

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 402

(Senator Carter, *et al.*)

Finance

Rules and Executive Nominations

Mental Health - Involuntary Admission - Inmates in Correctional Facilities

This bill alters the circumstances under which the Maryland Department of Health (MDH) must receive an inmate for involuntary admission and authorizes a court to impose sanctions if MDH fails to do so within a specified time period. The bill also establishes reporting requirements. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase minimally, likely concentrated in FY 2020, due to the bill's reimbursement provisions. Thereafter, the bill's requirements can likely be handled with existing resources, as discussed below. Revenues are not likely affected.

Local Effect: Local government revenues increase minimally due to the bill's reimbursement provisions, as discussed below. Expenditures are not materially affected.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

The bill defines "correctional facility" as a facility that is operated for the purpose of detaining or confining adults who are charged with or found guilty of a crime.

Additionally, “inmate” is defined as an individual who is actually or constructively detained or confined in a correctional facility.

Maryland Department of Health Requirements for Receiving an Inmate for Involuntary Admission

The bill distinguishes between an inmate in a correctional facility and an individual who is not an inmate in a correctional facility. The conditions under which MDH must receive an individual who is not an inmate in a correctional facility remain unchanged.

However, the requirements for involuntary admission of an inmate are modified. Specifically, MDH has to receive and evaluate an inmate within eight days of notification that the inmate has been certified for admission by a physician, licensed psychologist, or psychiatric nurse practitioner. The involuntary admission is subject to meeting two other requirements: (1) an application for admission has to have been completed; and (2) the individual’s involuntary admission is not limited by specified limitations, which are unchanged by the bill.

Maryland Department of Health Consequences If the Inmate Is Not Admitted within the Time Required

A correctional facility, or any person with a legitimate interest in the welfare of the inmate, may file a request with a court to review the admission status of the inmate to determine whether MDH has complied with its obligation to timely admit the inmate. If MDH fails to do so, a court may impose sanctions to compel compliance, including the requirement that MDH reimburse a correctional facility for costs incurred in retaining the inmate beyond the specified time period at the daily rate specified (\$45 per day).

Grant Funding

MDH may accept a grant of funds from the federal government or any other public or private foundation or agency for the purpose of complying with the requirement to accept an inmate into a facility within eight days of the inmate’s certification for involuntary admission.

Reporting Requirements

The Secretary of Health, in conjunction with the Commissioner of Correction, must report to specified committees of the General Assembly by October 31 of each year on the admission of inmates to State facilities under the bill. The report must include the mean and range of wait times and the total number of inmates who waited more than eight days for admission to a State facility for inmates incarcerated in (1) State prisons; (2) the

Patuxent Institution; (3) the Baltimore City Detention Center; and (4) county detention centers. The report must also include the total amount of payments made by MDH to correctional facilities as a result of court-imposed sanctions.

Current Law: Under the Health-General Article, application for the involuntary admission of an individual to a facility or Veterans' Administration (VA) hospital may be made by any person who has a legitimate interest in the welfare of the individual. However, before the Division of Correction (DOC) or the Patuxent Institution makes an application regarding an inmate in its institution, the Behavioral Health Administration (BHA) must first agree to pay the appropriate expenses.

A "facility" is defined as any public or private clinic, hospital, or other institution that provides or purports to provide treatment or other services for individuals who have mental disorders.

An application for the involuntary admission of an individual to a facility or VA hospital for the treatment of a mental disorder must (1) be in writing; (2) be dated; (3) be on the required form of BHA or the VA; (4) state the relationship of the applicant to the individual for whom admission is sought; (5) be signed by the applicant; (6) be accompanied by the certificates of either one physician and one psychologist or two physicians; and (7) contain any other information that BHA requires.

A physician's, psychologist's, or psychiatric nurse practitioner's certificate for the involuntary admission of an individual must be based on the personal examination of the physician or psychologist who signs the certificate. A certificate may not be used for admission if the examination was done more than one week before the certificate was signed or more than 30 days before the facility or the VA hospital received the application for admission. Likewise, a certificate of admission may not be used if the physician or psychologist who signed the certificate either has a financial interest in the proprietary facility in which the individual's admission is sought or is related by blood or marriage to the individual or to the applicant. The physician's, psychologist's, or psychiatric nurse practitioner's certificate must contain specified information, including (1) a diagnosis of a mental disorder of the individual; (2) an opinion that the individual needs inpatient care or treatment; and (3) an opinion that admission to a facility or VA hospital is needed for the protection of the individual or another.

MDH must receive an individual who has been certified by a physician, psychologist, or psychiatric nurse practitioner within 12 hours of receiving notice of a certification, if four specified conditions are met: (1) the individual's involuntary admission is not limited by § 10-617 of the Health-General Article (see below); (2) an application for admission has been completed; (3) a certifying physician, psychologist, or psychiatric nurse practitioner is unable to place the individual in a facility not operated by MDH; and

(4) MDH is unable to provide for the placement of the person other than in a facility operated by MDH.

The limitations under § 10-617 of the Health-General Article include that a facility or VA hospital may not admit the individual unless (1) the individual has a mental disorder; (2) the individual needs inpatient care or treatment; (3) the individual presents a danger to the life or safety of the individual or others; (4) the individual is unable or unwilling to be admitted voluntarily; and (5) there is no available, less restrictive form of intervention that is consistent with the welfare and safety of the individual. Additional restrictions apply if the individual is 65 or older.

Chapter 188 of 2018 requires a court, upon a finding that a defendant is incompetent to stand trial (IST) and is a danger to self or others, or upon a verdict that a defendant is not criminally responsible (NCR), to enter an order of commitment that requires MDH to commit the defendant to a designated health care facility as soon as possible but no later than 10 business days after MDH receives the order. If MDH fails to timely place the defendant in a facility, the court may impose any sanction reasonably designed to compel compliance, including requiring MDH to reimburse a detention facility for costs incurred as a result of delayed placement.

Background:

Incarceration of the Seriously Mentally Ill Nationally

According to a 2016 background paper published by the Treatment Advocacy Center, serious mental illness has become so prevalent in the U.S. corrections systems that approximately 20% of inmates in local jails and 15% of inmates in state prisons are estimated to have a serious mental illness. Based on the total inmate population, approximately 383,000 individuals with severe psychiatric disease were behind bars in the United States as of 2014 – nearly 10 times the number of patients remaining in the nation’s state psychiatric hospitals.

Maryland Forensic Services Workgroup

The State’s system for delivering forensic services has been subject to increased scrutiny and growing concern in recent years. “Forensic services” include not only court-ordered evaluations and commitments of IST and NCR defendants (under the Criminal Procedure Article), but also court-ordered evaluations and commitments of individuals for substance use disorders (under the Health-General Article). A 2016 Forensic Services Workgroup report noted several long-standing issues and made six primary recommendations: (1) increase bed capacity within MDH; (2) increase availability of community crisis services; (3) expand the capacity of the Office of Forensic Services; (4) increase outpatient

provider capacity to meet the needs of forensic patients; (5) centralize MDH forensic processes; and (6) increase education to reduce stigma in both the general public and the mental health treatment community.

Mental Illness among Inmates in Maryland's Local Correctional Facilities

The Treatment Advocacy Center and Parents for Care conducted a survey of local correctional facilities between December 18, 2017, and January 31, 2018. Twenty local correctional facilities responded (approximately 77%). Five jurisdictions did not respond to the survey including Baltimore, Cecil, Dorchester, Prince George's, and Wicomico counties. Over that period, six local correctional facilities reported having a total of 13 inmates in their custody who had been certified for involuntary admission and were awaiting transfer to a BHA facility. However, the responding local correctional facilities reported that this low number of inmates certified and awaiting transfer was atypical. Thirteen local correctional facilities reported that they normally have between 1 and 3 inmates awaiting hospital placement during most weeks of the year. Furthermore, the average wait time between being certified for involuntary admission and being transferred to a BHA facility was reported as 87 days.

Current Law in Practice

While there is currently a requirement that MDH admit a person certified for involuntary admission to an appropriate facility within 12 hours of receiving notice of the certification, there is no penalty provision or compulsion mechanism. MDH reports that BHA's facilities admissions policy currently considers inmate civil certifications fourth priority after (1) conditionally released patients returning voluntarily or pursuant to a hospital warrant and mandatory releases from the Department of Public Safety and Correctional Services (DPSCS) who meet the criteria for involuntary admission; (2) patients committed as NCR or IST and dangerous; and (3) patients referred to MDH for examination regarding competency to stand trial or a juvenile court order for examination or deposition. Along with individuals certified for admission from DOC or a local correctional facility, the fourth priority consists of other admissions in which there is no court involvement, such as a referral from a community hospital. However, there is no level of priority that admits patients within eight days.

MDH is required to admit a person found IST or NCR to a facility within 10 days or face contempt proceedings in which a court can impose sanctions to reasonably compel compliance, including reimbursement for incurred expenses. However, MDH reports that, as a result of meeting these admission requirements, MDH facilities are at full capacity.

State Expenditures: MDH estimates that the bill results in the need for a new 64-bed psychiatric facility and advises that its existing facilities cannot accommodate any

additions as they already operate at 100% capacity. MDH further advises that, on any given day, 15 court-ordered individuals are on its waiting list for admission with an average wait time of eight days. The Department of Legislative Services (DLS) agrees that, if the initial backlog of patients were to be admitted immediately, a new facility would be required but such a facility would not be completed in time to accommodate the initial backlog of patients under the bill. Thus, this analysis assumes that the initial backlog of patients will be accommodated on an incremental basis. Further, DLS advises that the bill's provisions alone do not necessitate the need for a new facility after the initial backlog is accommodated.

Because BHA must still agree to pay appropriate expenses before *State* correctional facilities (specifically DOC and Patuxent Institution) make an application for involuntary admission, this analysis assumes the admission of inmates in State custody continues to be accommodated as possible and MDH does not have to reimburse DPSCS for any delays.

Instead, the fiscal impact of the bill is associated with sanctions due to delayed involuntary admissions from local correctional facilities. Based on data from the Treatment Advocacy Center and Parents for Care, each of the 26 local correctional facilities in the State is assumed to have, on average, 2 inmates certified for involuntary admission awaiting transfer to a facility, with an average wait time of 87 days. Therefore, when the bill takes effect, there may be a backlog of approximately 52 inmates certified for involuntary admission and awaiting transfer. This equates to an average of approximately 0.59 inmates in local correctional facilities being certified for involuntary admission each day or about 4 inmates each week.

Accordingly, expenditures for MDH could increase by approximately \$60,000, likely in fiscal 2020 (though some sanctions may be ordered in fiscal 2019), to reimburse local correctional facilities for inmates held past the eight-day timeframe. This estimate assumes that any wait for those already certified for involuntary admission prior to the bill's effective date does not count toward the requirement. It also assumes admission of a total of 13 local correctional facility inmates each week (including those already court-ordered under IST and NCR) and reflects four additional inmates being certified for involuntary admission each week and placed on the waiting list along with any IST and NCR wait listed inmates. Under these assumptions, the waiting list could be eliminated in approximately nine weeks. Thereafter, DLS advises that BHA may be able to accommodate an additional four inmates per week who are certified for involuntary admission within the eight-day timeframe. Thus, MDH can likely handle the bill's requirements with existing resources in the out-years.

Even so, the estimated fiscal impact could fluctuate based upon several factors: (1) the backlog of admissions at any given time, which varies; (2) the number and frequency of inmates certified for involuntary admission; (3) the length of each delay; and (4) judicial

discretion in imposing sanctions. Therefore, if the number of inmates in local correctional facilities certified for admission is greater than anticipated, BHA may need additional capacity to meet the requirements of the bill.

Local Revenues: Local government revenues increase to the extent that MDH is required to reimburse local correctional facilities for costs incurred as a result of holding inmates certified for involuntary admission past the eight-day timeframe, particularly early on. Any such reimbursements are likely to be minimal for any one jurisdiction as each facility has only a few inmates certified for involuntary admission and awaiting transfer at any given time. To the extent that MDH is able to meet the eight-day timeframe for admissions under the bill, especially after the initial backlog is accommodated, revenues are reduced. (Per diem operating costs of local correctional facilities have ranged from approximately \$40 to \$179 per inmate in recent years.)

Additional Comments: The bill may result in fewer inmates in State correctional facilities being certified for involuntary admission to the extent (1) inmates in local correctional facilities are given priority (due to the possibility of sanctions) and (2) BHA is unable to agree to pay the appropriate expenses to admit DOC and Patuxent Institution inmates. Any such impact is more likely during the first several months the bill is in effect.

Additional Information

Prior Introductions: None.

Cross File: HB 306 (Delegate Sydnor, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Office of the Public Defender; Maryland Department of Health; Department of Public Safety and Correctional Services; Treatment Advocacy Center; Parents for Care; Department of Legislative Services

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