



## Testimony for the Senate Finance Committee

Wednesday, March 27, 2024

HB 1019 – Mental Health Law –

Petitions for Emergency Evaluation

**OPPOSE**

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The ACLU of Maryland urges an unfavorable report on HB 1019, which seeks to authorize peace officers to use reasonable and necessary force when executing a petition for emergency evaluation along with authorizing a court to extend a petition for emergency evaluation for a certain period of time. In doing so, the proponents of this bill seek to place enormous subjective power in the peace officers' hands and provide law enforcement with an expanded excuse to seriously or fatally injure an individual who may be suffering from a mental disorder based on the peace officers' inadequate training. This proposed standard of reasonable and necessary force is less restrictive and less protective than Maryland's current use of force statute utilized since 2021 that authorizes law enforcement to use necessary and proportional force to prevent an imminent threat of physical injury to someone but also directs law enforcement to cease the use of force when it is no longer needed due to the individual being under police control or poses an imminent threat of danger or death to the officer or any other individual.<sup>1</sup>

**We must protect the due process rights of individuals by requiring a new emergency petition after five days.**

In its current form, HB 1019 and all related policies authorize "any interested person who has reason to believe a person is suffering from a mental health disorder and presents a danger to the life and safety of the individual or others" to complete and present a petition for emergency evaluation of that person to a Maryland District Court judge. The judge will make a determination if probable cause exists at a hearing with only the "interested person" and will issue an emergency petition that permits the detention of the individual, placing them into custody and ordering their transport to an emergency facility. There is no clause in the bill or any related

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<sup>1</sup> Maryland Police Accountability Act of 2021 – Body Worn Cameras, Employee Programs, and Use of Force. MD PUBLIC SAFETY § 3-524(d).

policies that require the court to notify family members, guardians, or representatives of the subject to appear before the court to provide the court with a more holistic view for the judge to consider additional factors related to the subject's behavior alleged behavior, ultimately violating the subject's due process rights.

In situations where an individual has falsely reported a subject for allegedly being a danger to his or her own safety and the safety of others due to a mental disorder and has the individual presented before the court just to gain control over the individual's life, emotional state, or finances, the individual does not have the option to rebut any of the allegations nor does he or she have the option to have a representative vouch for them before the court as the only requirement is an ex-parte hearing that the only the petitioner has knowledge of.

**Any bill or law that authorizes law enforcement officers to respond to an individual experiencing a mental health crisis instead of trained mental health professionals violates the Americans with Disabilities Act.**

Title II of the Americans with Disabilities Act (ADA) protects individuals with mental health disabilities and intellectual and developmental disabilities from discrimination in the criminal justice system but also requires State and local governments to avoid discriminating against people with mental health disabilities or intellectual and developmental disabilities in administering services and to serve individuals with these disabilities in the most integrated setting appropriate to their needs. The ADA protects three classes of people with disabilities – 1) a person who has a physical or mental impairment that substantially limits one or more major life activities; 2) a person who has a history or record of an impairment; and 3) a person who is perceived by others as having an impairment.

Most of the time that law enforcement responds to a call for assistance and the person is experiencing a mental health crisis, it is evident to law enforcement that the officer needs assistance from a professional specially trained in mental health matters. At that point, the officer should not engage with the individual and wait for proper assistance to arrive while securing the location to prevent anyone from being harmed if possible. Due to inadequate training or possibly other factors, law enforcement has historically used excessive or deadly force disproportionately against these individuals. In the years 2021-2022, of the 23 people shot and killed by police in the State of Maryland, five of them were experiencing a mental health crisis at the time law enforcement responded to the call for assistance.<sup>2</sup> It is not feasible or in the best interest of public safety that law enforcement engages with an individual suffering from a mental health crisis and use unreasonable force to detain the individual. Allowing law enforcement to respond to a mental health crisis heightens the risk of placing the public in an unsafe situation that can lead to tragic

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<sup>2</sup> Congressman David Trone and credited to DC News Now. (2023, January 2). Law Enforcement De-Escalation Training Act signed into law. Retrieved from <https://trone.house.gov/2023/01/02/law-enforcement-de-escalation-training-act-signed-into-law>.

consequences. We encourage the use of trained mental health professionals as responders when a mentally disabled person is involved.

For the forgoing reasons, the ACLU of Maryland urges an unfavorable report on HB 1019.

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