

BILL: HB1382

POSITION: SUPPORT

DATE: February 27, 2020

The Mental Health Division (MHD) of the Office of the Public Defender represents clients in involuntary civil commitment hearings in 33 hospitals across the State of Maryland. Last year the MHD represented children in approximately 380 involuntary civil commitment cases. The vast majority of those children were in the custody of DSS. Since 2017, the OPD has worked with hospitals around the State to address the issue of children remaining on involuntary inpatient psychiatric units after discharge or judicial release. After a number of unsuccessful attempts to resolve this issue in Maryland courts, the MHD sought the assistance of two law firms, Venable, and Brown, Goldstein and Levy, to pursue civil rights litigation on behalf of these foster children in Federal Court. We also worked with Maryland legislators to develop legislative solutions to this issue.

The Mental Health Division of the Office of the Public Defender supports this bill for the following reasons:

1. Since at least 2017, children in local DSS custody are languishing in inpatient psychiatric units after discharge or judicial release because DSS, citing lack of available placement options, refuses to remove them.
2. Prolonged hospital stays are very destructive to children who already are highly traumatized due to physical abuse, sexual abuse, or neglect.
3. Foster children who needlessly occupy scarce inpatient psychiatric beds cause other children to suffer longer stays in emergency departments waiting for scarce beds to open.
4. DSS has been aware of this problem since at least 2017 has done nothing to resolve the issue.
5. Neither the hospitals nor the courts have been able to solve this issue.
6. This bill forbids DSS from failing to remove a child from a hospital or emergency room when the child does not require medical intervention or care.
7. This bill clarifies that no overlapping jurisdiction exists which would allow various county DSS agencies or courts to sidestep the Maryland Health-General Article requirements for receiving involuntary inpatient care.

Children are Languishing in Inpatient Psychiatric Units

Since 2018, the MHD has represented approximately 90 children who were either bounced from emergency department to inpatient psychiatric unit to emergency department or who remained hospitalized on inpatient psychiatric units after discharge or judicial release because DSS refused to remove them.

Prolonged Hospital Stays are Destructive to Children

Prolonged hospital stays are very destructive to children. Foster children have already been traumatized by abuse and neglect. Many of them have been abandoned by their biological parents. Many foster children have behavioral difficulties derivative of the trauma they suffered. These children, who feel abandoned yet again, begin to deteriorate emotionally and behaviorally when DSS refuses to remove them from the hospital after they have been discharged or judicially released. Children who have been unnecessarily hospitalized can become angry and act out impulsively. The lack of schooling and the isolation from friends, siblings, and other family can cause children to lag behind peers when they return to school, and can impact their social development. Inpatient psychiatric units are acute care units and are not designed to provide long term care. Accordingly, these units typically do not provide educational programs or other age appropriate therapeutic activities that would be available to foster children in appropriate long term placements. The State is failing these vulnerable children.

Inpatient Psychiatric Bed Shortage

There is currently a severe shortage of inpatient psychiatric beds for children in Maryland. Children may stay for days or weeks in emergency departments waiting for beds on inpatient units. This shortage is even more acute for children with autism spectrum disorder or other neurocognitive disorders. Warehousing children who do not meet the criteria for involuntary commitment in inpatient psychiatric units exacerbates this shortage. While prompt removal of children from inpatient psychiatric units will not solve the bed shortage issue, every little bit helps.

DSS is Aware of this Issue

DSS has been aware of this issue since at least 2017, and has seemingly done nothing to resolve this issue. DSS continues to warehouse foster children in emergency departments, sometimes moving children from emergency department to emergency department, and on inpatient psychiatric units simply because they have no other placements available. Despite the current publicity surrounding this issue and the interest shown by legislators and child welfare organizations, DSS continues (as recently as today) to unnecessarily hospitalize these children.

Courts and Hospitals Alone Cannot Fix This Issue

The use of hospitals to warehouse children is illegal, but hospitals cannot safely discharge minor foster children to the streets. Hospitals have worked with the OPD to file Petitions for Writs of Habeas Corpus seeking the release of these children in Circuit Courts around the State. Circuit Court judges have been reluctant to act on these Petitions. Most courts have been

unwilling to order DSS to remove the illegally held child, frequently relying on the existence of a concurrent CINA case to avoid hearing the merits of the Habeas Petition.

This bill clarifies that no overlapping jurisdiction exists which would allow various county DSS agencies or courts to sidestep the Health General requirements for receiving involuntary patient care, and gives hospitals a statute to rely on when DSS abandons their wards despite a physician ordering discharge or a judge ordering release.