

SENATE FINANCE COMMITTEE

House Bill 1019: Mental Health Law Petitions for Emergency Evaluation

March 27, 2024

Position: Oppose

Disability Rights Maryland (DRM) is the protection and advocacy organization for the state of Maryland; the mission of the organization, part of a national network of similar agencies, is to advocate for the legal rights of people with disabilities throughout the state. In the context of mental health disabilities, we advocate for access to person-centered, culturally responsive, trauma-informed care in the least restrictive environment. We appreciate the opportunity to provide testimony on HB 1019, which would explicitly authorize police use of force when executing emergency petitions and extend the time that a petition remains valid. DRM opposes HB 1019 because it ignores the states' obligations to provide a mental health care response to a mental health crisis.¹

I. DRM opposes explicit authorization for police use of force when executing emergency petitions.

Police are already permitted to use force when executing emergency petitions under Md. Code, Public Safety § 3-524, which governs use of force in *all* police encounters. DRM is concerned that explicitly authorizing the use of force in emergency petitions reinforces police use of force in response to people with mental health disabilities and contravenes the State's policy goals of reducing police responses to mental health crises.

Emergency petitions necessarily require that an individual has a known mental illness and people with mental illness are covered under the Americans with Disabilities Act. Authorizing police use of force when responding to mental health crises puts people with mental illness at increased risk of harm as people with mental health disabilities are more likely to be subject to police use of force and account for a disproportionate number of deaths caused by law enforcement officers.² Over reliance on police responses to mental health crises deprives people with disabilities of an equal opportunity to benefit from public services and risks running afoul of the ADA.³ Instead, the ADA requires police officers to provide accommodations for

¹ U.S. Department of Justice and U.S. Department of Health & Human Services, *Guidance for Emergency Responses to People with Behavioral Health or Other Disabilities*, (Washington, DC: U.S. DOJ and U.S. HHS, (May 2023) https://www.justice.gov/d9/2023-05/Sec.%2014%28a%29%20-%20DOJ%20and%20HHS%20Guidance%20on%20Emergency%20Responses%20to%20Individuals%20with%20Behavioral%20Health%20or%20Other%20Disabilities_FINAL.pdf.

² Bazelon Center for Mental Health Law & Vera Institute of Justice, *New Federal Guidance for Alternatives to Police for People with Behavioral Health or Other Disabilities*, Issue Brief, 2 (Jan. 2024), <https://www.bazelon.org/wp-content/uploads/2024/01/Bazelon-Vera-issue-brief-re-crisis-response-01-14-24.pdf>

³ Rachel Weiner, *Justice Dept. says D.C. police response may violate rights of mentally ill*, WASHINGTON POST (Feb, 23, 2024) (quoting Michael Perloff "The Department of Justice has been concerned nationwide about egregious

people with mental health disabilities, which may include providing a non-law enforcement response.

If the rationale for authorizing police force is due to concerns about liability when responding to emergency petitions where the individual may pose an imminent risk of physical harm, there is nothing precluding officers from using “necessary and proportional” force as specified in Md. Code, Public Safety § 3-524. If officers are unclear of their obligations under the law, this is likely due to a lack of adequate training on the use of force standard across all law enforcement interactions, not an issue with the use of force authorized when executing emergency petitions. Importantly, Md. Code, Public Safety § 3-524, already requires agencies to provide officers training on the application of the “necessary and proportional” force standard and officers are required to sign off that they understand the use of force standard and will comply with that standard. If officers are unclear about the “necessary and proportional” force standard as it applies to emergency petitions, then the problem is likely one of training and improving training is the appropriate solution, not adding a provision to explicitly authorize law enforcement’s use of force in the law governing emergency petitions.

In addition, multiple reports find Maryland schools frequently misuse emergency petitions on Black and disabled children who do not pose any imminent risk of danger.⁴ The Department of Justice entered into a settlement agreement with Wicomico County because of their public schools’ ongoing misuse of emergency petitions in response to minor behavioral issues.⁵ Recent reporting suggests schools are still improperly using the emergency petition process multiple times per week on children as young as five.⁶ Thus, authorizing police to use force on Black and disabled children who should not be subject to the emergency petition process in the first place, puts marginalized children at even greater risk of harm or even death.

DRM also has numerous adult clients who have been harmed by police officers’ use of force during the issuance of emergency petitions across jurisdictions, even after the Maryland Police Accountability Act of 2021 amended the use of force statute to limit force and require training. Many of these clients are Black and multiply disabled people who did not pose any imminent risk of danger, yet they were still harmed by police force used in the emergency petition

violations of the rights of people with disabilities due to local governments’ failure to ensure that a mental health crisis it receives a mental health response.”)

⁴ See, e.g., U.S. Dep’t of Just., C. R. Div., Settlement Agreement, *Wicomico County Public School District*, 2 (Jan. 23, 2017), available at <https://www.justice.gov/crt/case-document/wicomico-county-public-school-district-settlement-agreement>; Meredith Kolodner and Annie Ma, *The School district where kids are sent to psychiatric emergency rooms more than three times a week — some as young as 5*, THE HECHINGER REPORT (Dec. 5, 2023), available at <https://hechingerreport.org/widely-used-and-widely-hidden-the-district-where-kids-as-young-as-5-are-sent-to-psychiatric-hospitals-more-than-three-times-per-week/>.

⁵ U.S. Dep’t of Just., C. R. Div., Settlement Agreement, *Wicomico County Public School District* (Jan. 23, 2017).

⁶ Meredith Kolodner and Annie Ma, *The School district where kids are sent to psychiatric emergency rooms more than three times a week — some as young as 5*, THE HECHINGER REPORT (Dec. 5, 2023), available at <https://hechingerreport.org/widely-used-and-widely-hidden-the-district-where-kids-as-young-as-5-are-sent-to-psychiatric-hospitals-more-than-three-times-per-week/>.

process. One in four police killings occur when police are responding to mental health crises.⁷ Explicitly authorizing police to use force is unnecessary, potentially unlawful, and it puts our clients at substantially increased risk of harm.

II. DRM opposes the ability to extend the time that emergency petitions are valid.

Emergency petitions are currently only authorized for five days under Maryland law, as they are only intended to be used in an emergency, when an individual poses a danger of harming themselves or others. Allowing an emergency petition to be renewed for an additional five days, for up to 30 days, without new facts to explicitly demonstrate that an individual remains a danger to themselves or others risks defeating the purpose of an emergency petition and violating the Constitutional requirements set forth by the United States Supreme Court. Extending the time an emergency petition is valid raises questions about whether an emergent danger remains when an individual is able to survive safely in freedom for 5 days without intervention, let alone up to 30 days out from the initial issuance of a petition. Additionally, if an imminent and evident risk of danger arises, police can always execute an emergency petition without endorsement from a judge, so there is no justification for prolonging the time an emergency petition is valid.

The standards required for an emergency petition have long been the subject of debate in Maryland, but the U.S. Supreme Court precedent requiring a finding of dangerousness remains clear. The Supreme Court finds that “while the State may arguably confine a person to save him from harm, incarceration is rarely if ever a necessary condition for raising the living standards of those capable of surviving safely in freedom, on their own or with the help of family or friends.”⁸ Moreover, even if confinement was initially justifiable, “it may not Constitutionally continue after that basis no longer exists.”⁹ Thus, if an individual has been able to safely survive in the community for 5 days without intervention, then that fact alone suggests the individual is likely not an emergent danger to self or others.

HB 1019 only requires “good cause shown based on the presenting behavior of the individual” to grant a five-day extension. This vague criterion fails to comport with Constitutional requirements that the petitioned individual’s behavior must satisfy the dangerous to self or others standard at the time an emergency petition is executed. Extending the length of time that an emergency petition remains valid in the absence of a showing that the individual’s behavior continues to satisfy the standard of posing a danger to self or others, risks violating the requirements of the Fourteenth Amendment of the U.S. Constitution and Article 24 of the Maryland Declaration of Rights. Further, the inability to locate an individual precludes contemporaneous observation of an individual’s presenting behavior, so the inability to locate an individual on its own, is not a sufficient basis to justify extending an emergency petition.

⁷ See Susan Mizner, ACLU, *Police “Command and Control” Culture Is Often Lethal—Especially for People with Disabilities*, ACLU (May 10, 2018).

⁸ *O’Connor v. Donaldson*, 422 U.S. 563, 575 (1975) citing (*Shelton v. Tucker*, 364 U.S. 479, 488-490 (1960)).

⁹ *O’Connor*, 422 U.S. at 575, citing (*Jackson v. Indiana*, 406 U.S., 715, 738 (1972))

In sum, HB 1019's extension of the time an emergency petition remains valid in 5 day increments up to 30 days defeats the ordinary definitions of emergency and dangerousness, and fails to require a showing of present dangerousness at the time an extension is granted, making the emergency petition process vulnerable to legal challenge. HB 1019 also risks inflicting trauma on individuals with mental health disabilities by making them continuously committable and subject to unexpected police intervention based on stigma and stereotypes.

DRM recommends the committee issue an unfavorable report on HB 1019 due to the high risk of harm that would likely accompany authorizing increased force and the increased risk that people with mental health disabilities will be erroneously deprived of liberty by extending the time for an emergency petition. Instead of investing time and resources to increase policing and hospitalization of people with mental health disabilities, Maryland should be investing in culturally responsive, choice-based resources that effectively support people with mental health disabilities to safely remain in our communities. Please contact Courtney Bergan, Disability Rights Maryland's Equal Justice Works Fellow, for more information at CourtneyB@DisabilityRightsMd.org or 443-692-2477.