution’s Declaration of Rights recognizes “[t]hat the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other; *see also Attorney Gen. of Maryland v. Waldron*, 289 Md. 683, 699 (1981),” “There can be no doubt, however, that the deferential respect accorded the legislative branch by the judicial must neither undermine nor dilute the fundamental authority and responsibility vested in the judiciary to carry out its constitutionally required function.”).

Requiring the judge to act as an investigator is not a role that is, or should be, undertaken by a judge. While the intent of the bill is likely to ensure that defendants are not incarcerated as the result of inability to pay a fine, functionally, it would cause the court to not only to be the finder of fact but the investigator of those facts.

This bill would also have a significant operational and fiscal impact on the Judiciary. The required investigations and expansion of the availability of payment plans would consume judicial and clerical resources that would otherwise be available for processing

and trying cases, which would require additional personnel. In the proposed expansion of traffic installment payment plans (Senate Bill 234 from the 2020 legislative session), the Judiciary anticipated the need for 26 additional District Court clerks (2 in each district and 2 at the Traffic Processing Center to monitor plans). In addition to 26 additional clerks in the District Court, the circuit courts anticipate needing an additional 23.5 clerks (2 each in the 5 large courts, 0.5 each in the 7 small courts, 1 each in other courts). The total personnel and operating costs for an estimated 26 additional clerks in the District Court and 23.5 additional clerks in the circuit courts is **\$3,363,476**, in the first full fiscal year.

Installment plans are not an automated process. For traffic installment plans, in counties that have implemented the new MDEC case management system, a program is available to enter the initial payment plans, but tracking is done manually. For counties that have not implemented MDEC, the entire process is manual from the initial request and subsequent requests, notices, tracking due dates, processing payments and defaults. In addition, the Judiciary does not currently have a process in place to determine a person’s eligibility to pay. Fines collected for case types other than traffic will have to be monitored in each court location and cannot be centralized like fines collected for traffic violations, as there is no Traffic Processing Center for the processing of other types of court fines.

The Judiciary’s greatest challenge in managing payment plans is accommodating plans that include fines in multiple counties and in two different case management systems. Maintaining two separate case management systems is also an obstacle to developing and automating processes and notices.

In addition, the data shows that compliance with installment plans is insubstantial. See below:

<b>District Court Traffic Installment Payment Plan Data</b>			
<b>October 1, 2018 – December 31, 2021</b>			
<b>Month</b>	<b># of Plans Implemented</b>	<b># of Plans Defaulted On</b>	<b>Default Rate %</b>
<b>FY19 Totals</b>	<b>1,401</b>	<b>807</b>	<b>57%</b>
<b>FY20 Totals</b>	<b>1848</b>	<b>1334</b>	<b>72%</b>
<b>FY21 Totals</b>	<b>9063</b>	<b>6379</b>	<b>80%</b>
<b>FY22 Totals</b>	<b>2224</b>	<b>1817</b>	<b>83%</b>

If enacted, the Judiciary anticipates this legislation will have a significant fiscal and a significant operational impact.

<b>SB0897 Initial Cost of Implementation</b>	
Programming, including Reports	<b>\$98,871.84</b>
Additional Needed Staffing	<b>\$3,363,476.00</b>
<b>TOTAL</b>	<b>\$3,462,347.84</b>

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