

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Matthew J. Fader  
Chief Justice

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** House Health and Government Operations Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** House Bill 823  
Mental Health Law – Assisted Outpatient Treatment Programs  
**DATE:** February 22, 2023  
(3/14)  
**POSITION:** Oppose

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The Maryland Judiciary opposes House Bill 823. This bill establishes the Assisted Outpatient Treatment Pilot Program.

This bill sets requirements for a pilot program including requirements regarding eligibility, hearings, and treatment which seem very well intended, but need procedural work to be logistically implemented, at a minimum. The times outlined in this bill are unrealistic and there are due process considerations. On page 7, lines 23-24, the bill requires that a hearing on a petition be held “not later than 3 business days after the date the Petition is received by the Court.” That timeline is unworkable and would not even allow notice. It also does not recognize the demands of other cases pending. Also on page 10, lines 14-16, the bill mandates that a hearing be held within 5 days on any change to a treatment plan. That timeline is also unrealistic; should not be mandated; and would not even allow for notice to the parties. The Judiciary is in the best position to schedule the matters before it and any attempt to mandate the docket structure runs afoul of the separation of powers doctrine.

Additionally, the Judiciary is unsure how to interpret the “reasonable efforts to secure the Respondent’s appearance” provision on page 8, line 5 and lines 14-20. It is unclear what those reasonable efforts would be or how those efforts would comport with other notice provisions. It is also unclear how the court would “direct that the Respondent be taken into custody” and who would do that. Is that a local law enforcement agency? A health department employee? There is no express authority for such an act within the bill. It is also unclear where the individual would be taken. The bill indicates the Respondent will be “transported to an appropriate facility for examination by a psychiatrist” but there is no mechanism for the court or the transporting agency/individual to make such a determination.

The process hinges on a report from a psychiatrist who will be required to appear in court on short notice and it is not indicated how the psychiatrist will be compensated. Also, the Respondent is entitled to counsel at the hearing but there is no indication within the bill how counsel will be assigned, retained or compensated.

The bill goes on to state that, upon scheduling the petition for a hearing, the court cannot compel the testimony of the treating psychiatrist. It is unclear how, then, the court would have any means of determining whether the Respondent should be ordered into the treatment prescribed? It appears that the testimony of the treating psychiatrist is necessary, as the petitions filed contain the opinions and requests of the treating psychiatrist. How would the court logistically proceed with a hearing and consider the relief requested without the testimony of the treating psychiatrist?

The bill also states that the Respondent may not be found in contempt of court or involuntarily admitted to a facility for noncompliance with the court-ordered mental health treatment. As such, there is no mechanism by which the court can enforce compliance with the underlying order for outpatient mental health treatment. If there is no mechanism by which the court can enforce compliance, then the court should not be statutorily required to review petitions, hold hearings, and order such treatment.

This bill attempted to address some of the issues that the Judiciary raised last year. Despite efforts to address the issues raised, the bill still has logistical challenges, is unrealistic, and desires that the court exercise its power to order treatment without also empowering the court with the authority to enforce compliance.

cc. Hon. Steve Johnson  
Judicial Council  
Legislative Committee  
Kelley O'Connor