

HB 1160

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 1160

(Delegates Kipke and Henson)

Health and Government Operations

Mental Health Law - Reform of Laws and Delivery of Service

This bill modifies the standard for involuntary admission to require that an individual *is reasonably expected, if not hospitalized, to present a danger to the life or safety of the individual or of others* (rather than that the individual *presents* a danger to the life or safety of the individual or of others). The bill also defines “danger to the life or safety of the individual or of others.” The Maryland Police Training and Standards Commission (MPTSC) must provide information regarding the new definition of “danger to the life or safety of the individual or of others” to all schools that conduct police entrance-level and in-service training courses, including State, regional, county, and municipal training schools. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase by an indeterminate but potentially significant amount in FY 2023 and potentially in subsequent years, to the extent that more emergency petitions are filed and more involuntary admissions occur, as discussed below. To the extent the bill accelerates involuntary admissions and ultimately reduces the length of stay, readmissions, and criminal involvement for certain individuals, expenditures may decrease over time. MPTSC can provide the specified information to all training schools as required using existing budgeted resources. Revenues are not affected.

Local Effect: To the extent that additional emergency petitions are filed in circuit courts, expenditures may increase. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: “Danger to the life or safety of the individual or of others” means a substantial risk, in consideration of the individual’s current condition and, if available, personal and medical history, that as a result of the mental disorder the individual will (1) cause bodily harm to the individual or another individual; (2) be unable, except for reasons of indigence, to provide for the individual’s basic needs, including food, clothing, shelter, health, or safety due to the persistence of active psychosis, delusions, or hallucinations; or (3) suffer substantial deterioration of the individual’s judgment, reasoning, or ability to control behavior, provided that the individual is currently unable to make a rational and informed decision as to whether to submit to treatment.

Current Law:

Involuntary Admission

Under the Health-General Article, an application for involuntary admission of an individual to a facility or Veterans’ Administration hospital may be made by any person who has a legitimate interest in the welfare of the individual. 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, the Maryland Department of Health (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 Veterans’ Administration 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.

At any time, 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 of others.*

Within 12 hours after initial confinement to a facility, the facility must provide the individual with a form, provided by the Behavioral Health Administration, 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. The hearing officer must consider all the evidence and testimony of record and order the release of the individual from the facility unless the record demonstrates by clear and convincing evidence that, at the time of the hearing, each of the following elements exists: (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 voluntarily admitted to the facility; and (5) there is no available less restrictive form of intervention that is consistent with the welfare and safety of the individual. Additional findings must be made if the individual to be admitted is at least age 65.

Maryland Police Training and Standards Commission

Chapter 519 of 2016 reconstituted the former Police Training Commission as MPTSC, an independent commission within the Department of Public Safety and Correctional Services. MPTSC operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation with various entities, it also sets minimum qualifications for instructors and certifies qualified instructors for approved training schools.

State Expenditures: There is an operational and fiscal impact on the Judiciary from increased caseloads to review emergency petitions in the District Court. Additionally, general fund expenditures for MDH, the Office of Administrative Hearings (OAH), and

the Office of the Public Defender (OPD) increase in fiscal 2023 and potentially in subsequent years to the extent that more involuntary admissions occur under the bill.

However, to the extent the bill accelerates involuntary admissions and ultimately reduces the length of stay, readmissions, and criminal involvement for certain individuals, expenditures may decrease over time.

Judiciary

Under the bill, if a petitioner for an emergency evaluation is not a specified health care professional, health officer, or peace officer, the petitioner must present the petition to the court for immediate review, and the court must review the case to make a probable cause determination that the emergency evaluatee has shown the symptoms of a mental disorder and that the individual *is reasonably expected, if not hospitalized, to present* a danger to the life or safety of the individual or of others. As such, the caseloads for the District Court could be greatly increased. The Judiciary advises that the number of additional cases cannot be reasonably determined; there were 3,458, 3,799, and 4,110 emergency petitions filed in the District Court in fiscal 2019, 2020, and 2021, respectively. Thus, expenditures increase to the extent that additional emergency petitions are filed under the bill.

Maryland Department of Health

The modified standard for involuntary admission to a State facility for treatment expands the number of individuals who may be subject to involuntary admission. Thus, to the extent that additional involuntary admissions occur as a result of the bill, general fund expenditures increase to cover the cost of additional admissions.

To the extent the bill accelerates involuntary admissions and ultimately reduces the length of stay and readmissions for certain individuals, these expenditures may decrease over time.

Office of Administrative Hearings

Individuals who are involuntarily admitted are entitled to a hearing within 10 days of the initial admission. OAH advises it employs administrative law judges (ALJs) who preside over all involuntary admission hearings. Currently, OAH conducts hearings for 34 different behavioral health units divided among 19 different dockets; each docket is conducted once a week for a total of 988 dockets each year. Additionally, OAH advises that, in fiscal 2020, 1,345 cases were heard. OAH further advises that it can likely handle any additional hearings generated under the bill provided the increase is small. However, OAH must hire one additional ALJ for every four additional dockets per week (a total of

208 dockets per year). Thus, to the extent that 283 extra hearings per year result under the bill, OAH requires one additional ALJ.

In addition, OAH advises there would be an operational impact to train its ALJs on the substantive aspects of the bill. The Department of Legislative Services (DLS) advises that the training can be implemented using existing budgeted resources.

To the extent the bill accelerates involuntary admissions and ultimately reduces readmissions for certain individuals, expenditures may decrease over time.

Office of the Public Defender

Individuals who are involuntarily admitted are entitled to representation by counsel, almost exclusively provided by OPD, for the required hearing following initial admission. OPD advises that it anticipates a large number of additional cases, but the cases that require OPD representation will be impacted by the current shortage of inpatient psychiatric beds. According to its 2021 [annual report](#), appropriate annual caseload standards for the Mental Health Division is 689 cases per attorney. However, in 2021, the division handled 1,112 cases per attorney, well over the specified caseload standard. Nevertheless, DLS advises that expenditures for OPD increase to hire at least one additional attorney for every 689 additional cases that require OPD representation for an involuntary admission under the bill.

To the extent the bill accelerates involuntary admissions and ultimately reduces the length of stay to less than 10 days and readmissions for certain individuals, these expenditures may decrease over time.

Local Expenditures: The Judiciary advises that there were 404, 340, and 971 emergency petitions filed in circuit courts during fiscal 2019, 2020, and 2021, respectively. Thus, local expenditures may increase to the extent that additional emergency petitions are filed in circuit courts.

Additional Comments: The 2020 [final report](#) of the Commission to Study Mental and Behavioral Health, chaired by Lieutenant Governor Boyd K. Rutherford, recommended development of a clear statutory definition of danger of harm to self or others.

Additional Information

Prior Introductions: HB 1344 of 2021 received a hearing in the House Health and Government Operations Committee but was withdrawn. Its cross file, SB 928, was referred to the Senate Finance Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Charles, Frederick, and Montgomery counties; City of Havre de Grace; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; Department of Veterans Affairs; Office of Administrative Hearings; Department of Legislative Services

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