

SB507 HB 703 OPD Favorable 2 5 25.pdf

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Position: FAV



NATASHA DARTIGUE
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POSITION ON PROPOSED LEGISLATION

BILL: SB507/HB703

Criminal Procedure- Diagnosis of Developmental Disability or Intellectual Disability Evidence

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: February 5, 2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House 703/Senate Bill 507.

Relationship between Competency to Stand Trial and Intellectual Disability

It should be noted at the outset that people who are not able to understand court proceedings or assist in their defense are not competent to stand trial (and therefore can not be tried, convicted, or sentenced unless and until they become competent).¹ However, ability to understand, and quality of understanding are separate things. Hallmark characteristics of all Intellectual Disabilities are that people experience deficits in reasoning, problem solving, planning, abstract thinking, judgement, and in learning from past experiences.² There is no requirement that someone be capable of making *good* decisions about their case, only that they be capable of making decisions. In short, people with intellectual disabilities can learn enough to become competent to stand trial, although they are still functioning at a deficit that makes it difficult for them to assist in defense and understand the trial proceedings as they are happening.

Vulnerability to Harm in Jails and Prisons

People with Intellectual Disabilities are significantly more vulnerable while incarcerated than those without. Aside from being victims of institutional violence, they may be coerced into giving other people their food and commissary or allowing other inmates to use their phone calls. Once in the

¹ Criminal Procedure Article §3-101(f), and

² DSM-5_TR, Section II: Neurodevelopmental Disorders.

criminal justice system, people with Intellectual Disabilities often experience more confusion about court procedures, and diminished capacity to assist in their defense which can lead to them serving longer and harder sentences than those without these disabilities. While incarcerated, failure to quickly comply with orders, which may be related to difficulty processing information or anxiety in high stress situations, can lead to disciplinary reports, and can eventually result in solitary confinement or prolonged sentences.³

SB507/ HB703 enables evidence of a defendant's Intellectual Disability to be introduced and considered at trial.

As it currently stands the burden of proving criminal intent (mens rea, or mental state) is on the state, however a defendant's intent may be shown by surrounding circumstances and the judge or jury may infer that a person ordinarily intends the natural and probable consequences of their conduct.⁴ Particularly for people with Intellectual Disabilities, it is not always fair to assume that they intended the consequences of their actions. Again, people with intellectual disabilities experience deficits in reasoning, problem solving, and planning in ways that mean they did not understand or intend the consequences of their actions.

While the Defense is entitled to put forth evidence that the required mens rea did not exist in specific intent crimes⁵ the law is less clear as to general intent crimes such as second-degree assault, possession of controlled dangerous substances, or malicious destruction of property. This bill would clarify that evidence of intellectual disability can be introduced by the Defendant and be considered at all stages of a case.

Consideration of Intellectual Disability in Pre-Trial Detention Facilities

While Attorneys are permitted to raise a person's intellectual disabilities there is currently no requirement that Commissioners or Courts consider that information at bail review hearings. When considering pre-trial release judicial officers are required by Rule to consider a number of factors,

³ Jennifer C. Sarrett, Alexa Ucar, Beliefs about and perspectives of the criminal justice system of people with intellectual and developmental disabilities: A qualitative study, Social Sciences & Humanities Open, Volume 3, Issue 1, 2021, <https://doi.org/10.1016/j.ssaho.2021.100122>

⁴ See Maryland Pattern Jury Instructions- Criminal 3:31, Proof of Intent.

⁵ Hoey v. State, 311 Md. 473 (1998).

but intellectual disability is not listed among those factors.⁶ This bill would require intellectual disability to be a consideration during pre-trial release proceedings and empower judicial officers to craft conditions of release that consider an individual's needs and abilities.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB507/HB703.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.
Authored by: Kimber D. Watts, Supervising Attorney, Forensic Mental Health Division
410-767-1839, Kimberlee.watts@maryland.gov**

⁶ Md. Rule 4-216.1(f).

SB507 sponsor testimony.pdf

Uploaded by: Linda Hanifin Bonner

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 7, 2025

SPONSOR TESTIMONY
Senate Bill 507
Criminal Procedure - Diagnosis of Developmental
Disability of Intellectual Disability - Evidence

Chairman Smith and Committee Members

Thank you for the opportunity to introduce and provide crucial details regarding SB 507 - Criminal Procedure - Diagnosis of Developmental Disability of Intellectual Disability – Evidence.

For the record, I am Senator Shaneka Helson from the 30th Legislative District of Anne Arundel County, MD.

This Bill is also cross-filed (HB0703) and cosponsored with Delegate Aaron Kaufman from the 18th Legislative District of Montgomery County, MD.

With us today and representing real-life reasons for this Bill are:

- Melissa Rosenberg - Executive Director of the Autism Society of Maryland
- Delancy Alfred - Public Policy Manager, Autism Society of America
- Sari Wisch, Chief of Staff, Delegate Aaron Kaufman's office

As Ms. Rosenberg will further elaborate, SB 507 addresses a critical issue in our criminal justice system focusing on how individuals with developmental or intellectual disabilities are treated during their interactions with the law. It recognizes that these individuals may face unique challenges and, without proper consideration, may not receive a fair and just legal process.

Specifically, the bill allows for the introduction of evidence of certain diagnoses during the criminal proceedings (not after), ensuring that these diagnoses are considered when making decisions related to a defendant's pretrial release. It mandates that a judge or District Court commissioner consider whether a defendant has been diagnosed with a developmental or intellectual disability, acknowledging that these conditions can

significantly impact a person's ability to understand legal proceedings, follow court orders, or engage with the justice system in a typical manner.

After hearing from Ms. Rosenberg and our other speakers, I recommend and urge a FAVORABLE REPORT ON SB 507.

Autism Society Written Testimony on SB 507__final.

Uploaded by: Melissa Rosenberg

Position: FAV



Written Testimony on SB 507
Autism Society of America,
Autism Society of Maryland & Autism Society of Baltimore- Chesapeake
Submitted to Maryland Senate Judicial Proceedings Committee

February 7, 2025

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1 (800) 328-8476

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410-290-3466

Autism Society Baltimore-Chesapeake
P.O. Box 10822
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410.655.7933

Dear Chairman Smith, Vice Chair Waldstreicher, and other members of the Committee,

Thank you for the opportunity to submit testimony in support of SB 507, a bill to ensure that Autism and developmental disability and/or intellectual disability diagnosis is considered in the court of law.

My name is Melissa Rosenberg, Executive Director of the Autism Society of Maryland and I am here to testify on behalf of the Autism Society of America, the Autism Society of Maryland, and Autism Society Baltimore-Chesapeake. The Autism Society of America is the nation's oldest and largest grassroots organization representing individuals on the Autism spectrum and their families. The Autism Society envisions a world where individuals and families living with Autism can maximize their quality of life, are treated with the highest level of dignity, and live in a society where their talents and skills are appreciated and valued. Along with our 70+ affiliates nationwide, we provide advocacy, education, information and referral, support, and community engagement opportunities at national, state, and local levels. Our Maryland affiliates include the Autism Society of Maryland, which works with families and autistic individuals in Montgomery, Howard, Anne Arundel and surrounding counties, and the Autism Society of Baltimore-Chesapeake, which covers Baltimore City and County. Our affiliates serve the state by offering information and referral services, educational workshops, social and support groups.

This bill addresses a critical issue in our criminal justice system: how individuals with developmental or intellectual disabilities are treated during their interactions with the law. It recognizes that these individuals may face unique challenges and, without proper consideration, may not receive a fair and just legal process.

Specifically, the bill allows for the introduction of evidence of certain diagnoses in criminal proceedings, ensuring that these diagnoses are considered when making decisions related to a defendant's pretrial release. It mandates that a judge or District Court commissioner consider whether a defendant has been diagnosed with a developmental or intellectual disability, acknowledging that these conditions can significantly impact a person's ability to understand legal proceedings, follow court orders, or engage with the justice system in a typical manner.

While a diagnosis could come in at the time of trial under an exception of hearsay under the Maryland rule of evidence, those rules do not attach at a pretrial release determination. Thus, the person with autism is put at a significant disadvantage as their diagnosis is held against them and not recognized by CLS. This bill would change that and allow the diagnosis to be brought before trial and during pre-trial release determination. It also allows expert testimony on autism and how that could impact the crime accused.

The Autism and the I/DD community are over-represented in the criminal legal system. At the Autism Society of America, the Information and Referral team is receiving a growing number of calls from the community requesting help after getting caught up in the system. The same is being seen at our offices in Maryland.

By age 21, approximately 20% of youth with Autism had been stopped and questioned by police, and nearly 5% had been arrested¹. When in the courts, behavior by Autistic individuals can be deemed “weird” or “unusual” and impact the jury and judge. That is why it is critical to allow for the consideration of the diagnosis. It is hard to get an exact rate of those with autism in prison as many are likely undiagnosed. However, studies show Americans with Autism are seven times more likely to be victims of crime due to social vulnerability, twelve times more likely to become involved in the criminal justice system without criminal intent, and five times more likely to be incarcerated than the general population². When looking at the intersection of race and disability status, this data is further exacerbated. The criminal legal and prison system is extremely challenging to navigate as an Autistic individual. There are unique vulnerabilities faced by the Autism community in carceral settings. These can include bullying, exploitation, sexual assault, or placement in solitary confinement due to misunderstandings about their behavior. Communication differences lead to a lot of misunderstandings and unjust action.

In developing the bill, we have consulted multiple subject matter experts including the Arc of Maryland, the Maryland Developmental Disability Council, Pathfinders for Autism, Legal Reform for the Intellectually and Developmentally Disabled, People on the Go, Disability Rights Maryland and the Maryland State’s Attorneys Association.

We strongly support this legislation because it helps create a more just and equitable criminal justice system for individuals with developmental and intellectual disabilities that addresses a gap in the state’s legal system. I urge the committee to consider the positive impact this bill will have on fairness in pretrial release decisions, the treatment of defendants with disabilities, and the overall integrity of our legal processes.

Thank you for your time and consideration. If you have any questions, please contact Melissa Rosenberg, melissa.rosenberg@autismsocietymd.org or 410-290-3466.

¹ Rava J, Shattuck P, Rast J, Roux A. The Prevalence and Correlates of Involvement in the Criminal Justice System Among Youth on the Autism Spectrum. J Autism Dev Disord. 2017 Feb;47(2):340-346.

² U.S. Department of Justice, Office of Justice Programs. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/contact-individuals-autism-effective-resolutions>

SB507.DDCouncil.Support.pdf

Uploaded by: Rachel London

Position: FAV



Maryland Developmental Disabilities Council

CREATING CHANGE • IMPROVING LIVES

Senate Judicial Proceedings Committee

SB 507: Criminal Procedure - Diagnosis of Developmental Disability or Intellectual Disability -
Evidence

February 7, 2025

Position: Support

The Maryland Developmental Disabilities Council (Council) is an independent, public policy organization that creates change to make it possible for people with developmental disabilities to live the lives they want with the support they need. From this perspective, the Council supports SB 507 as a step toward making Maryland a place where everyone is treated fairly by the criminal justice system.

WHAT does this legislation do?

- The bill allows evidence to be introduced for the person who is accused (defendant) in a criminal case that they have Autism Spectrum Disorder, an Intellectual Disability or Developmental Disability.
- This information must be considered by a judge or District Court commissioner when making decisions related to a defendant's pretrial release.
- The bill is different from a plea of not criminally responsible or the 704(b) rule.

WHY is this legislation important?

- People with I/DD are over-represented in the criminal legal system. For example, the Centers for Disease Control estimates the 2.3% of children have Autism. But researchers have found that by age 21, approximately 20% of youth with Autism had been stopped and questioned by police, and nearly 5% had been arrested.¹
- People with I/DD are under-supported in the criminal justice system. The U.S Department of Justice supports better screening to help officials in the criminal justice system identify and provide reasonable accommodations for people with I/DD to ensure procedural fairness.

While investments for criminal justice equity are without question needed, including for people with disabilities, the Council believes that the amount, purpose, and timing of such efforts must take into consideration the needs of all Marylanders with disabilities. Funding for this bill should not be offset by limiting essential funding for other critical needs, most immediately the Developmental Disabilities Administration community services that thousands of Marylanders depend upon.

Contact: Rachel London, Executive Director, rlodnon@md-council.org

¹ <https://pubmed.ncbi.nlm.nih.gov/27844248/>

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Uploaded by: Randi Ames

Position: FAV

Maryland Senate Judicial Proceedings Committee
Senate Bill 507: Criminal Procedure - Diagnosis of Developmental
Disability or Intellectual Disability - Evidence
Friday, February 07, 2025, 1:00 PM
Position: Support

Chairman Smith and other members of the Judicial Proceedings Committee, thank you for the opportunity to testify on SB507. Disability Rights Maryland (DRM) is the state-designated Protection and Advocacy agency, authorized under federal law to protect and advocate for the rights of individuals with disabilities. DRM works with individuals with intellectual and developmental disabilities (I/DD) who become involved in the criminal justice system. People with I/DD are overrepresented in the criminal justice system both as victims/survivors and as offenders.¹ Individuals with I/DD that become involved in the criminal justice system as suspects, defendants, or incarcerated individuals often face prejudice and a lack of understanding. The U.S. Department of Justice's Letter of Findings issued to Baltimore City in August 2016 found that the Baltimore City Police Department routinely violated the rights of people with disabilities by using unreasonable force against individuals with disabilities and those in crisis, even when the individual committed no crime or was in restraints.²

Senate Bill 507 recognizes that individuals with I/DD face unique challenges and, without proper consideration, may not receive a fair and just legal process. Specifically, this bill allows for the introduction of evidence of certain diagnoses in criminal proceedings, ensuring that these diagnoses are considered when making decisions related to a defendant's pretrial release. It mandates that a judge or District Court commissioner consider

¹ Roger J Stancliffe, Beverly L Frantz. *Criminal Justice and People with Intellectual and Developmental Disabilities*. June 01, 2024. <https://pubmed.ncbi.nlm.nih.gov/38802095/>

² <https://www.justice.gov/archives/opa/pr/justice-department-announces-findings-investigation-baltimore-police-department>

whether a defendant has been diagnosed with an I/DD, acknowledging that these conditions can significantly impact a person's ability to understand legal proceedings, follow court orders, or engage with the justice system in a typical manner.

Individuals with I/DD are subject to higher rates of abuse and exploitation while incarcerated and are often denied alternatives to incarceration or appropriate habilitation programs that would help them safely return to the community. SB 507 will provide a needed opportunity for diversion away from incarceration for people with I/DD. People with I/DD must receive justice in the criminal justice system, whether as victims, witnesses, suspects, defendants, or incarcerated individuals.

For these reasons, DRM strongly supports Senate Bill 507 and urges a favorable report.

Respectfully,

Randi A. Ames, Esq.
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SB 507 - MDH - JPR - LOI.pdf

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Position: INFO



Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

February 7, 2025

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

Re: Senate Bill 507 - Criminal Procedure - Diagnosis of Developmental Disability or Intellectual Disability - Evidence - Letter of Information

Dear Chair Smith and Committee Members:

The Maryland Department of Health (Department) respectfully submits this letter of information for Senate Bill (SB) 507 - Criminal Procedure - Diagnosis of Developmental Disability or Intellectual Disability - Evidence. SB 507 would provide for conditions under which a diagnosis of Autism Spectrum Disorder, or a diagnosis of an intellectual or developmental disability, could be considered as evidence in a criminal proceeding.

SB 507 allows for evidence of an intellectual or developmental disability to be admitted by a court of law if a person meets the definition of “developmental disability” or “intellectual disability” as defined in § 7–101 of the Health-General Article. SB 507 further allows for this evidence to be furnished through expert testimony.

However, § 7–101 of the Health-General Article performs a distinct function within the internal operations of the Maryland Department of Health’s Developmental Disabilities Administration (DDA), and this function does not align with SB 507’s intention of providing a pathway for courts to utilize the terms “intellectual or developmental disability” in the context of criminal proceedings. The definitions in Health-General § 7–101 play a crucial role in determining an individual’s eligibility for the 1915(c) Medicaid home and community-based services waiver programs operated by DDA. Fewer than 25,000 individuals in the state of Maryland are presently determined to have an intellectual or developmental disability under this definition.

The definitional approach taken by SB 507 could present two potential challenges for both the court system and for DDA depending on the criteria used by the courts:

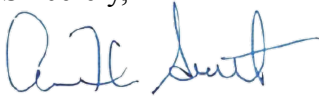
1. If the courts were to take a restrictive view of the definition of intellectual or developmental disability, only accepting direct evidence of a DDA medical eligibility determination as meeting the definition under Health-General § 7–101, many individuals

who may meet a broad definition of intellectual or developmental disability would not be able to benefit from the provisions of the bill. Additionally, such an approach could encourage defendants to attempt to apply for DDA medical eligibility without any intention of accessing the Medicaid home and community-based programs that are operated by DDA, which could place an undue burden on the medical eligibility determination process.

2. If the courts were to take an expansive view of the definition of intellectual or developmental disability, by allowing medical professionals or other experts to determine whether an individual meets the definitions in Health-General § 7-101, circumstances would likely arise under which a court could determine someone to have an intellectual or developmental disability, but DDA would not. Such a scenario would generate conflicting records and would increase the likelihood of confusion or legal dispute over the facts of individual cases placed before DDA for medical eligibility determination. Such confusion or disputes would likely place undue burden on DDA eligibility staff and on the Office of Administrative Hearings, which processes appeals of DDA medical eligibility determinations.

If you would like to discuss this further, please do not hesitate to contact Sarah Case-Herron, Director of Governmental Affairs, at sarah.case-herron@maryland.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Laura Herrera Scott'.

Laura Herrera Scott, MD, MPH
Secretary

SB 507 - MSAA Informational.pdf

Uploaded by: Patrick Gilbert

Position: INFO



Maryland State's Attorneys' Association

3300 North Ridge Road, Suite 185

Ellicott City, Maryland 21043

410-203-9881

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Rich Gibson
President

Steven I. Kroll
Coordinator

DATE: February 5, 2025

BILL NUMBER: SB 507

POSITION: Informational

The Maryland State's Attorneys' Association (MSAA) submits the following for the consideration of this Committee as it reviews and deliberates Senate Bill 507.

Some offenses, commonly referred to as "specific intent" offenses, require proof that, at the time the offense was committed, the defendant had a specific mental state or intent – in a prosecution for an offense like this, the State is required to establish this mental state beyond a reasonable doubt to the finder of fact, whether a judge or jury. Evidence that relates to a defendant's mental state, either tending to show that the defendant had the requisite intent or not, is relevant and, generally speaking, admissible.

SB 507 provides that evidence that of an autism spectrum disorder diagnosis, an intellectual disability diagnosis, or a developmental disability diagnosis is admissible if it bears on a defendant's mental state and is otherwise admissible – this evidence is already admissible under the Maryland Rules, and does not need a separate law providing for its admissibility before it could be received by a court.

Additionally, the provisions governing pretrial release, Md. Rule 4-216.1, require judicial officers to consider myriad factors about a defendant when making a pretrial release determination. An individual's developmental or intellectual disability would be, and is, considered by a judicial officer pursuant to this rule.

sb507.pdf

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Position: INFO

HON. STACY A. MAYER
CIRCUIT COURT
JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
JUDGE
FREDERICK COUNTY
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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 507
Criminal Procedure – Diagnosis of Developmental Disability or
Intellectual Disability - Evidence
DATE: January 29, 2025
(2/7)

INFORMATIONAL COMMENT PAPER

The Judiciary has no position on the bill but submits the below information for the Committee's consideration.

As drafted, the bill suggests that a judge or district court commissioner will have access to information regarding a defendant's diagnosis at the time of initial appearance or at a pretrial release determination. This information is often unavailable at that early stage of the proceeding. As such, the mandatory provision that it "shall" be considered may not be possible, if not known or presented at that stage of the proceeding.

cc. Hon. Shaneka Henson
Judicial Council
Legislative Committee
Kelley O'Connor