

House Bill 1160: Mental Health Law - Reform of Laws and Delivery of Service
Health and Government Operations Committee
March 9, 2022
Position: Unfavorable

Disability Rights Maryland (DRM) is Maryland's designated Protection & Advocacy agency, and is federally mandated to defend and advance the civil rights of individuals with disabilities. In particular, DRM supports the rights of individuals with disabilities to receive appropriate supports and services to live safe, meaningful and productive lives in their communities. HB 1160 will significantly broaden the criteria that allows for involuntarily commitment of an individual in Maryland, potentially violating their civil rights, and interfering with the lives of many individuals living with psychiatric disabilities, as well as exacerbating disparate treatment of persons of color who are living with disabilities and mental illness in the community.

By including in the definition of "dangerous" those individuals at risk of psychiatric deterioration, and broadening commitment criteria to include individuals who are "reasonably expected, if not hospitalized" to present a danger to self or others, the implementation of HB 1160 raises serious concerns for the disability community. Basing criteria for involuntary hospitalization on speculation raises constitutional questions. The United States Supreme Court has held that states have "no Constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom."¹ The Court has termed involuntary civil commitment to a psychiatric hospital "a massive curtailment of liberty."² Moreover, the Court has held that "the mere presence of mental illness does not disqualify a person from preferring his home to the comforts of an institution."³

HB 1160 creates a structure that assumes that institutional care is best for anyone at risk of a worsening mental health condition. However, the United States Supreme Court has held that undue institutionalization of persons with mental disabilities qualifies as discrimination by reason of disability under Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132.⁴ The broad reach of HB 1160 will undoubtedly lead to the institutionalization of individuals with mental disabilities who could be served in the community. Maryland must look to the ADA for guidance and expand accessible behavioral health care in the community, and not suggest through this legislation that in order to treat mental disabilities and prevent potential deterioration, one needs to be involuntarily committed and receive treatment in the most restrictive setting. HB 1160 will chip away the rights of Marylanders with mental health issues

¹*O'Connor v. Donaldson*, 422 U.S. 563, 574 (1975).

²*Humphrey v. Cady*, 405 U.S. 504, 509 (1972).

³*O'Connor v. Donaldson*, 422 U.S. 563, 574 (1975).

⁴*Olmstead v. L.C.*, 527 U.S. 581, 582 (1999).

to live in the community and seek treatment in the community when they are in need of psychiatric treatment.

The broad reach of HB 1160 will also likely increase the disparate treatment of people of color with disabilities and mental health issues in Maryland. Data has consistently shown that individuals of color are more likely to be retained involuntarily than their white peers. This is likely due to implicit bias. The criteria for involuntary hospitalization this statute creates will feed into implicit bias against persons of color, particularly those with mental health challenges and target those experiencing homelessness and poverty. Maryland must focus on providing voluntary, culturally appropriate, and accessible mental health services in the community and providing case management and housing supports, as opposed to requiring unnecessary and unwanted treatment in the most restrictive setting.

The United States Supreme Court, as well as Maryland Courts, have consistently valued an individual's right to make treatment decisions. HB 1160 would erode that right. Under the bill, if someone who is not presently a danger to themselves or others disagrees with treatment recommendations, they could be found to have not made a "rational and informed decision as to whether to submit to treatment," and as a result, be involuntarily hospitalized. DRM is concerned about this bill's impact on person centered care and trauma informed practices. Involuntary hospitalization is often a traumatic experience and could potentially retraumatize those individuals who have experienced it in the past, leading them to avoid seeking needed treatment.

Simply because an individual's mental health symptoms may be worsening does not necessarily make them a danger; nor does it mean involuntary hospitalization is the clinically appropriate level of care. The goal of emergency involuntary commitment should be to protect the safety of the individual in crisis, as well as the safety of others. As a clinical tool, it should be used only as a last resort. Instead of passing legislation that would expand coercive treatment in Maryland, we urge you to prioritize developing and funding additional community mental health and behavioral support services, establishing treatment alternatives that are trauma-informed, culturally appropriate, and which utilize peers and evidence-based treatment modalities to meet individuals where they are. While targeting individuals with mental health disabilities, in practice this bill would also negatively impact individuals with developmental disabilities, those with traumatic brain injuries, and others with physical and behavioral health disabilities, as these individuals might find themselves targeted by this bill.

DRM encourages the Committee to consider the negative impact of this bill on the disability community in Maryland. **Disability Rights Maryland opposes House Bill 1160 and urges an unfavorable report.** For more information, please contact Karen Foxman, Esq., at (410) 727-6352 ext. 2477 or KarenF@DisabilityRightsMD.org.