MARYLAND OFFICE OF THE PUBLIC DEFENDER

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POSITION ON PROPOSED LEGISLATION

BILL: SB 550 - Health Care Decisions Act - Surrogate Decision Making - Mental Disorders

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: Tuesday, February 24, 2026

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on SB 550.

This bill will expand the number of individuals who are authorized as surrogate decisionmakers to make extremely sensitive mental healthcare decisions on behalf of vulnerable individuals with mental disabilities. Currently under the law, a surrogate is not permitted to authorize mental healthcare treatment, in addition to sterilization. Both exceptions were carved out for a reason: because these decisions are so highly personal and invasive of individual autonomy that almost no one should be permitted to make these decisions on another's behalf, especially not without judicial oversight. As so many people are permitted to consent to mental healthcare treatment under this bill, it also opens the door to potential abuse by people with improper motives who may not protect the stated interests of the patient. Without the essential judicial safeguards of the court procedures used in a guardianship case, this bill presents a departure from Maryland law and the law of other states. Now is the time to provide greater protections for the rights of people with disabilities, not impose further limitations on their rights.

The bill effectively would displace the current protections in Maryland for people to avoid unwanted psychiatric treatment. *See* Md. Health-General Code Ann. § 10-708 (2025). Individuals subject to the panel have the right to counsel and to appeal. *Mercer v. Thomas B. Finan Ctr.*, 476 Md. 652, 695-96 (2021); *Riggins v. Nevada*, 504 U.S.127, 147 (1992); *Washington v. Harper*, 494 U.S. 210, 213 (1990); *Sell v. United States*, 539 U.S. 166 (2003); *Allmond v. Dep't of Health & Mental Hygiene*, 448 Md.

592, 595-96 (2016).The reason for the prohibition also finds its roots in Maryland common law. Maryland law presumes that adults are competent enough to make their own informed decisions, and this presumption does not disappear upon an individual's incapacity or involuntary admission to a mental health facility. *See Beeman v. Department of Health & Mental Hygiene*, 107 Md. App. 122, 146 (1995). The doctrine of informed consent, which includes the right to refuse treatment, is also a major part of Maryland Law and is closely tied to the constitutional right to bodily integrity. *See Stouffer v. Reid*, 413 Md. 491, 510 (2010) (holding that Maryland common law and statutory law also protect a patient's right to make informed choices about medical care and "[do] not allow a physician to substitute his judgment for that of the patient in the matter of consent to treatment."). This bill severely undermines these important common law doctrines and would upend decades of judicial precedent.

Maryland already has a judicial process for authorizing select individuals, as guardians of the person, to consent to psychiatric treatment for people with mental disabilities who are determined by the court to lack capacity to make decisions for themselves. Under Title 13 of the Estates and Trusts article, the court can appoint a person to decide important mental healthcare decisions on another's behalf. If the treatment has the risk of life-threatening complications (as many psychiatric treatments do), the authority must be explicitly granted by the court. *See* Md. Estates and Trusts Code Ann.§ 13-708 (2025). Although the bill purports to exclude certain individuals, serious concerns remain in terms of who will be making these decisions. For example, while the bill excludes people who have gotten divorced, many couples are separated and estranged without an official divorce decree who may or may not still be on good terms. The surrogacy statute is not currently designed to prevent abuse. Surrogates are typically appointed to make discrete medical decisions. Patients' thoughts on their mental health treatment often fluctuate, and relationships between the patient and their social supports may change over time. Surrogacy is not an appropriate means of addressing concerns related to mental health decision-making when a person may lack insight into their treatment from the perspective of their clinicians and social supports.

SB 550 mandates that surrogates "shall base base [their] decisions on the wishes of the patient" (page 3, ll. 11-12) to ensure that surrogates exercise what is known as substituted judgement, i.e., the surrogate acts as a loyal substitute for the patient and makes the decision that the patient would make as opposed to the decision that the surrogate thinks is best or appropriate. The intention is to secure the patient's autonomy. In the context of psychiatry, however, potential

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surrogates such as family members or friends frequently have a history of seeking involuntary treatment for the patient. Consequently, they are unlikely to act as loyal substitutes. Instead, they are much more likely to choose treatments they think are good for the patient even when the patient is expressly refusing them or has refused them in similar circumstances in the past. In short, there is likely to be a conflict of interest in respect to psychiatric treatment between the surrogate and the patient. By extending surrogate decisionmaking to psychiatric treatment, SB 550 fails to protect the autonomy of patients and places surrogates in a position where they are likely to violate the leading principle of bioethics in the United States, respect for autonomy. *See* Tom L. Beauchamp and James F. Childress, Principles of Biomedical Ethics (9th ed. 2026). As it is currently written, Maryland law secures this ethical principle. SB 550 does not.

We have found no corollary in other states that broaden the class of surrogates as this bill would. Nearly all the states we surveyed do *not* authorize surrogates to make mental health decisions without judicial oversight, guardianship, or authorization by the individual's advance directive. *E.g.*, 16 Del. C. § 2518 (stating that surrogates may not consent to voluntary admission to a mental health treatment facility unless the individual has specifically authorized such admission in an advance health-care directive); 755 ILCS 40/60(b) (stating that a surrogate decision maker, other than a court appointed guardian, may not consent to specific mental health services for an adult patient); Miss. Code Ann. § 41-41-227(5) (prohibiting surrogates from consenting to the admission of an individual to a mental health-care institution unless explicitly authorized in the individual's written advance health-care directive); Tex. Health & Safety Code § 313.004 (d)(3) (prohibiting surrogates from consenting to voluntary inpatient mental health services or electroconvulsive treatment or, for inmates, to psychotropic medication or involuntary inpatient mental health services); N.M. Stat. Ann. § 43-1-14 (preventing surrogates from admitting individuals to a mental health care facility unless explicitly authorized by an advance directive or a guardian).

In sum, SB 550 lacks vital safeguards that find their roots in constitutional, statutory, and common law and will upend decades of precedent protecting the rights of individuals to autonomy surrounding sensitive mental healthcare decisions. This is also a vast departure from what other states do with respect to surrogate decisionmaking.

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For these reasons, the Maryland Office of the Public Defender respectfully urges this Committee to issue an unfavorable report on SB 550.

Submitted by: Maryland Office of the Public Defender

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