

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 741

(Senators Lam and Augustine)

Finance and Judicial Proceedings

Forensic Mental Health Treatment

This bill specifies that a certificate of need (CON) is required (1) before a health care facility reduces psychiatric bed capacity by five or more beds and (2) if the closing or partial closing of a facility will result in a decrease of five or more psychiatric beds. The bill establishes the Workgroup on Forensic Mental Health Treatment. By October 1, 2026, the Secretary of Health and the Chief Justice of the Supreme Court of Maryland, in consultation with the workgroup, must create a data collection form for use by judges in incompetency to stand trial proceedings. The workgroup must meet at least once a year to review data collected from submitted forms. By January 1, 2027, and annually thereafter, the workgroup must submit a specified report. The bill also establishes the Forensic Mental Health Treatment Fund in the Maryland Department of Health (MDH), which may only be used to increase the number of licensed psychiatric beds in the State.

Fiscal Summary

State Effect: General fund expenditures increase by \$102,500 in FY 2026, including \$86,100 for MDH to staff the workgroup and \$16,400 in one-time programming costs for the Judiciary. MDH special fund revenues increase by an indeterminate amount beginning in FY 2026 from fines and penalties; special fund expenditures may increase accordingly, while general fund revenues decrease accordingly. General fund revenues increase minimally from interest earnings of the new special fund through FY 2028.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	-	-	-	-	-
GF Expenditure	\$102,500	\$102,500	\$107,000	\$111,800	\$116,500
SF Expenditure	-	-	-	-	-
Net Effect	(\$102,500)	(\$102,500)	(\$107,000)	(\$111,800)	(\$116,500)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Incompetency to Stand Trial Form

The form must include the following information:

- the judge presiding over the proceeding;
- the evaluator working on behalf of MDH who examined the defendant as part of the incompetency to stand trial proceedings;
- the charges brought against the defendant;
- the evaluator's opinion on the defendant's competency and dangerousness;
- the position taken by the State's Attorney and counsel for the defendant on the defendant's competency or dangerousness;
- the court's decision on the competency and dangerousness of the defendant;
- if the court found the defendant incompetent, whether the court ordered the defendant to be committed to a facility designated by MDH or that the defendant be released; and
- any other information identified by the Secretary and Chief Justice.

After the form is created, the Chief Justice must direct the courts to (1) complete the form following a proceeding related to incompetency to stand trial and (2) submit the form to MDH.

Workgroup on Forensic Mental Health Treatment

The workgroup consists of the following members: (1) the Secretary of Health (or their designee); (2) the Chief Justice of the Supreme Court of Maryland; (3) one circuit court judge, appointed by the Chief Justice; (4) one representative of the Mental Health Division of the Office of the Public Defender (OPD), appointed by the Public Defender; (5) the Executive Director of the Maryland Health Care Commission (or their designee); (6) the President of the Maryland State Attorneys' Association (or their designee); (7) the Executive Director of On Our Own of Maryland (or their designee); and (8) the President of Disability Rights Maryland (or their designee).

A member of the workgroup may not receive compensation but is entitled to reimbursement for expenses. MDH must provide staff for the workgroup.

By January 1, 2027, and annually thereafter, the workgroup must submit a report to the Governor and the General Assembly on (1) the data collected using the incompetency to stand trial form; (2) the need for more psychiatric beds in the State; (3) the need for increased outpatient competency restoration options; (4) funding recommendations related to the need for more beds and competency restoration options; and (5) any other findings or recommendations.

MDH and the workgroup must take appropriate precautions to protect the identities of a judge, evaluator, and defendant included on the incompetency to stand trial form.

Forensic Mental Health Treatment Fund

The bill requires the court to remit any fine or monetary penalty imposed on MDH for failure to admit a defendant to a designated health care facility within 10 business days to the new fund, so long as the fine or monetary penalty is not intended to reimburse a detention facility.

The fund consists of (1) fines and monetary penalties as specified above; (2) money appropriated in the State budget; (3) interest earnings; and (4) any money from any other source accepted for the benefit of the fund.

Expenditures from the fund may only be made in accordance with the State budget. Money expended from the fund is supplemental and not intended to replace funding that otherwise would be appropriated for increasing the total number of licensed psychiatric beds in the State.

MDH must adopt regulations on the distribution of funds from the fund.

Current Law:

Incompetent to Stand Trial

By statute, a defendant is found incompetent to stand trial (IST) if the defendant is not able to understand the nature or object of the proceeding or assist in the defense. If the court finds that the defendant is IST and, because of an intellectual disability or a mental disorder, is a danger to self or the person or property of others, the court may order the defendant committed to a facility designated by MDH until the court finds that the defendant is (1) no longer IST; (2) no longer a danger to self or the person or property of others due to a mental disorder or intellectual disability; or (3) not substantially likely to become competent to stand trial in the foreseeable future.

If a court commits the defendant to a facility designated by MDH, MDH must (1) admit the defendant to a designated facility as soon as possible – within 10 days of receiving the order of commitment and (2) notify the court of the date that the defendant was admitted to the designated facility.

If a court commits a defendant to a mental facility pursuant to a finding that the defendant is IST and, because of a mental disorder, is a danger to self or the person or property of another, the court may order MDH, as soon as possible after the defendant's admission, but not to exceed 48 hours, to:

- evaluate the defendant;
- develop a prompt plan of treatment for the defendant; and
- 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.

If MDH fails to admit a defendant to a designated health care facility within 10 business days of receiving the order of commitment, the court may impose any sanction on MDH, so long as the sanction is reasonably designed to compel compliance. This includes reimbursing a detention facility for the costs incurred in retaining the defendant for extra time.

The Judiciary advises that, in fiscal 2023, the District Court found 617 individuals IST, and circuit courts found 315 individuals IST. In fiscal 2024, the District Court found 731 individuals IST, and circuit courts found 294 individuals IST. This totals to 932 IST individuals in fiscal 2023 and 1,025 IST individuals in fiscal 2024.

State Revenues: MDH special fund revenues increase by an indeterminate amount beginning in fiscal 2026 from fines and monetary penalties imposed on MDH for failure to admit a defendant to a designated health care facility within 10 business days. These fines and penalties currently accrue to the Judiciary (as those used to reimburse detention facilities for incurred costs continue to do so under the bill). Approximately \$1.5 million in fines and penalties are levied against MDH annually. However, it is not known what proportion of these fines and penalties are intended to reimburse a detention facility.

Although the bill indicates that interest earnings of the new special fund remain in the fund, the bill does not amend Section 8 of Chapter 717 of 2024 (the Budget Reconciliation and Financing Act of 2024), which requires, notwithstanding any other provision of law, that interest earnings from special funds (with certain exceptions) accrue to the general fund from fiscal 2024 through 2028. Thus, the general fund revenue reduction noted above is offset minimally as interest earnings of the new special fund accrue to the general fund through fiscal 2028. However, the new special fund is exempted from a similar requirement

under Section 6-226(a)(2) of the State Finance and Procurement Article that applies from fiscal 2029 forward.

State Expenditures:

Maryland Department of Health

General Fund Expenditures: MDH advises that the requirement to staff the workgroup, prepare the annual reports, and manage the new special fund necessitates additional personnel. Thus, MDH general fund expenditures increase by \$86,109 in fiscal 2026, which accounts for the bill's October 1, 2025 effective date. This estimate reflects the cost of hiring one program manager to manage the workgroup, including any data collection and report writing responsibilities. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. This analysis assumes that MDH can manage the new special fund using this new position and other existing resources, given that revenues will be less than \$1.5 million annually. General funds are assumed to be used for the position as the special fund can only be used only to expand the number of psychiatric beds.

Position	1.0
Salary and Fringe Benefits	\$78,740
Operating Expenses	<u>7,369</u>
Total FY 2026 General Fund Expenditures	\$86,109

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Special Fund Expenditures: As noted earlier, revenues to the new special fund cannot be reliably estimated but are anticipated to be less than \$1.5 million annually. Thus, special fund expenditures increase by an indeterminate amount beginning as early as fiscal 2026 to expand the number of psychiatric beds in the State.

Judiciary

The Judiciary advises that it requires programming changes to allow courts to remit fines and penalties to the new fund in MDH. Including analysis, programming, testing, and project management, the Judiciary incurs expenditures of \$16,424 in fiscal 2026 only.

The bill also requires judges to use the form created by the workgroup for all proceedings related to incompetency to stand trial. However, the Judiciary advises that the required data collection and form completion can be handled with existing budgeted resources.

Office of the Public Defender

OPD advises that it may experience reduced expenditures under the bill to the extent that there is less litigation related to lack of bed capacity for OPD clients who require hospitalization after being found IST.

Additional Comments: MDH advises that it has historically reduced bed capacity in emergencies, such as outbreaks of contagious illnesses or HVAC failures, without a CON. A CON requires 45 days of advance notice.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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