

**House Bill 823 – Mental Health Law – Assisted Outpatient Treatment Programs**

Health and Government Operations Committee

March 14, 2023

**Position: Unfavorable**

Disability Rights Maryland (DRM) is Maryland’s designated Protection & Advocacy agency, 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 and to make meaningful choices about their supports and services. House Bill 823 would authorize counties to establish involuntary outpatient civil commitment programs that authorize courts to order individuals adhere to an outpatient mental health treatment regimen, forcing treatment and violating the civil rights of individuals with psychiatric disabilities, resulting in disparities in treatment that will negatively impact people of color and those living in poverty.

Mandating involuntary outpatient commitment is an infringement on an individual’s constitutional rights. This bill would authorize involuntary outpatient commitment in order to “prevent a relapse or deterioration that would likely make the respondent a danger to the life or safety of the respondent or others.” But such a determination is just speculation. The potential for a relapse or deterioration that would make it *likely* for an individual to be a danger to themselves or others does not constitute a risk of imminent, significant physical danger to self or others—the only standard for involuntary commitment found constitutional by the Supreme Court.<sup>1</sup>

If a respondent declines to submit to a psychological examination or fails to appear at a hearing, § 10-6A-06(E)(3)(I) and (II) allow a judge to order they be detained by law enforcement, taken to a facility, and forced to submit to a psychological examination. While the proposed bill requires “clear and convincing evidence” for the court to order that an individual adhere to Assisted Outpatient Treatment (AOT), the bill requires only “probable cause” for this detention and forced examination. This bill would allow an individual with a psychiatric disability to be forcefully removed from their home without any showing that the individual poses a danger to themselves or others. Respondents could be detained for up to 24 hours, again without a showing of current dangerousness or any of the other requirements for an emergency evaluation outlined in HG § 10-622. Detaining an individual based only on their failure to appear at a civil hearing or a psychiatric examination constitutes unreasonable search and seizure, violating the 4<sup>th</sup> Amendment to the Constitution.

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<sup>1</sup> *Humphrey v. Cady*, 405 U.S. 504, 509 (1972).

Detentions for forced examination also place individuals who may have psychiatric disabilities in contact with the police. Across the country and in Maryland, individuals with mental illnesses face higher rates of excessive force and violence from police. The Department of Justice found that police in Baltimore routinely used unreasonable force when escorting individuals to hospitals for mental health evaluations under emergency petitions.<sup>2</sup> Officers made “little, if any, effort to de-escalate or engage peaceably,” using force as a “first option” in detaining and transporting individuals with mental health disabilities. Not only is this unreasonable and excessive, it can escalate situations and lead people who are being detained for evaluations to perceive that they are being attacked or arrested. This can further escalate the encounter and lead to additional force and violence, disproportionately impacting Black and Brown Marylanders. Police have also decided to arrest individuals with mental health disabilities instead of detaining them for evaluation, subjecting them to jail and the criminal justice system just because of their perceived mental illness. Such encounters between people with mental health disabilities and the police have even led to deadly force against individuals with disabilities. Allowing for respondents to be detained based only on their failure to appear at a civil hearing or refuse a psychiatric examination places them at risk of a violent, traumatizing, and even deadly encounter with police.

The process in this bill for creating the individual’s mandated treatment plan is also concerning. § 10-6A-05 (B)(1) 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. The bill further states that “types of medication to be taken shall be identified, although the specific medication or doses need not be identified.” Medication is the only treatment explicitly contemplated in the bill. Under state and federal law, an individual can only be forced to take psychiatric medication in very limited circumstances. Individuals have the right to choose or refuse medication, including the type and dosage. Many psychiatric medications have long-lasting and permanent harmful side effects. 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. Even under the limited circumstances when an individual can be forced to take psychiatric medication, non-emergency medications must be approved by a Clinical Review Panel, and an individual can appeal the panel’s decision. This bill contains no such procedures or protections, raising significant questions of state and constitutional law regarding forced medication under an AOT program.

In addition to infringing on an individual’s constitutional rights, House Bill 823 fails to provide the necessary intensive services required to effectively provide outpatient mental health treatment that would reduce emergency room visits, hospitalizations, homelessness, and incarceration. Instead, court-ordered treatment plans may contain whatever unspecified treatment is available and which a community provider has volunteered to provide. The issue this bill seeks to address—the provision of mental health services for individuals who are

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<sup>2</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department* (August 10, 2016), 80.

frequently hospitalized or arrested as a result of their mental illness—will not be addressed without available services. Ultimately, this bill seeks to remediate the issue of limited available services and barriers to service access by forcing people into treatment. But if those services do not exist, the treatment will not be provided. Nothing will change for these individuals, except they will now be subject to the court’s supervision. Without providing for intensive services, there is no way for this bill to achieve its stated goals. The lack of provision for services is especially concerning when you consider that this bill explicitly allows a treating psychiatrist to consider if an individual has “failed to comply with the order of assisted outpatient treatment” in determining whether a petition for an emergency evaluation is warranted. Thus, in areas with few treatment options, an individual may be subject to an emergency evaluation for “fail[ing] to comply” with an order for assisted outpatient treatment. Increasing availability of outpatient community mental health services, as well as resources like housing, transportation and case management, could better prevent the hospitalizations and incarcerations that this bill cites as reasons to commit an individual to AOT, and would better achieve the goals of this bill.

Finally, and importantly, this bill will have a disproportionate impact on people of color. An evaluation of New York’s outpatient commitment program over a nearly 10-year period demonstrated that Black and Hispanic individuals are subject to court-ordered treatment at disproportionately high rates. Maryland’s Office of the Public Defender has similarly identified that Black and Hispanic individuals are involuntarily committed at significantly disproportionate rates. There are no provisions under this bill to ensure that it will be implemented in a non-discriminatory manner, leaving the law vulnerable to attack on disparate treatment grounds.

DRM encourages the Committee to consider the negative impact of this bill on the disability community in Maryland. For the reasons stated above, Disability Rights Maryland urges the committee to issue House Bill 823 an unfavorable report. For more information, please contact Em Holcomb at 443-692-2536 or [EmH@DisabilityRightsMD.org](mailto:EmH@DisabilityRightsMD.org).