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POSITION ON PROPOSED LEGISLATION

BILL: SB 480 Mental Health Law – Assisted Outpatient Treatment Program

FROM: Maryland Office of the Public Defender

POSITION: Oppose

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 480. OPD's Mental Health Division Chief, Carroll McCabe, and Assistant Public Defender Sanjeev Varghese, who represents individuals at Spring Grove Hospital Center, are providing separate testimony to detail the significant substantive concerns that we have with this bill. My testimony focuses on the cost impact of the bill, particularly with respect to the representation required to challenge involuntary treatment orders for people who cannot afford a private lawyer.

SB 480 does not authorize OPD to provide representation in involuntary outpatient commitment proceedings. But it does include a right to counsel -- as it must, given the liberty interests threatened. Our office currently represents over 99% of individuals facing involuntary inpatient commitment. Private attorneys generally do not provide this representation and it is unclear whether the counties would be able to secure sufficient outside counsel to provide adequate representation.

Whether inpatient or outpatient, involuntary treatment is a significant liberty infringement. Effective assistance of counsel in these proceedings requires substantial effort to protect the right to bodily integrity interests at stake. Collateral sources need to be interviewed; expert psychiatrists hired; State witnesses deposed; and years' worth of available records -- including records relating to inpatient and outpatient treatment, criminal history, corrections institutional history, and housing -- must be obtained and reviewed.

This level of effort will need to occur for each of the individuals who require representation. Last year, our Mental Health Division represented over 9,600 clients in involuntary admission cases. Thousands of those clients, as well as an unknown number of

people who are not initially subject to involuntary hospital admission, could be subject to involuntary outpatient treatment under this bill. Representation costs alone would require millions of dollars in appropriations.¹

A similar pilot project in Baltimore City highlights the high cost for little to no benefit for involuntary outpatient services. At the start of the pilot, nearly \$400,000 was expended to provide nine individuals (six voluntary patients, three involuntary patients) with peer support, clinical supervision, quality assurance, attorney representation and oversight.² The additional investment needed to develop and maintain this level of infrastructure statewide, and for the full patient base anticipated, would exponentially increase these costs.

Maryland taxpayers would get more “bang for their buck” if that money was spent on providing substantive mental health treatment in the community. There is a real need for robust community treatment options so that individuals voluntarily seeking treatment can receive the services they need. The funds proposed to be spent here would be better utilized by developing such treatment options, ensuring that they are accessible to residents seeking services, and providing comprehensive discharge plans for people released from inpatient psychiatric units.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 480.

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

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¹ Outpatient treatment representation is beyond the parameters of OPD’s authorizing statute. If that statute was amended to authorize this representation, OPD estimates requiring more than \$7 million to add this representation to our already overburdened Mental Health Division (MHD). The details of these costs are specified in the Agency Explanation of Impact that we submitted to the Department of Legislative Services.

² Fiscal and Policy Note, 2019 HB 427, online at https://mgaleg.maryland.gov/2019RS/fnotes/bil_0007/hb0427.pdf.