

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 43

(Senator Augustine)

Finance and Judicial Proceedings

Health and Government Operations

Maryland Department of Health - Forensic Review Board - Established

This bill requires the Maryland Department of Health (MDH) to establish a forensic review board at each facility that has persons committed as not criminally responsible (NCR). The boards are responsible for reviewing and determining whether to recommend to the court that a committed person is eligible for discharge or conditional release, with or without proposed conditions. A board may make recommendations relating to the release or rehabilitation of a committed person. MDH must adopt regulations to implement the bill.

Fiscal Summary

State Effect: MDH can implement the bill using existing budgeted resources, as discussed below. The bill is not otherwise anticipated to materially affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: Each board must consist of an odd number of licensed health care providers. At least once a year, each board must review each committed person's eligibility for release, as specified. If the committed person's treatment team determines the person is eligible for discharge or conditional release before the scheduled annual review, the team must notify the board in writing of the need for a release eligibility review; the board must conduct a review within 30 days after receiving such notice. Following a review, a board must determine whether to recommend to the court that a committed person is eligible for discharge or conditional release, with or without proposed conditions.

The board must notify the committed person and the person's counsel of record before it holds a meeting concerning the committed person and after the board issues a recommendation to the court, as specified. When making a recommendation, a forensic review board must consider a written statement offered by the committed person to the board. Counsel for any party may not attend forensic review board meetings, but a committed person may appoint an "authorized agent" to attend the portion of the board's meeting concerning the committed person. An "authorized agent" means an individual who is not counsel for the committed person and who is selected by the committed person to represent the person's interests in all board matters. An authorized agent may be a social worker or a nonlegal representative employed by the office of the attorney representing the committed person. An authorized agent may only give and hear arguments.

A forensic review board must maintain a written record containing (1) its recommendations and findings (including the reason for the board's recommendation and a plan for overcoming any barriers to release) and (2) if applicable, the written request for an eligibility review by the committed person's treatment team and the treatment team's written statement of the clinical reasons behind its determination that a committed person is eligible for discharge or conditional release.

The board's written record must be included in the committed person's medical record, and a document or record produced by a board must be provided on request to the committed person, counsel for that person, the court, the State's Attorney, or MDH.

The committed person's treatment team must implement any recommendations from the board and make arrangements for necessary treatment to rehabilitate the committed person, as specified. A forensic review board may appoint a representative to testify as to MDH's position at a release hearing. If a forensic review board takes a position that is contrary to the position of the committed person's treatment team, the board's representative may not be a part of the committed person's treatment team.

Current Law:

Designated Health Facility and Committed Persons

Under applicable statute, a "designated health facility" means a facility owned and operated by MDH, a State forensic residential center, or a hospital or private residential facility under contract with MDH to house and treat individuals found to be incompetent to stand trial or NCR. Section 3-101 of the Criminal Procedure Article defines a "committed person" as a person committed to MDH as NCR under the test for criminal responsibility.

Commitment to Facility After Finding of Not Criminally Responsible

After a verdict of NCR, a court ordinarily is required to order the defendant committed to a facility designated by MDH for appropriate care or treatment. MDH is required to admit the defendant to a designated facility as soon as possible but no later than 10 business days after it receives the order of commitment. While commitment to a facility is typically required, the court may release a defendant after a verdict of NCR if (1) MDH has issued an evaluation report within 90 days prior to the verdict stating that the defendant would not be a danger if released, with or without conditions and (2) the State's Attorney and the defendant agree to the release and any conditions the court chooses to impose.

Release After Commitment of Defendants Found to Be Not Criminally Responsible

A committed defendant is eligible for release only if the defendant proves by a preponderance of the evidence that the defendant will not be a danger to self or to the person or property of others due to a mental disorder or intellectual disability if released from commitment with conditions (conditional release) or without conditions (discharge). A detailed administrative and judicial process applies to release decisions. Conditional release can be for a term of up to five years, with options to extend for up to five years at a time. There is no limit on the number of extensions of conditional release. The Community Forensic Aftercare Program (CFAP) within MDH monitors all cases of individuals on conditional release. The court must notify the Criminal Justice Information System Central Repository whenever it orders conditional release or discharge of a committed person.

State Expenditures: MDH advises that all the State forensic hospitals have their own forensic review boards; CFAP has a separate forensic review board. MDH further advises it can comply with the bill's requirements using existing budgeted resources.

Additional Information

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

Designated Cross File: HB 32 (Delegate Charkoudian, *et al.*) - Health and Government Operations.

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

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