



**Testimony for the Senate Judicial Proceedings Committee
February 7, 2018**

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**SB 233 Maryland Department of Health – Defendants Found Incompetent to
Stand Trial or Not Criminally Responsible – Commitment**

FAVORABLE

The ACLU of Maryland urges a favorable report on SB 233, which would require courts to specify the date on which a defendant who has been found incompetent to stand trial or not criminally responsible must be committed to a health care facility. The bill also creates a rebuttable presumption of contempt if the Maryland Department of Health (MDH) fails to comply with the court order, and allows the court to impose fines and other sanctions.

The proposals offered in SB 233 are long overdue and much needed.

Delayed health treatment may constitute an Eighth Amendment violation

The state is obligated to provide inmates with adequate medical care and failure to do so may amount to a constitutional violation under the Eighth Amendment to the U.S. Constitution. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). This is true regardless of the agency or personnel providing the care. *West v. Atkins*, 487 U.S. 42, 57-58 (1988); *Richardson v. McKnight*, 521 U.S. 399 (1997).

Moreover, adequate healthcare means timely healthcare. Serious delays in access to medical personnel can constitute an eighth amendment violation.¹ Defendants in *Powell v. DMH*, were ordered to a treatment facility within one day of the court's order, but were not in fact placed in treatment until 12-36 days later. This delay is not only bad policy, but implicates the constitutional rights of the defendants.

Jails and prisons have become the mental health providers of last resort

The dearth in treatment beds is both a Maryland problem and a national concern. According to a study published in the *Psychiatric Services* journal, more than 8 million Americans suffer from serious mental illness.² That study also

¹ *Estelle v. Gamble*, 429 U.S. at 104; *Weyant v. Okst*, 101 F.3d 845, 856-57 (2nd Cir. 1996) (delay of hours in getting medical attention for diabetic in insulin shock); *Natale v. Camden County Correctional Facility*, 318 F.3d 575 (3rd Cir. 2003) (delay of 21 hours in providing insulin to diabetic); *Wallin v. Norman*, 317 F.3d 558 (6th Cir. 2003) (delay of one week in treating urinary tract infection, and one day in treating leg injury); *Murphy v. Walker*, 51 F.3d 714, 719 (7th Cir. 1995) (two-month delay in getting prisoner with head injury to a doctor).

² Judith Weissman, Ph.D., J.D., *Disparities in Health Care Utilization and Functional Limitations Among Adults With Serious Psychological Distress, 2006–2014* (April 17, 2017).

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found that between 2005–2010, the availability of psychiatric beds decreased by 14%.³ This means that in 2010, there were only 14 beds available per 100,000 people.

According to MDH, a \$92.5 million 100-bed facility would need to be created to maintain year-round access to treatment beds ordered by the courts. It is unacceptable that the backlog of treatment has been allowed to worsen to the current situation in which the state is now forced to expend an inordinate amount of financial resources in one fall swoop, essentially to play catch up for years, perhaps decades of neglectfulness. This situation begs the question, in the absence of litigation, unfavorable media attention, and now legislation, what intention did the Department have for remedying this backlog?

The influx of persons with serious mental illness to jails and prisons is a symptom of broader criminal justice failures

In many ways, the courts are the backstop to inadequate policing practices, which fail to identify and appropriately de-escalate encounters with persons suffering from serious mental illness. Between 2010 – 2014, thirty-eight percent of those who died (41 people) in police encounters presented in a way that suggested a possible medical or mental health issue, disability, substance use disorder or similar issue.⁴ The Treatment Advocacy Network estimates that nationally, at least 1 in 4 fatal law enforcement encounters involves a person with serious mental illness.⁵

These statistics indicate that persons with mental illness are not appropriately identified and served at their first encounter with law enforcement, which results in this community being arrested, charged and detained instead of being redirected to treatment. It is therefore all the more important that when these persons come before the courts, the courts offer a meaningful opportunity for treatment and not simply jail these persons, thereby compounding the ills of other aspects of the criminal justice system.

SB 233 is a step in the right direction—it addresses the potential constitutional concerns by reducing the delay in treatment for mentally ill defendants; it prevents jails from being forced to manage persons with mental illness, who they are not equipped to serve; and it creates a backstop to the unjust treatment of persons with mental illness throughout the criminal justice system.

For the foregoing reasons, the ACLU of Maryland urges a favorable report on SB 233.

³ NPR, How The Loss Of U.S. Psychiatric Hospitals Led To A Mental Health Crisis (November 30, 2017).

⁴ ACLU of Maryland, Briefing Paper on Deaths in Police Encounters in Maryland, 2010 – 2014 (March 2015).

⁵ Treatment Advocacy Center, Overlooked in the Undercounted, The Role of Mental Illness in Fatal Law Enforcement Encounters (December 2015).