

Department of Legislative Services
 Maryland General Assembly
 2026 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 412 (Senator Augustine)
 Finance and Judicial Proceedings

Health

Maryland Department of Health - Forensic Review Boards and Community Forensic Aftercare Program

This bill generally codifies the Community Forensic Aftercare Program (CFAP) within the Maryland Department of Health (MDH) to monitor persons committed as not criminally responsible (NCR) who are on conditional release and individuals with mental illness or intellectual disability who are required to be monitored under statutory provisions pertaining to individuals found to be NCR or incompetent to stand trial (IST). The bill also specifies new requirements for the program. The bill codifies CFAP’s existing board (named the community monitoring board under the bill), consisting of licensed health care providers to make recommendations and decisions relating to conditional release and out-of-State travel requests, as specified. MDH must adopt regulations to carry out the bill. Effective June 1, 2026, an order issued by a court under Title 3 of the Criminal Procedure Article may not be construed to authorize or require CFAP to make clinical decisions regarding the treatment of committed persons, regardless of the date on which the order was issued. **Otherwise, the bill takes effect October 1, 2027.**

Fiscal Summary

State Effect: General fund expenditures increase by \$97,000 in FY 2028 for MDH to implement the bill; future years reflect annualization and ongoing costs. The Office of the Public Defender (OPD) may incur costs in future years depending on demand for social work services, as discussed below. Otherwise, the bill can be implemented with existing budgeted resources. Revenues are not affected.

(in dollars)	FY 2028	FY 2029	FY 2030	FY 2031	FY 2032
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	97,000	115,900	121,400	126,800	132,400
Net Effect	(\$97,000)	(\$115,900)	(\$121,400)	(\$126,800)	(\$132,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary:

Community Forensic Aftercare Program

CFAP must:

- monitor committed persons on conditional release in accordance with court orders and recommendations of the committed person's mental health team;
- monitor individuals who have been (1) found IST but not a danger to self or the person or property of others and (2) released from confinement in an MDH facility in accordance with a court order for conditional release that requires community forensic aftercare monitoring;
- receive and report violations of a condition of conditional release; and
- review applications for change in conditional release on behalf of MDH.

CFAP may make monitoring decisions and recommendations but not clinical decisions regarding the treatment of committed persons. The bill prohibits a court from issuing an order under Title 3 of the Criminal Procedure Article that authorizes or requires CFAP to make clinical decisions regarding the treatment of a committed person.

A program monitor (a licensed social worker employed by CFAP) must hold a meeting with each monitored committed person and the committed person's mental health team at least three times within the first six months after the committed person was initially released from a facility. After this six-month period, meetings must be held as determined necessary by CFAP or the committed person's mental health team. The meetings are subject to specified notification requirements, and a committed person may appoint an advocate, including a designee of counsel, to attend a meeting. CFAP must provide specified notifications as soon as practicable if a meeting is held due to an emergency involving the committed person.

The bill requires CFAP to notify specified individuals and provide certain information when the program receives a report alleging that a committed person has violated conditional release. CFAP is also required to comply with specified requirements regarding disclosures of records.

Community Monitoring Board

CFAP must establish a community monitoring board consisting of licensed health care providers to make recommendations and decisions relating to conditional release and out-of-State travel requests, as specified. A committed person may appoint an “authorized agent” (a person who is not the person’s counsel and is selected by the person to represent their best interests in all board matters – can be a social worker or investigator employed by counsel) to attend the entirety (except for the final voting portion) of a community monitoring board meeting concerning the committed person and give and hear arguments. When making a recommendation or decision, the board must consider a written statement (if any) offered by the committed person to the community monitoring board. The board is subject to specified notice and recordkeeping requirements. The Office of the Attorney General may provide legal counsel to MDH at board meetings.

Forensic Review Boards

The bill (1) repeals the requirement that a forensic review board provide notice to a committed person and the person’s counsel of record within 10 days after the board issues a recommendation to the court; (2) clarifies that the committed person’s authorized agent may attend the entirety of the board’s meeting concerning the committed person except for the final voting portion of a meeting; and (3) authorizes an authorized agent to attend a board meeting virtually.

Current Law:

Community Forensic Aftercare Program

Started in 1982 by MDH, CFAP monitors individuals on conditional release orders and, as required by statute, reports allegations of violations to the committing court. CFAP’s team of licensed clinical social workers and mental health professionals work with treatment providers throughout Maryland who provide habilitation, rehabilitation and therapeutic services to individuals on conditional release. Both CFAP and its existing board are not in statute.

Commitment to Facility After Finding of Not Criminally Responsible

After a verdict of NCR, a court ordinarily is required to order the defendant committed to a facility designated by MDH for appropriate care or treatment. MDH is required to admit the defendant to a designated facility as soon as possible but no later than 10 business days after it receives the order of commitment. While commitment to a facility is typically required, the court may release a defendant after a verdict of NCR if (1) MDH has issued an evaluation report within 90 days prior to the verdict stating that the defendant would not

be a danger if released, with or without conditions and (2) the State's Attorney and the defendant agree to the release and any conditions the court chooses to impose.

Release After Commitment of Defendants Found to Be Not Criminally Responsible

A committed defendant is eligible for release only if the defendant proves by a preponderance of the evidence that the defendant will not be a danger to self or to the person or property of others due to a mental disorder or intellectual disability if released from commitment with conditions (conditional release) or without conditions (discharge). A detailed administrative and judicial process applies to release decisions. Conditional release can be for a term of up to five years, with options to extend for up to five years at a time. There is no limit on the number of extensions of conditional release. CFAP (an existing program) within MDH monitors all cases of individuals on conditional release. The court must notify the Criminal Justice Information System Central Repository whenever it orders conditional release or discharge of a committed person.

Incompetency to Stand Trial

By statute, a defendant is IST if the defendant is not able to understand the nature or object of the proceeding or assist in the defense. If, after a hearing, the court finds that the defendant is IST and, because of an intellectual disability or a mental disorder, is a danger to self or the person or property of others, the court must order the defendant committed to a facility designated by MDH until the court finds that the defendant is (1) no longer IST; (2) no longer a danger to self or the person or property of others due to a mental disorder or intellectual disability; or (3) not substantially likely to become competent to stand trial in the foreseeable future. The Developmental Disabilities Administration (DDA) must provide necessary care or treatment for a defendant committed after being found IST due to an intellectual disability.

The court is required to hold a competency review annually, after specified motions regarding new facts, and after receipt of a report containing specified information from MDH. Most courts convene a "status" conference at six-month intervals to review the case, which coincides with MDH reporting requirements. The defendant is not required to be present at the conference. At the conference, the department submits a report that includes detailed information regarding the clinical presentation of the individual and an opinion regarding the defendant's competency, dangerousness, and restorability to competency.

If the court finds that the defendant is IST but is not dangerous to self or the person or property of others due to a mental disorder or intellectual disability, the court may release the defendant on bail or recognizance and may order the defendant to obtain treatment as a condition of release. MDH may make recommendations for conditions necessary to ensure the safety of the defendant and the public, which may be incorporated into a pretrial

release order. Either MDH's CFAP or a local jurisdiction's pretrial services program will monitor a defendant on pretrial release. For these defendants, the court is required to hold a hearing annually from the date of release and at any time upon the motion of the State's Attorney or counsel for the defendant. The court may also hold a hearing at any time on its own initiative and may convene periodic status hearings to assess the defendant's compliance with the conditions of pretrial release, competency to stand trial, and dangerousness.

The court may modify or impose additional conditions of release on the defendant at the hearing. If the court finds that the defendant remains incompetent, is not likely to attain competency in the foreseeable future, and is dangerous, the court must revoke the pretrial release of the defendant and either civilly commit the defendant to a psychiatric facility or confine the defendant to a DDA facility in accordance with specified statutory provisions.

As long as the defendant remains committed to the department, MDH is required to submit a report to the court every six months from the date of commitment and whenever MDH determines that (1) the defendant is no longer IST; (2) the defendant is no longer a danger because of a mental disorder or intellectual disability; or (3) there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future. If the report states an opinion that the defendant is competent to stand trial or is no longer a danger as a result of a mental disorder or intellectual disability and services are necessary to maintain the defendant safely in the community, maintain competency, or restore competency, MDH must include a supplemental report providing a plan for services. Among other required items, the plan must include, if appropriate, recommendations regarding mental health treatment; vocational, rehabilitative, or support services; housing; case management services; alcohol or substance abuse treatment; and other clinical services.

Forensic Review Boards – Chapters 115 and 116 of 2025

Chapters 115 and 116 of 2025 require MDH to establish a forensic review board at each facility that has persons committed as NCR. The boards are responsible for reviewing and determining whether to recommend to the court that a committed person is eligible for discharge or conditional release, with or without proposed conditions. A board may make recommendations relating to the release or rehabilitation of a committed person and must notify the committed person and the person's counsel of record before it holds a meeting concerning the committed person and after the board issues a recommendation to the court, as specified. When making a recommendation, a forensic review board must consider a written statement offered by the committed person to the board. Counsel for any party may not attend forensic review board meetings, but a committed person may appoint an "authorized agent" to attend the portion of the board's meeting concerning the committed person and give and hear arguments at the meeting.

State Expenditures:

Maryland Department of Health

General fund expenditures for MDH increase by \$97,036 in fiscal 2028, which accounts for the bill’s October 1, 2027 effective date. This estimate reflects the cost of hiring one part-time administrative employee and one part-time social worker for CFAP. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Part-time Positions	2.0
Salaries and Fringe Benefits	\$79,908
Operating Expenses	<u>17,138</u>
MDH FY 2028 State Expenditures	\$97,046

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Office of the Public Defender

OPD advises that under current practice, clients sometimes request an OPD social worker to attend treatment meetings but tend to ask family members to attend CFAP board meetings. While OPD does not have an immediate need for additional social workers, OPD *may* require additional social workers should client demand for advocacy experienced under the bill exceed the capacity of existing OPD social workers. *For illustrative purposes only*, the cost associated with an OPD social worker is approximately \$97,000 annually.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 658 (Delegate Charkoudian, *et al.*) - Health.

Information Source(s): Maryland Association of County Health Officers; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Office of Administrative Hearings; Department of Legislative Services

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caw/jkb

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