

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 789
Finance

(Senator Lam, *et al.*)

Involuntary Commitment - Procedures for Admission

This bill adds a local correctional facility to the list of institutions that are limited by the agreement of the Behavioral Health Administration (BHA) to pay the appropriate expenses before an application for involuntary admission may be made. BHA must accept inmates for involuntary admission in the order in which an application is received and may not refuse to admit an inmate based on the source of the inmate's referral. The bill also adds additional requirements for a physician who is conducting an emergency evaluation on an individual in pretrial detention and imposes additional restrictions on an individual who is involuntarily admitted to a facility following an emergency evaluation. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: The bill's requirements can be handled with existing resources, as discussed below. Revenues are not affected.

Local Effect: Potential minimal increase in expenditures for local correctional facilities to the extent that fewer inmates are admitted to BHA facilities. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: If an emergency evaluation is conducted on an individual who is in pretrial detention, and the individual meets the requirements for involuntary admission, the physician conducting the evaluation, in addition to requirements under current law, must

inform the court, State's attorney, and any defense counsel of the need for an order of conditional release.

If the examining physician is unable to have an emergency evaluatee who is in pretrial detention admitted to a facility, the examining physician must notify the Maryland Department of Health (MDH) that the individual cannot be admitted and include a copy of an appropriate order for conditional pretrial release issued by the court.

If an individual was involuntarily admitted after an emergency evaluation and that individual is approved for discharge from the facility, the examining physician must send a brief report of the evaluation to the court. A peace officer must return to court with the individual, the court order, and the physician's report or, if the court is not in session, take the individual to an appropriate jail, and before the end of the next day that the court is in session, return to court with the individual and the report of the examining physician.

A court order issued regarding the conditional pretrial release of an individual held in pretrial detention who, after an emergency evaluation, meets the requirements for involuntary admission, constitutes a detainer against the individual until the charges are dismissed, nol prossed, or steted or until the individual appears in court.

The bill also requires that a facility, which has completed an application for admission of an emergency evaluatee, notify, the Office of the Public Defender *or other legal counsel if applicable*, within 30 hours.

Current Law: Under the Health-General Article, application for the involuntary admission of an individual to a facility or a Veterans' Administration (VA) hospital may be made by any person who has a legitimate interest in the welfare of the individual, including local correctional facilities. However, before the Division of Correction (DOC) or the Patuxent Institution makes an application regarding an inmate in its institution, BHA must first agree to pay the appropriate expenses.

In addition to other requirements, the application must (1) state the relationship of the applicant to the individual for whom admission is sought; (2) be signed by the applicant; and (3) be accompanied by the certificates of one physician and one psychologist, two physicians, or one physician and one psychiatric nurse practitioner.

Additionally, within 12 hours of receiving notification from the health care practitioner who has certified an individual for involuntary admission, MDH must receive and evaluate the individual for involuntary admission if certain requirements are met, including that the health care practitioner is unable to place the individual in a facility not operated by MDH.

A facility or VA hospital may not admit an individual under involuntary admission unless (1) the individual has a mental disorder; (2) the individual needs inpatient care or treatment; (3) the individual presents a danger to the life or safety of the individual or of others; (4) the individual is unable or unwilling to be admitted voluntarily; and (5) there is no available, less restrictive form of intervention that is consistent with the welfare and safety of the individual.

Specified health professionals and other interested parties may petition for an emergency evaluation of an individual, which may result in the involuntary admission of the individual to a mental disorder treatment facility, if the petitioner has reason to believe that the individual (1) has a mental disorder and (2) presents a danger to the life or safety of the individual or of others. Petitions for an emergency evaluation must contain specified additional information. If an emergency evaluatee meets the requirements for an involuntary admission and is unable or unwilling to agree to a voluntary admission, the examining physician must take the steps needed for involuntary admission of the emergency evaluatee to an appropriate facility, which may be a general hospital with a licensed inpatient psychiatric unit. If the examining physician is unable to have the emergency evaluatee admitted to a facility, the physician must notify MDH, which must provide for the admission of an emergency evaluatee to an appropriate facility within six hours of receiving notification. Within 30 hours after the facility completes an application for the involuntary admission of an emergency evaluatee, the emergency facility must notify the Office of the Public Defender.

Within 12 hours after initial confinement to a facility, the facility must provide the individual with a form, provided by BHA, which explains the individual's rights, including the right to consult with a lawyer. An individual who is proposed for involuntary admission must be afforded a hearing to determine whether the individual should be involuntarily admitted or released, which must be conducted within 10 days of initial confinement.

A court may order an emergency evaluation of an individual who has been arrested, if the court finds probable cause to believe that the individual has a mental disorder and the individual presents a danger to the life or safety of the individual or others. Any court order constitutes a detainer against the individual until the charges against the individual are dismissed, nol prossed, or stotted or until the individual is returned to court. If an individual was lawfully detained before the court ordered emergency evaluation and the individual does not meet the requirements for involuntary admission, the examining physician must send a brief report of the evaluation to the court; a peace officer must return to court with the individual, the court order, and the physician's report or if the court is not in session, take the individual to an appropriate jail, and before the end of the next day that the court is in session, return to court with the individual and the report of the examining physician.

Background:

Incarceration of the Seriously Mentally Ill Nationally

According to a 2016 background paper published by the Treatment Advocacy Center, serious mental illness has become so prevalent in the U.S. corrections systems that approximately 20% of inmates in local jails and 15% of inmates in state prisons are estimated to have a serious mental illness. Based on the total inmate population, approximately 383,000 individuals with severe psychiatric disease were behind bars in the United States as of 2014 – nearly 10 times the number of patients remaining in the nation’s state psychiatric hospitals.

Current Law in Practice

While there is currently a requirement that MDH admit a person certified for involuntary admission to an appropriate facility within 12 hours of receiving notice of the certification or within 6 hours for an emergency evaluatee, there is no penalty provision or compulsion mechanism. MDH reports that BHA’s facilities admissions policy currently considers inmate civil certifications fourth priority after (1) conditionally released patients returning voluntarily or pursuant to a hospital warrant and mandatory releases from the Department of Public Safety and Correctional Services who meet the criteria for involuntary admission; (2) patients committed as not criminally responsible (NCR) or incompetent to stand trial (IST) and dangerous; and (3) patients referred to MDH for examination regarding competency to stand trial or a juvenile court order for examination or deposition. Along with individuals certified for admission from DOC or a local correctional facility, the fourth priority consists of other admissions in which there is no court involvement, such as a referral from a community hospital. However, there is no level of priority that admits patients within 6 hours or even 12 hours.

MDH is required to admit a person found IST or NCR to a facility within 10 days or face contempt proceedings in which a court can impose sanctions to reasonably compel compliance, including reimbursement for incurred expenses. However, MDH reports that, as a result of meeting these admission requirements, MDH facilities are operating at 100% capacity.

State Expenditures: The Office of Administrative Hearings (OAH) advises that the bill could generate a significant increase in the number of contested involuntary admission hearings that it holds to determine whether individuals should be involuntarily admitted for inpatient psychiatric treatment. OAH further advises that it believes it can conduct any additional involuntary admission hearings with existing resources. The Department of Legislative Services advises that the number of contested involuntary admission hearings will continue to be limited by BHA’s inability to admit inmates from local correctional

facilities into a BHA facility and will be further limited under the bill by the requirement that BHA agree to pay appropriate expenses before a local correctional facility may apply to have an inmate in its custody involuntarily admitted. Thus, the number of involuntary admission hearings will not be materially affected.

MDH advises that, due to the fact that BHA facilities currently operate at 100% capacity, it is unlikely that BHA will be able to agree to pay the appropriate expenses for local correctional facilities to apply for involuntary admission of inmates in their custody. Because the number of applications for involuntary admission related to inmates in local correctional facilities will be limited by BHA's agreement to pay the appropriate expenses, BHA can likely meet the bill's requirements with existing resources.

Though not required by the bill, MDH further advises that in order for BHA to be able to agree to pay the appropriate expenses for the involuntary admission of inmates in local correctional facilities, DOC, and the Patuxent Institution, BHA will need additional capacity.

Local Expenditures: Although local correctional facilities are able to certify inmates for involuntary commitment under current law without BHA's approval, BHA is often unable to accept certified inmates for long periods of time due to lack of capacity. While the bill imposes an additional limitation on when a local correctional facility may apply to have an inmate in its custody involuntarily committed, it is unlikely to create a significant change in the number of inmates from local correctional facilities ultimately admitted to BHA facilities. Nevertheless, to the extent that fewer inmates in local correctional facilities are admitted to BHA facilities under the bill, expenditures for local correctional facilities may increase. (Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.)

Additional Information

Prior Introductions: None.

Cross File: HB 1204 (Delegates Barron and Moon) - Health and Government Operations.

Information Source(s): Montgomery and Prince George's counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of Public Safety and Correctional Services; Office of Administrative Hearings; Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2019
mag/jc

Analysis by: Amber R. Gundlach

Direct Inquiries to:
(410) 946-5510
(301) 970-5510