

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1344 (Delegate Kipke)  
Health and Government Operations

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Mental Health Law - Reform of Laws and Delivery of Service

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This bill modifies the standard for involuntary admission to require that an individual *is reasonably expected, if not hospitalized*, to present a danger to the life or safety of the individual or of others (rather than that the individual *presents* a danger to the life or safety of the individual or of others). The bill also defines “danger to the life or safety of the individual or of others.” The Maryland Police Training and Standards Commission (MPTSC) must provide information regarding the new definition of “danger to the life or safety of the individual or of others” to all schools that conduct police entrance-level and in-service training courses, including State, regional, county, and municipal training schools. **The bill takes effect July 1, 2021.**

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Fiscal Summary

**State Effect:** General fund expenditures increase by an indeterminate but potentially significant amount in FY 2022 and potentially in subsequent years, to the extent that more emergency petitions are filed and more involuntary admissions occur, as discussed below. To the extent the bill accelerates involuntary admissions and ultimately reduces the length of stay, readmissions, and criminal involvement for certain individuals, expenditures may decrease over time. MPTSC can provide the specified information to all training schools as required using existing budgeted resources. Revenues are not affected.

**Local Effect:** To the extent that additional emergency petitions are filed in circuit courts, expenditures may increase. Revenues are not affected.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** “Danger to the life or safety of the individual or of others” means a substantial risk, in consideration of the individual’s current condition and, if available, personal and medical history, that as a result of the mental disorder the individual will (1) cause bodily harm to the individual or another individual; (2) be unable, except for reasons of indigence, to provide for the individual’s basic needs, including food, clothing, shelter, health, or safety; or (3) suffer substantial deterioration of the individual’s judgment, reasoning, or ability to control behavior, provided that the individual is currently unable to make a rational and informed decision as to whether to submit to treatment.

### Current Law:

#### *Involuntary Admission*

Under the Health-General Article, an application for involuntary admission of an individual to a facility or Veterans’ Administration hospital may be made by any person who has a legitimate interest in the welfare of the individual. In addition to other requirements, the application must (1) state the relationship of the applicant to the individual for whom admission is sought; (2) be signed by the applicant; and (3) be accompanied by the certificates of one physician and one psychologist, two physicians, or one physician and one psychiatric nurse practitioner.

Additionally, within 12 hours of receiving notification from the health care practitioner who has certified an individual for involuntary admission, the Maryland Department of Health (MDH) must receive and evaluate the individual for involuntary admission if certain requirements are met, including that the health care practitioner is unable to place the individual in a facility not operated by MDH.

A facility or Veterans’ Administration hospital may not admit an individual under involuntary admission 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 of 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.

Specified health professionals and other interested parties may petition for an emergency evaluation of an individual, which may result in the involuntary admission of the individual to a mental disorder treatment facility, 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*. Petitions for an emergency evaluation must contain specified additional information. If an emergency evaluatee meets the requirements for an involuntary

admission and is unable or unwilling to agree to a voluntary admission, the examining physician must take the steps needed for involuntary admission of the emergency evaluatee to an appropriate facility, which may be a general hospital with a licensed inpatient psychiatric unit. If the examining physician is unable to have the emergency evaluatee admitted to a facility, the physician must notify MDH, which must provide for the admission of an emergency evaluatee to an appropriate facility within six hours of receiving notification.

At any time, a court may order an emergency evaluation of an individual who has been arrested, if the court finds probable cause to believe that the individual has a mental disorder and the individual *presents a danger to the life or safety of the individual or of others*.

Within 12 hours after initial confinement to a facility, the facility must provide the individual with a form, provided by the Behavioral Health Administration, which explains the individual's rights, including the right to consult with a lawyer. An individual who is proposed for involuntary admission must be afforded a hearing to determine whether the individual should be involuntarily admitted or released, which must be conducted within 10 days of initial confinement. The hearing officer must consider all the evidence and testimony of record and order the release of the individual from the facility unless the record demonstrates by clear and convincing evidence that, at the time of the hearing, each of the following elements exists: (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 of others*; (4) the individual is unable or unwilling to be voluntarily admitted to the facility; and (5) there is no available less restrictive form of intervention that is consistent with the welfare and safety of the individual. Additional findings must be made if the individual to be admitted is at least age 65.

#### *Maryland Police Training and Standards Commission*

Chapter 519 of 2016 reconstituted the former Police Training Commission as MPTSC, an independent commission within the Department of Public Safety and Correctional Services. MPTSC operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation with various entities, it also sets minimum qualifications for instructors and certifies qualified instructors for approved training schools.

**State Expenditures:** There is an operational and fiscal impact on the Judiciary from increased caseloads to review emergency petitions in the District Court. Additionally, general fund expenditures for MDH, the Office of Administrative Hearings (OAH), and the Office of the Public Defender (OPD) increase in fiscal 2022 and potentially in subsequent years to the extent that more involuntary admissions occur under the bill.

However, to the extent the bill accelerates involuntary admissions and ultimately reduces the length of stay, readmissions, and criminal involvement for certain individuals, expenditures may decrease over time.

### *Judiciary*

Under the bill, if a petitioner for an emergency evaluation is not a specified health care professional, health officer, or peace officer, the petitioner must present the petition to the court for immediate review, and the court must review the case to make a probable cause determination that the emergency evaluatee has shown the symptoms of a mental disorder and that the individual *is reasonably expected, if not hospitalized, to present* a danger to the life or safety of the individual or of others. As such, the caseloads for the District Court could be greatly increased. The Judiciary advises that the number of additional cases cannot be reasonably determined; in fiscal 2020, 3,799 emergency petitions were filed in the District Court. Thus, expenditures increase to the extent that additional emergency petitions are filed under the bill.

### *Maryland Department of Health*

The modified standard for involuntary admission to a State facility for treatment expands the number of individuals who may be subject to involuntary admission. Thus, to the extent that additional involuntary admissions occur as a result of the bill, general fund expenditures increase to cover the cost of additional admissions.

To the extent the bill accelerates involuntary admissions and ultimately reduces the length of stay and readmissions for certain individuals, these expenditures may decrease over time.

### *Office of Administrative Hearings*

Individuals who are involuntarily admitted are entitled to a hearing within 10 days of the initial admission. OAH advises it employs administrative law judges (ALJs) who preside over all involuntary admission hearings. Currently, OAH conducts hearings for 34 different behavioral health units divided among 19 different dockets; each docket is conducted once a week for a total of 988 dockets each year. Additionally, OAH advises that, in fiscal 2020, 1,345 cases were heard. OAH further advises that it may need to hire one additional ALJ for every 4 additional dockets per week (208 dockets per year). Thus, expenditures for OAH increase to hire at least one additional ALJ for every additional 283 involuntary admission hearings resulting from the bill.

In addition, OAH advises there would be an operational impact to train its ALJs on the substantive aspects of the bill. The Department of Legislative Services (DLS) advises that the training can be implemented using existing budgeted resources.

To the extent the bill accelerates involuntary admissions and ultimately reduces readmissions for certain individuals, these expenditures may decrease over time.

*Office of the Public Defender*

Individuals who are involuntarily admitted are entitled to representation by counsel, almost exclusively provided by OPD, for the required hearing following initial admission. OPD advises that it could need an additional four new attorneys to handle the increased caseload that may result from the expanded grounds for involuntary admission under the bill. According to its 2019 annual report, OPD had eight attorneys and supervisors within its mental health division. In 2019, OPD's mental health division handled 7,356 involuntary commitment matters and 52 commitment reviews (attorneys in OPD's mental health division also handle other case types such as competency and not criminally responsible hearings). Furthermore, the 2019 annual report indicated that the current caseload standard for the mental health division was approximately 900 cases per attorney each year. Therefore, DLS advises that expenditures for OPD increase to hire at least one additional attorney for every 900 additional case that require an involuntary admission under the bill.

To the extent the bill accelerates involuntary admissions and ultimately reduces the length of stay to less than 10 days and readmissions for certain individuals, these expenditures may decrease over time.

**Local Expenditures:** The Judiciary advises that there were 340 emergency petitions filed in circuit courts during fiscal 2020. Thus, local expenditures may increase to the extent that additional emergency petitions are filed in circuit courts.

**Additional Comments:** The 2020 [final report](#) of the Commission to Study Mental and Behavioral Health, chaired by Lieutenant Governor Boyd K. Rutherford, recommended development of a clear statutory definition of danger of harm to self or others.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 928 (Senator Ready) - Rules.

**Information Source(s):** Montgomery County; Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; Office of the Public Defender; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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