

Chapter 703

(Senate Bill 361)

AN ACT concerning

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

FOR the purpose of ~~authorizing a court to order administration of certain medication to a certain defendant for a certain amount of time after a certain finding of incompetency or not criminally responsible under certain circumstances; providing that a certain medication may be administered to a certain individual before the decision of a certain panel for a certain amount of time under certain circumstances; requiring a certain panel to issue a certain decision within a certain amount of time under certain circumstances~~ authorizing a court after a certain finding of incompetency or not criminally responsible due to a mental disorder to order the Maryland Department of Health within a certain period of time to evaluate a defendant, to develop a certain treatment plan, and to make a certain determination; requiring a certain panel to convene within a certain period of time after an individual's refusal of medication for a certain period of time if the individual was committed after a certain finding of incompetency or not criminally responsible due to a mental disorder and the individual's treatment plan made a certain determination; requiring the Behavioral Health Administration to develop and conduct certain training; requiring certain individuals to receive certain training; and generally relating to incompetency and criminal responsibility.

BY repealing and reenacting, without amendments,
 Article – Criminal Procedure
 Section 3–106(a)
 Annotated Code of Maryland
 (2008 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,
 Article – Criminal Procedure
 Section 3–106(b) and 3–112
 Annotated Code of Maryland
 (2008 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,
 Article – Health – General
 Section 10–708
 Annotated Code of Maryland
 (2015 Replacement Volume and 2017 Supplement)

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

Article – Criminal Procedure

3–106.

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

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

(I) order the defendant committed to the facility that the Health Department designates until the court finds that:

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

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

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

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

(2) IF THE COURT COMMITS THE DEFENDANT UNDER PARAGRAPH (1) OF THIS SUBSECTION BECAUSE OF A MENTAL DISORDER, THE COURT MAY ORDER THE HEALTH DEPARTMENT, AS SOON AS POSSIBLE AFTER THE DEFENDANT'S ADMISSION, BUT NOT TO EXCEED 48 HOURS, TO:

(I) EVALUATE THE DEFENDANT;

(II) DEVELOP A PROMPT PLAN OF TREATMENT FOR THE DEFENDANT UNDER § 10-706 OF THE HEALTH – GENERAL ARTICLE; AND

(III) EVALUATE WHETHER THERE IS A SUBSTANTIAL LIKELIHOOD THAT, WITHOUT IMMEDIATE TREATMENT, INCLUDING MEDICATION,

THE DEFENDANT WILL REMAIN A DANGER TO SELF OR THE PERSON OR PROPERTY OF ANOTHER.

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

3-112.

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

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

(b) **IF THE COURT COMMITS A DEFENDANT WHO WAS FOUND NOT CRIMINALLY RESPONSIBLE PRIMARILY BECAUSE OF A MENTAL DISORDER, THE COURT MAY ORDER THE HEALTH DEPARTMENT, AS SOON AS POSSIBLE AFTER THE DEFENDANT'S ADMISSION, BUT NOT TO EXCEED 48 HOURS, TO:**

(1) EVALUATE THE DEFENDANT;

(2) DEVELOP A PROMPT PLAN OF TREATMENT FOR THE DEFENDANT UNDER § 10-706 OF THE HEALTH - GENERAL ARTICLE; AND

(3) EVALUATE WHETHER THERE IS A SUBSTANTIAL LIKELIHOOD THAT, WITHOUT IMMEDIATE TREATMENT, INCLUDING MEDICATION, THE DEFENDANT WILL REMAIN A DANGER TO SELF OR THE PERSON OR PROPERTY OF ANOTHER.

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

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

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

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

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

~~(E)~~ **(E)** The court shall notify the Criminal Justice Information System Central Repository of each person it orders committed under this section.

Article – Health – General

10-708.

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

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

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

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

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

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

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

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

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

(ii) A psychiatrist; and

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

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

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

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

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

~~(II) FOR A PERIOD OF NO LONGER THAN 30 DAYS PENDING EXPEDITED REVIEW UNDER SUBSECTION (J) OF THIS SECTION, IF A COURT ORDERS ADMINISTRATION OF TREATMENT WITH PSYCHIATRIC MEDICATION IN CONNECTION 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 or continue the panel for good cause, for a reasonable time; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Notice of the right to request a hearing under subsection [(k)] (L) of this section;

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

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

~~(J) A PANEL SHALL ISSUE A WRITTEN DECISION WITHIN 30 DAYS AFTER A COURT ORDERS ADMINISTRATION OF TREATMENT WITH PSYCHIATRIC MEDICATION IN CONNECTION 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~~ A PANEL SHALL CONVENE WITHIN 9 DAYS AFTER AN INDIVIDUAL'S REFUSAL OF MEDICATION FOR A PERIOD OF AT LEAST 72 HOURS IF:

(1) THE INDIVIDUAL WAS COMMITTED TO A HOSPITAL UNDER TITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE BECAUSE OF A MENTAL DISORDER; AND

(2) THE TREATMENT PLAN DEVELOPED UNDER § 10-706 OF THIS SUBTITLE INDICATES THAT THERE IS A SUBSTANTIAL LIKELIHOOD THAT, WITHOUT IMMEDIATE TREATMENT, THE INDIVIDUAL WILL REMAIN A DANGER TO SELF OR THE PERSON OR PROPERTY OF ANOTHER.

~~(j)~~ **(K)** If a panel approves the administration of medication, the lay advisor promptly shall:

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

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

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

(4) Advise the individual of the provision for renewal of an approval under subsection ~~[(m)]~~ **(N)** of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(P) (1) THE ADMINISTRATION SHALL DEVELOP AND CONDUCT TRAINING ON THE REQUIREMENTS OF THIS SECTION TO ENSURE COMPLIANCE AT ALL STATE FACILITIES.

(2) THE TRAINING IS MANDATORY FOR ALL CLINICAL DIRECTORS AND ALL INDIVIDUALS WHO ARE ELIGIBLE TO SERVE ON A PANEL.

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

Approved by the Governor, May 15, 2018.