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POSITION ON PROPOSED LEGISLATION

BILL: SB 988 – Maryland Medical Assistance Program – Self-Directed Mental Health Services – Pilot Program

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 03/08/2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 988. This bill would move Maryland forward in our progress toward more effective and appropriate responses to individuals with serious mental illness. Further, the Mental Health Division of MOPD is uniquely positioned to address the concerns of the target population in this bill as nearly all our clients are, by definition, candidates for self-directed mental health services under SB 988.

I. SB 988 offers individualized, evidence-based mental health services to Marylanders living with severe mental illness.

Each year, thousands of Marylanders are petitioned for an emergency psychiatric evaluation and forcibly admitted to a hospital, where they become clients of MOPD. Many of these individuals are stuck in a cycle—they are forced into treatment only to leave the hospital after several days and resume their lives until they reach a point where they become a candidate for forced rehospitalization. This cycle of coercive, inflexible treatment is not working; once individuals are no longer forced to comply, they opt out of the treatment. Our clients repeatedly refused forced medication and forced treatment for a variety of reasons, including prior traumatic experiences with force treatment, medication side effects, lack of education on medication options, and lack of wrap-around services. Due to the current delivery of public mental health services, the long-term specific needs of our clients are not being met.

The reason why our clients resist forced treatment is clear. Treatment offered by the mental health system in Maryland is not individualized, it is heavily focused on medication, and it does not

allow for true autonomy in directing the course of one’s treatment. In contrast, SB 988 offers mental health treatment that is tailored to each individual and directed by the individual’s personal goals for independent living in their community. This approach utilizes services that are not available—neither current nor proposed—in our mental health system in Maryland. Such services include access to private therapists that may better meet an individual’s cultural, linguistic, or clinical needs, broader educational and vocational opportunities, increased access to housing options, and a variety of social supports designed to assist individuals in their activities of daily living.

Research over the past twenty years demonstrates promising outcomes for self-directed mental health care.¹ Our goal at MOPD in representing clients who are forced into treatment via the legal system is to advocate for their stated interests. In our experience, listening and responding to our clients about their specific, individual needs results in increased client satisfaction and a greater likelihood that the client will participate in services that are offered. Self-directed mental health care embodies this approach, and studies show individuals engaged in self-directed treatment are better able to avoid the cycle of forced rehospitalization.² As such, SB 988 allows for a system of mental health care that upholds our clients’ autonomy in health care decision-making and reduces interactions with the legal system.

II. SB 988 protects constitutional rights to bodily autonomy.

The right to bodily integrity is a well-established, fundamental constitutional principle, and courts have long held that this notion pertains to the right to refuse both medical and mental health treatment.³ Specifically, the US Supreme Court has ruled that individuals have a significant constitutionally protected liberty interest in declining antipsychotic drugs to treat mental illness, a finding that can only be overcome by essential state interests such as concern for an individual’s safety or the safety of others.⁴ Individuals who do not meet this standard should remain free to manage their mental health care as they see fit and decline treatment with antipsychotics, as many

¹ *Mental Health Self-Direction*, Human Services Research Institute <https://www.mentalhealthselfdirection.org/research> (last visited Mar. 7, 2024).

² *Self-Direction in Mental Health*, National Resource Center for Participant-Directed Services (2017), available at <https://appliedselfdirection.com/resource/#/in7b3sbjrb611ru>.

³ See U.S. Const. Amends. 5, 14; *O’Connor v. Donaldson*, 422 U.S. 563 (1975); *Addington v. Texas*, 441 U.S. 418 (1979); *Vitek v. Jones*, 445 U.S. 480 (1985); *Mercer v. Thomas Finan Center*, 476 Md. 652 (2021).

⁴ See *Sell v. United States*, 539 U.S. 166 (2003); *Washington v. Harper*, 494 U.S. 210 (1990); and *Riggins v. Nevada*, 504 U.S. 127 (1992).

find that the side effects of antipsychotics are severe⁵ and outweigh the therapeutic benefit. Self-directed mental health care offers the most constitutionally sound method of providing mental health services to individuals living with severe mental illness because it establishes a model of care that promotes self-determination and bodily autonomy. In doing so, individuals can engage in effective mental health treatment without the threat of coercion or involvement in the legal system.

In sum, the self-directed mental health care treatment model as presented in SB 988 is the best option for improving mental health care for Marylanders as it provides effective, individualized services while protecting citizens' rights to bodily autonomy. **For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 988.**

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⁵ *Washington v. Harper*, 494 U.S. 210, 230-31 (1990) (“The purpose of the drugs is to alter the chemical balance in a patient’s brain, leading to changes, intended to be beneficial, in his or her cognitive processes. While the therapeutic benefits of antipsychotic drugs are well documented, it is also true that the drugs can have serious, even fatal, side effects. One such side effect identified by the trial court is acute dystonia, a severe involuntary spasm of the upper body, tongue, throat, or eyes ... Other side effects include akathisia (motor restlessness, often characterized by an inability to sit still); neuroleptic malignant syndrome (a relatively rare condition which can lead to death from cardiac dysfunction); and tardive dyskinesia, perhaps the most discussed side effect of antipsychotic drugs. Tardive dyskinesia is a neurological disorder, irreversible in some cases, that is characterized by involuntary, uncontrollable movements of various muscles, especially around the face.” (citations omitted)).