

**SB0043\_MHAMD\_FAV.pdf**

Uploaded by: Dan Martin

Position: FAV

**Senate Bill 43 Maryland Department of Health – Forensic Review Board and Community  
Forensic Aftercare Program – Established**

Finance Committee

January 28, 2025

**Position: SUPPORT**

Mental Health Association of Maryland (MHAMD) is a nonprofit education and advocacy organization that brings together consumers, families, clinicians, advocates and concerned citizens for unified action in all aspects of mental health and substance use disorders (collectively referred to as behavioral health). We appreciate the opportunity to provide this testimony in support of Senate Bill 43.

SB 43 requires the Maryland Department of Health (MDH) to establish forensic review boards (FRB) at psychiatric facilities that have charge of persons who have been committed as not criminally responsible (NCR) to review patient records and determine whether to recommend that a committed person should be considered eligible for discharge or conditional release. The bill also establishes a community forensic aftercare program (CFAP) to monitor individuals on conditional release and support those individuals in complying with the conditions of their release. FRB and CFAP are existing entities within MDH created by internal policy. SB 43 will clarify and standardize existing best practices related to these entities.

There is a lack of transparency in the process of obtaining conditional release. In most facilities, an FRB designated by the facility determines whether MDH is ready to recommend release (often with conditions) at a hearing. SB 43 will create a standardized approach for each FRB's assessment to ensure that each committed person is entitled to the same due process, regardless of where they are held or the strength of their treatment team's advocacy.

Similarly, the existing CFAP – which is charged with coordinating and monitoring an individual's compliance with the treatment plan and conditions outlined in the conditional release order – exists without enabling statutes or regulations. Support and oversight vary greatly across CFAP monitors. Here too, the program and the individuals subject to the CFAP, would benefit from more consistency and transparency.

SB 43 will increase transparency and accountability in programs that determine whether individuals committed to psychiatric institutions are ready for release and those in the community charged with supporting the successful reentry for these individuals. For these reasons, MHAMD supports this bill and urges a favorable report.

*For more information, please contact Dan Martin at (410) 978-8865*

**SB 43\_MDH Forensic Review Board\_BHSB\_FAVORABLE.pdf**

Uploaded by: Dan Rabbitt

Position: FAV



January 28, 2025

**Senate Finance Committee**  
**TESTIMONY IN SUPPORT**

*SB 43 – Maryland Department of Health - Forensic Review Board and Community Forensic Aftercare Program - Established*

Behavioral Health System Baltimore (BHSB) is a nonprofit organization that serves as the local behavioral health authority (LBHA) for Baltimore City. BHSB works to increase access to a full range of quality behavioral health (mental health and substance use) services and advocates for innovative approaches to prevention, early intervention, treatment and recovery for individuals, families, and communities. Baltimore City represents nearly 35 percent of the public behavioral health system in Maryland, serving over 100,000 people with mental illness and substance use disorders (collectively referred to as “behavioral health”) annually.

**Behavioral Health System Baltimore supports SB 43 – Maryland Department of Health - Forensic Review Board and Community Forensic Aftercare Program - Established.** This bill will establish in statute the forensic review board process and community forensic aftercare program currently in place across Maryland. Providing statutory definitions and guidelines will ensure transparency and best practices across all of Maryland’s state hospitals.

Maryland currently faces significant a significant backlog of approximately 200 individuals in need of psychiatric care in state facilities. It can often take months for a placement to become available, which leaves these vulnerable individuals languishing in jail and having their mental health further deteriorate. We this in the Baltimore City Jail where dozens of individuals await placement at any given time with limited behavioral health care. There are many causes to this backlog but an inefficient discharge process out of state hospitals does contribute.

Maryland state facilities that have charge of persons found not criminally responsible have used forensic review boards as part of the discharge planning process for many years. This process has never been defined in statute, however, and varies across facilities. There have been reports of individuals who are clinically cleared for discharge from the facility who are denied by the review board without any explanation. A statutory standard for transparency in decision making will ensure that every is treated fairly and that the discharge process is consistent and timely.

This legislation is a commonsense initiative to standardize the process for release from state psychiatric facilities. **We urge the Senate Finance Committee to support SB 43.**

***For more information, please contact BHSB Policy Director Dan Rabbitt at 443-401-6142***

# **Augustine Favorable Testimony SB0043 FRB and CFAP**

Uploaded by: Malcolm Augustine

Position: FAV

MALCOLM AUGUSTINE  
*Legislative District 47*  
Prince George's County

PRESIDENT PRO TEMPORE

Executive Nominations Committee

Education, Energy and the  
Environment Committee



THE SENATE OF MARYLAND  
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January 28, 2025

The Honorable Pamela G. Beidle  
Chairwoman, Senate Finance Committee  
3 East Miller Senate Office Building  
11 Bladen Street Annapolis, MD 21401

**RE: SB43 - Maryland Department of Health – Forensic Review Board and Community Forensic Aftercare Program – Established**

Position: **Favorable**

Chair Beidle and Members of the Committee,

Thank you for the opportunity to present Senate Bill 43, which seeks to address gaps in Maryland's forensic mental health system by formalizing the role of Forensic Review Boards (FRBs) and the Community Forensic Aftercare Program (CFAP).

**The Problem:**

- Forensic Review Boards (FRBs) are internal panels within state facilities responsible for reviewing treatment team recommendations for individuals under a facility's care, including, but not limited to, those committed as Not Criminally Responsible (NCR).<sup>1</sup> Their responsibilities include evaluating recommendations for release with or without conditions, modification of an existing conditional release plan, and case discussion of complex or atypical clinical situations. However, the current process lacks standardization, transparency, and a codified legal structure, which undermines decisional consistency, board accountability, and due process.
- Once individuals are released into the community under conditional release orders, the Community Forensic Aftercare Program (CFAP) provides ongoing compliance monitoring and coordination<sup>2</sup>. The program ensures adherence to treatment plans and facilitates

<sup>1</sup> <https://health.maryland.gov/springgrove/Policy/Hospital/Forensic%20Review%20Board.pdf>

<sup>2</sup> [https://health.maryland.gov/OCEP/Pages/Community-Forensic-Aftercare-Program-\(CFAP\).aspx](https://health.maryland.gov/OCEP/Pages/Community-Forensic-Aftercare-Program-(CFAP).aspx)

communication between NCR individuals, their treatment teams, and key stakeholders such as courts and state attorneys. However, CFAP is not currently codified in statute or regulations, which creates uncertainty regarding its role and the need for standardized practices.

- Judges and legal stakeholders play a crucial role in reviewing and making decisions based on the recommendations of FRBs regarding the conditional release or continued commitment of individuals. However, they often face challenges due to incomplete or inconsistent information stemming from a lack of detailed records and standardized recommendations from FRBs. This lack of transparency and uniformity can make it difficult for judges to accurately assess an individual's progress, identify and address barriers to discharge, and make informed decisions tailored to the specific circumstances of each case.
- States, like Oregon<sup>3</sup>, Oklahoma<sup>4</sup>, and Connecticut<sup>5</sup>, have enacted legislation to establish forensic review boards explicitly by statute, enhancing oversight and standardization in their forensic mental health systems. Other states, such as Michigan<sup>6</sup> and Virginia<sup>7</sup>, rely on administrative frameworks, guidelines, or general statutory provisions for oversight without formally codifying boards in law.

#### **What SB43 does:**

- Codifies Forensic Review Boards (FRBs), establishes standardized procedures for annual and as-needed reviews of committed individuals, and mandates written records of findings, reasoning, and recommendations.
- Codifies the Community Forensic Aftercare Program (CFAP), provides guidelines for monitoring NCR individuals in the community to ensure compliance with treatment plans and release conditions, and facilitates regular meetings with NCR individuals, their treatment teams, and advocates to address potential challenges or violations proactively.

#### **How SB43 helps:**

- Codifying FRBs in statute offers several advantages over relying solely on administrative guidance or regulations. Unlike administrative guidance or regulations, statutes are enacted by the legislature and cannot be easily altered by changes in agency leadership or internal priorities. Moreover, codification ensures that all facilities adhere to consistent practices,

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<sup>3</sup> Or. Rev. Stat. Ann. § 161.385

<sup>4</sup> Okla. Stat. tit. 22, § 1161

<sup>5</sup> Conn. Gen. Stat. § 17a-581

<sup>6</sup> <https://mdhhs-pres-prod.michigan.gov/olmweb/EX/AP/Public/APF/106.pdf>

<sup>7</sup> Not Guilty by Reason of Insanity: Reference Manual for Community Services Boards & Behavioral Health Authorities,

[https://www.townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\720\GDoc\\_DBHDS\\_6310\\_v1.pdf](https://www.townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\720\GDoc_DBHDS_6310_v1.pdf)

reducing variability that can arise from differing interpretations of regulations or internal policies.

- Provides structural guardrails that clearly define how these boards operate. By codifying their roles, responsibilities, and processes, SB43 ensures that FRBs function within a consistent, transparent, and legally defined framework. This establishes accountability and guarantees that decisions regarding individuals are made according to standardized criteria ultimately promoting fairness and public confidence.
- Ensures the creation of a comprehensive written record for committed individuals, which supports their treatment team and legal representatives in understanding the rationale behind commitment, violations, and conditional release decisions. This transparency allows all stakeholders to collaborate and ensure that barriers to discharge or release are identified and addressed, while also providing a clear framework for compliance and progress monitoring.
- Provides courts with structured, evidence-based recommendations, ensuring more informed and equitable judicial outcomes while addressing inconsistencies in the current system.
- Streamlines evaluation and release processes for committed individuals, alleviating bed shortages in state facilities and freeing resources for those requiring immediate care.

**Chair Beidle and members of the committee, I ask for your favorable report.**



**SB43 FAV - NAMI.pdf**

Uploaded by: Michael Gray

Position: FAV

January 24, 2025

Chair Beidle, Vice Chair Hayes, and esteemed members of the Finance Committee,

The National Alliance on Mental Illness (NAMI)-Maryland respectfully requests a favorable report on SB43.

NAMI Maryland and our 11 local affiliates across the state represent a statewide network of more than 58,000 families, individuals, community-based organizations, and service providers. NAMI Maryland is a non-profit that is dedicated to providing education, support, and advocacy for persons with mental illnesses, their families and the wider community.

People living with mental health conditions are sometimes committed to the Maryland Department of Health (MDH) as “not criminally responsible” and stay in facilities until a Forensic Review Board (FRB) clears them for release. There is no enabling legislation in Maryland Code or guidance within the Code of Regulations defining the makeup, procedures, or reporting of FRBs. Commitment to a facility is a deprivation of liberty that, although it may be allowable under the law, the law currently provides no guidance on the process of release.

Any process that so dramatically impacts the lives of so many people should be authorized by the legislature and guided by the subject matter experts within a state agency. To operate without statutory authority not only leads to inconsistencies and lack of transparency, but it is also antidemocratic. The duly elected members of the General Assembly represent the will of Maryland’s people, including those subject to the forensic review process, their loved ones, and their communities. The General Assembly has an opportunity to rightfully assert its authority and define this important step between commitment to a facility and returning home. SB43 adds structure to the review process and transparency to the vital function of FRBs within the mental health system.

SB43 adds another significant layer of transparency to the review process by making documents related to FRB proceedings available to a person under a commitment order, their attorney, the state’s attorney, the court, or MDH. People subject to review under the current (lack of) law often have no access to the information discussed by FRBs that determines whether they will be released or remain in a facility.

NAMI Maryland sees the frustrations of Marylanders who have been stuck in facilities indefinitely with no knowledge of the timeline for their release or even the reasons why they are not being released. We want people living with mental health conditions to not just live, but to live well. For those reasons, we urge a favorable report on SB43.

Kathryn S. Farinholt  
Executive Director  
National Alliance on Mental Illness, Maryland

**Contact:** Morgan Mills  
Compass Government Relations  
Mmills@compassadvocacy.com

**SB 43 Final Testimony.pdf**

Uploaded by: Shelley Stokes

Position: FAV

1/24/25

The Honorable Pamela G. Beidle  
Chairwoman, Senate Finance Committee  
3 East Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

**RE: SB43**

Position: **Favorable**

Chair Beidle and Members of the Committee,

Thank you for the opportunity to speak in favor of SB 43.

Please allow me to explain briefly how and why the bill will benefit patients and their families.

My son entered a psychiatric facility in Maryland seven years ago. However, it took us six years to learn that a Forensic Review Board meets annually to evaluate his eligibility for release.

We were never informed that the reviews had been scheduled, nor were we allowed to contribute, participate, or have a voice in the planning process. We were unaware of the treatment plan meetings or reports' findings, conclusions, or recommendations. Additionally, year after year, our inquiries about my son's prognosis and the estimated length of his stay were consistently met with a silent response.

Last year, in March 2024, our family learned about the FRB process during an educational program at my son's hospital. The head of the FRB gave an excellent presentation. Many audience members were surprised to find out that reports were available in the Records Department and that patients, along with their authorized representatives or guardians, could access those reports.

After receiving copies of the reports consistently denying my son's eligibility for release, we were saddened to learn that the decisions were based on incomplete and inaccurate information.

For example, one of the findings links my son's poor appetite and weight loss to psychiatric issues. At the same time, data indicate a connection to complications from medication, as supported by medical records and family information.

Another finding describes my son as aggressive instead of noting withdrawal symptoms resulting from abruptly stopping a medication. He adjusted well to reductions that were tapered slowly and in smaller increments.

One recommendation was to put my son through more electroconvulsive shock therapy, even though he had already received 22 treatments. Two medical experts firmly oppose additional ECT due to the potential cognitive harm it may inflict on my son's brain.

Another recommendation for the team to consult with the Maryland Psychiatric Research Center in 2022 and 2023 was not acted upon until 2024.

For all these years, our family believed we were kept updated about our loved one's status and prognosis, yet we were completely in the dark.

I was impressed with the director and believed she aimed for fairness, so I called her to discuss our concerns. She explained that her report is primarily based on the Unit report and the FRB discussion. We have not yet received the 2024 Unit reports. When I told the director that I wished there was a way to provide the missing information for consideration, she suggested that our family could write a letter to the FRB outlining our concerns, which we plan to do.

Thank you for your time. I hope your committee decides to support SB 43.

# **SB43.pdf**

Uploaded by: Ashley Clark

Position: FWA

# MARYLAND PSYCHIATRIC SOCIETY



January 25, 2025

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Geetha Jayaram, M.D.

The Honorable Pamela Beidle

Senate Finance Committee

3 East Miller Senate Office Building

Annapolis, MD 21401

RE: Support With Amendments – SB 43: Forensic Review Board and Community Forensic Aftercare Program

Dear Chairman Beidle and Honorable Members of the Committee:

The Maryland Psychiatric Society (MPS) and the Washington Psychiatric Society (WPS) are state medical organizations whose physician members specialize in diagnosing, treating, and preventing mental illnesses, including substance use disorders. Formed more than sixty-five years ago to support the needs of psychiatrists and their patients, both organizations work to ensure available, accessible, and comprehensive quality mental health resources for all Maryland citizens; and strive through public education to dispel the stigma and discrimination of those suffering from a mental illness. As the district branches of the American Psychiatric Association covering the state of Maryland, MPS and WPS represent over 1100 psychiatrists and physicians currently in psychiatric training.

Previously, a Community Forensic Aftercare Program kept track of insanity acquittees in the community and all incompetent criminal defendants in state hospitals. However, over time this was folded into the new Office of Court-Ordered Evaluations and Placements. This bill aims to separate these functions out again. We feel that this is generally a good idea, because it requires the new CFAP to review each person on conditional release every 90 days. However, we do feel that some amendments would make this bill stronger. Therefore, the MPS/WPS would like to propose the following amendments to SB43:

### SUBTITLE 55. COMMUNITY FORENSIC AFTERCARE PROGRAM

C 1: The program shall monitor committed persons on conditional release in accordance with their court-approved conditions of release.

C 2: delete - "Clinical Decisions" is too vague and open to interpretation

D 1: At least annually, a community forensic aftercare monitor shall hold a meeting to review the committed persons compliance with conditional release and clinical progress.

In summary we feel as though routine review of those out on conditional release may prevent violations and hospital warrants, which could lighten inpatient loads at state hospitals. As such, MPS and WPS ask the committee for a favorable report on SB43 with our proposed amendments. If you have any questions regarding this testimony, please contact Lisa Harris Jones at [lisa.jones@mdlobbyist.com](mailto:lisa.jones@mdlobbyist.com).

Respectfully submitted,  
The Maryland Psychiatric Society and the Washington Psychiatric Society  
Legislative Action Committee

**2025 SB 43 FWA FRB\_CFAP MOPD.pdf**

Uploaded by: Julianna Felkoski

Position: FWA





**NATASHA DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
CHIEF OF EXTERNAL AFFAIRS

**ELIZABETH HILLIARD**  
DIRECTOR OF GOVERNMENT RELATIONS

## POSITION ON PROPOSED LEGISLATION

**BILL: SB 43 - Maryland Department of Health - Forensic Review Board and Community Forensic Aftercare Program - Established**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable with Amendments**

**DATE: Tuesday, January 28, 2025**

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The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on SB 43.

This bill will establish the Forensic Review Boards (FRB) and Community Forensic Aftercare Program (CFAP), which are existing entities within the Department of Health created by internal policy. The bill's purpose is to clarify and standardize existing best practices, most of which have existed for decades. Further, the bill provides additional notice and records requirements related to our clients' current conditions within institutional settings and in the community.

### **I. Forensic Review Board (FRB)**

Our clients have the right to an annual conditional release hearing during their commitment to a state facility. In every case where a patient has been found Not Criminally Responsible (NCR), they have the burden of proving eligibility for release by showing that they are not a danger to themselves, others, or the property of others. Currently, there is a lack of transparency in the process of obtaining conditional release. The Department relies on its internal policy to determine its position on each committed person's release. In most facilities, a Forensic Review Board (FRB) designated by the facility determines whether the Department is ready to recommend release (often with conditions) at a hearing. House Bill 32 will create a standardized approach for each Forensic Review Board's assessment to ensure that each committed person is entitled to the same due process, regardless of where they are held or the strength of their treatment team's advocacy.

There is no consistency or transparency in how the Department makes decisions about each committed person's case within each facility or between facilities. Often, a treatment team may have the opinion that a committed person is eligible for conditional release, but the FRB disagrees. In most facilities, the FRB is not required to explain its decision in the medical record, and the Department has withheld information and documentation on FRB decisions by claiming deliberative process privilege. Judges have ruled inconsistently on the issue. The Department allows each FRB to make decisions about our clients' fundamental right to liberty without providing their reasoning. We need access to the FRB's reasoning to understand our clients' barriers to release. This proposed bill will codify the FRB process so that, through a request for the medical record, all parties can have access to the reasons why a committed person may or may not be recommended for release.

## **II. Community Forensic Aftercare Program (CFAP)**

The Department also operates the Community Forensic Aftercare Program (CFAP) without enabling statutes or regulations. In every case, CFAP monitors are tasked with (1) coordinating and monitoring compliance with the treatment plan and conditions outlined in the conditional release order, including notifying all necessary agents expected to provide treatment or service, and (2) promptly notifying the State's Attorney and the Court if the committed person fails to comply with any of the stated conditions. CFAP monitors take various approaches to their work. We need more consistency and transparency for all parties.

CFAP monitors are social workers but are not in a treating relationship with the individuals they monitor. Therefore, CFAP monitors cannot make treatment decisions. Still, they approve or deny requests related to many aspects of our clients' lives, such as time with their families, career advancement opportunities, and access to education. Under the order of conditional release, CFAP is entitled to any and all information related to our clients' mental health treatment and anything in their life that could affect their condition. The orders grant broad authority, but there is no guidance in law or regulation to ensure that this broad authority is used appropriately. There have been cases where CFAP monitors had overridden medical recommendations from community providers.

Because CFAP does not exist in statutes or regulations, CFAP monitors are not required by law to meet with our clients, but many do, often virtually. Some clients are seen once per month, and others may be seen every 6 months. Some clients are very capable of advocating for themselves, and some clients are severely limited by their disabilities. Our clients also struggle to communicate with

their attorneys about the issues they face that could affect their conditional release and ability to continue to live in the community. Clients should have the right to designate an advocate of their choice to attend meetings with their CFAP monitor. Often, CFAP monitors invite our clients' treating providers, residential programs, and sometimes families to participate in meetings. All participants contribute based on their various perspectives and interests, and our clients can struggle to make their voices heard. It would benefit all parties, especially our clients, for our clients to designate an advocate to speak on their behalf.

The goal of CFAP and the Department should be to monitor clients and communicate with various stakeholders in a manner that assists them in maintaining their mental health and preserving their ability to remain safely in the community. The proposed bill would clarify CFAP's role and enable the Department to promulgate regulations to standardize CFAP's practices.

### **III. Bed Availability**

Both parts of this bill will ensure that our clients are only living in state hospitals and residential facilities if they are currently in need of institutional inpatient care or treatment because of their mental illness and/or intellectual disability. If our clients are not a danger to themselves, others, or the property of others, they are constitutionally entitled to live in the community under certain conditions. This bill will ensure that our clients have adequate information to understand what, if any, discharge barriers exist. This will allow them to have a better chance of overcoming these obstacles and clarify the reasoning behind the Department's position in preparation for a hearing on release.

It will also ensure that our clients are not unnecessarily brought into an institutional setting on a hospital warrant. If defense counsel receives notice of the facts related to alleged violations, we could solve problems in the community before a hospital warrant is issued and our client is uprooted from the community, often losing their housing, job, and existing support network because they were brought back to a state hospital or residential facility.

This bill will free up beds within our state facilities by shedding light on the reasons why our clients are in the facility or being brought back on a hospital warrant with the goal that only patients who are currently exhibiting dangerous behavior because of their mental illness or intellectual disability are being institutionalized as required under the Maryland Criminal Procedure Article and constitutional law.

#### **IV. Amendments**

OPD supports the sponsor amendments. The amendments further clarify existing practices and add certain protections to ensure adequate notice.

##### **A. Add language clarifying frequency of FRB reviews**

At page 2, line 16, INSERT:

(1) EACH FORENSIC REVIEW BOARD SHALL REVIEW NO LESS FREQUENTLY THAN ANNUALLY EACH COMMITTED PERSON'S ELIGIBILITY FOR RELEASE UNDER § 3-114 OF THIS SUBTITLE.

OPD supports this amendment because it would clarify that reviews can happen more frequently than annually. The goal should be to allow these reviews to be conducted as needed, but not less frequently than annually.

##### **B. Broaden to include additional FRB functions beyond eligibility for release**

Page 2, line, 14, ADD the following new sections:

(B) EACH FORENSICS REVIEW BOARD MAY MAKE DECISIONS AS TO ANY ISSUE RELATED TO THE RELEASE OR CONTINUED COMMITMENT OF PERSONS COMMITTED TO THE FACILITY UNDER THIS TITLE.

(C) THE DEPARTMENT SHALL PROMULGATE REGULATIONS TO GOVERN THE AUTHORITY OF FORENSIC REVIEW BOARDS.

FRB's already make decisions concerning various other issues, and the Department will need to establish regulations to clarify the functions of each FRB. We support this amendment so that the Department has the latitude to make decisions through the FRB's related to its position on release and other forensic issues in various kinds of cases.

##### **C. Add definition of Current Community Providers**

At Page 5, line 3, ADD:

(D) "MENTAL HEALTH TEAM" MEANS THE COMMITTED PERSON'S CURRENT COMMUNITY PROVIDERS.

OPD supports this amendment to clarify this definition as a term of art that is frequently used in these cases and in conditional release orders issued by the courts.

**D. Add CFAP's FRB**

At Page 5, line 8, ADD:

(C) THE COMMUNITY FORENSIC AFTERCARE PROGRAM SHALL ESTABLISH A FORENSIC REVIEW BOARD TO MAKE DECISIONS AS TO:

- (1) RECOMMENDATIONS AS TO TERMINATION OF CONDITIONAL RELEASE;
- (2) RECOMMENDATIONS AS TO EXTENSION OF CONDITIONAL RELEASE; AND
- (3) OTHER DECISIONS AFFECTING THE ELIGIBILITY OF COMMITTED PERSONS TO REMAIN ON CONDITIONAL RELEASE.

(D) THE COMMUNITY FORENSIC AFTERCARE PROGRAM FORENSIC REVIEW BOARD SHALL MAINTAIN A WRITTEN RECORD CONTAINING ITS FINDINGS, REASONING, AND RECOMMENDATIONS.

The CFAP has an existing FRB, and this amendment would clarify its role. OPD supports this amendment because it will allow for the CFAP FRB to continue to make decisions on eligibility to remain on conditional release, but it will clarify that the Department's reasoning needs to be recorded in writing.

**E. Add counsel for committed persons to receive information related to violations.**

At Page 5, line 21, ADD:

(E) IF THE DEPARTMENT RECEIVES INFORMATION RELATED TO AN ALLEGED VIOLATION THAT COULD RESULT IN A REPORT TO THE APPROPRIATE STATE'S ATTORNEY'S OFFICE, THE COMMUNITY FORENSIC AFTERCARE PROGRAM SHALL PROVIDE ALL AVAILABLE INFORMATION TO COUNSEL OF RECORD FOR THE COMMITTED PERSON.

OPD supports this amendment so that we can obtain information related to the alleged violation before a hospital warrant is issued in case there is a way to adjust the treatment plan to address the issue in the community. Our clients are entitled to a hearing within 10 days of admission after a

hospital warrant is served. Defense counsel already receives notice that a violation has been reported to the appropriate state's attorney's office. We do not currently get any information related to the facts, and if we are not in contact with the client, it can be challenging to address the issue. CFAP currently takes 10 business days to respond to requests for records. This bill would require them to turn records over within 48 hours. By providing us with the facts associated with the violation, we would know where to start, and we could take steps to resolve issues in the community before our client is deprived of their liberty.

**F. Add appointment of an expert witness**

At Page 3, line 30, ADD:

(G) THE FORENSIC REVIEW BOARD SHALL APPOINT A REPRESENTATIVE EXPERT, WHO IS NOT A MEMBER OF THE COMMITTED PERSON'S TREATMENT TEAM, TO TESTIFY AS TO THE DEPARTMENT'S POSITION AT ANY HEARING ON RELEASE PURSUANT TO THIS TITLE.

OPD supports this amendment because it will protect our client's relationship with their treating psychiatrist from deteriorating. Even when a treating psychiatrist disagrees with the FRB, they are required to testify to the Department's FRB opinion at the hearing. This results in a breakdown of trust with their treating psychiatrist for our clients. They believed their psychiatrist was supporting their release and planning for their discharge, but at a hearing, the psychiatrist can only speak to the FRB's ultimate opinion on dangerousness and eligibility for release. Some facilities already use an FRB-designated expert to testify at a hearing, and this is a more ethical and functional approach. The FRB expert should be board-certified in forensic psychology or psychiatry so that they are trained to assess safety risks and discuss the reasoning behind the FRB's recommendation for or against release with or without conditions. The treating psychiatrist could still be called as a fact witness to speak to their current observations on the unit. This amendment would result in more clarity at hearings and appropriately distinguish the roles of the testifying expert and the treating clinician, which is essential for the client's progress. Where the Department currently uses an FRB expert to testify to its position, this strengthens and clarifies the department's position.

**G. Change advocate to include private counsel's designees.**

Page 5, line 19, CHANGE:

(2) A COMMITTED PERSON MAY APPOINT AN ADVOCATE, INCLUDING A ~~REPRESENTATIVE FROM THE OFFICE OF THE PUBLIC DEFENDER~~ DESIGNEE OF COUNSEL OF THE COMMITTED PERSON, TO ATTEND A MEETING HELD UNDER PARAGRAPH (1) OF THIS SUBSECTION.

OPD supports this amendment. Defense counsel of record should be able to send an advocate from their office to CFAP meetings. We already send our social workers and investigators to treatment team meetings as needed. This will allow our clients to do the same when they are having issues in the community or when we are litigating issues related to requests for modification of conditional release.

#### **H. Add meeting notifications section**

At Page 2, line 29, ADD:

(1) THE FORENSIC REVIEW BOARD SHALL NOTIFY THE COMMITTED PERSON AND COUNSEL OF RECORD 10 DAYS IN ADVANCE THAT THE FORENSIC REVIEW BOARD WILL BE HAVING A MEETING CONCERNING THEIR CASE.

(2) THE FORENSIC REVIEW BOARD SHALL NOTIFY THE COMMITTED PERSON AND COUNSEL OF RECORD OF THE RECOMMENDATION ON RELEASE WITHIN 10 DAYS OF THE MEETING.

(3) THE FORENSIC REVIEW BOARD SHALL INCLUDE THE WRITTEN RECORD OF ITS FINDINGS AND RECOMMENDATIONS IN THE MEDICAL RECORD WITHIN 10 DAYS OF THE MEETING.

OPD supports this amendment because it would provide advance notice of FRB meetings and recommendations so that we can prepare to discuss the outcomes of these meetings with our clients. We already rely heavily on medical records to assess the Department's position and discuss our client's options. This will ensure that we know whose case is coming up for review so that we can communicate with our clients about their right to a hearing, and we can discuss their progress toward release based on when we see in the FRB record after the meeting.

#### **I. Add a treatment plan implementation requirement**

At Page 3, line 24, ADD:

(F) THE TREATMENT TEAM SHALL IMPLEMENT THE RECOMMENDATIONS OF THE FORENSIC REVIEW BOARD AND MAKE ARRANGEMENTS FOR NECESSARY TREATMENT TO REHABILITATE THE COMMITTED PERSON IN ACCORDANCE WITH THE HEALTH - GENERAL ARTICLE, SECTION 10-706.

OPD supports this amendment because we often see that facilities lack the necessary treatment to overcome barriers to discharge. For example, substance use treatment and individual therapy often have waitlists because of a lack of counselors and psychologists. This will reinforce that the Department is obligated to provide necessary treatment as recommended by the FRB.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB 43.**

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.  
Authored by: Carroll McCabe, Chief Attorney, Mental Health Division  
Julianna Felkoski, Assistant Public Defender, Mental Health Division**



**SB 43 - FIN- BHA - LOI.pdf**

Uploaded by: Meghan Lynch

Position: INFO



## DEPARTMENT OF HEALTH

*Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary*

January 28, 2025

The Honorable Pamela Beidle  
Chair Finance Committee  
3 East Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: Senate Bill (SB) 43 – Maryland Department of Health – Forensic Review Board and Community Forensic Aftercare Program – Established– Letter of Concern**

Dear Chair Beidle and Committee Members:

The Maryland Department of Health (Department) is submitting this letter of concern to Senate Bill (SB) 43 - Maryland Department of Health—Forensic Review Board and Community Forensic Aftercare Program. As written, the Department has concerns about the bill, including the fiscal impact it will have on the Department. However, there are aspects of this bill that the Department’s psychiatric hospitals could benefit from. We look forward to working with the committee and bill sponsors to address some of the concerns we have outlined here.

If enacted as currently drafted, SB 43 requires the Department to legislatively establish a forensic review board at facilities housing individuals committed as not criminally responsible. Each forensic review board will be mandated to review the eligibility for release of these individuals. The legislation also seeks to legislatively implement the Community Forensic Aftercare Program within the Maryland Department of Health to monitor individuals on conditional release based on recommendations from each person's mental health team.

While the Department understands the bill's intent to improve oversight and rehabilitation, several operational challenges in the proposed legislation could undermine the quality of care, the integrity of the review process, and the efficiency of the Division responsible for monitoring these individuals.

One primary concern is the proposed reduction in the review turnaround time from 10 days to just two (2) days. With more than 1,000 individuals committed, the Department currently struggles to meet the existing 10-day review interval. Reducing this timeframe to two (2) days is unrealistic and will overburden already limited resources. Reviews need to be thorough and conducted promptly; the proposed change compromises the ability to complete comprehensive evaluations.

Additionally, SB 43 requires that the Community Forensic Aftercare Program (CFAP) monitor individuals on conditional release by having at least one meeting every 90 days with the individual, their representative, and their mental health team. While these meetings are essential for ensuring appropriate transitions of care, the number of individuals that require monitoring

under these new provisions will overwhelm the existing program. This will decrease the quality of supervision and oversight, ultimately jeopardizing the rehabilitation process and the individuals' well-being.

Another significant concern is the bill's potential to shift the focus of the monitoring and review process from rehabilitation to a probation-style oversight model. MDH should support individuals in their recovery and reintegration into society rather than functioning as a post-conviction probation office. The proposed structure for conditional release and monitoring might erode this rehabilitative approach, inadvertently hindering the ultimate goal of successfully reintegrating individuals into the community.

Furthermore, the increase in the number of individuals requiring monitoring and the proposed reduction in review times will demand substantial additional resources. This may lead to an overburdened system, further straining an already stressed framework.

Lastly, the Department would like to note that there are aspects of this bill that are already standard practice for facilities. Reviews by the Forensic Review Board (FRB) take place at least annually but sometimes more frequently depending on how an individual is doing with their treatment plan. The treatment team can ask for a review to be performed sooner if it is found that the individual is ready. However, provisions under this bill, such as needing a quorum present or the process of moving from a professional clinical decision to a forum where the possibility of addressing legal and risk mitigation issues is the primary concern being addressed, could have adverse consequences by increasing the average length of stay at the per diem rate at our facilities.

For these reasons, the Department urges a reconsideration of SB 43. We stand ready to work with the committee to address the concerns we've outlined in this letter. The Department strongly supports efforts to ensure the safety and rehabilitation of individuals committed as not criminally responsible. However, we believe this bill, in its current form, is not conducive to those goals and could inadvertently undermine the objectives it seeks to achieve. We respectfully request that you review the potential unintended consequences of this legislation and work toward an approach that balances effective oversight with the goal of rehabilitation.

If you would like to discuss this further, please do not hesitate to contact Sarah Case-Herron, Director of Governmental Affairs at [sarah.case-herron@maryland.gov](mailto:sarah.case-herron@maryland.gov).

Sincerely,



Laura Herrera Scott, MD, MPH  
Secretary