

HOUSE BILL 432

D3, E2

4lr1660

By: **Delegates Kaufman, Acevero, Addison, Allen, Arikan, Attar, Bagnall, Boaf, Bouchat, Boyce, Charkoudian, Conaway, Cullison, Ebersole, Embry, Feldmark, Foley, Forbes, Guyton, Guzzone, Healey, Henson, Hill, Hutchinson, Ivey, A. Johnson, Kaiser, Lehman, Lopez, McComas, Miller, Mireku–North, T. Morgan, Palakovich Carr, Pasteur, Pena–Melnyk, Pruski, Queen, Rosenberg, Ruff, Schmidt, Shetty, Simmons, Simpson, Solomon, Spiegel, Stein, Stewart, Taveras, Taylor, Terrasa, Toles, Turner, Vogel, Wells, Wilkins, Williams, Woods, Wu, and Young**

Introduced and read first time: January 18, 2024

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts and Judicial Proceedings and Criminal Procedure – Technical**
3 **Corrections – References to Intellectual Disability**

4 FOR the purpose of replacing references to mental retardation with references to an
5 intellectual disability in certain provisions of law; and generally relating to
6 references to intellectual disability.

7 BY repealing and reenacting, with amendments,
8 Article – Courts and Judicial Proceedings
9 Section 3–801(q)(3), 3–8A–01(s) and (u), 3–8A–17.3(b)(2), and 3–8A–19(i) and (j)(3)
10 Annotated Code of Maryland
11 (2020 Replacement Volume and 2023 Supplement)

12 BY adding to
13 Article – Courts and Judicial Proceedings
14 Section 3–8A–01(s)
15 Annotated Code of Maryland
16 (2020 Replacement Volume and 2023 Supplement)

17 BY repealing
18 Article – Courts and Judicial Proceedings
19 Section 3–8A–01(t)
20 Annotated Code of Maryland
21 (2020 Replacement Volume and 2023 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Criminal Procedure
3 Section 3–101(g)(3), 3–105(c)(2)(i) and (d)(3), 3–106(b), (c)(1), (e)(2), and (g),
4 3–108(a)(1) and (2), 3–109(a), 3–110(a) and (c), 3–112(d) and (g), and 3–114(b)
5 and (c)
6 Annotated Code of Maryland
7 (2018 Replacement Volume and 2023 Supplement)

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

10 **Article – Courts and Judicial Proceedings**

11 3–801.

12 (q) (3) “Mental disorder” does not include [mental retardation] AN
13 INTELLECTUAL DISABILITY.

14 3–8A–01.

15 **(S) “INTELLECTUAL DISABILITY” MEANS A DEVELOPMENTAL DISABILITY**
16 **THAT IS EVIDENCED BY INTELLECTUAL FUNCTIONING THAT IS SIGNIFICANTLY**
17 **BELOW AVERAGE AND IMPAIRMENT IN THE ADAPTIVE BEHAVIOR OF A CHILD.**

18 **[(s)] (T) (1) “Mental disorder” means a behavioral or emotional illness that**
19 **results from a psychiatric or neurological disorder.**

20 (2) “Mental disorder” includes a mental illness that so substantially
21 impairs the mental or emotional functioning of a child as to make care or treatment
22 necessary or advisable for the welfare of the child or for the safety of the child or property
23 of another.

24 (3) “Mental disorder” does not include [mental retardation] AN
25 INTELLECTUAL DISABILITY.

26 [(t) “Mental retardation” means a developmental disability that is evidenced by
27 intellectual functioning that is significantly below average and impairment in the adaptive
28 behavior of a child.]

29 (u) “Mentally handicapped child” means a child who [is] HAS or may [be mentally
30 retarded or mentally ill] HAVE AN INTELLECTUAL DISABILITY OR A MENTAL
31 DISORDER.

32 3–8A–17.3.

1 (b) (2) In determining the treatment that is necessary for the child to attain
2 competency to proceed, the qualified expert shall consider and report on the following:

3 (i) The mental illness, [mental retardation] **INTELLECTUAL**
4 **DISABILITY**, developmental immaturity, or other developmental disability causing the
5 child to be incompetent to proceed;

6 (ii) The treatment or education appropriate for the mental illness,
7 [mental retardation] **INTELLECTUAL DISABILITY**, developmental immaturity, or other
8 developmental disability of the child, and an explanation of each of the possible treatment
9 or education alternatives, in order of recommendation;

10 (iii) The likelihood of the child attaining competency to proceed under
11 the treatment or education recommended, an assessment of the probable duration of the
12 treatment required to attain competency, and the probability that the child will attain
13 competency to proceed in the foreseeable future; and

14 (iv) Whether the child meets the criteria for involuntary admission
15 under Title 10, Subtitle 6, Part III of the Health – General Article.

16 3–8A–19.

17 (i) The court may not commit a child to the custody of the Maryland Department
18 of Health under this section for inpatient care and treatment in a State [mental
19 retardation] facility **FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY** unless the
20 court finds on the record based upon clear and convincing evidence that:

21 (1) The child [is mentally retarded] **HAS AN INTELLECTUAL DISABILITY**;

22 (2) The condition is of such a nature that for the adequate care or protection
23 of the child or others, the child needs in–residence care or treatment; and

24 (3) There is no less restrictive form of care and treatment available which
25 is consistent with the child’s welfare and safety.

26 (j) (3) If, at any time after the commitment of the child to a State [mental
27 retardation] facility **FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY** under this
28 section, the individualized plan of habilitation developed under § 7–1006 of the Health –
29 General Article recommends that a child no longer meets the standards specified in
30 subsection (i) of this section, then the court shall grant a hearing to review the commitment
31 order. The court may grant a hearing at any other time for the purpose of determining if
32 the standards specified in subsection (i) of this section continue to be met.

33 Article – Criminal Procedure

34 3–101.

1 (g) (3) "Mental disorder" does not include [mental retardation] AN
2 INTELLECTUAL DISABILITY.

3 3-105.

4 (c) (2) (i) If the court finds that, because of the apparent severity of the
5 mental disorder or [mental retardation] INTELLECTUAL DISABILITY, a defendant in
6 custody would be endangered by confinement in a correctional facility, the court may order
7 that the Health Department, in the Health Department's discretion:

8 1. confine the defendant, pending examination, in a medical
9 facility that the Health Department designates as appropriate; or

10 2. immediately conduct a competency examination of the
11 defendant by a community forensic screening program or other agency that the Health
12 Department finds appropriate.

13 (d) (3) If the Health Department reports that, in its opinion, the defendant is
14 incompetent to stand trial, the report shall state, in a complete supplementary opinion,
15 whether, because of [mental retardation or] A mental disorder OR AN INTELLECTUAL
16 DISABILITY, the defendant would be a danger to self or the person or property of another,
17 if released.

18 3-106.

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

23 (c) (1) (i) If, after a hearing, the court finds that the defendant is
24 incompetent to stand trial and, because of [mental retardation or] a mental disorder OR
25 AN INTELLECTUAL DISABILITY, is a danger to self or the person or property of another,
26 the court shall order the defendant committed to the facility that the Health Department
27 designates until the court finds that:

28 1. the defendant no longer is incompetent to stand trial;

29 2. the defendant no longer is, because of [mental retardation
30 or] a mental disorder OR AN INTELLECTUAL DISABILITY, a danger to self or the person
31 or property of others; or

32 3. there is not a substantial likelihood that the defendant
33 will become competent to stand trial in the foreseeable future.

1 (ii) If a court commits the defendant because of [mental retardation]
2 **AN INTELLECTUAL DISABILITY**, the Health Department shall require the Developmental
3 Disabilities Administration to provide the care or treatment that the defendant needs.

4 (e) At a competency hearing under subsection (d) of this section, if the court finds
5 that the defendant is incompetent and is not likely to become competent in the foreseeable
6 future, the court shall:

7 (2) order the confinement of the defendant for 21 days as a resident in a
8 Developmental Disabilities Administration facility for the initiation of admission
9 proceedings under § 7-503 of the Health – General Article provided the court finds that the
10 defendant, because of [mental retardation] **AN INTELLECTUAL DISABILITY**, is a danger
11 to self or others.

12 (g) (1) For a defendant who has been found incompetent to stand trial but not
13 dangerous, as a result of a mental disorder or [mental retardation] **AN INTELLECTUAL**
14 **DISABILITY**, to self or the person or property of others, and released on bail or on
15 recognizance, the court:

16 (i) shall hold a hearing annually from the date of release;

17 (ii) may hold a hearing, at any time, on its own initiative; or

18 (iii) shall hold a hearing, at any time, upon motion of the State's
19 Attorney or the counsel for the defendant.

20 (2) At a hearing under paragraph (1) of this subsection, the court shall
21 reconsider whether the defendant remains incompetent to stand trial or a danger to self or
22 the person or property of another because of [mental retardation or] a mental disorder **OR**
23 **AN INTELLECTUAL DISABILITY**.

24 (3) At a hearing under paragraph (1) of this subsection, the court may
25 modify or impose additional conditions of release on the defendant.

26 (4) If the court finds, at a hearing under paragraph (1) of this subsection,
27 that the defendant is incompetent and is not likely to become competent in the foreseeable
28 future and is a danger to self or the person or property of another because of [mental
29 retardation or] a mental disorder **OR AN INTELLECTUAL DISABILITY**, the court shall
30 revoke the pretrial release of the defendant and:

31 (i) civilly commit the defendant in accordance with subsection (e)(1)
32 of this section; or

33 (ii) order confinement of the defendant in accordance with
34 subsection (e)(2) of this section.

1 3–108.

2 (a) (1) In addition to any other report required under this title, the Health
3 Department shall report to the court that has ordered commitment of a defendant under §
4 3–106 of this title:

5 (i) every 6 months from the date of commitment of the defendant;
6 and

7 (ii) whenever the Health Department determines that:

8 1. the defendant no longer is incompetent to stand trial;

9 2. the defendant no longer is, because of [mental retardation
10 or] a mental disorder **OR AN INTELLECTUAL DISABILITY**, a danger to self or the person
11 or property of others; or

12 3. there is not a substantial likelihood that the defendant
13 will become competent to stand trial in the foreseeable future.

14 (2) The Department shall include a supplemental report that provides a
15 plan for services to facilitate the defendant remaining competent to stand trial or not
16 dangerous, as a result of [mental retardation or] a mental disorder **OR AN INTELLECTUAL**
17 **DISABILITY**, to self or the person or property of others, if:

18 (i) a report required under this title states an opinion that the
19 defendant is competent to stand trial or is not dangerous, as a result of [mental retardation
20 or] a mental disorder **OR AN INTELLECTUAL DISABILITY**, to self or the person or property
21 of others; and

22 (ii) services are necessary to maintain the defendant safely in the
23 community, to maintain competency, or to restore competency.

24 3–109.

25 (a) A defendant is not criminally responsible for criminal conduct if, at the time
26 of that conduct, the defendant, because of a mental disorder or [mental retardation] **AN**
27 **INTELLECTUAL DISABILITY**, lacks substantial capacity to:

28 (1) appreciate the criminality of that conduct; or

29 (2) conform that conduct to the requirements of law.

30 3–110.

1 (a) (1) If a defendant intends to rely on a plea of not criminally responsible,
2 the defendant or defense counsel shall file a written plea alleging, in substance, that when
3 the alleged crime was committed, the defendant was not criminally responsible by reason
4 of [insanity] **A MENTAL DISORDER OR AN INTELLECTUAL DISABILITY** under the test for
5 criminal responsibility in § 3-109 of this title.

6 (2) A written plea of not criminally responsible by reason of [insanity] **A**
7 **MENTAL DISORDER OR AN INTELLECTUAL DISABILITY** shall be filed at the time
8 provided for initial pleading, unless, for good cause shown, the court allows the plea to be
9 filed later.

10 (c) If the trier of fact finds that the State has proved beyond a reasonable doubt
11 that the defendant committed the criminal act charged, then, if the defendant has pleaded
12 not criminally responsible, the trier of fact separately shall find whether the defendant has
13 established, by a preponderance of the evidence, that the defendant was at the time
14 criminally responsible or not criminally responsible by reason of [insanity] **A MENTAL**
15 **DISORDER OR AN INTELLECTUAL DISABILITY** under the test for criminal responsibility
16 in § 3-109 of this title.

17 3-112.

18 (d) If the court commits a defendant who was found not criminally responsible
19 primarily because of [mental retardation] **AN INTELLECTUAL DISABILITY**, the Health
20 Department shall designate a facility for [mentally retarded persons] **INDIVIDUALS WITH**
21 **AN INTELLECTUAL DISABILITY** for care and treatment of the committed person.

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

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

27 (2) the report indicates that the person would not be a danger, as a result
28 of [mental retardation or] **A mental disorder OR AN INTELLECTUAL DISABILITY**, to self
29 or to the person or property of others if released, with or without conditions; and

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

32 3-114.

33 (b) A committed person is eligible for discharge from commitment only if that
34 person would not be a danger, as a result of **A mental disorder or [mental retardation] AN**
35 **INTELLECTUAL DISABILITY**, to self or to the person or property of others if discharged.

1 (c) A committed person is eligible for conditional release from commitment only
2 if that person would not be a danger, as a result of A mental disorder or [mental
3 retardation] **AN INTELLECTUAL DISABILITY**, to self or to the person or property of others
4 if released from confinement with conditions imposed by the court.

5 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act are
6 intended solely to correct technical errors in the law and there is no intent to supplant or
7 otherwise disturb the decisional law interpreting “mental retardation” or “insanity”.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2024.