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POSITION ON PROPOSED LEGISLATION

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

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 02/28/2024

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.

I. Use of Force

The General Assembly recently enacted the Maryland Use of Force Statute, MD PUBLIC SAFETY § 3-524. It is not necessary to include language on the use of force in the Health-General Article of the Maryland Code. The current bill would shift the standard to less restrictive and less protective language (“reasonable and necessary force”) than what the Legislature created in SB 71 - Maryland Police Accountability Act of 2021 - Body-Worn Cameras, Employee Programs, and Use of Force. MD PUBLIC SAFETY § 3-524 (d) provides:

(d)(1) A police officer may not use force against a person unless, under the totality of the circumstances, the force is necessary and proportional to:

- (i) prevent an imminent threat of physical injury to a person; or
- (ii) effectuate a legitimate law enforcement objective.

(2) A police officer shall cease the use of force as soon as:

- (i) the person on whom the force is used:
 - 1. is under the police officer's control; or
 - 2. no longer poses an imminent threat of physical injury or death to the police officer or to another person; or
- (ii) the police officer determines that force will no longer accomplish a legitimate law enforcement objective.

This language offers explicit direction for police. Creating a separate, less restrictive standard for the use of force with psychosocially disabled persons is unnecessary, detrimental, and likely to result in constitutional challenges.

Marylanders would benefit from better police training on mental health crisis intervention. However, police should not be tasked with 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.⁶ 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, Maryland will move further away from the goals associated with the Maryland Police Accountability Act of 2021 (SB 71) and the creation of the Maryland Use of Force Statute, MD PUBLIC SAFETY § 3-524. Ultimately, Maryland should be moving toward best practices that include less police involvement in the service of emergency petitions (“EP”) and more

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/police-mentally-ill-deaths/2020/10/17/8dd5bfc6-0245-11eb-b7ed-141dd88560ea_story.html.

intervention by specially trained mental health professionals.⁷ We encourage the Health and Government Operations Committee to work with experts and stakeholders on ways to improve crisis response, and we are grateful for efforts to improve policing.

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

The EP process is intended to provide an immediate evaluation based on recent symptoms and behavior. Police can issue an EP on their own, mental health providers can complete an EP with police, or a court can endorse an EP and serve it through the police. HEALTH–GENERAL, § 10-622 (a) provides that an evaluatee must “present” a danger:

(a) A petition for emergency evaluation of an individual may be made under this section only if the petitioner has reason to believe that the individual:

(1) Has a mental disorder; and

(2) Presents a danger to the life or safety of the individual or of others.

Meaning, the danger to self or others must be immediate. This is consistent with Supreme Court jurisprudence requiring that a state cannot confine a person once they no longer meet criteria and they can “survive safely in freedom.”⁸

After five days, behavior and circumstances can change, and the EP is stale. 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

In addition, an extension for good cause requires the petitioner to return to court for a hearing on each requested extension. The petitioner could just as easily file a new petition, which is a

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>.

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).

one-page form. The petitioner could more easily request a new EP by calling the police without returning to court.

Better police training and resources could help alleviate some of the concerns related to the challenges associated with serving an EP. We support more training or a study on the use of force in police encounters with evaluatees. 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 evaluatee or the circumstances. 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. In cases where an EP remains unserved, the need for immediate evaluation may arise again, but the expiration of the first EP does not preclude the issuance and execution of a new EP.

An EP serves as documentation that the petitioner believed the person had a mental illness and presented a danger to themselves based on immediate observations. Time is of the essence when an EP is executed, and because the standards are flexible, the EP process is not a barrier to evaluation. An extension is not necessary when a new EP can be completed just as easily.

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

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