

HOUSE BILL 202

E2
HB 650/17 – JUD

8lr1018
CF 8lr0998

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

Introduced and read first time: January 18, 2018

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

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

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 after a certain finding of incompetency
6 or not criminally responsible under certain circumstances; providing that a certain
7 medication may be administered to a certain individual before the decision of a
8 certain panel for a certain amount of time under certain circumstances; requiring a
9 certain panel to issue a certain decision within a certain amount of time under
10 certain circumstances; and generally relating to incompetency and criminal
11 responsibility.

12 BY repealing and reenacting, without amendments,
13 Article – Criminal Procedure
14 Section 3–106(a)
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2017 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Procedure
19 Section 3–106(b) and 3–112
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2017 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Health – General
24 Section 10–708
25 Annotated Code of Maryland
26 (2015 Replacement Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Criminal Procedure**

4 3–106.

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

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

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

14 [(i)] 1. the defendant no longer is incompetent to stand trial;

15 [(ii)] 2. the defendant no longer is, because of mental retardation
16 or a mental disorder, a danger to self or the person or property of others; or

17 [(iii)] 3. there is not a substantial likelihood that the defendant
18 will become competent to stand trial in the foreseeable future; AND

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

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

28 3–112.

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

32 (2) **IF THE COURT FINDS THAT, BECAUSE OF MENTAL RETARDATION**
33 **OR A MENTAL DISORDER, THE DEFENDANT IS A DANGER TO SELF OR THE PERSON**

1 OR PROPERTY OF ANOTHER, AND FINDS THAT TREATMENT WITH PSYCHIATRIC
2 MEDICATION IS IN THE DEFENDANT’S BEST INTEREST, THE COURT MAY ORDER
3 ADMINISTRATION OF THE TREATMENT IN ACCORDANCE WITH A TREATMENT PLAN
4 DEVELOPED BY THE HEALTH DEPARTMENT FOR A PERIOD OF NO LONGER THAN 30
5 DAYS PENDING AN EXPEDITED CLINICAL REVIEW PANEL PROCEDURE UNDER §
6 10-708 OF THE HEALTH – GENERAL ARTICLE, EVEN IF THE DEFENDANT REFUSES
7 THE MEDICATION.

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

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

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

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

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

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

23 Article – Health – General

24 10-708.

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

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

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

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

33 (b) Medication may not be administered to an individual who refuses the

1 medication, except:

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

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

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

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

12 (ii) A psychiatrist; and

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

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

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

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

24 **(I) IN AN EMERGENCY UNDER SUBSECTION (B)(1) OF THIS**
25 **SECTION; OR**

26 **(II) FOR A PERIOD OF NO LONGER THAN 30 DAYS PENDING**
27 **EXPEDITED REVIEW UNDER SUBSECTION (J) OF THIS SECTION, IF A COURT ORDERS**
28 **ADMINISTRATION OF TREATMENT WITH PSYCHIATRIC MEDICATION IN CONNECTION**
29 **WITH:**

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

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

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

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

4 (ii) The purpose of the panel; and

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

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

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

10 (ii) To present information, including witnesses;

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

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

14 (v) To be informed of:

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

17 2. The individual's diagnosis; and

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

21 (3) The chairperson of the panel may:

22 (i) Postpone or continue the panel for good cause, for a reasonable
23 time; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 contain:

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

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

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

8 (J) A PANEL SHALL ISSUE A WRITTEN DECISION WITHIN 30 DAYS AFTER A
9 COURT ORDERS ADMINISTRATION OF TREATMENT WITH PSYCHIATRIC MEDICATION
10 IN CONNECTION WITH:

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

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

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

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

19 (2) Ensure that the individual has access to a telephone as provided under
20 § 10-702(b) of this subtitle;

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **[1)] (M)** (1) Within 14 calendar days from the decision of the administrative
19 law judge, the individual 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 Office of Administrative
21 Hearings.

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

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

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

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

32 (4) The circuit court shall hear and issue a decision on an appeal within 7

1 calendar days from the date the appeal was filed.

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

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

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

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

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