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POSITION ON PROPOSED LEGISLATION

**BILL: HB 1215 Criminal Procedure - Alcohol and Drug Offenses - Immunities –
Limitations**

FROM: Maryland Office of the Public Defender

POSITION: Oppose

DATE: 3/7/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 1215.

House Bill 1215 seeks to undercut the Good Samaritan Law, Criminal Procedure § 1-210 by limiting immunity to people who comply with a prior treatment referral and by precluding immunity for anyone who has received immunity twice before regardless of whether they completed treatment. This will undercut the important public health components of the Good Samaritan Law and is bound to increase overdose fatalities without reducing illegal drug use.

The Good Samaritan Law was established to encourage people to seek medical assistance for overdoses and other medical emergencies caused by drug or alcohol use. The fear of arrest and prosecution is a known barrier to calling 911, and laws like Crim. Proc. § 1-210 are a best practice public health response. It is carefully tailored to exclude immunity from crimes beyond possession and use, or to people not involved in responding to the medical emergency. This targeted immunity, without conditions or other limitations, is important to encourage calls for life-saving assistance.

HB 1215 will gut the Good Samaritan law's effectiveness in large part by creating practical barriers to any meaningful application. Police and other emergency responders will have no way at the scene of an overdose to know whether someone previously received immunity or if they completed treatment from a prior overdose call. They also should not be spending their time at the scene of an overdose deciphering eligibility for immunity. Without a clear bright line of immunity for anyone seeking medical assistance for themselves or someone

else who may otherwise be charged with possession, arrest is a legitimate risk in any circumstance –and the fear of arrest will once again preclude 911 calls.

HB 1215 also ignores the reality that relapse is an inherent part of recovery. Individuals typically relapse several times as they learn to respond to stressors and develop healthier lifestyles. This bill does not just punish the reality of relapsing but increases the likelihood of a relapse being a death sentence by discouraging people from seeking needed medical help.

The bill also provides no mechanism to ensure that referrals provided are appropriate to respond to that individual’s clinical needs. Programs have different requirements, services, medication assisted therapies available, insurance requirements, and available openings. They also respond to different needs – a person with co-occurring diagnoses of bipolar disorder and opioid use disorder requires different services than someone with a history of trauma and narcotics addiction. In addition to our court representation, OPD has several dedicated grant projects in which social workers and peer recovery specialists help connect clients to community-based treatment services as an alternative to incarceration. These services require a full assessment of the person’s history, conditions, and current capacities, and then pairing that person with the appropriate program based on the diagnostic impression and needs identified. This is particularly important, and complex, for individuals who may be self-medicating due to an undiagnosed or untreated condition. HB 1215 does not contemplate the expertise, resources or time needed for appropriate referrals.

As a society, we have often tried to address public health issues through law enforcement and prosecution, particularly with respect to substance abuse. If increased risk of criminal penalties were effective, we would not have the substance abuse and overdose problems that exist today. Public health measures like the Good Samaritan Law are far more effective in promoting treatment and minimizing fatalities.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 1215.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.

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