JOANNA DIAMOND
ADVOCACY CONSULTANT

Testimony for the House Health & Government Operations Committee
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HB 499 – Health – Standards for Involuntary Admissions and Petitions for Emergency Evaluation – Modification

OPPOSE

The ACLU of Maryland opposes HB 499, which allows for the involuntary, civil commitment of an overdose survivor. Indefinite civil commitment is unconstitutional, extremely costly, and unnecessary to protect society against substance use disorder.

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

WWW.ACLU-MD.ORG

COLEMAN BAZELON
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

The constitutional standard for commitment of someone to mental health treatment against their will is that the person poses a danger to themself or others.[1] A person may also be committed for treatment if they are found not competent to stand trial; they may be committed for treatment aimed at becoming competent to stand trial.[2] Under other circumstances, a person found not criminally responsible may be committed for treatment. These standards are based on recognized psychiatric conditions and diagnosis.[3] This bill circumvents this constitutional framework by creating a new category for involuntary commitment that is not based on a psychiatric diagnosis.

While substance use disorder is a diagnosable psychiatric disorder, such a diagnosis is not required for involuntary commitment under this bill. Rather, this bill imposes involuntary commitment as an extreme punishment to those who have experienced and survived a drug overdose. If an individual is suffering from a mental disorder that could benefit from treatment – including substance use disorder – and presents a danger to themselves or others, they can already be admitted to inpatient treatment under existing law.[4] This bill would result in the incarceration of overdose survivors indefinitely and without due process.

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[1] *O'Connor v. Donaldson*, 422 U.S. 563 (1975) (holding that a state cannot constitutionally confine a non-dangerous individual who is capable of surviving safely in freedom by themselves or with the help of willing and responsible family members or friends); *See also United States v. Ballard*, 704 F. Supp. 620 (E.D.N.C. 1987) (holding that the government failed to establish that defendants, who had been found to be incompetent to stand trial and had been committed based on finding that they posed danger to themselves or others, were mentally incompetent to make decisions regarding their medical treatment).

[2] *Powell v. Maryland Dep't of Health*, 455 Md. 520, 549, 168 A.3d 857, 874 (2017) (citing *Jackson v. Indiana*, 406 U.S. 715, 738, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972)).

[3] *See Dusky v. United States*, 362 U.S. 402 (1960) (establishing the constitutional standard for a defendant's right to have a competency evaluation before proceeding to trial).

[4] *Donaldson*, 422 U.S. at 575; *See also* Md. Code Ann., Health-Gen. § 10-632(a) and (e) (West).

Countless studies have shown that increased criminal penalties do not reduce the rate of substance use.[5] Instead, they may discourage users from seeking help for their friends in emergency overdose situations for fear of negative consequences or punishment. The threat of involuntary commitment is likely to have a similar deterrent effect.

For these reasons, we urge you to issue an unfavorable report for HB 499.

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[5] *See, e.g.*, Donald Green & Daniel Winik, *Using Random Judge Assignments to Estimate the Effects of Incarceration and Probation on Recidivism Among Drug Offenders*, 48(2) Criminology 357, 357–387 (May 2010); Samuel R. Friedman et al., *Drug Arrests and Injection Drug Deterrence*, 101(2) American Journal of Public Health 344, 347 (2011); Valerie Wright, *Deterrence in Criminal Justice Evaluating Certainty vs. Severity of Punishment*, The Sentencing Project (November 2010).