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Health and Government Operations Committee
Subcommittees
Government Operations and Health Facilities
Insurance and Pharmaceuticals

Joint Committee on Legislative Ethics
Legislative Policy Committee
Rules and Executive Nominations Committee
Spending Affordability Committee

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Committee Testimony Offered to the Health & Government Operations Committee

HB1344 - Mental Health Law - Reform of Laws and Delivery of Service

The final 2020 report of the Maryland Mental and Behavioral Health Commission, chaired by Lt. Governor Rutherford expressly called for Danger Standard legislation:

> *Recommendation Nine: Clear Statutory Definition of Harm to Self and Others Through the work of the Youth and Families subcommittee and from compelling public testimony before the commission from family members of individuals in crisis it is crucial for the State to develop a clear and unambiguous standard for determining when individuals in crisis poses a danger to themselves and others in order to give caregivers and public safety officials clear standards for action to alleviate this danger. The commission recommends legislation that provides a clearer statutory definition of danger of harm to self or others. The currently widely used standard of "immediacy" is insufficient.*

The purpose of this bill is to address a longstanding problem with mental health civil commitment in Maryland – a problem not with what the law *says*, but with what it leaves unexplained.

When a person with severe mental illness falls into a psychiatric crisis and cannot recognize their own desperate need for hospital care, our law allows for "civil commitment" (involuntary hospitalization), so that the person may be stabilized in a controlled medical setting and assisted in getting back to their life in the community as soon as possible. As in all states, one of the key findings required for civil commitment under our law is that the person is currently a danger to themselves or others.

The problem is that we are one of only five states whose civil commitment law offers no guidance as to what "danger to self or others" means. As you might

imagine, interpretations of this critical phrase have varied widely among the various professionals who must make decisions under this law – including police and emergency responders, clinicians and judges. Too often, the prevailing view is that a person is not "dangerous" unless and until they are violent, suicidal, or engaging in outrageously hazardous conduct such as walking into traffic.

As reflected in the many tragic stories shared by Maryland families in the testimony we have received today, the impact of this narrow reading of the law is often disastrous and irreversible. Families are routinely told that their loved one -- despite being severely mentally ill, in a state of psychosis or delusion, and clearly trapped in a downward spiral – cannot be helped ***yet*** because they haven't demonstrated a clear danger of causing physical injury to anyone. And so families can do nothing but helplessly wait for their loved one to prove their dangerousness through some dramatic, terrible action. They pray that this action, when it comes, does not result in the death or serious injury of the person, or another family member, or a random stranger. And they pray that the person's actions do not land them in a jail or prison cell. Sometimes these individuals and their families are relatively fortunate in how things work out … (*this* time, at least). All too often they are not.

This bill is not the entire solution to our mental health system's deficiencies in serving people in crisis, but it represents a huge step in the right direction. The goal is to facilitate more timely treatment by clarifying that a person need not be violent, suicidal or alarmingly reckless to be "dangerous" enough to warrant intervention. More specifically, the bill would recognize two key circumstances where "danger to self" should not be in question:

First, it would make clear that an individual is dangerous to self if, ***as a result of their untreated mental illness and NOT as a result of indigence***, they cannot meet their basic survival needs of food, clothing, shelter, health or safety. Language of this nature is included in the laws of all 45 states that currently have statutory definitions of "danger to self or others."

Second, it would make clear that a person is a danger to themselves when they are unable to make a rational and informed treatment decision and their untreated mental illness places them at serious risk of ***substantial psychiatric deterioration***, i.e., loss of basic mental functioning. Similar language to this can be found in the civil commitment laws of 24 states. It is rooted in ample research demonstrating that the longer a person remains in a state of untreated psychosis, the lower their prospects for recovery and the greater their risk of sustaining physical brain damage. To put it simply, when the need for treatment of psychosis arises, time is a luxury we just don't have.

Common sense should tell us that the circumstances covered by this bill represent real danger to a person who is refusing care. Nobody thinks that involuntary treatment should be anything other than a last resort. This bill would leave intact the current law's requirement of clear and convincing evidence that the person has been offered and has refused voluntary care. But however much we may prefer that a person enter the hospital voluntarily, we must recognize that this isn't always a viable option. By no fault of their own, people with untreated severe mental illness are sometimes robbed of the ability to recognize their own illness and need for care. This bill is designed to ensure that we make treatment possible for such a person *before* they decompensate to the point that they are violent or suicidal, and hopefully before they fall into the trap of criminalization.

There is no reason to expect this bill to lead to a flood of additional people arriving in emergency rooms and psychiatric inpatient units. Rather than speculate wildly about this, we should look to the many states that have long had definitions of "danger" in their law substantially similar to this bill. There is nothing in the data to suggest that these states have higher rates of hospitalization per capita than we do. Rather than add to the number of people hospitalized, this bill would make it possible for the same individuals cycling through our system now to get care at an earlier stage of that cycle -- when they are less acutely ill, more responsive to treatment, and not ensnared in the criminal justice system. The net effect of this bill will be *less* hospitalization, not more.

Nor should this bill raise civil liberty concerns. All due process protections, so well developed in Maryland's current law, remain in place, including legal representation and judicial hearings. The proposed language is in keeping with the well-accepted civil commitment standards of states such as Colorado, Illinois and Minnesota. I would be happy to furnish members of the committee with examples of these laws from other states.

I urge the committee to support HB1344 to help Marylanders in crisis and their families to secure treatment before tragedy. I also ask any members of the committee who harbor doubts as to whether this bill is needed to carefully read all of the testimonies received today from Maryland families who have suffered greatly from the overly narrow conception of dangerousness that frequently prevails in our state. Thank you. I would be happy to answer any questions.