Testimony for SB 586.pdfUploaded by: Cory McCray Position: FAV

Cory V. McCray

Legislative District 45

Baltimore City

DEPUTY MAJORITY WHIP

Budget and Taxation Committee

Subcommittees

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Pensions

Chair, Public Safety, Transportation, and Environment



THE SENATE OF MARYLAND Annapolis, Maryland 21401

James Senate Office Building 11 Bladen Street, Room 221 Annapolis, Maryland 21401 410-841-3165 · 301-858-3165 800-492-7122 Ext. 3165 Cory.Mccray@senate.state.md.us

Testimony in Support of Senate Bill 586 Criminal Procedure - Pretrial Release of Defendant - Notice

Dear Chairman Smith and Members of the Judicial Proceedings Committee:

I write to urge you to **support** Senate Bill 586. Requiring courts and the Office of the State's Attorney to report information on criminal defendants and their release status is a critical step in establishing transparency and notice amongst our law enforcement agencies.

Under the current laws, there are no provisions that mandate notice to arresting law enforcement agencies regarding the pre-trial release of criminal defendants, formerly under their purview. With Senate Bill 586, the courts and the Office of the State's Attorney is directed to notify the associated law enforcement agency within 48 hours of the release of a defendant, arrested by that agency, if that defendant has been charged with first-degree murder; second-degree murder; attempted first-degree murder; attempted second-degree murder; robbery with a dangerous weapon; and armed carjacking. It is imperative that this information is communicated with law enforcement agencies in efforts to promote shared knowledge of the status of violent offenders within our communities.

If enacted, Senate Bill 586 shall take effect October 1, 2022, and will require that certain practices be adopted in accordance with the law.

In efforts to foster systemic transparency and awareness across the board, I respectfully request a favorable report of Senate Bill 586.

Respectfully submitted,

Cory V. McCray State Senator, 45th District

HTPP FAV Testimony SB 598- FINAL.pdf Uploaded by: Jessica Emerson

Position: FAV



Testimony of the Human Trafficking Prevention Project

BILL NO: Senate Bill 568

TITLE: Health Records and Reporting of Overdoses – Limitations on Use in

Criminal Investigation or Prosecution

COMMITTEE: Judicial Proceedings HEARING DATE: February 23, 2022

POSITION: FAVORABLE WITH SPONSOR AMENDMENTS

Senate Bill 568 with sponsor amendments would mend a loophole in Maryland's current overdose data collection law by clarifying that no information contained within an overdose victim's medical records may be used for criminal investigations or prosecutions. The Human Trafficking Prevention Project at the University of Baltimore School of Law supports this bill because it will reduce the risk of overdose for people who trade sex, including trafficking survivors, many of whom are using drugs to cope with the trauma of their trafficking experience.

Drug overdoses continue to be a serious public health challenge in Maryland. The number of opioid-related deaths increased by 20% between 2019 and 2020, and preliminary data indicates a continued increase in 2021. In 2018, Maryland enacted a law requiring emergency service providers to report overdose information to overdose mapping applications in an attempt to gather concrete public health data on overdoses occurring within the state. In an attempt to prevent the use of this data from being examined by law enforcement and used for prosecutorial purposes, the statute specified that the "[o]verdose information reported by an emergency medical services provider" to these mapping applications "may not be used for a criminal investigation or prosecution."

Despite this specified ban on use of the overdose data, various criminal justice actors have interpreted this as merely preventing law enforcement from taking the medic-reported information *directly from the mapping applications*, while still allowing them to obtain the same information from the separately maintained, medic-created medical records concerning these overdoses. **This undermines the intended benefits of the law, which is to protect the privacy of the overdose victim rather than subjecting them to increased police scrutiny and potential prosecution**. Senate Bill 568 with sponsor amendments would correct this ambiguity by clarifying that no data from the mapping system *or* from the overdose patient's medical records, such as that which could be obtained from medic-created records, may be used for a criminal investigation or prosecution. Closing this loophole will result in fewer overdoses due to less fear of police involvement for overdose victims and their associates.

While this legislation that will reduce the harms that all people using drugs face, it is of particular import to women who trade sex, given the link between drug among at-risk women who practice sex work,² including survivors of human trafficking. Many trafficking survivors report self- medicating to cope with past trauma and were trafficked as a direct result of this addiction, while those who have survived a trafficking experience often begin using substances as a means to cope with what has happened to them. Women who trade sex, including those who have survived or are experiencing trafficking, are put at increased risk of overdose if they or the people around them do not feel comfortable calling for help when a drug-related emergency arises.

Senate Bill 598 will reduce this potential harm by clarifying that neither mapping data on overdoses nor the same data retrieved from the overdose victim's medical records may be used in criminal investigations or prosecutions. This commonsense bill will improve the health outcomes of all persons who use drugs, including trafficking survivors. For these reasons, the Human Trafficking Prevention Project at the University of Baltimore School of Law supports Senate Bill 598 with sponsor amendments. We respectfully urge a favorable report.

¹ MD CODE ANN., HEALTH-GEN. § 13-3602(e) (West, 2018).

² See generally Payam Roshanfekr et. al., Drug Use and Sex Work Among At-Risk Women: A Qualitative Study of Initial Risk Factors Iran J Psychiatry Behav. Sci. (June 2015); Saba Rouhani, et. al., High Willingness to Use Overdose Prevention Sites Among Female Sex Workers in Baltimore, Maryland, Drug Alcohol Depend. (July 2020).

MDDCSAM - SB 568 FAV - Health Records OD Prosecuti

Uploaded by: Joseph Adams, MD

Position: FAV



MDDCSAM is a chapter of the American Society of Addiction Medicine whose members are physicians and other health providers who treat people with substance use disorders.

SB 568 – Judicial Proceedings – Health Records and Reporting of Overdoses-Limitations on the Criminal Investigation or Prosecution 2/23/22

FAVORABLE

Chairman Smith and Members of the Judicial Proceedings Committee,

My name is Malik Burnett and I am an addiction medicine physician at the University of Maryland Medical Center and MedMark Treatment Centers and completed my residency training in preventive medicine at Johns Hopkins School of Medicine, as a resident of Baltimore City and I am writing to you today on behalf of the MD-DC American Society of Addiction Medicine (MDDCASAM) in favor of the passage of SB 568 which would prohibit the use of electronic health information relating to overdose from being used as part of a criminal investigation or prosecution.

According to data from the Maryland Department of Health, 2799 Marylander's died of an opioid related overdose through 2020, and we can be certain that 2021 data will continue the unfortunate twenty year upward trend of human tragedy. Throughout this time period, in an effort to respond to the increasing epidemic, the state has improved its epidemiological capacity to both identify and intervene in overdose events. The electronic data generated through these efforts can and has been used in constructive ways to promote public health and public safety such as the Spike Alerts, which advise communities of contaminants in the local drug supply in real time. Or by linking overdose data to the Chesapeake Regional Information System for Our Patients (CRISP), which allows providers to access the information needed to link patients to treatment, which reduces overdose risk by 76%.¹ What is abundant clear is that we cannot use the electronic health data we are able to generate today to perpetuate a criminal justice approach to a public health problem. SB 568 serves to clarify the legislatures position that emergency medical data generated during the process of saving lives should not be then used to damage those same lives through criminal investigations and prosecutions.

The use of electronic health data for law enforcement purposes further perpetuates the stigma associated with the disease of addiction. This stigma fundamentally increases the difficulty for both patients and providers alike to engage in honest dialogue about substance use and substance use disorders. Fear of criminal prosecution will make individuals in need of timely assistance reluctant to reach out to emergency medical services, which significantly increases the likelihood that an overdose event becomes an overdose fatality. Taking every opportunity to promote treatment over punishment is what

¹ Wakeman SE, Larochelle MR, Ameli O, et al. Comparative Effectiveness of Different Treatment Pathways for Opioid Use Disorder. *JAMA Netw Open.* 2020;3(2):e1920622. doi:10.1001/jamanetworkopen.2019.20622

the general assembly can be doing to help stem this epidemic and providing favorable recommendation to SB586 is in line with that spirit.

Overall, it is clear that efforts to use the criminal justice and law enforcement systems to deter, interdict, and incarcerate both drugs and individuals has failed as a policy strategy related to addressing addiction and overdose. We should utilize the resources of the state, including electronic health and emergency medical services data to enhance health care coordination, social safety net services utilization, and social determinants outcomes tracking. It is the Maryland DC Society of Addiction Medicine's desire and the desire of the thousands of Maryland families that have lost loved ones to scourge overdose that you will give SB568 a favorable recommendation to protect the health care records of Maryland citizens in the moments of greatest vulnerability.

Respectfully,

G. Malik Burnett, MD MBA MPH Addiction Medicine Fellow, University of Maryland Medical Center Board Member, Maryland-DC Society of Addiction Medicine

MATOD - SB 568 FAV - Reporting Loophole.pdf Uploaded by: Joshua Grollmes

Position: FAV



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Senate Judicial Proceedings Committee February 23, 2022

Senate Bill 568 Health Records and Reporting of Overdoses - Limitations on Use in Criminal Investigation or Prosecution Support

The Maryland Association for the Treatment of Opioid Dependence (MATOD) urges a favorable opinion on SB 568. MATOD represents over 65 healthcare organizations across Maryland that provide and promote high-quality, effective medication assisted treatment for opioid addiction. MATOD programs serve over 35,000 Marylanders enrolled in opioid treatment programs receiving methadone and buprenorphine, in conjunction with counseling and other medical services.

When the General Assembly passed legislation in 2018 authorizing the reporting by emergency medical service providers and law enforcement officers who treat individuals experiencing a suspected or actual overdose, there was language in the law explicitly stating that the data cannot be used for criminal investigation. The recovery community and other advocates supported the bill, understanding the intent was to use the data for epidemiological analysis and guide efforts for education, outreach, and naloxone distribution. We believe the legislative intent at the time was clear – the information would not be used for criminal investigation.

Unfortunately, much like what currently happens with Maryland's Good Samaritan law that is meant to encourage people to call for help when someone is overdosing and not feel at risk of arrest, law enforcement has found a loophole and is using the reporting of this data as a way to engage in criminal investigations. This loophole must be closed.

The mistrust people who use drugs have of police is real. The more that arrest and prosecution is seen as a higher priority than saving lives, the more people will not call for help when someone is experiencing an emergency. More people will die.

MATOD urges a favorable report on SB 568 to close this loophole.

NCADD-MD - SB 568 FAV - Health Record Loophole.pdf

Uploaded by: Nancy Rosen-Cohen

Position: FAV



Senate Judicial Proceedings Committee February 23, 2022

Senate Bill 568 Health Records and Reporting of Overdoses Limitations on Use in Criminal Investigation or Prosecution Support

Amid the COVID-19 pandemic, the pre-existing opioid overdose death fatality crisis has worsened. In Maryland, the number of opioid-related deaths increased by 20% between 2019 and 2020, and preliminary data indicates a continued increase in 2021.

NCADD-Maryland supports Senate Bill 568 which will close a loophole to protect people who receive emergency medical services from having that fact used to conduct a criminal investigation.

When the General Assembly passed legislation in 2018 authorizing the reporting by emergency medical service providers and law enforcement officers who treat individuals experiencing a suspected or actual overdose, there was language in the law explicitly stating that the data cannot be used for criminal investigation. The recovery community and other advocates supported the bill, understanding the intent was to use the data for epidemiological analysis and guide efforts for education, outreach, and naloxone distribution.

We believe the legislative intent at the time was clear – the information would not be used for criminal investigation.

Unfortunately, much like what currently happens with Maryland's Good Samaritan law which is meant to encourage people to call for help when someone is overdosing and not feel at risk of arrest, law enforcement has found a loophole and is using the reporting of this data as a way to engage in criminal investigations. This loophole must be closed.

The mistrust people who use drugs have of police is real. The more that arrest and prosecution is seen as a higher priority than saving lives, the more people will not call for help when someone is experiencing an emergency, and the more people will die. We strongly urge a favorable report on SB 568 to close this loophole.

The Maryland Affiliate of the National Council on Alcoholism and Drug Dependence (NCADD-Maryland) is a statewide organization that works to influence public and private policies on addiction, treatment, and recovery, reduce the stigma associated with the disease, and improve the understanding of addictions and the recovery process. We advocate for and with individuals and families who are affected by alcoholism and drug addiction.

SB0568-JPR-FWA.pdfUploaded by: Natasha Mehu Position: FWA



Office of Government Relations 88 State Circle Annapolis, Maryland 21401

SB 568

February 23, 2022

TO: Members of the Senate Judicial Proceedings Committee

FROM: Natasha Mehu, Director, Office of Government Relations

RE: Senate Bill 568 - Health Records and Reporting of Overdoses - Limitations on

Use in Criminal Investigation or Prosecution

POSITION: SUPPORT WITH AMENDMENTS

Chairman Smith, Vice-Chairman Waldstreicher, and members of the committee, please be advised that the Baltimore City Administration (BCA) **supports SB 568 with amendments**.

This bill clarifies the original legislative intent of Health-General Article § 13-3602. It would save the lives of numerous overdose victims, and have little, if any, impact on criminal investigations while protecting the relationship between emergency medical services providers and some of their most desperate patients. Our amendment further clarifies that we are seeking to protect the individuals' medical records.

The Issue:

In 2018, the General Assembly created Health-General Article § 13-3602, Reporting an overdose. This statute effectively required emergency medical services providers (such as municipal fire department medics) to report overdose information to overdose mapping applications. The statute specified that the "[o]verdose information reported by an emergency medical services provider" to these mapping applications "may not be used for a criminal investigation or prosecution." H-G § 13-3602(e) (emphasis added). This, however, created ambiguity.

¹ Although H-G § 13-3602(a) only says emergency medical services providers "may" report overdose information to such applications, H-G § 13-3602(d) says that the Maryland Institute for Emergency Medical Services Systems ("MIEMSS") "shall" report it, and COMAR 30.03.04.04 requires all emergency medical services providers to report to MIEMSS, so H-G § 13-3602 effectively requires all overdose information to be reported, even if indirectly.

The Ambiguity:

Some people read H-G § 13-3602(e)'s ban on using such medic-provided overdose information in criminal investigations as a privacy protection for the overdose victims that shields the medical record created as a result of the 911 call from being examined for criminal investigator purposes. Such protections are important to ensure that overdose victims and their associates are willing to call 911 in an emergency, and willing to provide accurate information once a medic has arrived, even when the patient is overdosing on illicitly obtained substances.

Other people read the ban as much more limited – merely preventing criminal investigators from taking the medic-reported information *directly from the mapping applications*, while still allowing law enforcement and prosecutors to obtain the same information from the separately maintained, medic-created medical records concerning these overdoses.

The Problem:

Under the latter, less restrictive reading, the ban provides no real privacy protection, as criminal investigators can use a mapping application as a shopping list to tell them what overdose victims' medical record information they wish to obtain from the emergency medical services providers' records, even if they cannot get this information directly from the mapping applications. Read this way, the ban in H-G § 13-3602(e) is effectively meaningless.²

Moreover, if a criminal investigator is allowed to obtain overdose victims' medical record information directly from emergency medical providers for use in criminal investigations and prosecutions, the fear of police involvement will dissuade overdose victims and their associates from calling 911 at all, thereby resulting in more overdose deaths.

The Solution:

The amendments to H-G § 13-3602 and Health-General Article § 4-306 proposed in SB568 merely make it clear that the ban in H-G § 13-3602(e) was intended to help keep overdose victims alive by making sure that the fear of criminal investigation does not dissuade overdose victims from seeking help. By clarifying that criminal investigators may not obtain this overdose information directly from the medical records held by emergency medical services providers, SB 568 maintains the key distinction between seeking emergency medical assistance and inviting criminal investigation of an overdose. In addition to altering the text of H-G § 13-3602(e) itself, this bill also amends H-G § 4-306 simply to clarify that emergency medical services providers are not required to provide the medical records for criminal investigations that H-G § 13-3602(e) says cannot be used for criminal investigations or prosecutions.

An important point to note is that SB 568 only clarifies that criminal investigators cannot invade the privacy of the patient-medic relationship to obtain the information from the emergency medical records. For instance, when a 911 call comes in explicitly requesting assistance with an "overdose," jurisdictions are free to dispatch both medics and police officers to the scene (as many do) so that police can investigate a possible crime while medics provide healthcare. This bill does nothing to change that.

However, many overdose victims and their associates (generally, those using illegally obtained substances) specifically will not mention an overdose or drugs to the 911 operator, but will instead describe the emergency as "breathing trouble" or the like, in order to avoid having

² Because we do not believe that the General Assembly intended the ban in H-G § 13-3602(e) to be meaningless, we believe that SB568 merely clarifies this statute's original intent.

police officers dispatched along with the medics. It is these overdose victims – those already attempting to hide from criminal investigators – whose overdose information will be kept private in their emergency medical records, because it is precisely these victims who will stop calling 911 if even a "breathing trouble" emergency call also results in police involvement.

H-G § 13-3602 was passed to ensure that overdose information could be quickly and accurately collected and shared so that public health authorities could respond with resources that could save people's lives. The ban on using overdose information in criminal investigations or prosecutions in H-G § 13-3602(e) was intended to make sure that this collecting and sharing would not discourage people from calling 911 for emergency medical assistance during an overdose, and SB568 merely clarifies what is prohibited by that ban. Indeed, if overdose victims and their associates stop calling 911, the emergency medical services providers will stop having the overdose information to report, thereby defeating the entire purpose of H-G § 13-3602 as a whole.

If criminal investigations scare these people away from calling 911 at all, more overdose victims will needlessly die. And any small value to criminal investigations that access to these emergency medical records might have provided will quickly evaporate, as these 911 calls dwindle in number, and as even the few victims that continue to call begin providing fake names and fake contact information to emergency medical service providers. If criminal investigators are allowed to pry into these emergency medical records for use in criminal investigations, any value to such investigations will be short-lived, but the trust between overdose victims and medics will be gone forever.

The clarifying statutory amendments in SB 568 preserve that trust. This bill allows overdose victims to call 911 without fear of police involvement. It encourages overdose victims to continue to provide accurate information to their emergency healthcare providers. It allows medics to continue to respond to as many overdoses calls as possible, to report as many of those calls to mapping applications as possible, and to save as many lives as possible.

For these reasons, we request a **favorable with amendments** report on SB 568.

SB0568-Sponsor Amendment.pdf Uploaded by: Natasha Mehu

Position: FWA



SB0568/363026/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

18 FEB 22 13:22:52

BY: Senator McCray
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 568

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 6, strike "by a law enforcement officer" and substitute "from an overdose patient's medical records".

AMENDMENT NO. 2

On page 3, in line 2, strike "BY A LAW ENFORCEMENT OFFICER" and substitute "FROM AN OVERDOSE PATIENT'S MEDICAL RECORDS".

SB568_FAV WITH AMENDMENT_BHRC.pdfUploaded by: Rajani Gudlavalleti

Position: FWA



February 23, 2022

The Honorable Will Smith Chairman, Senate Judicial Proceedings Committee 2 East Miller Senate Office Building Annapolis, MD 21401

Senate Bill 568 (Health Records and Reporting of Overdoses - Limitations on Use in Criminal Investigation or Prosecution) - FAVORABLE WITH SPONSOR AMENDMENTS

Dear Chair Smith and Senate Judicial Proceedings Committee members,

Baltimore Harm Reduction Coalition (BHRC) is an advocacy organization that mobilizes community members for the health, dignity, and safety of people targeted by the war on drugs and anti- sex worker policies. As a certified Overdose Response Program, Naloxone distributor, and syringe service program, we have provided essential health care services across the state for years. To supplement the life-saving services provided by us and dozens of harm reduction programs across the state, BHRC strongly supports Senate Bill 568 (Health Records and Reporting of Overdoses - Limitations on Use in Criminal Investigation or Prosecution) with sponsor amendments.

SB568 is an essential fix to existing law that shields victims of drug overdoses from having their private medical information shared in the course of a criminal investigation. In 2018, Maryland enacted a law requiring EMS report overdose information to mapping applications, but banned the use of this mapping data in the course of a criminal investigation or prosecution. Despite the clear intent of the law, some law enforcement and prosecutors have interpreted this much more narrowly, and see this as only a ban on data obtained directly from the mapping application, and not a ban on the same data from separately maintained, emergency medical services records. This loophole undermines the intent of the initial law and perpetuates the culture of fear around reporting overdoses that already exists in communities across the state.

Laws exist across the world with the purpose of encouraging people to call for help when someone is facing a medical emergency due to drugs or alcohol, such as Maryland's Good Samaritan law. However, we have heard from community members, naloxone trainees, and syringe service program participants time and again -- they will not call 911 if they believe police will arrest, harass, or harm them or those around them. How can BHRC in good conscience insist our clients rely on these protections and call for help, knowing fully well that any information recovered by EMS can later be accessed by law enforcement and prosecutors to form an investigation? When the threat of criminal investigation has to be weighed with saving a life it is no surprise that Maryland continues to see increases in overdoses, reaching a staggering 2,799 fatalities in 2020.

¹Maryland Department of Health (Jan 2020). Unintentional Drug and Alcohol-Related Intoxication Deaths in Maryland Annual Report 2020.

In the midst of multiple public health crises, Marylanders deserve access to emergency medical services without the fear of their medical information being used against them or their peers. We ask that the Judicial Proceedings Committee give SB568 a favorable report with sponsor amendments.

For more information about Baltimore Harm Reduction Coalition or our position, please contact our Director of Mobilization, Rajani Gudlavalleti at rajani@baltimoreharmreduction.org

SB 568_Health Record and Reporting of Overdoses_BH Uploaded by: Stacey Jefferson

Position: FWA



February 23, 2022

Senate Judicial Proceedings Committee TESTIMONY IN SUPPORT with AMENDMENT

SB 568- Health Records and Reports of Overdoses- Limitations on Use in Criminal Investigations and Prosecution

Behavioral Health System Baltimore (BHSB) a nonprofit organization that serves as the local behavioral health authority (LBHA) for Baltimore City. BHSB works to increase access to a full range of quality behavioral health (mental health and substance use) services and advocates for innovative approaches to prevention, early intervention, treatment and recovery for individuals, families, and communities. Baltimore City represents nearly 35 percent of the public behavioral health system in Maryland, serving over 77,000 people with mental illness and substance use disorders (collectively referred to as "behavioral health") annually.

Behavioral Health System Baltimore supports with the sponsor amendment SB 568- Health Records and Reports of Overdoses- Limitations on Use in Criminal Investigations and Prosecution. This bill prohibits overdose information reported by an emergency medical services (EMS) provider or by the Maryland Institute for Emergency Medical Service Systems (MIEMSS) from being obtained by a law enforcement officer as part of a criminal investigation or prosecution.

In 2018, the General Assembly passed legislation that requires emergency medical service providers, or medics to report overdose information to overdose mapping applications. The statue specified that the information reported by an emergency medical service provider to these mapping applications may not be used for a criminal investigation or prosecution. The language however has created an ambiguity by being interpretated as allowing the same information to be accessed from separately maintained, medic created medical records concerning these overdoses. This undermines the intended benefits of the law, which is to protect the privacy of the overdose victim rather than subjecting them to increased police scrutiny and potential prosecution.

SB 568 with the sponsor amendments would correct this ambiguity by clarifying that no data from the mapping system *or* from the overdose patient's medical records, such as that which would be obtained from medic-created records, may be used for a criminal investigation or prosecution. Closing this loophole will result in fewer fatal overdoses due to less fear of police involvement for overdose victims and their associates.

Fatal overdoses continue to be a serious public health challenge in Maryland. The number of opioid-related deaths increased by 20% between 2019 and 2020, and preliminary data indicates a continued increase in 2021. Research has found that many people are known to delay or refrain from calling 911 due to fear of arrest or prosecution at an overdose scene. ¹ BHSB supports SB 568 because it provides the technical clarification to uphold the original intent of previous legislation to shield overdose victim's emergency records and therefore continuing to reduce the fear that discourages people from calling 911 at the scene of an overdose. As such, BHSB urges the Senate Judicial Proceedings Committee to support SB 568 with the sponsor's amendment.

¹ Latimore. A, Bergstein. R, International *Journal of Drug Policy*, "Caught with a body" yet protected by law? Calling 911 for opioid overdose in the context of the Good Samaritan Law, November 2017