

**House Bill 1160 Mental Health Law – Reform of Laws and Delivery of Service**

Health and Government Operations Committee

March 9, 2022

**Position: OPPOSE**

The Mental Health Association of Maryland is a nonprofit education and advocacy organization that brings together consumers, families, clinicians, advocates and concerned citizens for unified action in all aspects of mental health and substance use disorders (collectively referred to as behavioral health). We appreciate the opportunity to provide this testimony in opposition to House Bill 1160.

HB 1160 defines “danger to the life or safety of the individual or others” for purposes of an emergency psychiatric evaluation and involuntary commitment to a psychiatric facility as including those individuals at risk of psychiatric deterioration. The bill would also broaden involuntary commitment to include individuals who are “*reasonably expected, if not hospitalized*” to present a danger to self or others.

**Psychiatric Deterioration and Predicting Future Dangerousness**

The U.S. Supreme Court holds that states may not confine to a hospital a “non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.”<sup>1</sup> HB 1160 would define as “dangerous” those individuals at risk of psychiatric deterioration. However, just because an individual’s mental health symptoms may be worsening does not necessarily make them a danger, nor does it mean involuntary hospitalization is the clinically appropriate level of care.

Predictions of future dangerousness are notoriously unreliable. Studies have consistently found that unstructured clinical assessments of future dangerousness are “accurate in no more than one out of three predictions”<sup>2</sup> and only “slightly more reliable than chance.”<sup>3</sup> Adding the variable of “deterioration” and extending the potential danger to an unspecified distant future will increase the already high error rates of involuntary detention and commitment.

And if trained and experienced mental health professionals would struggle to accurately predict future dangerousness based on psychiatric deterioration, it seems reasonable to assume that law enforcement and lay persons would perform exponentially worse. While police officers may be able to assess, based on direct observation, whether a person is currently acting in a

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<sup>1</sup> *O’Connor v. Donaldson*, 422 U.S. 563 (1975).

<sup>2</sup> Monahan, J., *Structured Risk Assessment of Violence*, *Textbook of Violence Assessment and Management* 17, 20-21 (Simon and Tardiff eds., 2008).

<sup>3</sup> See, e.g., *In re the Detention of D.W., et. al. v. the Department of Social and Health Services*, No. 90110-4 (Supreme Court of Washington, August 7, 2014)

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dangerous manner, they have no expertise to form a reasonable basis that someone is experiencing “psychiatric deterioration” which will result in future dangerousness.

With respect to lay persons, a petition for a psychiatric evaluation currently requires a description of the dangerous behavior that is believed related to mental illness, which enables a judge or district court commissioner to determine whether there is an objectively reasonable basis for involuntary detention. This review provides at least some minimum level of due process protection against speculative subjective opinions rendered by non-professionals. Under a “psychiatric deterioration” standard, however, petitions would have to be approved based precisely on such subjective speculation that a person’s mental health is declining and that this decline is an inherent danger to self or others.

### **BHA Involuntary Commitment Workgroup**

At the request of the Lt. Governor, the Behavioral Health Administration (BHA) was charged last year with reviewing current civil commitment laws and examining the definition of dangerousness and grave disability. Over a period of two months, BHA led a diverse group of stakeholders over four workgroup meetings to better define the language of civil commitment. The purpose of the meetings was to review national best practices on civil commitment and develop recommendations to provide greater clarity to Maryland’s civil commitment definition.

This was an inclusive process that included representatives from consumer and family advocacy organizations, behavioral health providers and professionals, legal rights organizations, individuals with lived experiences, hospitals, local system managers and others. The process resulted in several recommendations for improving the involuntary commitment process in Maryland, including a revised definition of the dangerousness standard ([see pgs. 14-15 of the final report](#)). The definition in HB 1160 goes well beyond the definition agreed to by a majority of the workgroup participants.

**For these reasons, MHAMD opposes House Bill 1160 and urges an unfavorable report.**