

HOUSE BILL 385

E2

8lr0113

By: **Chair, Judiciary Committee (By Request – Departmental – Health)**

Introduced and read first time: January 24, 2018

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Incompetency and Criminal Responsibility**

3 FOR the purpose of requiring a court to determine eligibility for and conditions of pretrial
4 release for a certain defendant in accordance with certain rules at a certain time;
5 requiring the Maryland Department of Health to arrange for admission of a certain
6 defendant to a certain facility at a certain time in accordance with a certain policy
7 under certain circumstances; altering a certain provision of law to require a court to
8 hold a certain hearing within a certain amount of time after the Department sends
9 a certain report, rather than within a certain amount of time after receiving a certain
10 report from the Department; defining a certain term; and generally relating to
11 incompetency and criminal responsibility.

12 BY repealing and reenacting, with amendments,
13 Article – Criminal Procedure
14 Section 3–101 and 3–106
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2017 Supplement)

17 BY adding to
18 Article – Criminal Procedure
19 Section 3–104.1
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2017 Supplement)

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

24 **Article – Criminal Procedure**

25 3–101.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

2 (b) “Committed person” means a person committed to the Health Department as
3 not criminally responsible under the test for criminal responsibility.

4 (c) “Court” means a court that has criminal jurisdiction.

5 **(D) “FACILITY” HAS THE MEANING STATED IN § 10–101 OF THE HEALTH –**
6 **GENERAL ARTICLE.**

7 **[(d)] (E)** “Health Department” means the Maryland Department of Health.

8 **[(e)] (F)** “Hospital warrant” means a legal document issued by a court that:

9 (1) authorizes any law enforcement officer in the State to apprehend a
10 person who is alleged to have violated an order for conditional release and transport the
11 person to a facility designated by the Health Department; and

12 (2) requires that the issuance of the warrant is entered in the person’s
13 criminal history record information of the criminal justice information system.

14 **[(f)] (G)** “Incompetent to stand trial” means not able:

15 (1) to understand the nature or object of the proceeding; or

16 (2) to assist in one’s defense.

17 **[(g)] (H)** (1) “Mental disorder” means a behavioral or emotional illness that
18 results from a psychiatric or neurological disorder.

19 (2) “Mental disorder” includes a mental illness that so substantially
20 impairs the mental or emotional functioning of a person as to make care or treatment
21 necessary or advisable for the welfare of the person or for the safety of the person or
22 property of another.

23 (3) “Mental disorder” does not include mental retardation.

24 **[(h)] (I)** “Office” means the Office of Administrative Hearings.

25 **3–104.1.**

26 **UNLESS A DEFENDANT IS CHARGED WITH A CRIME OF VIOLENCE AS DEFINED**
27 **IN § 14–101 OF THE CRIMINAL LAW ARTICLE, WHENEVER A COURT ORDERS THE**
28 **HEALTH DEPARTMENT TO EXAMINE A DEFENDANT UNDER § 3–105 OF THIS TITLE**
29 **OR COMMITS THE DEFENDANT TO THE HEALTH DEPARTMENT UNDER § 3–106 OF**

1 **THIS TITLE, THE COURT SHALL DETERMINE ELIGIBILITY FOR AND CONDITIONS OF**
2 **PRETRIAL RELEASE IN ACCORDANCE WITH THE MARYLAND RULES.**

3 3-106.

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

8 (b) (1) If, after a hearing, the court finds that the defendant is incompetent to
9 stand trial and, because of mental retardation or a mental disorder, is a danger to self or
10 the person or property of another, the court may order the defendant committed to the
11 facility that the Health Department designates until the court finds that:

12 (i) the defendant no longer is incompetent to stand trial;

13 (ii) the defendant no longer is, because of mental retardation or a
14 mental disorder, a danger to self or the person or property of others; or

15 (iii) there is not a substantial likelihood that the defendant will
16 become competent to stand trial in the foreseeable future.

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

20 **(3) IF THE COURT COMMITS THE DEFENDANT TO THE HEALTH**
21 **DEPARTMENT, THE HEALTH DEPARTMENT SHALL ARRANGE FOR THE**
22 **DEFENDANT'S ADMISSION TO AN APPROPRIATE FACILITY:**

23 **(I) WITHIN 21 DAYS AFTER THE DATE OF COMMITMENT; AND**

24 **(II) IN ACCORDANCE WITH THE HEALTH DEPARTMENT'S**
25 **FACILITY AND ADMISSION POLICY.**

26 (c) (1) To determine whether the defendant continues to meet the criteria for
27 commitment set forth in subsection (b) of this section, the court shall hold a hearing:

28 (i) every year from the date of commitment;

29 (ii) within 30 days after the filing of a motion by the State's Attorney
30 or counsel for the defendant setting forth new facts or circumstances relevant to the
31 determination; and

1 (iii) within [30] 21 days after [receiving a report from] the Health
2 Department [stating opinions, facts, or circumstances that have not been previously
3 presented to the court and are relevant to the determination] **SENDS A REPORT STATING**
4 **THAT THE DEFENDANT NO LONGER MEETS THE CRITERIA FOR CONFINEMENT.**

5 (2) At any time, and on its own initiative, the court may hold a conference
6 or a hearing on the record with the State's Attorney and the counsel of record for the
7 defendant to review the status of the case.

8 (d) At a competency hearing under subsection (c) of this section, if the court finds
9 that the defendant is incompetent and is not likely to become competent in the foreseeable
10 future, the court shall:

11 (1) civilly commit the defendant as an inpatient in a medical facility that
12 the Health Department designates provided the court finds by clear and convincing
13 evidence that:

14 (i) the defendant has a mental disorder;

15 (ii) inpatient care is necessary for the defendant;

16 (iii) the defendant presents a danger to the life or safety of self or
17 others;

18 (iv) the defendant is unable or unwilling to be voluntarily committed
19 to a medical facility; and

20 (v) there is no less restrictive form of intervention that is consistent
21 with the welfare and safety of the defendant; or

22 (2) order the confinement of the defendant for 21 days as a resident in a
23 Developmental Disabilities Administration facility for the initiation of admission
24 proceedings under § 7-503 of the Health – General Article provided the court finds that the
25 defendant, because of mental retardation, is a danger to self or others.

26 (e) The provisions under Title 10 of the Health – General Article shall apply to
27 the continued retention of a defendant civilly committed under subsection (d) of this section.

28 (f) (1) For a defendant who has been found incompetent to stand trial but not
29 dangerous, as a result of a mental disorder or mental retardation, to self or the person or
30 property of others, and released on bail or on recognizance, the court:

31 (i) shall hold a hearing annually from the date of release;

32 (ii) may hold a hearing, at any time, on its own initiative; or

1 (iii) shall hold a hearing, at any time, upon motion of the State's
2 Attorney or the counsel for the defendant.

3 (2) At a hearing under paragraph (1) of this subsection, the court shall
4 reconsider whether the defendant remains incompetent to stand trial or a danger to self or
5 the person or property of another because of mental retardation or a mental disorder.

6 (3) At a hearing under paragraph (1) of this subsection, the court may
7 modify or impose additional conditions of release on the defendant.

8 (4) If the court finds, at a hearing under paragraph (1) of this subsection,
9 that the defendant is incompetent and is not likely to become competent in the foreseeable
10 future and is a danger to self or the person or property of another because of mental
11 retardation or a mental disorder, the court shall revoke the pretrial release of the defendant
12 and:

13 (i) civilly commit the defendant in accordance with paragraph (1) of
14 subsection (d) of this section; or

15 (ii) order confinement of the defendant in accordance with
16 subsection (d)(2) of this section.

17 (g) If the defendant is found incompetent to stand trial, defense counsel may
18 make any legal objection to the prosecution that may be determined fairly before trial and
19 without the personal participation of the defendant.

20 (h) The court shall notify the Criminal Justice Information System Central
21 Repository of any commitment ordered or release authorized under this section and of any
22 determination that a defendant is no longer incompetent to stand trial.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2018.