

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

Committee Report: Favorable

House action: Adopted

Read second time: February 26, 2024

CHAPTER _____

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)

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 BY repealing
2 Article – Courts and Judicial Proceedings
3 Section 3–8A–01(t)
4 Annotated Code of Maryland
5 (2020 Replacement Volume and 2023 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Criminal Procedure
8 Section 3–101(g)(3), 3–105(c)(2)(i) and (d)(3), 3–106(b), (c)(1), (e)(2), and (g),
9 3–108(a)(1) and (2), 3–109(a), 3–110(a) and (c), 3–112(d) and (g), and 3–114(b)
10 and (c)
11 Annotated Code of Maryland
12 (2018 Replacement Volume and 2023 Supplement)

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

15 **Article – Courts and Judicial Proceedings**

16 3–801.

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

19 3–8A–01.

20 (S) “INTELLECTUAL DISABILITY” MEANS A DEVELOPMENTAL DISABILITY
21 THAT IS EVIDENCED BY INTELLECTUAL FUNCTIONING THAT IS SIGNIFICANTLY
22 BELOW AVERAGE AND IMPAIRMENT IN THE ADAPTIVE BEHAVIOR OF A CHILD.

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

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

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

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

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

4 3–8A–17.3.

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

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

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

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

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

20 3–8A–19.

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

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

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

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

30 (j) (3) If, at any time after the commitment of the child to a State [mental
31 retardation] facility **FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY** under this
32 section, the individualized plan of habilitation developed under § 7–1006 of the Health –
33 General Article recommends that a child no longer meets the standards specified in
34 subsection (i) of this section, then the court shall grant a hearing to review the commitment

1 order. The court may grant a hearing at any other time for the purpose of determining if
2 the standards specified in subsection (i) of this section continue to be met.

3 Article – Criminal Procedure

4 3–101.

5 (g) (3) “Mental disorder” does not include [mental retardation] AN
6 INTELLECTUAL DISABILITY.

7 3–105.

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

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

14 2. immediately conduct a competency examination of the
15 defendant by a community forensic screening program or other agency that the Health
16 Department finds appropriate.

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

22 3–106.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 3–108.

6 (a) (1) In addition to any other report required under this title, the Health
7 Department shall report to the court that has ordered commitment of a defendant under §
8 3–106 of this title:

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

11 (ii) whenever the Health Department determines that:

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

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

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

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

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

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

28 3–109.

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

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

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

3 3–110.

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

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

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

20 3–112.

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

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

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

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

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

1 3-114.

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.