

Department of Legislative Services
 Maryland General Assembly
 2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 43 (Senator Augustine)
 Finance and Judicial Proceedings

Maryland Department of Health - Forensic Review Board and Community Forensic Aftercare Program - 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. The bill also codifies the Community Forensic Aftercare Program (CFAP) within MDH to monitor persons committed as NCR who are on conditional release and specifies new requirements for the program. MDH must adopt regulations to implement CFAP.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$225,700 in FY 2026 for MDH to implement the bill; future years reflect annualization and include expenditures for the Office of the Public Defender (OPD), as discussed below. The Office of Administrative Hearings can implement the bill with existing budgeted resources. Revenues are not affected.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	225,700	344,800	450,600	487,500	508,300
Net Effect	(\$225,700)	(\$344,800)	(\$450,600)	(\$487,500)	(\$508,300)

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

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

Small Business Effect: None.

Analysis

Bill Summary:

Forensic Review Boards

Each board must consist of an odd number of licensed health care providers. Each board must review annually each 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 an annual eligibility review or a review held at the written request of a committed person's treatment team, 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.

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.

Community Forensic Aftercare Program

CFAP must monitor committed persons on conditional release in accordance with the committed person's mental health team. However, the program may not make clinical decisions regarding the treatment of committed persons. At least once every 90 days, a community forensic aftercare monitor must hold a meeting with each monitored committed person and the committed person's mental health team. A committed person may appoint an advocate, including a representative of OPD, to attend a meeting. If the program receives a report that a committed person has violated conditional release, the program must notify the court, the committed person's counsel, and the State's Attorney and provide the State's Attorney with specified contact information about the person who reported the violation and a copy of the committed person's order of conditional release.

The program must provide records within 48 hours after the receipt of a request, unless the program is legally prohibited from disclosing the records to the requestor.

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. 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:

Maryland Department of Health

According to MDH, all the State forensic hospitals have their own forensic review boards, and CFAP has a separate forensic review board. Hospital boards assess and prepare patients for discharge, and CFAP’s board assesses people already released into the community

regarding their continuing need for conditions of release and potential changes to their resources and services to best serve the patient in the community.

Further, as noted above, CFAP currently monitors individuals committed as NCR who are on conditional release. According to MDH, CFAP currently reviews cases annually as a board, and CFAP monitors meet with clients on a varying basis depending on individual needs; in addition to other provisions, however, the bill *requires* quarterly (every 90 days) meetings. General fund expenditures for MDH therefore increase by *at least* \$225,679 in fiscal 2026, which accounts for the bill’s October 1, 2025 effective date. This estimate reflects the cost of hiring one social work manager for CFAP and one nurse program consultant. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$210,941
Operating Expenses	<u>14,738</u>
Minimum MDH FY 2026 State Expenditures	\$225,679

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

MDH advises that an additional 7.5 positions (one social work manager, three nurses, three nurse program consultants, and one part-time contractual health policy analyst) beyond the positions listed in the estimate above are needed for the department to implement the bill. The cost associated with these positions is approximately \$755,600 in fiscal 2026, increasing to \$1.0 million by fiscal 2030. The Department of Legislative Services advises that most of these additional positions appear to be associated – at least in part – with forensic review boards, and MDH did not sufficiently explain the need for these positions given that the affected facilities already have forensic review boards with functions that are similar to the requirements of the bill. As such, expenditures associated with these positions are not reflected above.

In addition, MDH advises that, under current practice, OPD does not usually attend CFAP meetings. When OPD is present, MDH representatives attend CFAP meetings with an assistant Attorney General. MDH does not have an assistant Attorney General dedicated exclusively to CFAP but may require one should the number of individuals requesting an OPD advocate increase significantly. *For illustrative purposes only*, expenditures associated with an assistant Attorney General are assumed to be approximately \$165,000 on an annual basis (which includes fringe benefits and operating costs).

Office of the Public Defender

General fund expenditures for OPD increase by \$71,792 in fiscal 2027 and \$165,496 in fiscal 2028. This estimate reflects the cost of hiring two social workers to serve as advocates in CFAP meetings (one beginning on October 1, 2026, and one beginning on October 1, 2027). It includes salaries (new and ongoing), fringe benefits, one-time start-up costs, and ongoing operating expenses. The delayed and staggered start dates for these positions reflect OPD's assessment of the time it will take for individuals on conditional release to recognize OPD's availability as an advocate in quarterly CFAP meetings and increase their requests for OPD's participation in these meetings.

	<u>FY 2027</u>	<u>FY 2028</u>
New Positions	1.0	1.0
Salaries and Fringe Benefits	\$64,415	\$156,984
Operating Expenses	<u>7,377</u>	<u>8,512</u>
Total OPD State Expenditures	\$71,792	\$165,496

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

Additional Information

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

Designated Cross File: HB 32 (Delegate Charkoudian) - 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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