

SENATE BILL 43

E2, J1, J3

(PRE-FILED)

5lr1451
CF HB 32

By: **Senator Augustine**

Requested: October 29, 2024

Introduced and read first time: January 8, 2025

Assigned to: Finance and Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 25, 2025

CHAPTER _____

1 AN ACT concerning

2 **Maryland Department of Health – Forensic Review Board ~~and Community~~**
3 **~~Forensic Aftercare Program~~ – Established**

4 FOR the purpose of requiring the Maryland Department of Health to establish a forensic
5 review board at facilities that have charge of persons who have been committed to
6 the facility as not criminally responsible; authorizing a forensic review board to make
7 recommendations relating to the release or rehabilitation of a committed person;
8 requiring each forensic review board to review the eligibility for release of committed
9 persons on a certain basis and determine whether to recommend to the court that
10 the committed person is eligible for discharge or conditional release; ~~establishing the~~
11 ~~Community Forensic Aftercare Program in the Department to monitor committed~~
12 ~~persons on conditional release;~~ and generally relating to forensic review boards ~~and~~
13 ~~the Community Forensic Aftercare Program.~~

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Procedure
16 Section 3–101(a), (b), and (d) and 3–121(b)
17 Annotated Code of Maryland
18 (2018 Replacement Volume and 2024 Supplement)

19 BY adding to
20 Article – Criminal Procedure
21 Section 3–120.1
22 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2018 Replacement Volume and 2024 Supplement)

~~BY adding to~~

~~Article – Health – General~~

~~Section 13-5501 and 13-5502 to be under the new subtitle “Subtitle 55. Community Forensic Aftercare Program”~~

~~Annotated Code of Maryland~~

~~(2023 Replacement Volume and 2024 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Criminal Procedure

3–101.

(a) In this title the following words have the meanings indicated.

(b) “Committed person” means a person committed to the Health Department as not criminally responsible under the test for criminal responsibility.

(d) “Health Department” means the Maryland Department of Health.

3–120.1.

(A) IN THIS SECTION, “AUTHORIZED AGENT” MEANS AN INDIVIDUAL WHO IS NOT COUNSEL FOR THE COMMITTED PERSON AND WHO IS SELECTED BY THE COMMITTED PERSON TO REPRESENT THE INTERESTS OF THE COMMITTED PERSON IN ALL FORENSIC REVIEW BOARD MATTERS.

(B) (1) THE HEALTH DEPARTMENT SHALL ESTABLISH A FORENSIC REVIEW BOARD AT EACH FACILITY THAT HAS CHARGE OF A COMMITTED PERSON UNDER THIS SUBTITLE.

(2) A FORENSIC REVIEW BOARD MAY MAKE RECOMMENDATIONS RELATING TO THE RELEASE OR REHABILITATION OF A COMMITTED PERSON UNDER THIS SUBTITLE.

~~(B)~~ **(C) EACH MEMBER OF A FORENSIC REVIEW BOARD SHALL BE A HEALTH CARE PROVIDER LICENSED UNDER THE HEALTH OCCUPATIONS ARTICLE.**

~~(C)~~ **(D) (1) EACH AT LEAST ONCE EACH YEAR, EACH FORENSIC REVIEW BOARD SHALL REVIEW ANNUALLY EACH COMMITTED PERSON’S ELIGIBILITY FOR RELEASE UNDER § 3–114 OF THIS SUBTITLE.**

1 **(2) THE FORENSIC REVIEW BOARD SHALL, BY A MAJORITY VOTE OF**
2 **THE MEMBERS, DETERMINE WHETHER TO RECOMMEND TO THE COURT THAT A**
3 **COMMITTED PERSON IS ELIGIBLE FOR DISCHARGE OR CONDITIONAL RELEASE, WITH**
4 **OR WITHOUT PROPOSED CONDITIONS.**

5 **(3) (I) EACH FORENSIC REVIEW BOARD SHALL MAINTAIN A**
6 **WRITTEN RECORD CONTAINING ITS FINDINGS AND RECOMMENDATIONS.**

7 **(II) THE WRITTEN RECORD SHALL BE INCLUDED IN THE**
8 **MEDICAL RECORD OF THE COMMITTED PERSON.**

9 **(III) THE FINDINGS SHALL INCLUDE THE REASONS FOR THE**
10 **FORENSIC REVIEW BOARD'S RECOMMENDATION AND A PLAN FOR OVERCOMING ANY**
11 **BARRIERS TO RELEASE.**

12 **(4) WHEN MAKING A RECOMMENDATION UNDER THIS SECTION, A**
13 **FORENSIC REVIEW BOARD SHALL CONSIDER A WRITTEN STATEMENT OFFERED BY**
14 **THE COMMITTED PERSON TO THE FORENSIC REVIEW BOARD.**

15 **(5) THE FORENSIC REVIEW BOARD SHALL PROVIDE NOTICE TO A**
16 **COMMITTED PERSON AND THE COUNSEL OF RECORD FOR THE COMMITTED PERSON:**

17 **(I) AT LEAST 10 DAYS BEFORE THE FORENSIC REVIEW BOARD**
18 **HOLDS A MEETING CONCERNING THE COMMITTED PERSON; AND**

19 **(II) WITHIN 10 DAYS AFTER THE FORENSIC REVIEW BOARD**
20 **ISSUES A RECOMMENDATION TO THE COURT.**

21 ~~**(D)**~~ **(E) (1) EACH FORENSIC REVIEW BOARD SHALL HAVE AN ODD**
22 **NUMBER OF MEMBERS.**

23 **(2) EACH MEMBER OF THE FORENSIC REVIEW BOARD SHALL HAVE**
24 **ONE VOTE.**

25 **(3) (I) A FORENSIC REVIEW BOARD MAY NOT CONDUCT A REVIEW**
26 **UNDER SUBSECTION ~~(C)~~ (D) OF THIS SECTION UNLESS A QUORUM IS PRESENT.**

27 **(II) A MAJORITY OF THE MEMBERS OF THE FORENSIC REVIEW**
28 **BOARD IS A QUORUM.**

29 **(F) (1) A COMMITTED PERSON MAY APPOINT AN AUTHORIZED AGENT TO**
30 **ATTEND THE PORTION OF A FORENSIC REVIEW BOARD MEETING CONCERNING THE**
31 **COMMITTED PERSON.**

1 **(2) AN AUTHORIZED AGENT MAY BE A SOCIAL WORKER OR A**
2 **NONLEGAL REPRESENTATIVE EMPLOYED BY THE OFFICE OF THE ATTORNEY**
3 **REPRESENTING THE COMMITTED PERSON.**

4 **(3) AN AUTHORIZED AGENT MAY ONLY GIVE AND HEAR ARGUMENTS.**

5 **(4) COUNSEL FOR ANY PARTY MAY NOT ATTEND FORENSIC REVIEW**
6 **BOARD MEETINGS.**

7 ~~(F)~~ **(G)** **(1) IF THE COMMITTED PERSON'S TREATMENT TEAM**
8 **DETERMINES THAT THE COMMITTED PERSON IS ELIGIBLE FOR DISCHARGE OR**
9 **CONDITIONAL RELEASE BEFORE THE ANNUAL REVIEW SCHEDULED UNDER**
10 **SUBSECTION ~~(E)~~ (D) OF THIS SECTION, THE TREATMENT TEAM SHALL NOTIFY THE**
11 **FORENSIC REVIEW BOARD IN WRITING OF THE NEED FOR A RELEASE ELIGIBILITY**
12 **REVIEW.**

13 **(2) WITHIN 30 DAYS AFTER RECEIVING NOTICE UNDER PARAGRAPH**
14 **(1) OF THIS SUBSECTION, THE FORENSIC REVIEW BOARD SHALL CONDUCT A REVIEW**
15 **IN ACCORDANCE WITH SUBSECTION ~~(E)~~ (D) OF THIS SECTION.**

16 **(3) THE TREATMENT TEAM SHALL PROVIDE A WRITTEN STATEMENT**
17 **THAT INCLUDES THE CLINICAL REASONS UNDERLYING THE DETERMINATION THAT**
18 **THE COMMITTED PERSON IS ELIGIBLE FOR DISCHARGE OR CONDITIONAL RELEASE.**

19 **(4) A COPY OF THE NOTIFICATION MADE UNDER PARAGRAPH (1) OF**
20 **THIS SUBSECTION AND THE WRITTEN STATEMENT REQUIRED UNDER PARAGRAPH**
21 **(3) OF THIS SUBSECTION SHALL BE INCLUDED IN THE MEDICAL RECORD OF THE**
22 **COMMITTED PERSON.**

23 ~~(F)~~ **(H)** **A COPY OF A DOCUMENT OR RECORD PRODUCED BY A FORENSIC**
24 **REVIEW BOARD UNDER THIS SECTION SHALL, ON REQUEST, BE PROVIDED TO:**

25 **(1) THE COMMITTED PERSON;**

26 **(2) COUNSEL FOR THE COMMITTED PERSON;**

27 **(3) THE COURT;**

28 **(4) THE STATE'S ATTORNEY; OR**

29 **(5) THE HEALTH DEPARTMENT.**

30 **(I) THE COMMITTED PERSON'S TREATMENT TEAM SHALL IMPLEMENT**
31 **RECOMMENDATIONS, IF ANY, FROM THE FORENSIC REVIEW BOARD AND MAKE**

ARRANGEMENTS FOR NECESSARY TREATMENT TO REHABILITATE THE COMMITTED PERSON IN ACCORDANCE WITH § 10-706 OF THE HEALTH – GENERAL ARTICLE.

(J) (1) A FORENSIC REVIEW BOARD MAY APPOINT A REPRESENTATIVE TO TESTIFY AS TO THE HEALTH DEPARTMENT’S POSITION AT A RELEASE HEARING.

(2) IF A FORENSIC REVIEW BOARD TAKES A POSITION CONTRARY TO THE POSITION OF THE COMMITTED PERSON’S TREATMENT TEAM, THE REPRESENTATIVE APPOINTED UNDER THIS SUBSECTION MAY NOT BE A MEMBER OF THE COMMITTED PERSON’S TREATMENT TEAM.

(K) THE HEALTH DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

3-121.

(b) (1) If a court receives a report that alleges that a committed person has violated a condition of a conditional release, the court promptly shall:

(i) notify:

1. the Health Department;
2. counsel of record for the committed person; and
3. the State’s Attorney; and

(ii) provide the State’s Attorney with the name, address, and telephone number of the person who reported the violation and a copy of the order for conditional release.

(2) If the Health Department receives a report that alleges that a committed person has violated conditional release, the Department shall:

(i) notify:

1. the court;
2. counsel of record for the committed person; and
3. the State’s Attorney; and

(ii) provide the State’s Attorney with the name, address, and telephone number of the person who reported the violation and a copy of the order for conditional release.

~~Article Health General~~

~~SUBTITLE 55. COMMUNITY FORENSIC AFTERCARE PROGRAM.~~

~~13-5501.~~

~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(B) "COMMITTED PERSON" HAS THE MEANING STATED IN § 3-101 OF THE CRIMINAL PROCEDURE ARTICLE.~~

~~(C) "PROGRAM" MEANS THE COMMUNITY FORENSIC AFTERCARE PROGRAM.~~

~~13-5502.~~

~~(A) THERE IS A COMMUNITY FORENSIC AFTERCARE PROGRAM IN THE DEPARTMENT.~~

~~(B) THE PURPOSE OF THE PROGRAM IS TO MONITOR COMMITTED PERSONS ON CONDITIONAL RELEASE.~~

~~(C) (1) THE PROGRAM SHALL MONITOR COMMITTED PERSONS ON CONDITIONAL RELEASE IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE COMMITTED PERSON'S MENTAL HEALTH TEAM.~~

~~(2) THE PROGRAM MAY NOT MAKE CLINICAL DECISIONS REGARDING THE TREATMENT OF COMMITTED PERSONS.~~

~~(D) (1) AT LEAST ONCE EVERY 90 DAYS, A COMMUNITY FORENSIC AFTERCARE MONITOR SHALL HOLD A MEETING WITH:~~

~~(I) EACH COMMITTED PERSON MONITORED BY THE PROGRAM;~~
~~AND~~

~~(II) THE MENTAL HEALTH TEAM OF THE COMMITTED PERSON.~~

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

~~(E) IF THE PROGRAM RECEIVES A REPORT ALLEGING THAT A COMMITTED PERSON HAS VIOLATED CONDITIONAL RELEASE, THE PROGRAM SHALL:~~

1 ~~(1) MAKE THE NOTIFICATIONS REQUIRED UNDER § 3-121(B)(2)(I) OF~~
2 ~~THE CRIMINAL PROCEDURE ARTICLE; AND~~

3 ~~(2) PROVIDE THE STATE'S ATTORNEY WITH THE INFORMATION~~
4 ~~REQUIRED UNDER § 3-121(B)(2)(II) OF THE CRIMINAL PROCEDURE ARTICLE.~~

5 ~~(F) IF THE PROGRAM RECEIVES A REQUEST FOR RECORDS, THE PROGRAM~~
6 ~~SHALL PROVIDE THE RECORDS WITHIN 48 HOURS AFTER THE REQUEST IS RECEIVED~~
7 ~~UNLESS THE PROGRAM IS PROHIBITED UNDER APPLICABLE FEDERAL OR STATE~~
8 ~~LAW FROM DISCLOSING THE RECORDS TO THE REQUESTING PERSON.~~

9 ~~(G) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THE~~
10 ~~PROGRAM.~~

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2025.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.