



NATASHA DARTIGUE
PUBLIC DEFENDER
KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER
HANNIBAL KEMERER
CHIEF OF STAFF
ELIZABETH HILLIARD
DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB 707, *Mental Health Law - Definition of Danger to the Life or Safety of the Individual or of Others and Reports on Emergency Evaluation Petitions (Right to Treatment)*

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: March 31, 2026 Bill Hearing

The Maryland office of the Public Defender (MOPD) urges a favorable report on SB 707. We want to thank the bill sponsor for working with us and additional stakeholders, and for incorporating proposed amendments from MOPD. The bill, as amended by the Senate Finance Committee, aligns with the Constitution, federal case law and Maryland law.

The Senate Finance Committee introduced two key amendments to the bill:

1. It requires that the personal, medical, and psychiatric history considered by mental health clinicians, law enforcement officers, and judges in emergency petitions, certifications, and involuntary civil commitment hearings must be **recent**.
2. It mandates that an individual's inability to provide for their basic needs must be so severe as to create a substantial risk of serious bodily harm, serious illness, or death in the **near** future.

Relevance of Past History:

- Past medical records and psychiatric history, especially those years old, are not necessarily relevant to a client's current mental state.
- Psychiatric recovery is not a linear process; a history of decompensation or certain behaviors does not guarantee they will be exhibited in the future.
- Current behaviors during periods of decompensation are influenced by various factors, including environmental issues like homelessness.

The Nuance of Utilizing Past History in Assessing Current Mental State

Relying heavily on a client's distant past medical records and psychiatric history to interpret their current mental state can be misleading and is often an oversimplification of a complex individual process. Records, particularly those years old, represent a snapshot in time and may not hold the same diagnostic or prognostic relevance for the client's present condition.

Psychiatric Recovery is Non-Linear:

It is crucial to recognize that psychiatric recovery is rarely a linear progression. A history marked by periods of decompensation, specific challenging behaviors, or past diagnoses does not create an unchangeable future. Individuals evolve, coping mechanisms change, therapeutic interventions take effect, and the brain's neuroplasticity allows for significant behavioral and emotional recalibration over time. Consequently, a previous pattern of behavior is not a guarantee of future exhibition. Clinicians and legal professionals must be cautious not to substitute historical data for a comprehensive, real-time assessment of the client's current psychological functioning and stability.

The Impact of Current Environmental and Psychosocial Stressors:

A client's current behaviors, especially those observed during periods of acute decompensation, are influenced by their immediate environment and ongoing psychosocial stressors. Issues such as chronic homelessness, financial instability, lack of access to consistent healthcare, or victimization can precipitate or exacerbate mental health crises. For example, a client struggling with homelessness may exhibit heightened paranoia or irritability that is a direct, understandable response to a chaotic and unsafe living situation, rather than solely a reflection of a core, static psychiatric illness. Attributing all current symptoms solely to a past diagnosis, while neglecting the powerful impact of current environmental determinants, risks misdiagnosis and inappropriate treatment or legal conclusions. A holistic view requires weighing current environmental pressures alongside historical factors.

Impact on Legal Counsel and Hearing Efficiency:

- Allowing this evidence without limit would necessitate that counsel (the Office of the Public Defender, in over 99% of involuntary civil commitment cases) obtain and review years of records to provide effective assistance.
- This requirement could lead to significant hearing delays, potentially involving subpoenas for out-of-state medical and psychiatric records.
- The admission of such extensive evidence would lengthen the involuntary civil commitment hearing.

The Standard for Emergency Intervention: Current Condition vs. Historical Data

The standard for emergency intervention—specifically the issuance of an Emergency Petition (EP)—must remain focused on the subject's immediate, present danger and decompensation. This requirement is rooted in the practical realities faced by law enforcement and the legislative intent behind emergency protective custody laws.

Law Enforcement's Immediate Assessment:

Police officers responding to a 911 crisis call operate in a time-critical environment. They do not possess the capacity, nor the mandate, to act as historical medical reviewers. They cannot be expected to spend critical minutes or hours reviewing a detailed description of years' worth of medical or psychiatric records while a subject is in acute crisis.

The justification for issuing an EP is, by necessity, based on the subject's current behavior and immediate presentation, which indicates a danger to self or others. The decision is not, and cannot ethically or practically be, predicated on behaviors they exhibited in a decompensated state five or ten years prior. The relevance of decades-old history to the current emergency—the legal trigger for the initial detention—is marginal at best and potentially detrimental.

What officers require for a lawful and safe decision is a concise, accurate description of the subject's immediate state, including recent behaviors and statements, to determine the necessity of an EP. Conflating historical diagnostic data with current dangerousness undermines the emergency nature of the police function and risks inappropriate interventions based on stale data. The focus must be on the precipitating incident and the subject's *present* risk profile.

Assessments by Emergency Room Physicians and Mental Health Clinicians

Emergency room physicians and mental health clinicians engaged in assessing an individual for certification for involuntary psychiatric admission have limited time and cannot review years of medical or psychiatric records. They typically review recent medical and psychiatric records that are available in CRISP (the State designated Health Information Exchange and Health Data Utility for Maryland).

The Senate's amendment aligns with current practice, ensuring that any decision affecting an individual's liberty is grounded in recent, relevant evidence. For instance, in *In Re: J.C.N.*, 460 Md. 371 (2018), the Court of Appeals found the evidence presented at the involuntary admission hearing was such that a reasonable person in the position of the ALJ could accept the evidence as adequately supporting his ultimate finding, by clear and convincing evidence, that at the time of the hearing J.C.N. was a danger to herself or others.

For an individual's behavior to meet the Finance Committee's second amendment standard, it must pose a substantial, near-future risk of serious bodily harm, serious illness, or death. Significantly, at least half of the states incorporate a time constraint within the forward-looking component of their definition of dangerousness. This complies with the requirements of federal case law which does not allow the involuntary hospitalization of an individual because they may become a danger in six months or a year.

Federal case law governs the criteria for involuntary civil commitment, establishing clear

constitutional limitations on the state's authority to detain individuals based on potential future dangerousness. *See e.g., Addington v. Texas*, 441 U.S. 418 (1979) (because psychiatric predictions of future dangerousness are uncertain, unlike factual criminal guilt, the Court held due process requires “clear and convincing evidence for involuntary civil commitment - recognizing “dangerousness” to self or others, linked to mental illness, as a core substantive criterion, balancing individual liberty against state interests in treatment and public safety); *O'Connor v Donaldson*, 422 U.S. 563 (1975) (affirmed that non-dangerous individuals cannot be confined against their will, even if mentally ill). Specifically, these legal precedents mandate strict compliance, prohibiting the involuntary commitment of an individual predicated solely on the mere, speculative possibility that they might pose a danger at some point in the distant future. This principle is rooted in the Due Process Clause, which requires that any deprivation of liberty be supported by clear and convincing evidence of a present danger to the individual or to others. A commitment based on a remote, uncertain, or attenuated risk violates this constitutional protection because it fails to meet the requisite standard of proof for necessity. Thus, effectively punishing a predicted future status rather than addressing a current, demonstrable need for intervention. The legal standard requires a finding of a substantial risk of harm likely to materialize in the *near* future, thereby distinguishing legitimate, constitutionally permissible interventions from speculative detentions that infringe upon fundamental rights.

The statute now complies with Maryland law, Constitutional, and federal case law, following the Senate Finance Committee's amendment.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB 707 as it is written.

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

Authored by: Carroll McCabe, Chief Attorney, Mental Health Division and
Sanjeev Varghese, Deputy Chief Attorney, Mental Health Division