

HOUSE BILL 650

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7lr2305
CF SB 691

By: **Delegates Morhaim, Atterbeary, Dumais, Krebs, Rose, Shoemaker, and P. Young**

Introduced and read first time: February 1, 2017

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 14, 2017

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Incompetency and Criminal**
3 **Responsibility – Court-Ordered ~~Medication~~ Evaluation**

4 FOR the purpose of authorizing a court to order ~~administration of certain medication to a~~
5 ~~certain defendant for a certain amount of time~~ a certain defendant's doctor to develop
6 a treatment plan within a certain period of time after a certain finding of
7 incompetency or not criminally responsible under certain circumstances; providing
8 that ~~a certain medication may be administered to a certain individual before the~~
9 ~~decision of a certain panel for a certain amount of time under certain circumstances;~~
10 ~~requiring a certain panel to issue a certain decision within a certain amount of time~~
11 ~~under certain circumstances~~ if a certain defendant refuses medication, the court may
12 order a certain panel to convene within a certain period of time; prohibiting a certain
13 panel from being postponed under certain circumstances; and generally relating to
14 incompetency and criminal responsibility.

15 BY repealing and reenacting, without amendments,
16 Article – Criminal Procedure
17 Section 3–106(a)
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2016 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Criminal Procedure
22 Section 3–106(b) and 3–112

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland
2 (2008 Replacement Volume and 2016 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Health – General
5 Section 10–708
6 Annotated Code of Maryland
7 (2015 Replacement Volume and 2016 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
9 That the Laws of Maryland read as follows:

10 **Article – Criminal Procedure**

11 3–106.

12 (a) If, after a hearing, the court finds that the defendant is incompetent to stand
13 trial but is not dangerous, as a result of a mental disorder or mental retardation, to self or
14 the person or property of others, the court may set bail for the defendant or authorize
15 release of the defendant on recognizance.

16 (b) (1) If, after a hearing, the court finds that the defendant is incompetent to
17 stand trial and, because of mental retardation or a mental disorder, is a danger to self or
18 the person or property of another, the court may:

19 ~~(1)~~ order the defendant committed to the facility that the Health
20 Department designates until the court finds that:

21 ~~{(i)}~~ ~~1.~~ the defendant no longer is incompetent to stand trial;

22 ~~{(ii)}~~ ~~2.~~ the defendant no longer is, because of mental retardation
23 or a mental disorder, a danger to self or the person or property of others; or

24 ~~{(iii)}~~ ~~3.~~ there is not a substantial likelihood that the defendant
25 will become competent to stand trial in the foreseeable future; ~~AND~~

26 ~~(H) IF THE COURT FINDS THAT TREATMENT WITH PSYCHIATRIC~~
27 ~~MEDICATION IS IN THE DEFENDANT'S BEST INTEREST, ORDER ADMINISTRATION OF~~
28 ~~THE TREATMENT IN ACCORDANCE WITH A TREATMENT PLAN DEVELOPED BY THE~~
29 ~~HEALTH DEPARTMENT FOR A PERIOD OF NO LONGER THAN 30 DAYS PENDING AN~~
30 ~~EXPEDITED CLINICAL REVIEW PANEL PROCEDURE UNDER § 10-708 OF THE HEALTH~~
31 ~~—GENERAL ARTICLE, EVEN IF THE DEFENDANT REFUSES THE MEDICATION.~~

32 (2) If a court commits the defendant because of mental retardation, the
33 Health Department shall require the Developmental Disabilities Administration to provide
34 the care or treatment that the defendant needs.

1 **(3) (I) IF THE COURT COMMITS THE DEFENDANT BECAUSE OF A**
2 **MENTAL DISORDER AND THE MENTAL DISORDER IS TREATABLE WITH PSYCHIATRIC**
3 **MEDICATION THAT WILL BE LIKELY TO MAKE THE DEFENDANT LESS OF A DANGER**
4 **TO SELF OR THE PERSON OR PROPERTY OF ANOTHER, THE COURT MAY ORDER THE**
5 **DEFENDANT'S TREATING PHYSICIAN TO EVALUATE AND DEVELOP A RECOMMENDED**
6 **TREATMENT PLAN WITHIN 5 DAYS OF THE DEFENDANT'S ADMISSION TO THE**
7 **DESIGNATED FACILITY.**

8 **(II) IF THE DEFENDANT REFUSES TREATMENT RECOMMENDED**
9 **BY A TREATMENT PLAN DEVELOPED UNDER SUBPARAGRAPH (I) OF THIS**
10 **PARAGRAPH, A CLINICAL REVIEW PANEL SHALL BE ESTABLISHED UNDER THE**
11 **PROCEDURES OUTLINED BY § 10-708 OF THE HEALTH – GENERAL ARTICLE AND**
12 **SHALL CONVENE WITHIN 14 DAYS OF THE DEFENDANT'S ADMISSION TO THE**
13 **DESIGNATED FACILITY IN ORDER TO REVIEW ANY PROPOSED ADMINISTRATION OF**
14 **PSYCHIATRIC MEDICATION OVER THE REFUSAL OF THE DEFENDANT.**

15 3-112.

16 (a) ~~(1)~~ Except as provided in subsection (c) of this section, after a verdict of not
17 criminally responsible, the court immediately shall commit the defendant to the Health
18 Department for institutional inpatient care or treatment.

19 ~~(2) IF THE COURT FINDS THAT, BECAUSE OF MENTAL RETARDATION~~
20 ~~OR A MENTAL DISORDER, THE DEFENDANT IS A DANGER TO SELF OR THE PERSON~~
21 ~~OR PROPERTY OF ANOTHER, AND FINDS THAT TREATMENT WITH PSYCHIATRIC~~
22 ~~MEDICATION IS IN THE DEFENDANT'S BEST INTEREST, THE COURT MAY ORDER~~
23 ~~ADMINISTRATION OF THE TREATMENT IN ACCORDANCE WITH A TREATMENT PLAN~~
24 ~~DEVELOPED BY THE HEALTH DEPARTMENT FOR A PERIOD OF NO LONGER THAN 30~~
25 ~~DAYS PENDING AN EXPEDITED CLINICAL REVIEW PANEL PROCEDURE UNDER §~~
26 ~~10-708(J) OF THE HEALTH – GENERAL ARTICLE, EVEN IF THE DEFENDANT~~
27 ~~REFUSES THE MEDICATION.~~

28 (b) **(1)** If the court commits a defendant who was found not criminally
29 responsible primarily because of mental retardation, the Health Department shall
30 designate a facility for mentally retarded persons for care and treatment of the committed
31 person.

32 **(2) (I) IF THE COURT COMMITS A DEFENDANT WHO WAS FOUND**
33 **NOT CRIMINALLY RESPONSIBLE PRIMARILY BECAUSE OF MENTAL DISORDER THE**
34 **COURT MAY ORDER THE DEFENDANT'S TREATING PHYSICIAN TO EVALUATE AND**
35 **DEVELOP A RECOMMENDED TREATMENT PLAN WITHIN 5 DAYS OF THE DEFENDANT'S**
36 **ADMISSION TO THE DESIGNATED FACILITY IF THE COURT FINDS:**

1 **1. BECAUSE OF A MENTAL DISORDER, THE DEFENDANT**
 2 **IS A DANGER TO SELF OR THE PERSON OR PROPERTY OF ANOTHER;**

3 **2. THE DEFENDANT HAS A MENTAL DISORDER THAT IS**
 4 **TREATABLE WITH PSYCHIATRIC MEDICATION; AND**

5 **3. THE MEDICATION IS LIKELY TO MAKE THE**
 6 **DEFENDANT LESS OF A DANGER TO SELF OR THE PERSON OR PROPERTY OF**
 7 **ANOTHER.**

8 **(II) IF THE DEFENDANT REFUSES TREATMENT RECOMMENDED**
 9 **BY A TREATMENT PLAN DEVELOPED UNDER SUBPARAGRAPH (I) OF THIS**
 10 **PARAGRAPH, A CLINICAL REVIEW PANEL ESTABLISHED UNDER THE PROCEDURES**
 11 **OUTLINED IN § 10-708 OF THE HEALTH – GENERAL ARTICLE SHALL CONVENE**
 12 **WITHIN 14 DAYS OF THE DEFENDANT’S ADMISSION TO THE DESIGNATED FACILITY IN**
 13 **ORDER TO REVIEW ANY PROPOSED ADMINISTRATION OF PSYCHIATRIC MEDICATION**
 14 **OVER THE REFUSAL OF THE DEFENDANT.**

15 (c) After a verdict of not criminally responsible, a court may order that a person
 16 be released, with or without conditions, instead of committed to the Health Department,
 17 but only if:

18 (1) the court has available an evaluation report within 90 days preceding
 19 the verdict made by an evaluating facility designated by the Health Department;

20 (2) the report indicates that the person would not be a danger, as a result
 21 of mental retardation or mental disorder, to self or to the person or property of others if
 22 released, with or without conditions; and

23 (3) the person and the State’s Attorney agree to the release and to any
 24 conditions for release that the court imposes.

25 (d) The court shall notify the Criminal Justice Information System Central
 26 Repository of each person it orders committed under this section.

27 **Article – Health – General**

28 10-708.

29 (a) (1) In this section the following words have the meanings indicated.

30 (2) “Lay advisor” means an individual at a facility, who is knowledgeable
 31 about mental health practice and who assists individuals with rights complaints.

32 (3) “Medication” means psychiatric medication prescribed for the
 33 treatment of a mental disorder.

1 (4) "Panel" means a clinical review panel that determines, under the
 2 provisions of this section, whether to approve that medication be administered to an
 3 individual who objects to the medication.

4 (b) Medication may not be administered to an individual who refuses the
 5 medication, except:

6 (1) In an emergency, on the order of a physician where the individual
 7 presents a danger to the life or safety of the individual or others; or

8 (2) In a nonemergency, when the individual is hospitalized involuntarily or
 9 committed for treatment by order of a court and the medication is approved by a panel
 10 under the provisions of this section.

11 (c) (1) A panel shall consist of the following individuals appointed by the chief
 12 executive officer of the facility or the chief executive officer's designee, one of whom shall
 13 be appointed chairperson:

14 (i) The clinical director of the psychiatric unit, if the clinical director
 15 is a physician, or a physician designated by the clinical director;

16 (ii) A psychiatrist; and

17 (iii) A mental health professional, other than a physician.

18 (2) If a member of the clinical review panel also is directly responsible for
 19 implementing the individualized treatment plan for the individual under review, the chief
 20 executive officer of the facility or the chief executive officer's designee shall designate
 21 another panel member for that specific review.

22 (d) (1) The chief executive officer of the facility or the chief executive officer's
 23 designee shall give the individual and the lay advisor written notice at least 24 hours prior
 24 to convening a panel.

25 (2) ~~Except in an emergency under subsection (b)(1) of this section,~~
 26 ~~medication] MEDICATION~~ or medications being refused may not be administered to an
 27 individual prior to the decision of the panel, ~~EXCEPT:~~

28 ~~(I) IN AN EMERGENCY UNDER SUBSECTION (B)(1) OF THIS~~
 29 ~~SECTION; OR~~

30 ~~(II) FOR A PERIOD OF NO LONGER THAN 30 DAYS PENDING~~
 31 ~~EXPEDITED REVIEW UNDER SUBSECTION (J) OF THIS SECTION, IF A COURT ORDERS~~
 32 ~~ADMINISTRATION OF TREATMENT WITH PSYCHIATRIC MEDICATION IN CONNECTION~~
 33 ~~WITH:~~

~~1. A FINDING THAT AN INDIVIDUAL IS INCOMPETENT TO STAND TRIAL UNDER § 3-106(B) OF THE CRIMINAL PROCEDURE ARTICLE; OR~~

~~2. A VERDICT OF NOT CRIMINALLY RESPONSIBLE UNDER § 3-112(A) OF THE CRIMINAL PROCEDURE ARTICLE.~~

(e) (1) The notice under subsection (d)(1) of this section shall include the following information:

(i) The date, time, and location that the panel will convene;

(ii) The purpose of the panel; and

(iii) A complete description of the rights of an individual under paragraph (2) of this subsection.

(2) At a panel, an individual has the following rights:

(i) To attend the meeting of the panel, excluding the discussion conducted to arrive at a decision;

(ii) To present information, including witnesses;

(iii) To ask questions of any person presenting information to the panel;

(iv) To request assistance from a lay advisor; and

(v) To be informed of:

1. The name, address, and telephone number of the lay advisor;

2. The individual's diagnosis; and

3. An explanation of the clinical need for the medication or medications, including potential side effects, and material risks and benefits of taking or refusing the medication.

(3) The chairperson of the panel may:

(i) ~~Postpone~~ UNLESS THE PANEL HAS BEEN ORDERED BY A COURT TO CONVENE UNDER § 3-106 OR § 3-112 OF THE CRIMINAL PROCEDURE ARTICLE, POSTPONE or continue the panel for good cause, for a reasonable time; and

1 (ii) Take appropriate measures necessary to conduct the panel in an
2 orderly manner.

3 (f) Prior to determining whether to approve the administration of medication, the
4 panel shall:

5 (1) Review the individual's clinical record, as appropriate;

6 (2) Assist the individual and the treating physician to arrive at a mutually
7 agreeable treatment plan; and

8 (3) Meet for the purpose of receiving information and clinically assessing
9 the individual's need for medication by:

10 (i) Consulting with the individual regarding the reason or reasons
11 for refusing the medication or medications and the individual's willingness to accept
12 alternative treatment, including other medication;

13 (ii) Consulting with facility personnel who are responsible for
14 initiating and implementing the individual's treatment plan, including discussion of the
15 current treatment plan and alternative modes of treatment, including medications that
16 were considered;

17 (iii) Receiving information presented by the individual and other
18 persons participating in the panel;

19 (iv) Providing the individual with an opportunity to ask questions of
20 anyone presenting information to the panel; and

21 (v) Reviewing the potential consequences of requiring the
22 administration of medication and of withholding the medication from the individual.

23 (g) The panel may approve the administration of medication or medications and
24 may recommend and approve alternative medications if the panel determines that:

25 (1) The medication is prescribed by a psychiatrist for the purpose of
26 treating the individual's mental disorder;

27 (2) The administration of medication represents a reasonable exercise of
28 professional judgment; and

29 (3) Without the medication, the individual is at substantial risk of
30 continued hospitalization because of:

31 (i) Remaining seriously mentally ill with no significant relief of the
32 mental illness symptoms that:

1 1. Cause the individual to be a danger to the individual or
2 others while in the hospital;

3 2. Resulted in the individual being committed to a hospital
4 under this title or Title 3 of the Criminal Procedure Article; or

5 3. Would cause the individual to be a danger to the individual
6 or others if released from the hospital;

7 (ii) Remaining seriously mentally ill for a significantly longer period
8 of time with the mental illness symptoms that:

9 1. Cause the individual to be a danger to the individual or to
10 others while in the hospital;

11 2. Resulted in the individual being committed to a hospital
12 under this title or Title 3 of the Criminal Procedure Article; or

13 3. Would cause the individual to be a danger to the individual
14 or others if released from the hospital; or

15 (iii) Relapsing into a condition in which the individual is unable to
16 provide for the individual's essential human needs of health or safety.

17 (h) (1) A panel shall base its decision on its clinical assessment of the
18 information contained in the individual's record and information presented to the panel.

19 (2) A panel may meet privately to reach a decision.

20 (3) A panel may not approve the administration of medication where
21 alternative treatments are available and are acceptable to both the individual and the
22 facility personnel who are directly responsible for implementing the individual's treatment
23 plan.

24 (i) (1) A panel shall document its consideration of the issues and the basis for
25 its decision on the administration of medication or medications.

26 (2) A panel shall provide a written decision on the administration of
27 medication or medications, and the decision shall be provided to the individual, the lay
28 advisor, and the individual's treatment team for inclusion in the individual's medical
29 record.

30 (3) If a panel approves the administration of medication, the decision shall
31 specify:

32 (i) The medication or medications approved and the dosage and
33 frequency range;

1 (ii) The duration of the approval, not to exceed the maximum time
2 provided under subsection (m) of this section; and

3 (iii) The reason that alternative treatments, including the
4 medication, if any, were rejected by the panel.

5 (4) If a panel approves the administration of medication, the decision shall
6 contain:

7 (i) Notice of the right to request a hearing under subsection (k) of
8 this section;

9 (ii) The right to request representation or assistance of a lawyer or
10 other advocate of the individual's choice; and

11 (iii) The name, address, and telephone number of the designated
12 State protection and advocacy agency and the Lawyer Referral Service.

13 ~~(J) A PANEL SHALL ISSUE A WRITTEN DECISION WITHIN 30 DAYS AFTER A~~
14 ~~COURT ORDERS ADMINISTRATION OF TREATMENT WITH PSYCHIATRIC MEDICATION~~
15 ~~IN CONNECTION WITH:~~

16 ~~(1) A FINDING THAT AN INDIVIDUAL IS INCOMPETENT TO STAND~~
17 ~~TRIAL UNDER § 3-106(B) OF THE CRIMINAL PROCEDURE ARTICLE; OR~~

18 ~~(2) A VERDICT OF NOT CRIMINALLY RESPONSIBLE UNDER § 3-112(A)~~
19 ~~OF THE CRIMINAL PROCEDURE ARTICLE.~~

20 ~~[(j)] (K)~~ If a panel approves the administration of medication, the lay advisor
21 promptly shall:

22 (1) Inform the individual of the individual's right to appeal the decision
23 under subsection ~~[(k)] (L)~~ of this section;

24 (2) Ensure that the individual has access to a telephone as provided under
25 § 10-702(b) of this subtitle;

26 (3) If the individual requests a hearing, notify the chief executive officer of
27 the facility or the chief executive officer's designee pursuant to subsection ~~[(k)(1)] (L)(1)~~
28 of this section and give the individual written notice of the date, time, and location of the
29 hearing; and

30 (4) Advise the individual of the provision for renewal of an approval under
31 subsection (m) of this section.

1 ~~[(k)] (k)~~ (1) An individual may request an administrative hearing to appeal
2 the panel's decision by filing a request for hearing with the chief executive officer of the
3 facility or the chief executive officer's designee within 48 hours of receipt of the decision of
4 the panel.

5 (2) Within 24 hours of receipt of a request for hearing, the chief executive
6 officer of the facility or the chief executive officer's designee shall forward the request to
7 the Office of Administrative Hearings.

8 (3) An initial panel decision authorizing the administration of medication
9 shall be stayed for 48 hours. If a request for hearing is filed, the stay shall remain in effect
10 until the issuance of the administrative decision.

11 (4) The Office of Administrative Hearings shall conduct a hearing and
12 issue a decision within 7 calendar days of the decision by the panel.

13 (5) The administrative hearing may be postponed by agreement of the
14 parties or for good cause shown.

15 (6) The administrative law judge shall conduct a de novo hearing to
16 determine if the standards and procedures in this section are met.

17 (7) At the hearing, the individual representing the facility:

18 (i) May introduce the decision of the panel as evidence; and

19 (ii) Shall prove, by a preponderance of the evidence, that the
20 standards and procedures of this section have been met.

21 (8) The administrative law judge shall state on the record the findings of
22 fact and conclusions of law.

23 (9) The determination of the administrative law judge is a final decision for
24 the purpose of judicial review of a final decision under the Administrative Procedure Act.

25 ~~[(l)] (M)~~ (1) Within 14 calendar days from the decision of the administrative
26 law judge, the individual or the facility may appeal the decision and the appeal shall be to
27 the circuit court on the record from the hearing conducted by the Office of Administrative
28 Hearings.

29 (2) The scope of review shall be as a contested case under the
30 Administrative Procedure Act.

31 (3) (i) Review shall be on the audiophonic tape without the necessity of
32 transcription of the tape, unless either party to the appeal requests transcription of the
33 tape.

1 (ii) A request for transcription of the tape shall be made at the time
2 the appeal is filed.

3 (iii) The Office of Administrative Hearings shall prepare the
4 transcription prior to the appeal hearing, and the party requesting the transcription shall
5 bear the cost of transcription.

6 (4) The circuit court shall hear and issue a decision on an appeal within 7
7 calendar days from the date the appeal was filed.

8 ~~[(m)]~~ ~~(N)~~ (1) Treatment pursuant to this section may not be approved for
9 longer than 90 days.

10 (2) (i) Prior to expiration of an approval period and if the individual
11 continues to refuse medication, a panel may be convened to decide whether renewal is
12 warranted.

13 (ii) Notwithstanding the provisions of paragraph (1) of this
14 subsection, if a clinical review panel approves the renewal of the administration of
15 medication or medications, the administration of medication or medications need not be
16 interrupted if the individual appeals the renewal of approval.

17 ~~[(n)]~~ ~~(O)~~ When medication is ordered pursuant to the approval of a panel under
18 this section and at a minimum of every 15 days, the treating physician shall document any
19 known benefits and side effects to the individual.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2017.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.