

HOUSE BILL 1346

E2, J3, J1

4lr2431

By: **Delegates Clippinger and Pena–Melnik**

Introduced and read first time: February 9, 2024

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Competency Evaluations and Commitment Orders – Modification**

3 FOR the purpose of altering the procedures related to competency evaluations, including
4 by requiring the Maryland Department of Health, rather than the court, to
5 determine the basis on which a defendant will be examined; altering the definition
6 of “designated health care facility” for the purpose of certain provisions of law
7 governing the commitment of defendants who are found to be incompetent to stand
8 trial; extending the time period within which the Department is required to admit
9 certain defendants who are found to be incompetent to stand trial; and generally
10 relating to competency evaluations and commitment orders.

11 BY repealing and reenacting, with amendments,
12 Article – Criminal Procedure
13 Section 3–105 and 3–106(a) and (c)
14 Annotated Code of Maryland
15 (2018 Replacement Volume and 2023 Supplement)

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

18 **Article – Criminal Procedure**

19 3–105.

20 (a) (1) For good cause and after giving the defendant an opportunity to be
21 heard, the court may order the Health Department to examine the defendant to determine
22 whether the defendant is incompetent to stand trial.

23 [(2) The court shall set and may change the conditions under which the
24 examination is to be made.]

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(2) THE HEALTH DEPARTMENT SHALL DETERMINE WHETHER,**
2 **BASED ON THE HEALTH DEPARTMENT'S PROFESSIONAL JUDGMENT REGARDING**
3 **WHETHER THE DEFENDANT IS A DANGER TO SELF OR THE PERSON OR PROPERTY OF**
4 **ANOTHER, THE DEFENDANT WILL BE EXAMINED ON:**

5 **(I) AN OUTPATIENT BASIS; OR**

6 **(II) AN INPATIENT BASIS.**

7 (b) On consideration of the nature of the charge, the court:

8 (1) may require or allow the examination to be done on an outpatient basis;
9 and

10 (2) if an outpatient examination is authorized, shall set bail for the
11 defendant or authorize release of the defendant on recognizance.

12 (c) (1) **(I)** If a defendant is to be held in custody for examination under this
13 section, the defendant may be confined in a correctional facility until the Health
14 Department can conduct the examination.

15 **(II)** If the court finds it appropriate for the health or safety of the
16 defendant, the court may order confinement in a medical wing or other isolated and secure
17 unit of the correctional facility.

18 (2) (i) If the court finds that, because of the apparent severity of the
19 mental disorder or mental retardation, a defendant in custody would be endangered by
20 confinement in a correctional facility, the court may order that the Health Department, in
21 the Health Department's discretion:

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

24 2. immediately conduct a competency examination of the
25 defendant by a community forensic screening program or other agency that the Health
26 Department finds appropriate.

27 (ii) Unless the Health Department retains the defendant, the
28 defendant shall be promptly returned to the court after the examination.

29 (3) A defendant who is held for examination under this section may
30 question at any time the legality of the detention by petition for a writ of habeas corpus.

31 (d) (1) If a court orders an examination under this section, the Health
32 Department shall:

- 1 (i) examine the defendant; and
- 2 (ii) send a complete report of its findings to:
- 3 1. the court;
- 4 2. the State's Attorney; and
- 5 3. the defense counsel.

6 (2) (I) Unless there is a plea that the defendant was not criminally
7 responsible under § 3–109 of this title, the defendant is entitled to have the report within
8 7 BUSINESS days after the court orders the examination. [However, failure]

9 (II) FAILURE of the Health Department to send the complete report
10 within that time is not, of itself, grounds for dismissal of the charges.

11 (III) On good cause shown, the court may extend the time for
12 examination.

13 (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 mental disorder, the defendant would be a
16 danger to self or the person or property of another, if released.

17 (4) A statement made by the defendant in the course of an examination
18 under this section is not admissible in a criminal proceeding for the purpose of proving the
19 commission of a criminal offense or to enhance the sentence of the defendant.

20 (5) Except for the purpose of impeaching the testimony of the defendant, a
21 report prepared as the result of an examination under this section is not admissible in a
22 criminal proceeding for the purpose of proving the commission of a criminal offense or to
23 enhance the sentence of the defendant.

24 3–106.

25 (a) [(1)] In this section, “designated health care facility” means:

26 [(i)] (1) a State facility as defined in § 10–101 of the Health –
27 General Article;

28 [(ii)] (2) a State forensic residential center; [or]

1 [(iii)] **(3)** a hospital or private residential facility under contract
 2 with the Health Department to house and treat individuals found to be incompetent to
 3 stand trial or not criminally responsible;

4 **(4) A UNIT WITHIN A CORRECTIONAL OR DETENTION FACILITY; OR**

5 **(5) AN OUTPATIENT PROGRAM DESIGNATED BY THE HEALTH**
 6 **DEPARTMENT THAT PROVIDES COMPETENCY RESTORATION SERVICES.**

7 [(2) “Designated health care facility” does not include a correctional or
 8 detention facility or unit within a correctional or detention facility.]

9 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
 10 as follows:

11 **Article – Criminal Procedure**

12 3–106.

13 (c) (1) (i) If, after a hearing, the court finds that the defendant is
 14 incompetent to stand trial and, because of mental retardation or a mental disorder, is a
 15 danger to self or the person or property of another, the court shall order the defendant
 16 committed to the facility that the Health Department designates until the court finds that:

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

18 2. the defendant no longer is, because of mental retardation
 19 or a mental disorder, a danger to self or the person or property of others; or

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

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

25 (2) If the court commits a defendant to the Health Department under
 26 paragraph (1) of this subsection, the Health Department shall:

27 (i) admit the defendant to a designated health care facility as soon
 28 as possible, but not later than [10] **30** business days after the Health Department receives
 29 the order of commitment; and

30 (ii) notify the court of the date on which the defendant was admitted
 31 to the designated health care facility.

1 (3) If the court commits the defendant under paragraph (1) of this
2 subsection because of a mental disorder, the court may order the Health Department, as
3 soon as possible after the defendant's admission, but not to exceed 48 hours, to:

4 (i) evaluate the defendant;

5 (ii) develop a prompt plan of treatment for the defendant under §
6 10-706 of the Health – General Article; and

7 (iii) evaluate whether there is a substantial likelihood that, without
8 immediate treatment, including medication, the defendant will remain a danger to self or
9 the person or property of another.

10 (4) If the Health Department fails to admit a defendant to a designated
11 health care facility within the time period specified in paragraph (2)(i) of this subsection,
12 the court may impose any sanction reasonably designed to compel compliance, including
13 requiring the Health Department to reimburse a detention facility for expenses and costs
14 incurred in retaining the defendant beyond the time period specified in paragraph (2)(i) of
15 this subsection at the daily rate specified in § 9-402(b) of the Correctional Services Article.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2024. Section 2 of this Act shall remain effective for a period of 2 years and, at
18 the end of September 30, 2026, Section 2 of this Act, with no further action required by the
19 General Assembly, shall be abrogated and of no further force and effect.