

# SENATE BILL 361

E2  
SB 691/17 – JPR

8lr0998  
CF HB 202

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By: **Senators Ready, Bates, Kelley, and Salling**  
Introduced and read first time: January 24, 2018  
Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 12, 2018

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

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~~ authorizing a court after a certain finding of incompetency or  
11 not criminally responsible due to a mental disorder to order the Maryland  
12 Department of Health within a certain period of time to evaluate a defendant, to  
13 develop a certain treatment plan, and to make a certain determination; requiring a  
14 certain panel to convene within a certain period of time after an individual's refusal  
15 of medication for a certain period of time if the individual was committed after a  
16 certain finding of incompetency or not criminally responsible due to a mental  
17 disorder and the individual's treatment plan made a certain determination;  
18 requiring the Behavioral Health Administration to develop and conduct certain  
19 training; requiring certain individuals to receive certain training; and generally  
20 relating to incompetency and criminal responsibility.

21 BY repealing and reenacting, without amendments,  
22 Article – Criminal Procedure  
23 Section 3–106(a)  
24 Annotated Code of Maryland

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2008 Replacement Volume and 2017 Supplement)

2 BY repealing and reenacting, with amendments,  
 3 Article – Criminal Procedure  
 4 Section 3–106(b) and 3–112  
 5 Annotated Code of Maryland  
 6 (2008 Replacement Volume and 2017 Supplement)

7 BY repealing and reenacting, with amendments,  
 8 Article – Health – General  
 9 Section 10–708  
 10 Annotated Code of Maryland  
 11 (2015 Replacement Volume and 2017 Supplement)

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

14 **Article – Criminal Procedure**

15 3–106.

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

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

23 ~~(1)~~ order the defendant committed to the facility that the Health  
 24 Department designates until the court finds that:

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

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

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

30 ~~(H) IF THE COURT FINDS THAT TREATMENT WITH PSYCHIATRIC~~  
 31 ~~MEDICATION IS IN THE DEFENDANT'S BEST INTEREST, ORDER ADMINISTRATION OF~~  
 32 ~~THE TREATMENT IN ACCORDANCE WITH A TREATMENT PLAN DEVELOPED BY THE~~  
 33 ~~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;



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

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

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

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

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

13 (ii) A psychiatrist; and

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

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

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

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

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

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

31 ~~1. A FINDING THAT AN INDIVIDUAL IS INCOMPETENT TO~~  
32 ~~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 (1) Review the individual's clinical record, as appropriate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

14 ~~(2) A VERDICT OF NOT CRIMINALLY RESPONSIBLE UNDER § 3-112(A)~~  
15 ~~OF THE CRIMINAL PROCEDURE ARTICLE~~ A PANEL SHALL CONVENE WITHIN 9 DAYS  
16 AFTER AN INDIVIDUAL'S REFUSAL OF MEDICATION FOR A PERIOD OF AT LEAST 72  
17 HOURS IF:

18 (1) THE INDIVIDUAL WAS COMMITTED TO A HOSPITAL UNDER TITLE  
19 3 OF THE CRIMINAL PROCEDURE ARTICLE BECAUSE OF A MENTAL DISORDER; AND

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

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

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

28 (2) Ensure that the individual has access to a telephone as provided under  
29 § 10-702(b) of this subtitle;

30 (3) If the individual requests a hearing, notify the chief executive officer of  
31 the facility or the chief executive officer's designee pursuant to subsection [(k)(1)] (L)(1) of

1 this section and give the individual written notice of the date, time, and location of the  
2 hearing; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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