

Senate Judicial Proceedings Committee
HB 779 – Correctional Services – Medication Review Committee – Administration of
Psychotropic Medication to an Incarcerated Individual
February 18, 2025 at 1:00 PM
Position: Unfavorable

Disability Rights Maryland (DRM) is Maryland’s state-designated Protection and Advocacy organization, with responsibility under law to protect individuals with disabilities from abuse, neglect and civil violations. Over the past decade, DRM has investigated the mental health care provided to individuals with mental illness state correctional facilities, finding the care seriously inadequate, particularly those housed on segregation (restrictive housing) units. We have visited and toured many of the state’s facilities, have reviewed thousands of pages of medical records, engaged with representatives of the Department of Public Safety and Correctional Services (DPSCS), and communicated with incarcerated individuals with disabilities throughout the State. DRM has found that the mental health care provided to many incarcerated individuals with mental illness is constitutionally deficient¹ and appreciates attempts to improve care.

However, HB 779 allows seriously mentally ill incarcerated individuals to be subject to various psychotropic medications against their will without proper protections and within an inadequate treatment environment. Given the current DPSCS mental health structure, which involves a private for-profit mental health care provider who has not provided services required in its contract and which operates without proper oversight by DPSCS; and the lack of protections and treatment that should accompany any consideration of forcible care, DRM urges this Committee to reject the bill. Recognizing the critical importance of proper mental health care, DRM suggests that the subject of the bill be considered for further study. DRM offers to participate in any such process.

DRM’s Concerns Include:

The Inadequate Environment: Disability Rights Maryland hears frequently from incarcerated individuals and their loved ones that mental health treatment and supports are not available. From DRM’s experiences, the complaints are valid. The Department of Legislative Services, Office of Legislative Audits review of Incarcerated Individuals Healthcare Contracts (November 25, 2024) noted that audits dating back to February 2007 have identified issues with the health care contracts. Included among the audits’ recent findings are:

¹ In 2021, after sharing reports with DPSCS and engaging in attempts to remedy the serious harms DRM observed for years, DRM filed *DRM v. Scruggs*, Case No. 1:21-cv-02959-MJM, in federal district court to secure the rights of individuals with serious mental illness to be free from the harm caused by segregation and to ensure the provision of constitutionally adequate mental health care for individuals in segregation. That case is pending.

- DPSCS awarded the medical and mental health contracts despite concerns with the contractors;
- DPSCS did not monitor the contracts to ensure critical health exams were conducted;
- DPSCS did not monitor the contracts to ensure required staffing was provided;
- DPSCS did not monitor the contracts to ensure adequacy of ordered pharmaceuticals;
- DPSCS could not demonstrate that the staffing levels were sufficient to provide required services;
- The mental health and medical contractors failed to provide all the required staff in any month of their respective contracts;
- DPSCS did not assess the mental health contractor liquidated damages totaling approximately \$10.5 million between March 2022 and January 2024; and
- DPSCS did not follow up with the mental health contractor to ensure that missing screenings and incomplete physical exams were completed. In a three-month audit in 2023, the mental health contractor did not complete 548 required Suicide Risk Evaluations and 682 required Mental Health Exams.

Incarcerated individuals maintain a constitutional liberty right to control their own body, including the medications that go into it. The U.S. Supreme Court has opined that this right may only be abridged to meet an important governmental interest, such as significant danger to self or others within the institution. DRM is aware that the mental health care for many individuals who refuse medication is significantly inadequate and there does not appear to be any foreseeable possibility of moving such individuals to the state hospitals, where they may receive better clinical services. However, authorizing forced medication without requiring provision of critically needed companion services and without adequate protections is not the answer. Instead, a thoughtful evaluation of what is required for critical licensed mental health units within DPSCS is required.

Other Considerations:

1. **Due Process Protections Should Be Provided.** Incarcerated individuals should have the same right to counsel and appeal as individuals facing involuntary medication in Maryland's hospitals and psychiatric units. It is essential that incarcerated individuals are only involuntarily medicated when they meet legal requirements. Pursuant to Md. Code Ann., Health-General § 10-708, individuals in psychiatric hospitals and psychiatric units of general hospitals have the right to an attorney to represent them in any appeal before the Office of Administrative Hearings, and the legal right to appeal their case to Circuit Court if they disagree with the Administrative Law Judge's decision. In the federal system, public defenders are notified prior to clients being involuntarily medicated, so they can defend their clients' rights to be free from

medication when it would unfairly harm their underlying criminal case or otherwise violate their clients' constitutional and civil rights.

2. **Clarify What Is Meant By “State Correctional Facilities.”** Page 2, line 19 states that the provisions of HB 779 apply only in “state correctional facilities.” This term does not appear in Maryland Code or regulations. It is unclear whether this includes Baltimore City’s detention facilities, which are operated by DPSCS, or even local detention centers. We recommend that this be clarified with an amendment to the bill. There are many more protections that need to be provided if pretrial defendants were to be involuntarily medicated.
3. **Clarify That Medication Review Committees May Approve Involuntary Medication only in mental health units that have on-site clinical staff.** HB 779 page 2, lines 16-18 define “Licensed Mental Health Infirmary” as “a designated unit within a state correctional facility that is licensed by the Maryland Department of Health as a mental health infirmary.” However, HB 779 **fails to specify** that only individuals residing in a “Mental Health Infirmary” are subject to the procedures for involuntary medication, although there are some clues that this might have been the original intention. The term “Mental Health Infirmary” is not used in Maryland statute or regulation, or by the Office of Health Care Quality (OHCQ). Instead, OHCQ has licensed three “Health Facilit[ies] within a Correctional Institution” in DPSCS-operated facilities, pursuant to Health-General § 19-318. However, there are not standards for a “mental health infirmary. The Department of Health does not provide monitoring or review of DPSCS facilities, except to issue licenses. Therefore, it is critical that there is clarity about where forced medication could occur and how clinical oversight is to be provided.
DRM recommends that an amendment be adopted to clarify that incarcerated individuals may not be involuntarily medicated outside of such facilities. To do otherwise would subject individuals to an unreasonable risk of harm, and even death, because they could not be adequately monitored by mental health and medical clinicians in other correctional settings.

DRM is also concerned that provision of involuntary medication may result in further harms, such as cell extractions, use of mace, or other force. **Provision of involuntary medications should be administered in a private clinical setting.**

4. **Provision of Other Supportive Therapies and Treatment.** To be most effective psychotropic medication often must often be accompanied by counseling, therapy, group therapy, and/or psychosocial programs. A Medication Review Committee convened to consider forcible medication should be required to consider both whether there are less intrusive mental health services that should be provided to ameliorate

the danger of risk of harm; and to consider whether the forcible medication needs to be accompanied by other treatment in order to justify its use and provide proper care. Such supportive therapies are currently extremely limited in DPSCS facilities; when they do exist, they often consist of packets provided to individuals to complete in their cells.

5. **Individuals Should Have the Right to an Independent Advocate and to Review Medication History and Requests for Alternative Medications.** More consideration should be given to who and how an advocate for the individual who is seriously mentally ill is to be provided. As drafted, there is no independence provided for this role. In state hospitals, there exist independent “rights advisors” who are specifically tasked and trained for their positions. The individual should have the right to include another advocate of their choice, including a family member who can share information and support the individual. We also recommend an amendment permitting the incarcerated individual who is subject to a Medication Review Committee to be specifically permitted to share information with the committee about what medications they believe would be or have in the past been helpful to their mental health, and what they are willing to take. The Medication Review Committee should be directed to give due weight to the perspective of the incarcerated individual in this regard.
6. **Medication Formularies.** DRM has heard frequently that the medication provided by DPSCS is not the medication previously prescribed for an individual and that that medication may not be on the DPSCS formulary. The person who is subject to forcible medication and their advocate, with consent, must be provided access to the individual’s medical history and information about alternative medications and potential side effects. The Medication Review Committee should be directed to give due weight to the perspective of the incarcerated individual in this regard and have access to processes for when a non-formulary medication may be authorized.
7. **Individuals Should Receive a Copy of the Medication Review Committee’s Report.** On page 5, lines 13-14, the Report should also be provided to the individual who the subject of a Medication Review Committee and their advocate or lay advisor.

For reasons stated above, DRM urges the Committee to reject the bill and to permit stakeholders to spend the time needed to address the issues presented by DRM and others who oppose the proposed legislation but support the provision of adequate mental health care.

Should you have any questions or need additional information, please contact Luciene Parsley, Litigation Director at Disability Rights Maryland, at lucienep@disabilityrightsmd.org or at 443-692-2494.