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POSITION ON PROPOSED LEGISLATION

BILL: HB 860 - Petitions for Emergency Evaluation (Arnaud and Magruder Memorial Act)

FROM: Maryland Office of the Public Defender

POSITION: Neutral/Informational with Amendments

DATE: March 31, 2026 Bill Hearing

The Maryland Office of the Public Defender respectfully requests that the Committee consider the following information when evaluating House Bill 860.

The Maryland Office of the Public Defender (MOPD) greatly appreciates the work the sponsor has done to enact protections in the bill and to offer MOPD's proposed amended language highlighted below. We also appreciate efforts to reform the Emergency Petition ("EP") process, as we see firsthand the harm that is caused to Marylanders, especially Black and brown Marylanders when mental health crises are not met with appropriate services and care. Emergency Petitions in Maryland, (and nationally) are overused on Black and brown populations. Because of racial disparities in rates of police contact, Black people, including those with mental illness, are more likely to interact with police. Additionally, nearly two out of every three Black people who need mental health care services do not receive them.¹

Unfortunately, EPs are also disproportionately used on Black and brown children. In 2023, Wicomico used emergency petitions more often per capita than almost every other Maryland district where data is available. Baltimore City, for example, in the same year had 271 emergency petitions from schools, compared with Wicomico's 117, according to data obtained from law enforcement agencies through public records requests. But Baltimore City's student population is five times as large.² At least 40 percent of those children were aged 12 or younger. More than half were Black children, even though only a little more than a third of Wicomico public school children are Black.

¹ <https://policingequity.org/wp-content/uploads/2023/02/CPE-WhitePaper-MentalHealth.pdf>

² <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/#:~:text=More%20than%20three%2Dquarters%20of,of%20Wicomico%20students%20have%20disabilities.>

From the 8 years between 2015 and 2023, the process was used more than 750 times on children. Some are as young as 5 years old. It is with these significant daily implications in mind that the Maryland Office of the Public Defender submits the following testimony:

In regard to the change to the effective period of the EP, MOPD highlights that 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.

This means that the danger to self or others must be immediate, 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.”³ An EP serves as documentation that the petitioner believed the person (evaluatee) had a mental illness and presented a danger to themselves based on immediate observations. Time is of the essence when an EP is executed. Thus, MOPD is concerned that the extensions provided for in proposed subsection (D) of House Bill 860 Health General § 10-623, may lead to attenuation between the observed behavior and the issuance of an EP in a way that does not serve the ultimate goal of aiding an individual in crisis.

After five days, behavior and circumstances can change, and the EP is stale. The potential for an extension without new evidence of immediate danger, could effectively turn an EP into an ongoing effort to deprive a person of their liberty without probable cause that they are a danger to themselves or others. We appreciate the bill’s language to clarify the “good cause” standard and the additional requirement that the **FOUNDATIONS AND CONDITIONS THAT NECESSITATED THE ISSUANCE OF THE INITIAL PETITION STILL EXIST**. Due to the potential liberty and legal

³ *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.”).

implications of the extensions provided for in House Bill 860 we offered the below listed amendment to the bill sponsor.

Under Health General § 10–623 add **Section (F)** to state the following:

- (a) Legal records required to be disclosed under Md. Code Ann., Health-Gen. Sec. 4-307(l)(2) shall include any and all motions filed to extend an emergency petition, and previously filed emergency petitions that expired; and
- (b) the court shall provide such records to counsel within 48 hours of request.

The only way to ensure a safer and more just Maryland is to move beyond the current framework which relies on law enforcement to serve Emergency Petitions. To that end, we greatly appreciate the addition of the language in the House to Healthy General § 10–624(a)(3):

II) MAY ACT IN ACCORDANCE WITH BEST PRACTICES ON HOW TO TAKE AN EMERGENCY EVALUEE TO AN EMERGENCY FACILITY; AND

(III) SUBJECT TO THE DISCRETION OF THE PEACE OFFICER, MAYBE JOINED BY A MOBILE CRISIS TEAM WHEN PRACTICABLE,

The prioritization of using mobile crisis units to respond to mental health emergencies and serve emergency petitions is critical. Several states have specifically codified a preference for a mobile crisis team response in the instance that an EP might be necessary, such as California and Virginia. And, [the Department of Justice](#), has clearly articulated that “community-based crisis services play a key role in preventing needless institutionalization, law enforcement encounters, and incarceration of people with disabilities. These services, including mobile crisis services and crisis stabilization services—such as staffed crisis apartments, peer crisis respite centers, and community-based crisis stabilization units—divert many people with disabilities from admission to psychiatric hospitals, emergency departments, and jails.” The DOJ has further directed that sending a mobile crisis team or other responder, rather than law enforcement, when a call involves a person with a behavioral health disability, ensures that individuals with disabilities are afforded equal opportunity as is due to them under the ADA.

Finally, MOPD urges Maryland to consider alternatives to law enforcement issued EPs. As noted above, the DOJ recently released *Guidance for Emergency Responses to People with Behavioral Health or Other Disabilities*⁴ and noted the following on the use of force:

⁴ 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),

Research has shown that as many as 10 percent of all police calls involve a person with a serious mental illness.^[5] Other estimates indicate that 17% of use of force cases involve a person with a serious mental illness, and such individuals face 11.^[6] 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.^[7] In recent years, people with mental illness have accounted for between 20% and 25% of individuals killed by law enforcement.^[8] 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.

Ultimately, Maryland should 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. Better police training and resources and prioritizing mobile crisis teams will alleviate the harm and potential dangers inherent in serving an EP and having an EP served. We urge consideration by the committee of tracking and reporting of the use of EPs and those being served by law enforcement. Additionally, we hope that Maryland will not stop at House Bill 860 and move beyond relying on law enforcement responses to mental health crises and explore the community response mechanisms explored in this [Center for Police Equity Report](#).

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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>.

⁵ 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.

⁶ Laniyonu, A. & Goff, P. (2021). Measuring Disparities in Police Use of Force and Injury Among Person with Serious Mental Illness. *BMC Psychiatry*, 21.

⁷ Perry, D. (2016). *The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability*. Ruderman Family Foundation.

⁸ 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/2020/10/17/8dd5bcf6-0245-11eb-b7ed-141dd88560ea_story.html.