



Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

April 1, 2024

The Honorable Luke Clippinger
Chair, Judiciary Committee
Room 101 House Office Building
Annapolis, MD 21401-1991

RE: Senate Bill 449 – Criminal Procedure – Incompetency to Stand Trial Dismissal – Letter of Opposition

Dear Chairman Clippinger and Committee Members,

The Maryland Department of Health (Department) respectfully submits this letter of opposition for Senate Bill 449 (SB) 449 entitled “Criminal Procedure – Incompetency to Stand Trial Dismissal.” Under current law, when a defendant is charged with a felony or a crime of violence, is found Incompetent to Stand Trial (IST), and is not resorted to competency, the Maryland Judiciary must dismiss the charges after the individual has remained incompetent for the lesser of five years, or the passage of time that is equal to the maximum sentence for the most severe crime charged.

SB 449 would double the amount of time in which the Judiciary must wait before dismissing the charges against an IST individual who is charged with first-degree murder or sexually assaultive behavior. Specifically, the judiciary would be required to dismiss the charges after the individual has remained incompetent for the lesser of ten years, or the passage of time that is equal to the maximum sentence for the most severe crime charged.

The Department opposes SB 449 because it impacts the clinicians’ ability to make clinically sound and independent determinations relating to discharge. The purpose of the Department Healthcare System’s psychiatric hospitals is to provide therapeutic treatment to individuals with severe mental illness. This legislation increases the time an individual would be forced to remain in an inpatient setting, overriding the ability of clinicians to discharge an individual who could be maintained safely and appropriately in a less restrictive community level of care. Department’s

psychiatric hospitals are therapeutic environments, and these commitments are meant to be rehabilitative rather than punitive.

SB 449 also interferes with the Healthcare System's ability to follow the Supreme Court's mandate outlined in *Olmstead v. L.C.*¹ Under *Olmstead*, individuals with disabilities, including behavioral health disabilities, have a right to receive treatment in the community in non-institutional settings. SB 449 would impact the System's ability to discharge individuals to an appropriate level of care for a longer period of time, even if the individual does not meet medical necessity criteria for inpatient behavioral health treatment, violating community integration requirements of *Olmstead*.

Finally, this bill would make it even more difficult for the Department's Healthcare System to comply with the statutory requirement to admit individuals who are court committed within 10 days. The Department's adult psychiatric hospitals operate 1,056 adult psychiatric beds, which are always at almost full capacity. Due to the increase in judicial evaluation and commitment orders, the Healthcare System has a court-ordered admissions waitlist for individuals who have been committed to the Department's psychiatric hospitals. Therefore, this bill could necessitate adding capacity to the existing Healthcare System facilities, particularly at Perkins, which is already undergoing a major Capital Improvement Project, or the building of additional facilities. Any additional capacity added to existing facilities or the establishment of new facilities will require significant construction.

In summary, the Department respectfully opposes this bill because it impacts the ability of clinicians to make discharge determinations as to whether an individual could be maintained in a less restrictive community level of care, impacts patients' rights in accordance with *Olmstead*, and impacts the ability to admit patients timely to the Department's adult psychiatric facilities.

If you would like to discuss this further, please contact Sarah Case-Herron, Director of Governmental Affairs, at sarah.case-herron@maryland.gov.

Sincerely,



Laura Herrera Scott, M.D., M.P.H.
Secretary

¹ 527 U.S. 581 (1999)