

HOUSE BILL 654

J1, E4

11r0909

By: **Delegates Rosenberg and Hubbard**

Introduced and read first time: February 9, 2011

Assigned to: Health and Government Operations and Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Clinical Review Panels – Psychiatric Medication – Correctional Facilities**

3 FOR the purpose of providing that certain psychiatric medication may not be
4 administered to certain individuals committed to the custody of a facility under
5 the jurisdiction of the Department of Public Safety and Correctional Services
6 except under certain circumstances; providing for the composition and
7 appointment of certain clinical review panels; requiring certain officials to give
8 certain written notice to certain individuals at a certain time; providing that an
9 individual has certain rights during a meeting of a panel; authorizing the chair
10 of a panel to take certain action; requiring a panel to take certain action before
11 deciding whether to approve the administration of medication; authorizing a
12 panel to approve the administration of medication and make certain
13 recommendations under certain circumstances; requiring a panel to base
14 certain decisions on certain information; authorizing a panel to meet privately
15 to reach a decision; prohibiting a panel from approving the administration of
16 medication under certain circumstances; requiring a panel to provide certain
17 documentation; requiring a panel to provide a certain written decision to certain
18 individuals; requiring a certain lay adviser to take certain action under certain
19 circumstances; authorizing certain individuals to request a certain
20 administrative hearing in a certain manner; requiring certain officials to
21 forward certain hearing requests to the Office of Administrative Hearings
22 within a certain time period; providing for a certain stay of a panel decision;
23 requiring the Office to conduct a certain hearing and issue a decision in a
24 certain time period; providing for the procedures to be followed at a hearing
25 before the Office; authorizing a certain appeal of a decision of the Office;
26 providing that certain treatment is subject to a certain approval period;
27 authorizing a panel to make a certain renewal under certain circumstances;
28 requiring certain physicians to document the known benefits and side effects of
29 certain medication under certain circumstances; requiring the Department to
30 pay for certain legal representation under certain circumstances; requiring the
31 Department to submit a certain annual report to the Governor and General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Assembly; defining certain terms; and generally relating to clinical review
2 panels and correctional facilities.

3 BY adding to
4 Article – Correctional Services
5 Section 9–614
6 Annotated Code of Maryland
7 (2008 Replacement Volume and 2010 Supplement)

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

10 **Article – Correctional Services**

11 **9–614.**

12 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
13 **MEANINGS INDICATED.**

14 **(2) “LAY ADVISER” MEANS AN INDIVIDUAL AT A FACILITY WHO IS**
15 **KNOWLEDGEABLE ABOUT MENTAL HEALTH PRACTICE AND WHO ASSISTS**
16 **INDIVIDUALS WITH RIGHTS COMPLAINTS.**

17 **(3) “MEDICATION” MEANS PSYCHIATRIC MEDICATION**
18 **PRESCRIBED FOR THE TREATMENT OF A MENTAL DISORDER.**

19 **(4) “PANEL” MEANS A CLINICAL REVIEW PANEL CONVENED TO**
20 **DECIDE, IN ACCORDANCE WITH THIS SECTION, WHETHER TO APPROVE THE**
21 **ADMINISTRATION OF MEDICATION TO AN INDIVIDUAL WHO OBJECTS TO THE**
22 **MEDICATION.**

23 **(B) MEDICATION MAY NOT BE ADMINISTERED TO AN INDIVIDUAL WHO**
24 **REFUSES THE MEDICATION WHILE COMMITTED TO THE CUSTODY OF A FACILITY**
25 **UNDER THE JURISDICTION OF THE DEPARTMENT, EXCEPT:**

26 **(1) IN AN EMERGENCY, ON THE ORDER OF A PHYSICIAN WHEN**
27 **THE INDIVIDUAL PRESENTS A DANGER TO THE LIFE OR SAFETY OF THE**
28 **INDIVIDUAL OR OTHERS; OR**

29 **(2) IN A NONEMERGENCY, WHEN THE MEDICATION HAS BEEN**
30 **APPROVED BY A PANEL IN ACCORDANCE WITH THIS SECTION.**

31 **(C) (1) A PANEL SHALL CONSIST OF THE FOLLOWING INDIVIDUALS**
32 **APPOINTED BY THE MANAGING OFFICIAL OF THE FACILITY OR THE MANAGING**
33 **OFFICIAL’S DESIGNEE, ONE OF WHOM SHALL BE APPOINTED CHAIR:**

1 **(I) THE CLINICAL DIRECTOR OF THE PSYCHIATRIC UNIT IF**
2 **THE CLINICAL DIRECTOR IS A PHYSICIAN, OR, IF THE CLINICAL DIRECTOR IS**
3 **NOT A PHYSICIAN, A PHYSICIAN DESIGNATED BY THE CLINICAL DIRECTOR;**

4 **(II) A PSYCHIATRIST; AND**

5 **(III) A MENTAL HEALTH PROFESSIONAL OTHER THAN A**
6 **PHYSICIAN.**

7 **(2) IF A MEMBER OF A PANEL ALSO IS DIRECTLY RESPONSIBLE**
8 **FOR IMPLEMENTING THE INDIVIDUALIZED TREATMENT PLAN FOR THE**
9 **INDIVIDUAL UNDER REVIEW, THE MANAGING OFFICIAL OF THE FACILITY OR**
10 **THE MANAGING OFFICIAL'S DESIGNEE SHALL DESIGNATE ANOTHER PANEL**
11 **MEMBER FOR THAT SPECIFIC REVIEW.**

12 **(D) (1) THE MANAGING OFFICIAL OF THE FACILITY OR THE**
13 **MANAGING OFFICIAL'S DESIGNEE SHALL GIVE THE INDIVIDUAL WHO IS**
14 **REFUSING THE MEDICATION AND THE LAY ADVISER WRITTEN NOTICE AT LEAST**
15 **24 HOURS BEFORE CONVENING A PANEL.**

16 **(2) EXCEPT IN AN EMERGENCY UNDER SUBSECTION (B)(1) OF**
17 **THIS SECTION, ANY MEDICATION BEING REFUSED BY AN INDIVIDUAL MAY NOT**
18 **BE ADMINISTERED TO THE INDIVIDUAL BEFORE THE PANEL MAKES ITS**
19 **DECISION REGARDING ADMINISTRATION OF THE MEDICATION.**

20 **(E) (1) THE NOTICE UNDER SUBSECTION (D)(1) OF THIS SECTION**
21 **SHALL INCLUDE:**

22 **(I) THE DATE, TIME, AND LOCATION THAT THE PANEL WILL**
23 **CONVENE;**

24 **(II) THE PURPOSE OF THE PANEL; AND**

25 **(III) A COMPLETE DESCRIPTION OF THE RIGHTS OF AN**
26 **INDIVIDUAL UNDER PARAGRAPH (2) OF THIS SUBSECTION.**

27 **(2) DURING A MEETING OF A PANEL, AN INDIVIDUAL WHO IS**
28 **REFUSING MEDICATION HAS THE RIGHT TO:**

29 **(I) ATTEND ANY MEETING OF THE PANEL OTHER THAN A**
30 **PRIVATE MEETING AUTHORIZED UNDER SUBSECTION (H)(2) OF THIS SECTION;**

31 **(II) PRESENT INFORMATION, INCLUDING WITNESSES;**

1 (III) ASK QUESTIONS OF ANY PERSON PRESENTING
2 INFORMATION TO THE PANEL;

3 (IV) REQUEST ASSISTANCE FROM A LAY ADVISER; AND

4 (V) BE INFORMED OF:

5 1. THE NAME, ADDRESS, AND TELEPHONE NUMBER
6 OF THE LAY ADVISER;

7 2. THE INDIVIDUAL'S DIAGNOSIS; AND

8 3. AN EXPLANATION OF THE CLINICAL NEED FOR
9 THE MEDICATION, INCLUDING POTENTIAL SIDE EFFECTS AND MATERIAL RISKS
10 AND BENEFITS OF TAKING OR REFUSING THE MEDICATION.

11 (3) THE CHAIR OF THE PANEL MAY:

12 (I) POSTPONE OR CONTINUE THE PANEL FOR GOOD CAUSE
13 FOR A REASONABLE TIME; AND

14 (II) TAKE APPROPRIATE MEASURES NECESSARY TO
15 CONDUCT THE PANEL IN AN ORDERLY MANNER.

16 (F) BEFORE DECIDING WHETHER TO APPROVE THE ADMINISTRATION
17 OF MEDICATION TO AN INDIVIDUAL UNDER THIS SECTION, THE PANEL SHALL:

18 (1) REVIEW THE INDIVIDUAL'S CLINICAL RECORD, AS
19 APPROPRIATE;

20 (2) ASSIST THE INDIVIDUAL AND THE TREATING PHYSICIAN TO
21 ARRIVE AT A MUTUALLY AGREEABLE TREATMENT PLAN; AND

22 (3) MEET FOR THE PURPOSE OF RECEIVING INFORMATION AND
23 CLINICALLY ASSESSING THE INDIVIDUAL'S NEED FOR MEDICATION BY:

24 (I) CONSULTING WITH THE INDIVIDUAL REGARDING THE
25 REASON FOR REFUSING THE MEDICATION AND THE INDIVIDUAL'S WILLINGNESS
26 TO ACCEPT ALTERNATIVE TREATMENT, INCLUDING OTHER MEDICATION;

27 (II) CONSULTING WITH FACILITY PERSONNEL WHO ARE
28 RESPONSIBLE FOR INITIATING AND IMPLEMENTING THE INDIVIDUAL'S
29 TREATMENT PLAN, INCLUDING DISCUSSION OF THE CURRENT TREATMENT PLAN

1 AND ALTERNATIVE MODES OF TREATMENT, INCLUDING MEDICATIONS THAT
2 WERE CONSIDERED;

3 (III) RECEIVING INFORMATION PRESENTED BY THE
4 INDIVIDUAL AND OTHER PERSONS PARTICIPATING IN THE MEETING OF THE
5 PANEL;

6 (IV) PROVIDING THE INDIVIDUAL WITH AN OPPORTUNITY TO
7 ASK QUESTIONS OF ANYONE PRESENTING INFORMATION TO THE PANEL; AND

8 (V) REVIEWING THE POTENTIAL CONSEQUENCES OF
9 REQUIRING THE ADMINISTRATION OF MEDICATION AND OF WITHHOLDING THE
10 MEDICATION FROM THE INDIVIDUAL.

11 (G) THE PANEL MAY APPROVE THE ADMINISTRATION OF MEDICATION
12 AND MAY RECOMMEND AND APPROVE ALTERNATIVE MEDICATION IF THE PANEL
13 DETERMINES THAT:

14 (1) THE MEDICATION IS PRESCRIBED BY A PSYCHIATRIST FOR
15 THE PURPOSE OF TREATING THE INDIVIDUAL'S MENTAL DISORDER;

16 (2) THE ADMINISTRATION OF MEDICATION REPRESENTS A
17 REASONABLE EXERCISE OF PROFESSIONAL JUDGMENT; AND

18 (3) WITHOUT THE MEDICATION, THE INDIVIDUAL IS AT
19 SUBSTANTIAL RISK OF:

20 (I) REMAINING SERIOUSLY MENTALLY ILL WITH NO
21 SIGNIFICANT RELIEF OF THE MENTAL ILLNESS SYMPTOMS THAT CAUSE THE
22 INDIVIDUAL TO BE A DANGER TO THE INDIVIDUAL OR TO OTHERS;

23 (II) REMAINING SERIOUSLY MENTALLY ILL FOR A
24 SIGNIFICANTLY LONGER PERIOD OF TIME WITH MENTAL ILLNESS SYMPTOMS
25 THAT CAUSE THE INDIVIDUAL TO BE A DANGER TO THE INDIVIDUAL OR TO
26 OTHERS; OR

27 (III) RELAPSING INTO A CONDITION IN WHICH THE
28 INDIVIDUAL IS IN DANGER OF SERIOUS PHYSICAL HARM RESULTING FROM THE
29 INDIVIDUAL'S INABILITY TO PROVIDE FOR THE INDIVIDUAL'S ESSENTIAL
30 HUMAN NEEDS OF HEALTH OR SAFETY.

31 (H) (1) A PANEL SHALL BASE ITS DECISION REGARDING THE
32 ADMINISTRATION OF MEDICATION TO AN INDIVIDUAL ON THE PANEL'S

1 CLINICAL ASSESSMENT OF THE INFORMATION CONTAINED IN THE INDIVIDUAL'S
2 RECORD AND INFORMATION PRESENTED TO THE PANEL.

3 (2) A PANEL MAY MEET PRIVATELY TO REACH A DECISION.

4 (3) A PANEL MAY NOT APPROVE THE ADMINISTRATION OF
5 MEDICATION WHERE ALTERNATIVE TREATMENTS ARE AVAILABLE AND ARE
6 ACCEPTABLE TO BOTH THE INDIVIDUAL AND THE FACILITY PERSONNEL WHO
7 ARE DIRECTLY RESPONSIBLE FOR IMPLEMENTING THE INDIVIDUAL'S
8 TREATMENT PLAN.

9 (i) (1) A PANEL SHALL DOCUMENT ITS CONSIDERATION OF THE
10 ISSUES AND THE BASIS FOR ITS DECISION ON THE ADMINISTRATION OF
11 MEDICATION.

12 (2) A PANEL SHALL PROVIDE A WRITTEN DECISION ON THE
13 ADMINISTRATION OF MEDICATION TO AN INDIVIDUAL UNDER THIS SECTION;
14 AND THE DECISION SHALL BE PROVIDED TO THE INDIVIDUAL, THE LAY ADVISER,
15 AND THE INDIVIDUAL'S TREATMENT TEAM FOR INCLUSION IN THE INDIVIDUAL'S
16 MEDICAL RECORD.

17 (3) IF A PANEL APPROVES THE ADMINISTRATION OF
18 MEDICATION, THE DECISION SHALL SPECIFY:

19 (i) ANY MEDICATION APPROVED AND THE DOSAGE AND
20 FREQUENCY RANGE;

21 (ii) THE DURATION OF THE APPROVAL, NOT TO EXCEED THE
22 MAXIMUM TIME PROVIDED UNDER SUBSECTION (M) OF THIS SECTION; AND

23 (iii) IF APPLICABLE, THE REASON THAT ALTERNATIVE
24 TREATMENTS WERE REJECTED BY THE PANEL.

25 (4) IF A PANEL APPROVES THE ADMINISTRATION OF
26 MEDICATION, THE DECISION SHALL INCLUDE:

27 (i) NOTICE OF THE RIGHT TO REQUEST A HEARING UNDER
28 SUBSECTION (K) OF THIS SECTION;

29 (ii) NOTICE OF THE RIGHT TO REQUEST REPRESENTATION
30 OR ASSISTANCE OF A LAWYER OR OTHER ADVOCATE CHOSEN BY THE
31 INDIVIDUAL TO WHOM THE MEDICATION WOULD BE ADMINISTERED; AND

1 **(III) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE**
2 **DESIGNATED STATE PROTECTION AND ADVOCACY AGENCY AND THE LAWYER**
3 **REFERRAL SERVICE.**

4 **(J) IF A PANEL APPROVES THE ADMINISTRATION OF MEDICATION TO AN**
5 **INDIVIDUAL UNDER THIS SECTION, THE LAY ADVISER PROMPTLY SHALL:**

6 **(1) INFORM THE INDIVIDUAL OF THE INDIVIDUAL'S RIGHT TO**
7 **APPEAL THE DECISION UNDER SUBSECTION (K) OF THIS SECTION;**

8 **(2) ENSURE THAT THE INDIVIDUAL HAS ACCESS TO A**
9 **TELEPHONE;**

10 **(3) IF THE INDIVIDUAL REQUESTS A HEARING, NOTIFY THE**
11 **MANAGING OFFICIAL OF THE FACILITY OR THE MANAGING OFFICIAL'S**
12 **DESIGNEE AS REQUIRED BY SUBSECTION (K)(1) OF THIS SECTION AND GIVE THE**
13 **INDIVIDUAL WRITTEN NOTICE OF THE DATE, TIME, AND LOCATION OF THE**
14 **HEARING; AND**

15 **(4) ADVISE THE INDIVIDUAL OF THE PROVISION FOR RENEWAL OF**
16 **AN APPROVAL UNDER SUBSECTION (M) OF THIS SECTION.**

17 **(K) (1) AN INDIVIDUAL MAY REQUEST AN ADMINISTRATIVE HEARING**
18 **TO APPEAL THE PANEL'S DECISION BY FILING A REQUEST FOR A HEARING WITH**
19 **THE MANAGING OFFICIAL OF THE FACILITY OR THE MANAGING OFFICIAL'S**
20 **DESIGNEE WITHIN 48 HOURS OF RECEIPT OF THE DECISION OF THE PANEL.**

21 **(2) WITHIN 24 HOURS OF RECEIPT OF A REQUEST FOR A**
22 **HEARING, THE MANAGING OFFICIAL OF THE FACILITY OR THE MANAGING**
23 **OFFICIAL'S DESIGNEE SHALL FORWARD THE REQUEST TO THE OFFICE OF**
24 **ADMINISTRATIVE HEARINGS.**

25 **(3) (I) AN INITIAL PANEL DECISION AUTHORIZING THE**
26 **ADMINISTRATION OF MEDICATION SHALL BE STAYED FOR 48 HOURS.**

27 **(II) IF A REQUEST FOR A HEARING IS FILED, THE STAY**
28 **SHALL REMAIN IN EFFECT UNTIL THE ISSUANCE OF A DECISION IN THE**
29 **ADMINISTRATIVE HEARING.**

30 **(4) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL**
31 **CONDUCT A HEARING AND ISSUE A DECISION WITHIN 7 CALENDAR DAYS OF THE**
32 **DECISION BY THE PANEL.**

1 **(5) THE ADMINISTRATIVE HEARING MAY BE POSTPONED BY**
2 **AGREEMENT OF THE PARTIES OR FOR GOOD CAUSE SHOWN.**

3 **(6) THE ADMINISTRATIVE LAW JUDGE SHALL CONDUCT A DE**
4 **NOVO HEARING TO DETERMINE IF THE STANDARDS AND PROCEDURES IN THIS**
5 **SECTION ARE MET.**

6 **(7) AT THE HEARING, THE INDIVIDUAL REPRESENTING THE**
7 **FACILITY:**

8 **(I) MAY INTRODUCE THE DECISION OF THE PANEL AS**
9 **EVIDENCE; AND**

10 **(II) SHALL PROVE BY A PREPONDERANCE OF THE EVIDENCE**
11 **THAT THE STANDARDS AND PROCEDURES OF THIS SECTION HAVE BEEN MET.**

12 **(8) THE ADMINISTRATIVE LAW JUDGE SHALL STATE ON THE**
13 **RECORD THE FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

14 **(9) THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE IS**
15 **A FINAL DECISION FOR THE PURPOSE OF JUDICIAL REVIEW OF A FINAL**
16 **DECISION UNDER THE ADMINISTRATIVE PROCEDURE ACT.**

17 **(L) (1) WITHIN 14 CALENDAR DAYS FROM THE DECISION OF THE**
18 **ADMINISTRATIVE LAW JUDGE, THE INDIVIDUAL WHO REQUESTED THE HEARING**
19 **OR THE FACILITY MAY APPEAL THE DECISION, AND THE APPEAL SHALL BE TO**
20 **THE CIRCUIT COURT ON THE RECORD FROM THE HEARING CONDUCTED BY THE**
21 **OFFICE OF ADMINISTRATIVE HEARINGS.**

22 **(2) THE SCOPE OF REVIEW SHALL BE AS A CONTESTED CASE**
23 **UNDER THE ADMINISTRATIVE PROCEDURE ACT.**

24 **(3) (I) REVIEW SHALL BE ON THE AUDIOPHONIC TAPE OF THE**
25 **HEARING WITHOUT THE NECESSITY OF TRANSCRIPTION OF THE TAPE UNLESS**
26 **EITHER PARTY TO THE APPEAL REQUESTS TRANSCRIPTION OF THE TAPE.**

27 **(II) A REQUEST FOR TRANSCRIPTION OF THE TAPE SHALL**
28 **BE MADE AT THE TIME THE APPEAL IS FILED.**

29 **(III) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL**
30 **PREPARE THE TRANSCRIPTION BEFORE THE APPEAL HEARING, AND THE PARTY**
31 **REQUESTING THE TRANSCRIPTION SHALL BEAR THE COST OF TRANSCRIPTION.**

1 **(4) THE CIRCUIT COURT SHALL HEAR AND ISSUE A DECISION ON**
2 **AN APPEAL WITHIN 7 CALENDAR DAYS FROM THE DATE THE APPEAL WAS FILED.**

3 **(M) (1) TREATMENT OF AN INDIVIDUAL PROVIDED UNDER THIS**
4 **SECTION MAY NOT BE APPROVED FOR LONGER THAN 90 DAYS.**

5 **(2) (I) BEFORE THE EXPIRATION OF AN APPROVAL PERIOD**
6 **AND IF THE INDIVIDUAL CONTINUES TO REFUSE MEDICATION, A PANEL MAY BE**
7 **CONVENED TO DECIDE WHETHER RENEWAL IS WARRANTED.**

8 **(II) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH**
9 **(1) OF THIS SUBSECTION, IF A PANEL APPROVES THE RENEWAL OF THE**
10 **ADMINISTRATION OF MEDICATION, THE ADMINISTRATION OF THE MEDICATION**
11 **NEED NOT BE INTERRUPTED IF THE INDIVIDUAL APPEALS THE RENEWAL OF**
12 **APPROVAL.**

13 **(N) WHEN MEDICATION IS ORDERED FOR AN INDIVIDUAL UNDER THE**
14 **APPROVAL OF A PANEL UNDER THIS SECTION AND AT A MINIMUM OF EVERY 15**
15 **DAYS, THE TREATING PHYSICIAN SHALL DOCUMENT ANY KNOWN BENEFITS AND**
16 **SIDE EFFECTS TO THE INDIVIDUAL.**

17 **(O) IF AN INDIVIDUAL REQUESTS LEGAL REPRESENTATION FROM THE**
18 **DESIGNATED STATE PROTECTION AND ADVOCACY SYSTEM, THE DEPARTMENT**
19 **SHALL PAY THE COSTS ASSOCIATED WITH THE REPRESENTATION.**

20 **(P) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE DEPARTMENT**
21 **SHALL SUBMIT A REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH §**
22 **2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON**
23 **THE NUMBER OF CLINICAL REVIEW PANELS CONVENED UNDER THIS SECTION**
24 **AND THE DECISIONS MADE BY EACH CLINICAL REVIEW PANEL.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2011.