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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.**

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