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POSITION ON PROPOSED LEGISLATION

**BILL: SB 453 Mental Health - Emergency Evaluation and Involuntary Admission Procedures
and Assisted Outpatient Treatment Programs**

FROM: Maryland Office of the Public Defender

POSITION: Informational

DATE: 2/20/2024

The Maryland Office of the Public Defender provides this informational testimony to address the significant cost issues related to Senate Bill 453.

SB 453 would authorize involuntary outpatient treatment statewide and require OPD to provide representation. We anticipate that thousands of individuals would require representation. In 2023, our Mental Health Division represented over 9,600 clients in involuntary admission cases. Thousands of those clients, as well as an unknown number of people who are not initially subject to involuntary hospital admission, could be subject to involuntary outpatient treatment under this bill.

As an initial matter, OPD must receive direct appropriations for its role. Whether in a hospital or outpatient, forced treatment is a significant liberty issue that requires resources dedicated to ensuring that this process is not abused, that individual rights remain intact to the greatest extent possible, and that due process is fully afforded to anyone who may be subject to forced medication or other treatment. The General Assembly must invest in protecting the rights of those who may be subject to involuntary services as much as it seeks to invest in providing involuntary services.

A direct appropriation to OPD is also important for both practical and ethical considerations. The Maryland Department of Health (MDH) will be our adversary in resulting litigation. Requiring us to seek funding from MDH and potentially be audited for the use of those funds, will create immediate conflict issues. Moreover, grant funding is not a sustainable way to fund a legislative mandate. Grant funding cannot create permanent positions in our agency and therefore does not allow for the stability and support needed for this initiative to succeed.

Providing effective assistance of counsel will require a substantial effort. Each case requires obtaining years worth of inpatient and outpatient medical records, treatment records, criminal records, jail medical/treatment records, housing provider records, depositions of the opposing expert mental health treatment professionals and fact witnesses, etc. We would also need to interview collateral sources, hire expert psychiatrists and pharmacologists, and engage additional support staff, investigators, social workers, and peer specialists.

As detailed in our submission for the fiscal note, we anticipate that our costs would include 20 attorneys, 7 secretaries, 10 social workers, 10 peer specialists, 5 paralegals, and a mental health treatment professional to train these new staff positions on substantive mental health issues. Each of these positions is necessary to provide the legal representation, administrative support, and expertise to encourage compliance with services and to address the surrounding issues (housing needs, food security, etc.) that may impede success. Beyond these staffing costs, OPD will also incur significant expenses in securing experts needed for resulting litigation. Experts in hospitalization cases are paid \$200/hour and are generally retained for a minimum of 10 hours. While we do not know exactly how much time would be needed for experts in outpatient cases, given that there would be voluminous records, we anticipate the expert fees to be comparable. Assuming that there are 300 cases, with 10 hours of labor per case, would result in \$600,000 in expert costs. There is the potential for thousands of people to be subject to AOT proceedings, so our 300-case estimate is incredibly low. Ensuring sufficient resources for AOT respondent representation is a key component of ensuring the protection of individual liberty and bodily integrity.

The Department of Legislative Services Fiscal note assumes that OPD attorneys can carry the same number of forced outpatient treatment cases as involuntary civil commitment cases. That assumption is incorrect because the two types of cases are procedurally different. Involuntary civil commitment cases are administrative proceedings and are controlled by the State Administrative Procedure Act. Discovery is limited, pretrial motions are sporadic and there is only one hearing that must be held within 17 days of a client's admission into an inpatient psychiatric unit. There will be significant discovery, motions practice, preparation for trial, and time spent determining the effect of an AOT order on each client's life.

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

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