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POSITION ON PROPOSED LEGISLATION

BILL: SB 43 - Maryland Department of Health - Forensic Review Board - Established

FROM: Maryland Office of the Public Defender

POSITION: Favorable (with Amendments as Adopted by the Senate)

DATE: Wednesday, March 26, 2025

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 Board (FRB) an existing entity 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 years. Further, the bill provides additional notice and records requirements related to our clients' current conditions within institutional settings.

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. Senate Bill 43 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.

I. Bed Availability

This bill will ensure that our clients are only living in state hospitals 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 a better chance of overcoming these obstacles and clarify the reasoning behind the Department's position in preparation for a hearing on release.

This bill will free up beds within our state facilities by shedding light on the reasons why our clients are in the facility 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.

II. Amendments

OPD supports the bill as amended by the Senate.

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.
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