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## HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE

### House Bill 1019: Mental Health Law Petitions for Emergency Evaluation

February 28, 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 authorize police officers to use more force than is permitted in other encounters and extends 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.<sup>1</sup>

#### I. DRM opposes the provision authorizing police officers to use reasonable force.

Police are already permitted to use force when executing emergency petitions, but the standard officers are required to use is "necessary and proportional force," which includes the requirement that officers must attempt to de-escalate a situation before resorting to force.<sup>2</sup> The Maryland Police Accountability Act of 2021 was passed by the General Assembly to limit the excessive use of police force which had contributed to numerous police killings.<sup>3</sup> The legislature intentionally created a higher threshold than the prior "reasonable force" standard, applying the new, "necessary and proportional" force standard to explicitly limit law enforcement officers' use of force across Maryland. As written, HB 1019 would create a separate and lower threshold for force when officers are responding to calls to execute an emergency petition, treating people with mental illness differently from other similarly situated individuals. Thus, HB 1019 may violate the Equal Protection clause of the U.S. Constitution and Article 24 of the Maryland Declaration of Rights.

Additionally, 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

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<sup>1</sup> 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](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).

<sup>2</sup> Md. Code Ann, Public Safety § 3-524

<sup>3</sup> MARYLAND POLICE ACCOUNTABILITY ACT OF 2021—BODY-WORN CAMERAS, EMPLOYEE PROGRAMS, AND USE OF FORCE, 2021 Maryland Laws Ch. 60 (S.B. 71).

to be subject to police use of force and account for a disproportionate number of police deaths.<sup>4</sup> Over reliance on police to respond to mental health crises deprives people with disabilities of an equal opportunity to benefit from public services and risks running afoul of the ADA.<sup>5</sup> Instead, the ADA requires police officers to provide accommodations for people with mental health disabilities, which may include providing a non-law enforcement response.

If the rationale for adding authorization to use “reasonable 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. 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, under Md. Code, Public Safety § 3-524, agencies have an obligation to provide officers training on 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 authorizing a different standard for law enforcement’s use of force.

In addition, Maryland schools frequently misuse emergency petitions on Black and disabled children who do not pose any imminent risk of danger. 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.<sup>6</sup> Recent reporting suggests schools are still improperly using the emergency petition process multiple times per week on children as young as five.<sup>7</sup> Thus, authorizing police to use more force on Black and disabled children who should not be subject to the emergency petition process in the first place, puts children at even greater risk of harm or even death.

DRM has had numerous clients who were harmed by officers using excessive force during the issuance of emergency petitions, even after the use of force statute went into effect. Many of these clients were Black and multiply disabled people who did not pose any imminent risk of

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<sup>4</sup> 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>

<sup>5</sup> 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 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.”)

<sup>6</sup> U.S. Dep’t of Just., C. R. Div., *Wicomico County Public School District - Settlement Agreement*, (Jan. 23, 2017), available at <https://www.justice.gov/crt/case-document/wicomico-county-public-school-district-settlement-agreement>.

<sup>7</sup> 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/>.

danger, yet they were still harmed by police force used in the emergency petition process. One in four police killings occur when police are responding to mental health crises.<sup>8</sup> Explicitly authorizing police to use force and at a standard that exceeds other law enforcement interactions 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 authorized for five days, 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 demonstrating that an individual remains a danger to themselves or others risks defeating the purpose of an emergency petition. 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 has remained. The Court found 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.”<sup>9</sup> Moreover, even if confinement was initially justifiable, “it may not Constitutionally continue after that basis no longer exists.”<sup>10</sup> 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 not an emergent danger to self or others. Thus, extending the time an emergency petition remains valid in 5 day increments up to 30 days defeats the ordinary definitions of emergency and dangerousness and may make the emergency petition process vulnerable to legal challenge.

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. Please contact Courtney Bergan, Disability Rights Maryland’s Equal Justice Works Fellow for more information at [CourtneyB@DisabilityRightsMd.org](mailto:CourtneyB@DisabilityRightsMd.org) or 443-692-2477.

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<sup>8</sup> See Susan Mizner, ACLU, *Police “Command and Control” Culture Is Often Lethal—Especially for People with Disabilities*, ACLU (May 10, 2018).

<sup>9</sup> *O’Connor v. Donaldson*, 422 U.S. 563, 575 (1975) citing (*Shelton v. Tucker*, 364 U.S. 479, 488-490 (1960)).

<sup>10</sup> *O’Connor*, 422 U.S. at 575, citing (*Jackson v. Indiana*, 406 U.S., 715, 738 (1972))