

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Appropriations Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 406
Children in Out-of-Home Placement – Placement in Medical
Facilities
DATE: February 9, 2022
(2/15)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 406. The bill amends § 3-816.1 of the Courts and Judicial Proceedings Article, which governs out-of-home placement for children in need of assistance. The bill creates new restrictions and procedures for youth who are placed in a psychiatric care facility or emergency facility.

Although the Judiciary understands the intent of this legislation, implementation is problematic. First, the bill contains several mandatory provisions. The bill limits the court's discretion and authority to commit a child for inpatient care and treatment in a psychiatric facility. Specifically, the court may not commit a child for such treatment if: (1) an administrative law judge (ALJ) has made a determination that the child does not require such treatment; (2) clinical staff of the facility caring for the child has determined that the child does not meet the medical standard for hospitalization; or (3) commitment is sought due to the inability of a local department to find another suitable placement for the child. The bill also states that the court may not commit a child for inpatient care unless the court finds, on the record, that a licensed psychiatrist or psychologist has examined the child within the preceding 48 hours and made the requisite findings about the child's mental health.

This bill would strip the court of its authority to order a youth to be kept in a facility while the arrangements for his or her placement are being made. This includes, for example, a youth for whom a placement has been found, but at which there is a wait list, or a youth for whom the only available placement is out of state, and arrangements for transportation and other logistics simply cannot be made within the timeframe required by this bill. Removing the court's authority to order a youth to be held at a facility pending placement increases the risk of harm to both the youth and the community. It is often exceedingly difficult to find a placement for these youth, and the placements that exist are often out of state. Even when a placement can be found, it is not likely to be

feasible to transfer a child to that placement within the timeframe mandated by this bill, and the bill would strip the court of its authority to order a youth to be kept in a facility while the arrangements for his or her placement are being made.

The proposed language regarding administrative law judges would also have a significant impact on these hearings. The bill mandates that the findings of an administrative law judge are admissible as evidence in a hearing under this subtitle. The Department is not permitted to have a representative attend the hearings before the ALJ. This bill would effectively prohibit the juvenile court from conducting a full evidentiary hearing and would prevent the court from effectively making a decision that is in the best interest of the child. It would hamstring the court's ability to hear evidence and make findings of fact and would instead require the court to base much of its decision on the administrative law judge's findings, in essence substituting the ALJ's judgment for its own. This runs counter to the court's mandate to hear all the evidence and make a determination based on the best interests of the child.

cc. Hon. Kirill Reznik
Judicial Council
Legislative Committee
Kelley O'Connor