



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