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THE MARYLAND HOUSE OF DELEGATES
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**Testimony in Support of HB 1382 - Foster Children in Out-of-Home Placement -
Placement in Medical Facilities**
February 27, 2020 * Appropriations

What this bill matters

Today, there are multiple Maryland foster children being held in hospital emergency departments even though they have no medical reason for being there. They have been held for days and weeks and even months - no school, no outside exposure, no exercise, no playing in parks, no normal interactions with friends and family. The Department of Human Services has failed these children. This bill aims to fix this dire situation.

HB 1382 addresses the issue of foster care children being held longer than medically necessary in hospitals due to DHS's failure to ensure appropriate placements (i.e. family settings). Across the state, right now, there are foster children languishing in inpatient and medical facilities *after discharge or judicial release*. Some children are held for days past discharge; others for weeks or even months if a placement is not readily available. Other children are being shuffled from one hospital to the next until a hospital will admit them or until a placement becomes available. **This is illegal and inhumane.** There are several Supreme Court cases (*O'Connor v. Donaldson*, *Addington v. Texas*, *Olmstead v. L.C.*, etc.) that clearly define the due process rights of individuals facing involuntary civil commitment in a psychiatric facility, and those rights are being violated in the cases of these foster children in Maryland today.

It is imperative that children are **not** kept in such a restrictive environment any longer than is medically necessary. The hospital in general, and a psychiatric facility in particular, is a traumatizing place for children. The issue involves several agencies and stakeholders, many of whom you will hear from today. It also involves many children who are caught in a web of bureaucracy and are literally stuck in hospitals across the state. None of them are able to be here today, but the stories of several of these children are presented on the slides I have included.

This is a very complex and very troubling issue, which will require both carrots and sticks to correct. The bill before you focuses on ensuring that DHS discontinue its illegal and immoral practice of abandoning children in emergency rooms. DHS is failing to invest in foster care families and family supportive services to ensure that these children do not need to go into the emergency room to begin with, and have a home to go to when they are ready for release.

Because this is a difficult issue, I look forward to hearing suggested amendments and working with all those parties who are looking out for these children to do the following: 1) increase the availability of and support for foster families 2) invest in a family-first model that prioritizes keeping children with families to avoid entering foster care, and 3) fostering

collaboration between DHS and MDH so that they can achieve continuity of care and expediting appropriate placements for foster children.

What this bill does

HB 1382 requires the Department of Human Services and local DHS offices to:

- Remove a child from a hospital, emergency or inpatient facility after a medical exam by a psychiatrist shows that the child no longer needs medical or intervention care (because it is illegal to involuntarily detain anyone in a psychiatric hospital if they don't meet criteria, decided in *O'Connor v Donaldson*, 422 U.S. 563, 1975).
- Remove a child from an inpatient facility within 4 hours after the medical team agrees that the child no longer meets criteria for civil commitment and agrees to discharge the child, or an administrative law judge orders the discharge after a hearing.
- Report to a hospital any information regarding hospitalizations or attempted hospitalizations of a child within the previous 7 calendar days if certain criteria are met.
- Immediately begin placement planning for a foster child committed to an inpatient facility and report on placement planning to the Court within 7 days.
- Reimburse the hospital, emergency department, or inpatient facility for the costs associated with the child's overstay.

HB 1382 prohibits a local DHS agency from delivering a child to another hospital, emergency facility, or inpatient facility if a medical evaluation of the child in the previous seven calendar days determined that the child did not require medical intervention or care, and if no new behaviors are exhibited.

HB 1382 prohibits an emergency facility from keeping a child longer than is authorized, or admitting unnecessarily a child due to the inability of DHS to locate an appropriate alternative placement.

HB 1382 prohibits a Court from committing a child for inpatient care if an administrative law judge or clinical staff has made a determination that the child does not require such treatment. The bill also makes clear that a Court cannot commit a child solely because DHS is unable to find a suitable placement for the child.

HB 1382 requires all residential child care programs and regional institutes for foster children to report on the names of children who stayed at the facility beyond the licensing limit or beyond the time determined to be clinically necessary.

This legislation will prevent unnecessary hospital overstay by holding DHS accountable for the appropriate placement of foster children. It creates enforcement and reporting mechanisms to prevent vulnerable children from being overlooked or abandoned in unsuitable environments.

Why you should vote for this bill

Foster children are already particularly vulnerable and many are highly traumatized. Keeping children in facilities where they have limited access to important resources like school, enrichment activities and social connections will only further traumatize these

children - and it is a violation of these children's constitutional rights. This legislation protects foster children from being abandoned and forces DHS to find less restrictive placements for children when they are discharged or released from medical or psychiatric care.

This bill is essential to hold the local DHS agencies accountable for their actions, inform state agencies, CINA attorneys and other involved entities to protect foster children in the future from being subject to these atrocities. The courts have already established precedent that prohibits this the practice of warehousing foster children. This bill codifies it and provides opportunities for enforcement. This bill will hold agencies responsible, clearly delineate each party's role, and promote transparency so that we can do better by our foster children.