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Senate Bill 807-Frederick County- Mental Health Law-Assisted Outpatient Treatment Pilot Program

Finance Committee

March 8, 2022

Position: Unfavorable

Disability Rights Maryland (DRM) is Maryland's designated Protection & Advocacy agency, and is federally mandated to defend and advance the civil rights of individuals with disabilities. In particular, DRM supports the rights of individuals with disabilities to receive appropriate supports and services to live safe, meaningful, and productive lives in their communities. DRM supports the rights of individuals with disabilities to actively participate in their treatment care plan. DRM opposes Senate Bill 807, which will establish an Assisted Outpatient Treatment (AOT) pilot program in Frederick County, and would allow a court to order Frederick County residents to adhere to an outpatient mental health treatment regimen based on the individual's likelihood of "deterioration," thereby forcing treatment, violating the civil rights of those with psychiatric disabilities, and creating disparities in treatment that will impact people of color.

Mandating involuntary outpatient commitment is an infringement on an individual's constitutional rights. Aspects of SB 807 are particularly concerning. SB 807 would force an individual living in the community to submit to a psychological examination. While the proposed bill requires "clear and convincing evidence" for the court to mandate that an individual adhere to the AOT, the bill requires only "probable cause" for an individual to be "taken into custody and transported to an appropriate facility to be examined by a psychiatrist if they fail to show up for the psychological examination that is required for the AOT." This standard could potentially violate the civil rights of individuals with psychiatric disabilities, and will increase disparate treatment and harm to people of color.

The process in SB 807 for creating the individual's mandated treatment plan is equally concerning. SB 807 states that the respondent "shall be given a reasonable opportunity to participate in the development of the treatment plan," but fails to provide a meaningful way for the affected individual to contribute to the plan. SB 807 further states that "types of medication to be taken shall be identified, although the specific medication or doses need not be identified." This assumption of medication as a course of treatment is alarming, given an individual's right to choose medication or refuse medication, including type and dosage, considering the long-lasting and permanent harmful side effects of many psychiatric medications. Pursuant to the Due Process Clause of the Fourteenth Amendment, an individual has a constitutionally protected liberty interest in being free from forced administration of psychiatric medication. SB 807 raises significant constitutional questions regarding coercive medication under an AOT program, since an individual could be subject to an Emergency Petition solely for failing to follow the court-ordered treatment plan, including any medication specified by such plan.

SB 807 also permits an individual's mental health advance directive to be disregarded. The bill proscribes that an individual's advanced directive "shall be honored... unless considered contrary to the best interest of the respondent by the psychiatrist." This bill could take away an individual's ability to have a say in their psychiatric care that is already guaranteed in Maryland law, through forced participation in the AOT. This right should not be abridged solely because a person is diagnosed with a mental health disability.

In his State of the Union address last week, President Biden called for parity between mental health and physical health. SB 807 only exacerbates the lack of parity by forcing treatment for those with psychiatric disabilities in the community.

The legislature must also consider at what point an individual living in the community with a psychiatric disability will be free from submitting to the AOT and forced treatment. SB 807 as drafted exposes a person living in the community with a psychiatric disability, who is not a danger to themselves or others, to the constant risk of being subjected to forced treatment and continual commitment to this program.

Research and data on outpatient commitment show it confers no additional benefit beyond access to effective community services. The threat of forced treatment, with medication that has harmful side effects, often deters individuals from voluntarily seeking treatment. A recent study involving individuals with schizophrenia in mandatory community programs, published in *European Psychiatry*, concluded that patients who are more engaged in their treatment decisions exhibit improved treatment outcomes, that patient participation includes being involved in decision making or expressing attitudes about different treatment options and that an increased emphasis on collaborative care has the potential to increase the participation of patients in their own treatment and improve their autonomy.¹ Finally, as stated throughout this testimony, mandating treatment in the community without imminent health and safety concerns raises serious constitutional concerns.

Instead of passing legislation that would expand coercive treatment in Maryland, we urge you to prioritize developing and funding additional community mental health and behavioral support services, establishing treatment alternatives that are trauma-informed, culturally appropriate, and which utilize peers and evidence-based treatment modalities to meet individuals where they are. While targeting individuals with mental health disabilities, in practice this bill would also negatively impact individuals with developmental disabilities, those with traumatic brain injuries, and others with physical and behavioral health disabilities, as these individuals might find themselves targeted by this bill.

DRM encourages the Committee to consider the negative impact of this bill on the disability community in Maryland. **Disability Rights Maryland opposes Senate Bill 807 and urges an unfavorable report.** For more information, please contact Karen Foxman, Esq., at (410) 727-6352 ext. 2477 or KarenF@DisabilityRightsMD.org.

¹ Joanne E. Plahouras et al., Experiences with legally mandated treatment in patients with schizophrenia: A systematic review of qualitative studies, 63 *European Psychiatry* e39 (2020), available at <https://www.cambridge.org/core/journals/european-psychiatry/article/experiences-with-legally-mandated-treatment-in-patients-with-schizophrenia-a-systematic-review-of-qualitative-studies/98603E48CF32F7B2DF0CE9C082EB6155>