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POSITION ON PROPOSED LEGISLATION

BILL: SB 412 - Maryland Department of Health – Community Forensic Aftercare Program – Established

FROM: Maryland Office of the Public Defender

POSITION: Favorable with Amendments

DATE: Tuesday, February 17, 2026

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on SB 412. We are in support of the sponsor's amendments.

This bill will establish the Community Forensic Aftercare Program (CFAP), which is an existing program within the Maryland Department of Health created by internal policy. The bill's purpose is to standardize existing best practices and promote greater transparency in the cases monitored by the CFAP, which are cases where a client is committed to the Department under Title 3 of the Criminal Procedure Article and released with conditions to the community. Most often, these are cases where a person has been found Not Criminally Responsible in a criminal case due to a mental illness or intellectual disability, and they are required to follow conditions that will ensure that they remain compliant with treatment in the community.

Currently, the Department operates the Community Forensic Aftercare Program (CFAP) without an enabling statute or regulations. In every case, CFAP monitors are tasked with (1) coordinating and monitoring compliance with the treatment plan and conditions outlined in the conditional release order, including notifying all necessary agents expected to provide treatment or service, and (2) promptly notifying the State's Attorney and the Court if the committed person fails to comply with any of the stated conditions. CFAP monitors take various approaches to their work. We need more consistency and transparency for all parties, but we also recognize that CFAP monitors are qualified as social workers to exercise discretion and make supervision and treatment recommendations so that a committed person can remain safely in the community.

CFAP monitors are social workers but are not in a treating relationship with the individuals they monitor. Therefore, CFAP monitors cannot make treatment decisions. Still, they approve or deny requests related to many aspects of our clients' lives, such as time with their families, career advancement opportunities, and access to education. Under the order of conditional release, CFAP is entitled to any and all information related to our clients' mental health treatment and anything in their life that could affect their condition. The orders grant broad authority, but there is no guidance in law or regulation to ensure that this broad authority is used appropriately. There have been cases where CFAP monitors have overridden medical recommendations from community providers.

CFAP monitors typically meet with our clients virtually. Some clients are seen once per month, while others are seen every 6 months. Some clients are very capable of advocating for themselves, and some clients are severely limited by their disabilities. Our clients also struggle to communicate with their attorneys about issues that could affect their conditional release and ability to remain in the community. Clients should have the right to designate an advocate of their choice to attend meetings with their CFAP monitor. CFAP monitors often invite our clients' treating providers, residential programs, and, in some cases, families to participate in meetings. It would benefit all parties, especially our clients, to allow them to designate an advocate to ask questions on their behalf.

The goal of CFAP and the Department should be to monitor clients and communicate with various stakeholders in a manner that assists them in maintaining their mental health and preserving their ability to remain safely in the community. The proposed bill would clarify CFAP's role and enable the Department to promulgate regulations to standardize CFAP's practices.

Additionally, this bill will ensure that our clients are only living in state hospitals and residential facilities if they are currently in need of that highest level of care. If our clients are not a danger to themselves, others, or the property of others because of a mental illness or intellectual disability, they are constitutionally entitled to live in the community with conditions. This bill will help prevent the unnecessary placement of our clients in an institutional setting under a hospital warrant. Better communication between the CFAP and defense counsel could prevent rehospitalization. If defense counsel receives notice of the facts related to alleged violations, we could address community issues before a hospital warrant is issued and our client is removed from the community, often losing their housing, job, and existing support network when they are returned to a state hospital or residential facility.

OPD supports the sponsor amendments. The amendments are offered to further clarify existing practices and add statutory protections to ensure adequate notice to counsel for the committed person. OPD met with the sponsor, the cross-filed bill sponsor, and the Department on several occasions to reach as much consensus as possible on these amendments.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB 412.

Submitted by: Maryland Office of the Public Defender

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