HB 1019_DRM_Oppose_SenateTestimony.pdf
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Position: UNF

Disability Rights Maryland

Empowerment. Integration. Equality.

1500 Union Ave., Suite 2000, Baltimore, MD 21211
Phone: 410-727-6352 | Fax: 410-727-6389
www.DisabilityRightsMD.org

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

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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 themself 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 themself 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.

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[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.

HB 1019 unfav MOPD Written Testimony.pdf
Uploaded by: Elizabeth Hilliard
Position: UNF

Natasha Dartigue
Public Defender

Keith Lotridge
Deputy Public Defender

Melissa Rothstein
Chief of External Affairs

Elizabeth Hilliard
Acting Director of Government Relations

POSITION ON PROPOSED LEGISLATION

BILL: HB 1019 - Mental Health Law - Petitions for Emergency Evaluation

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 03/26/24

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 1019. The bill would move Maryland backward in our progress toward more effective and appropriate responses to mental health crises. The bill has two components: first, it codifies the use of force by a peace officer executing an emergency petition in Health General Article § 10–624 and second, it permits numerous "extensions" of emergency petitions for "good cause." The Maryland Office of the Public Defender is opposed to both provisions and this testimony addresses each in turn:

I. Use of Force

House Bill 1019 adds the following language to Health General Article 10-624 (3) A PEACE OFFICER MAY USE REASONABLE AND NECESSARY FORCE IN ACCORDANCE WITH § 3–524 OF THE PUBLIC SAFETY ARTICLE WHEN EXECUTING A PETITION.

The General Assembly recently enacted the Maryland Use of Force Statute, MD PUBLIC SAFETY § 3-524. Law enforcement officers across the State use force permitted by this statute in the execution of emergency petitions and in response to 911 calls for psychiatric emergencies. It appears that law enforcement agencies across the State accept that the MD Public Safety statute applies to law enforcement officers executing emergency petitions and responding to 911 calls for psychiatric emergencies. Therefore, is not necessary to include language on the use of force in the Health–General Article of the Maryland Code.

Instead of codifying the use of force that a law enforcement officer may use when executing an emergency petition, Maryland should focus on moving away from law enforcement

being the first response in mental health crises.[1] The DOJ recently released *Guidance for Emergency Responses to People with Behavioral Health or Other Disabilities*[2] and noted the following on the use of force:

> Research has shown that as many as 10 percent of all police calls involve a person with a serious mental illness.[[3]] Other estimates indicate that 17% of use of force cases involve a person with a serious mental illness, and such individuals face 11.[[4]] times the risk of experiencing a police use of force faced by persons without a serious mental illness. Further, while representing only 22% of the population, individuals with disabilities may account for 30% to 50% of incidents of police use of force.[[5]] In recent years, people with mental illness have accounted for between 20% and 25% of individuals killed by law enforcement.[[6]] These interactions are not only harmful and potentially deadly for people with disabilities; they also impose monetary costs on taxpayers. Case studies have demonstrated that when communities respond to individuals in crisis with law enforcement responses like arrest, court, and jail services, taxpayer costs are significantly higher than when crisis response services are utilized pre-booking.

If the Legislature passes HB 1019, instead of focusing on trained mental health care providers and crisis intervention specialists executing emergency petitions, Maryland will be codifying the use of law enforcement to execute emergency petitions and move further away from the goals associated with the Maryland Police Accountability Act of 2021 (SB 71) and the

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[1] "Most people with mental health conditions are no more likely to be violent than anyone else. Only 3%–5% of violent acts can be attributed to individuals living with a serious mental illness." Mental Health Myths and Facts - SAMHSA (Apr 24, 2023), https://www.samhsa.gov/mental-health/myths-and-facts#:~:text=Myth%3A%20People%20with%20mental%20health,with%20a%20serious%20mental%20illness.

[2] 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; *see also* 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] Watson, A. & Fulambarker, A. (2012). The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners. *Best Practices in Mental Health*, 8(2):71.

[4] Laniyonu, A. & Goff, P. (2021). Measuring Disparities in Police Use of Force and Injury Among Person with Serious Mental Illness. *BMC Psychiatry*, 21.

[5] Perry, D. (2016). *The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability*. Ruderman Family Foundation.

[6] Kimberly Kindy et al., *Fatal police shootings of mentally ill people are 39 percent more likely to take place in small and midsized areas*, Washington Post, Oct. 17, 2020, https://www.washingtonpost.com/national/policementally-ill-deaths/2020/10/17/8dd5bcf6-0245-11eb-b7ed-141dd88560ea_story.html.

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
For further information please Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

creation of the Maryland Use of Force Statute, MD PUBLIC SAFETY § 3-524. The Maryland Office of the Public Defender urges an unfavorable report on House Bill 1019 and urges that Maryland move toward best practices that include less police involvement in the service of emergency petitions ("EP") and more intervention by specially trained mental health professionals.[7]

Better police training and resources could help alleviate some of the concerns related to the challenges associated with serving an EP. We know that these situations are incredibly difficult for everyone involved, and it is our understanding that police may enter these situations with very little information on the condition of the evaluee or the circumstances. While we are grateful for efforts to improve policing, we hope that instead of codifying use of force, we can move beyond police response to mental health crises.

II. Good Cause to Extend the Time to Serve an EP

House Bill 1019 would allow for an "interested party" to petition for extensions of an emergency petition every five days, not exceeding 30 days. The EP process is intended to provide an immediate evaluation based on current symptoms and behavior and permit immediate intervention if someone is experiencing a mental health crisis that includes symptoms of a mental disorder and that the individual presents a danger to the life or safety of the individual or of others. Under current law, police, mental health providers, or courts can issue an EP. The majority of EP's are issued by the police during their interactions with individuals based on real time observations and concurrent safety concerns.

Police and mental health practitioners can issue EP's without a court hearing. HEALTH–GENERAL, § 10-622 (a) provides that an evaluee (the person being emergency petitioned) must "(1) Ha[ve] a mental disorder; and (2) Present[] a danger to the life or safety of the individual or of others." The danger to self or others must be immediate. Often, police complete an EP during a call. Police have the authority to respond to calls and issue and execute EP's when cases require urgency. This is consistent with Supreme Court jurisprudence requiring that a state

[7] A lawsuit—*Bread for the City v. District of Columbia*—is pending in DC to challenge the city's "reliance on Metropolitan Police Department (MPD) officers as the default first responders for mental health emergencies, an approach to emergency response services that discriminates against people with mental health disabilities." Complaint for Declaratory and Injunctive Relief, at ¶ 1, https://www.aclu.org/cases/bread-for-the-city-v-district-of-columbia?document=Bread-for-the-City-v-District-of-Columbia-Complaint#legal-documents.

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
For further information please Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

cannot confine a person once they no longer meet criteria and they can "survive safely in freedom."[8]

To meet the requirements of the Constitution, any extension for good cause must require the court to consider whether the evaluee continues to present a danger to self or others. House Bill 1019 is drafted to permit extensions "FOR GOOD CAUSE SHOWN BASED ON THE PRESENTING BEHAVIOR OF THE INDIVIDUAL." There is no definition of "good cause," however and there is no indication that the "interested party" seeking the emergency petition must reevaluate or interact with the person being petitioned to demonstrate the "presenting behavior." The amended language in HB1019 does not require a finding of continuing dangerousness. This language does not satisfy the requirements of Maryland or Supreme Court law. If there is no new evidence of immediate danger, the EP could effectively turn into an ongoing effort to deprive a person of their liberty without probable cause that they are a danger to themselves or others. The standard for what is probable cause in serving an EP is already low in comparison with the standard in a criminal case, and qualified immunity applies.[9] An individual's behavior and circumstances can significantly change in five days, which would – or to comply with the Constitution *should* -- make the EP is stale. Permitting an EP issued by a court, which under current law is only good for five days, to be extended for good cause is not a good policy decision.

An EP serves as documentation that the "interested party" or petitioner believed or believes that the evaluee (person being petitioned) had a mental illness and presented a danger to themselves based on immediate observations. Thus, time is of the essence when an EP is executed. An extension is not necessary, and is not good policy, when a new EP can be completed just as easily. A new EP may be requested through a one page form that comports with the already existing statutory dangerousness requirement and would require the "interested party" to return to court much like an extension for good cause would require the petitioner to return to court under HB 1019. Alternatively, an interested party or concerned individual could

[8] *O'Connor v. Donaldson*, 422 U.S. 563, 574-75 (1975) (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)) ("Nor is it enough that Donaldson's original confinement was founded upon a constitutionally adequate basis, if in fact it was, because even if his involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed.").
[9] *See S.P. v. City of Takoma Park, Md.*, 134 F.3d 260, 274 (4th Cir. 1998).

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
For further information please Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

more easily request a new EP by calling the police without returning to court. For example, a police officer who finds an evaluee on day 6 after the initial EP expired could issue and serve a new EP without going to court if the police officer directly observes that the evaluee continues to meet the dangerousness criteria. There is no circumstance where a law enforcement officer is prohibited from issuing and serving an EP on an evaluee who meets criteria. As noted above, MOPD does not encourage further law enforcement, rather we support more training or a study on the use of force in police encounters with evaluees. But, since the process already permits law enforcement to issue an EP immediately we urge that process to be used as opposed to elongated and likely stale court extension process.

Yet, the opposite is true. There is no protection of an evaluee against being emergency petitioned even if they are no longer demonstrating behavior that would satisfy the EP criteria. In fact, a police officer responsible for serving an EP extended by the court on day 15 would not be able to refuse to serve the EP even if the police officer finds the evaluee and does not believe the evaluee continues to meet criteria.

Notably, court hearings on emergency petitions are *ex parte.* The person being petitioned is not at the hearing, it is only the "interested party," who is usually a lay person requesting the issuance of the EP. Under HB 1019, the extension hearings will also be *ex parte* proceedings. These proceedings are sealed. While it is understandable that the initial emergency hearing is *ex parte,* there is no need for extension hearings to also be *ex parte.* At some point, the shield of an *ex parte* proceeding should be lifted and the evaluee and or his attorney should be able to participate or at least have the right to obtain transcripts of good cause extension hearings within 24 hours of a written request. Attorneys representing clients in involuntary civil commitment hearings are required to litigate due process errors in the process. The ability to effectively litigate due process errors in the process is impeded when access to documents and transcripts of state court proceedings.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 1019.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.
Authored by: Julianna Felkoski, Assistant Public Defender, Mental Health Division
Carroll McCabe, Chief Attorney, Mental Health Division

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
For further information please Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

HB_1019_ UNFAV_Emergency Evaluation Petitions_ACLU

Uploaded by: Henry Floyd Jr.

Position: UNF

HENRY E. FLOYD, JR.
PUBLIC POLICY COUNSEL

AMERICAN CIVIL
LIBERTIES UNION
OFMARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 200
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
COREY STOTTLEMYER
PRESIDENT

DANA VICKERS SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

Testimony for the Senate Finance Committee

Wednesday, March 27, 2024

HB 1019 – Mental Health Law –

Petitions for Emergency Evaluation

OPPOSE

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.[1]

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

[1] 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.[2] 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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[2] 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.

GREGORY BROWN
PUBLIC POLICY
COUNSEL

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

3600 CLIPPER MILL
ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838

WWW.ACLU-MD.ORG

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ANDREW FREEMAN
GENERAL COUNSEL

Tenney UNFAVORABLE HB1019.pdf
Uploaded by: Lauren Tenney, PhD, MPhil, MPA, BPS
Position: UNF

Lauren J. Tenney, PhD, MPhil, MPA, BPS, Psychiatric Survivor

(516) 319-4295 * www.LaurenTenney.us * LaurenTenney@aol.com * Kensington, Maryland

TO: An Open Letter to the Maryland Legislature Memorandum of Opposition to HB1019 UNF HB1019

FROM: Lauren J. Tenney, PhD, MPhil, MPA, BPS, Psychiatric Survivor

DATE: March 26, 2024

RE: Letter Informing Legislature of Submitted **Memorandum of Opposition UNFAVORABLE UNF HB1019** and any subsequent laws court ordering or compelling psychiatric treatment or oversight over expressed objection of any individual.

I am a psychiatric survivor, research psychologist, and mental health policy expert. I oppose HB1019 and request an UNFAVORABLE response to HB1019 by you and your committee. I highlight the oppressive nature of coercive psychiatry, its disproportionate harm to marginalized communities, and the need for community-based alternatives. I criticize the expansion of state control over mental health decisions and emphasize the importance of upholding human rights and autonomy. I raise concerns about the potential emotional impact on individual targeted by HB1019 can question the support it receives from various stakeholders. I urge legislators to prioritize alternatives to coercion and punishment that respect individuals' dignity and autonomy.

Key Concerns:

1. **Use of Force by Peace Officers:** One out of four people killed by the police are killed during a wellness check. To have a law that indicates that police force is allowed puts all people in Maryland who might be subject to this law in danger. The serious risk of abuse or excessive force is etched into HB1019 and violates human rights standards via police involvement in psychiatric interventions.
1. **Ethical, Legal, and Practical Concerns:** Forced treatment by court order presents ethical, legal, and practical challenges, including uninformed compliance and potential violations of individuals' rights.
2. **Justice Should Not Be Based on Guesswork:** Legal professionals lack the expertise to assess mental health conditions accurately, raising questions about the reliability of psychiatric assessments in court proceedings.
3. **Absence of Clear Criteria for Extension:** Vague criteria for extending petitions raise concerns about arbitrary decisions and human rights violations, necessitating clearer standards and justification.

Lauren J. Tenney, PhD, MPhil, MPA, BPS, Psychiatric Survivor

(516) 319-4295 * www.LaurenTenney.us * LaurenTenney@aol.com * Kensington, Maryland

Memorandum of Opposition UNFAVORABLE HB1019

4. **Extended 'Emergency' Evaluation:** Extending emergency evaluations up to 30 days lacks clarity and may lead to discriminatory assessments, undermining individuals' rights and well-being.

Additional Points:

- **Human Rights Concerns:** Coercive psychiatric practices risk human rights violations and adverse consequences, including iatrogenic effects of psychiatric treatment.
- **Deceptive Psychiatry Narrative:** Misinformation surrounding psychiatric treatment persists. There is not a shred of biological evidence for any psychiatric diagnosis and tremendous evidence for the biological damage and death that psychiatric treatment causes.
- **Racial Disparities:** Coercive psychiatric interventions disproportionately affect marginalized communities, exacerbating existing racial disparities.
- **Iatrogenic Effect:** Psychiatric treatments often result in unintended adverse effects, necessitating caution and informed consent in their applications.
- **Advance Directives:** Advance directives should be followed to respect individuals' references and autonomy.
- **Medical Evaluation:** Only qualified medical professionals without financial interests should assess individuals for emergency and/or involuntary commitment.
- **Data Collection:** No where does the bill indicate how data will be collected on the use of this extended state power and data collection on respondents and petitioners ought to be tracked, particularly concerning race, ethnicity, age, gender, sex, sexuality, religion, and occupation.

Thank you for your time and attention. Please return an UNFAVORABLE response to HB1019.

Please find below my written testimony.

Kind regards,

Lauren J. Tenney, PhD, MPhil, MPA, BPS, Psychiatric Survivor

Lauren J. Tenney, PhD, MPhil, MPA, BPS, Psychiatric Survivor

(516) 319-4295 * www.LaurenTenney.us * LaurenTenney@aol.com * Kensington, Maryland

Lauren J. Tenney, PhD, MPhil, MPA, BPS, Psychiatric Survivor

(516) 319-4295 * www.LaurenTenney.us * LaurenTenney@aol.com * Kensington, Maryland

Memorandum of Opposition UNFAVORABLE HB1019

Thank you for allowing me to testify today, on my fifty-second birthday, March 27, 2024.

My name is Lauren Joy Tenney. I have a PhD in Psychology with a specialization in Environmental Psychology, a Master's Degree in the Philosophy of Psychology, a Master's degree in Public Administration, and a Bachelor's degree in the Professional Studies of Human Services. I have more than thirty years of experience working in the field of public mental health policy, regulation, and rights protection and advocacy. I worked as a professor of psychology at the undergraduate level for nearly two decades. I am also a psychiatric survivor who was first institutionalized at fifteen years old in 1988. I have been working to end these types of laws since 1995, when at the time, I qualified to be subject to them.

I am personally concerned about the effects of this law on my own life as well as the lives of people in Maryland.

Coercive psychiatry is oppressive and violates autonomy. Marginalized communities face disproportionate harm. We ought to resist state control over mental health decisions and advocate for community-based alternatives. We must reject the expansion of coercive laws and prioritize human rights and autonomy, empowering communities, and people to address their own needs. Community support over confinement ought to be our goal. There is no justification for adding the use of force to legislation that is already designed to arrest one's liberty and freedom. Due process matters and there ought to be dignity in crisis, not a blank check for the use of force. Where in the legislation are consequences of force addressed? Is there a transparent evaluation process? What is the accountability for law enforcement if force is utilized against a person who likely has not committed any crime, but is escaped on psychiatric parole?

HB1019 perpetuates coercive practices within the public psychiatric system, which are inherently oppressive. The use of involuntary detention and forced treatment violates individuals' autonomy and extends systems of control and domination.

HB1019 will exacerbate existing inequalities and injustices within the public psychiatric system. Marginalized communities, including People of Color, LGTBQI2SA+ individuals, and those experiencing poverty or who do not have anywhere to live are disproportionately targeted by coercive psychiatric interventions.

Lauren J. Tenney, PhD, MPhil, MPA, BPS, Psychiatric Survivor

(516) 319-4295 * www.LaurenTenney.us * LaurenTenney@aol.com * Kensington, Maryland

Memorandum of Opposition UNFAVORABLE HB1019

HB1019 expands the power of the state to detain and treat individuals against their will, further entrenching systems of surveillance and control. We ought to resist state control and intervention in people's lives, particularly when it comes to matters of mental health.

HB1019 could evoke a range of emotions and reactions from individuals who may be targeted by it including fear, anger and frustration, discrimination and shame, anxiety and distress, and trauma and re-traumatization. Especially if individuals believe that our rights are being violated or if we disagree with the necessity of intervention, we may feel powerless and resentful towards the authorities or individuals involved in the process. The fear of losing control over our own autonomy and decision-making processes can be deeply distressing. We may further internalize discriminatory messages and perceive ourselves as not being welcome in society, further isolating us from the support networks that we all need. The anxiety of not having control over medical decisions is not limited to the possibility of loss of liberty and freedom, the iatrogenic effects of treatment, and impact on personal and professional lives. The loss of agency and control over one's own body and mind can re-traumatize an individual and further undermine our sense of safety and well-being. It is essential to consider the impact of coercive psychiatric interventions and prioritize approaches that respect our autonomy, dignity, and human rights.

Law enforcement, families and caregivers, mental health professionals, public safety advocates, and politicians and policy makers might support HB1019 because they are pressured to or because they are prey to the deceptive psychiatry narrative and see psychiatric response as necessary to protect public safety, which will lead them to prioritize use of force over concerns about individual rights and autonomy. However, this analysis precludes underlying power dynamics, potential harms, and alternative approaches. Relying on law enforcement professionals who do not have mental health expertise increases risk and moves away from community-based, alternative crisis response and trauma-informed approaches. What is needed are support networks that empower individuals and respect their autonomy. A collaborative, rights-based approach on the part of the mental health professional would eliminate the idea of them contacting the police to catch their client. Public safety advocates question the effectiveness and ethical implications of involuntary evaluation and treatment and would rather seek holistic approaches to public safety that address underlying social inequalities and prioritize non-coercive crisis intervention strategies. Politicians and policy makers who rely on coercive measures as a response to public concerns about mental health crises and public safety are being irresponsible. Instead, people in power should address root causes of mental distress, such as poverty, trauma, and social isolation, rather than further entrenching punitive approaches that exacerbate harm and marginalization.

I urge you to respond unfavorably to HB1019 and to prioritize alternatives to coercion and punishment that uphold the dignity and autonomy of individuals with psychiatric histories.

Lauren J. Tenney, PhD, MPhil, MPA, BPS, Psychiatric Survivor

(516) 319-4295 * www.LaurenTenney.us * LaurenTenney@aol.com * Kensington, Maryland

In short, this bill or any one like it supporting any type of court ordered psychiatry, in the community or in an institution ought not be passed legislation in Maryland. The following are specific concerns presented in the bills:

2. **Use of Force by Peace Officers:** Police interactions turn deadly when police are sent to pick up people with psychiatric histories. One out of four people killed by the police are killed during a wellness check. To have a law that indicates that police force is allowed puts all people in Maryland who might be subject to this law in danger. The risk of abuse or excessive force is etched into HB1019 that violates human rights standards.
3. **Ethical, Legal, and Practical Concerns:** Any proposed law that would support forced treatment by court order or compulsion or coerced or uninformed compliance presents serious ethical, legal, and practical challenges.
4. **Justice Should Not Be Based on Guesswork: Keep Legal Professionals Out of Mental Health Assessments:** People in the legal profession, including judges, do not possess the training or licensure to determine whether someone "has shown the symptoms of a mental disorder" and it well known that there is no predictive algorithm for assessing future danger. Legal expertise does not equal competency in mental health assessment.
5. **Absence of Clear Criteria for Extension:** "Good cause" is a vague and evasive description that can lead to human rights violations and unnecessary and costly involvement with the public psychiatric system. HB1019 does not specify clear criteria or standards for determining when such extensions are warranted. The lack of clarity could lead to arbitrary decisions and increase the risk of human rights violations, particularly if extensions are granted without sufficient justification or consideration of the individual's right and well-being.
6. **Extended 'Emergency' Evaluation: Discriminatory Assessment Concerns:** Extending a petition for 'emergency evaluations' up to 30 days raises questions about the true meaning of 'emergency' and suggests potential discriminatory assessment. To extend a petition for someone to be kidnapped for "emergency evaluation" by five-day increments, for up to thirty days, requires the average person to question what is meant by "emergency" as surely, an emergency is ordinarily thought of as an imminent situation of crisis, trauma, tragedy. A predicament of difficulty that presents an urgent situation, a disaster. An order to pick someone up for an emergency that lasts 30 days in itself shows that the unnamed, undefined pending "emergency" is likely rooted in discriminatory assessment rather than reality.

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(516) 319-4295 * www.LaurenTenney.us * LaurenTenney@aol.com * Kensington, Maryland

Key Points:

Human Rights Concerns: This bill presents human rights violations and concerns risking people to death via police interaction as well as potential iatrogenic consequences of psychiatric treatment and torture.

Deceptive Psychiatry Narrative: Misinformation and the harmful nature of psychiatric treatments raise serious questions about the effectiveness of forced psychiatric treatment.

Racial Disparities: There is a great potential for creating further racial disparities in a system that already shows racialized trends.

Iatrogenic Effects: Unintended adverse effects or complications caused by a medical intervention. Psychiatric treatments consistently cause iatrogenic effects as well as intentional damage, such as in the situation of intentional brain damage by coursing electricity through the brain.

Advanced Directives: Advance Directives ought to always be followed.

Medical Evaluation: Only medical doctors without financial stakes should be allowed to evaluate individuals for involuntary commitment, and even then, the practice is questionable and problematic.

Data Collection: There needs to be stricter ongoing independent external data collection on respondents, and petitioners, including demographics, psychiatric history, and outcomes of investigations. I

Thank you for your time and consideration. I am available to discuss any of the information for which I provided as written testimony below. I request you to submit an UNFAVORABLE response to HB1019.

Kind regards,

Lauren J. Tenney, PhD, MPhil, MPA, BPS, Psychiatric Survivor

SSJC Opposition to HB 1019 - EPs; Senate Testimony

Uploaded by: Robert Landau

Position: UNF

OPPOSITION TO

HB 1019 - Mental Health Law - Petitions for Emergency Evaluation

Before the Senate Finance Committee

March 27, 2024

The Silver Spring Justice Coalition (SSJC) is a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County committed to eliminating harm caused by police and empowering those communities most affected by policing.

My name is Robert Landau. I am a resident of Gaithersburg, and I am submitting testimony in opposition to HB 1019 on behalf of SSJC.

We urge you to oppose HB 1019, which would unnecessarily authorize police officers to use force in executing petitions for emergency evaluations (EPs), and allow a petition's expiration date to be extended when there may no longer be any need for an emergency evaluation. This bill jeopardizes the wellbeing and rights of persons who live with mental health conditions. It also endangers their rights under the Americans with Disabilities Act.

Use-of-Force Statute is Unnecessary, Provides Inadequate Protection

Bill proponents claim that Maryland's code on emergency evaluations needs a reference to the Maryland Use of Force Statute (§ 3-524) because EPs are a civil, not a criminal, procedure. The Public Safety Article provision § 3-524 applies to all conduct by law enforcement officers – including civil proceedings. The standards for police use-of-force are already clear. Reiterating it in the Health, General Article is unnecessary.

Inserting a reference to the Use of Force Statute would send the message that

force by law enforcement officers is justified when a person being served a petition demonstrates even the slightest resistance. If anything, police executing EPs should be required to take even greater care to avoid harming a person with a mental health condition. Furthermore, by adding a reference to § 3-524, the General Assembly would be condoning conduct that may violate the Americans with Disabilities Act (ADA), which requires accommodations for persons with mental illness. See, https://www.aclu.org/cases/bread-for-the-city-v-district-of-columbia?document=Bread-for-the-City-v-District-of-Columbia-Complaint#legal-documents.

People trapped in these involuntary circumstances, who are disproportionately Black and Hispanic, need greater protection and preservation of their rights as they are often disproportionately harmed by law enforcement officers.

Extension Process Will Lead to Unwarranted Apprehensions

We are deeply concerned that the bill's EP extension process will be used to deprive persons of their liberty without sufficient justification. Bill sponsors argue that extending EPs for up to 30 days may be necessary to find and apprehend a person who is the subject of an EP. However, the mental status of a person, and their alleged level of dangerousness, can change. If the subject of an EP can't be located, how does anyone know if their condition still warrants an evaluation?

The bill's language is vague and does not protect a person's liberty rights. It allows extensions of an EP for "good cause shown based on the presenting behavior of the individual…." This phrase is unclear and makes it too easy to get an extension. What does "good cause" mean? Bearing in mind that the subject of an EP is never present at the initial hearing or at the motion to extend the EP, what does "based on the presenting behavior" mean? If "good cause" is nothing more than that the person can't be found, then that is no standard at all. These ambiguities are reason enough to oppose the bill.

The subject of an EP who can avoid being seized by the police or sheriff for five days is unlikely to be an imminent danger to themselves or others. If the petitioner has fresh evidence that the individual needs an evaluation, there should be presented in a *de novo* EP hearing.

An SSJC member spoke with a captain in the Prince George's County Sheriff's office, who said that EPs are frequently abused by people with malign purposes. (EPs can be initiated by anyone claiming to be an interested party.) The captain talked about a case in which someone sought an EP 48 times. In another case, a person who allegedly was not regularly going to kidney dialysis was the victim of the EP process. Clearly, the entire EP process needs to be examined more closely, and this bill is not the solution – it only creates more issues. Given the obstacles for legal representation for people who are served EPs, we urge more protections for these persons, not less.

The Committee should deeply consider the harm and trauma done to a person when they are forcibly held against their will, especially when there is no evidence that the EP is still justified. EPs also waste the resources of already overburdened hospital emergency departments.

This bill is bad for the most vulnerable people in our communities, and it would be a bad policy for a state that has such inadequate protections for people who are subject to EPs. We urge that, rather than take a piecemeal approach to this complex problem, that the General Assembly study the entire EP system, with input from all stakeholders, before trying to fix any aspect of this broken system.

Please contact Robert Landau, at 301.938.9850, for further information about SSJC's position.

Robert Landau
Gaithersburg, MD

✦ silverspringjustice.wordpress.com ✦ Facebook: ssjusticecoalition ✦ Twitter: @SilverCoalition ✦ ✦
silverspringjustice@gmail.com