

Chapter 444

(House Bill 432)

AN ACT concerning

**Courts and Judicial Proceedings and Criminal Procedure – Technical
Corrections – References to Intellectual Disability**

FOR the purpose of replacing references to mental retardation with references to an intellectual disability in certain provisions of law; and generally relating to references to intellectual disability.

BY repealing and reenacting, with amendments,

Article – Courts and Judicial Proceedings

Section 3–801(q)(3), 3–8A–01(s) and (u), 3–8A–17.3(b)(2), and 3–8A–19(i) and (j)(3)

Annotated Code of Maryland

(2020 Replacement Volume and 2023 Supplement)

BY adding to

Article – Courts and Judicial Proceedings

Section 3–8A–01(s)

Annotated Code of Maryland

(2020 Replacement Volume and 2023 Supplement)

BY repealing

Article – Courts and Judicial Proceedings

Section 3–8A–01(t)

Annotated Code of Maryland

(2020 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,

Article – Criminal Procedure

Section 3–101(g)(3), 3–105(c)(2)(i) and (d)(3), 3–106(b), (c)(1), (e)(2), and (g),
3–108(a)(1) and (2), 3–109(a), 3–110(a) and (c), 3–112(d) and (g), and 3–114(b)
and (c)

Annotated Code of Maryland

(2018 Replacement Volume and 2023 Supplement)

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

Article – Courts and Judicial Proceedings

3–801.

(q) (3) “Mental disorder” does not include [mental retardation] **AN INTELLECTUAL DISABILITY.**

3–8A–01.

(S) “INTELLECTUAL DISABILITY” MEANS A DEVELOPMENTAL DISABILITY THAT IS EVIDENCED BY INTELLECTUAL FUNCTIONING THAT IS SIGNIFICANTLY BELOW AVERAGE AND IMPAIRMENT IN THE ADAPTIVE BEHAVIOR OF A CHILD.

[(s)] (T) (1) “Mental disorder” means a behavioral or emotional illness that results from a psychiatric or neurological disorder.

(2) “Mental disorder” includes a mental illness that so substantially impairs the mental or emotional functioning of a child as to make care or treatment necessary or advisable for the welfare of the child or for the safety of the child or property of another.

(3) “Mental disorder” does not include [mental retardation] **AN INTELLECTUAL DISABILITY.**

[(t) “Mental retardation” means a developmental disability that is evidenced by intellectual functioning that is significantly below average and impairment in the adaptive behavior of a child.]

(u) “Mentally handicapped child” means a child who [is] **HAS** or may [be mentally retarded or mentally ill] **HAVE AN INTELLECTUAL DISABILITY OR A MENTAL DISORDER.**

3–8A–17.3.

(b) (2) In determining the treatment that is necessary for the child to attain competency to proceed, the qualified expert shall consider and report on the following:

(i) The mental illness, [mental retardation] **INTELLECTUAL DISABILITY**, developmental immaturity, or other developmental disability causing the child to be incompetent to proceed;

(ii) The treatment or education appropriate for the mental illness, [mental retardation] **INTELLECTUAL DISABILITY**, developmental immaturity, or other developmental disability of the child, and an explanation of each of the possible treatment or education alternatives, in order of recommendation;

(iii) The likelihood of the child attaining competency to proceed under the treatment or education recommended, an assessment of the probable duration of the

treatment required to attain competency, and the probability that the child will attain competency to proceed in the foreseeable future; and

(iv) Whether the child meets the criteria for involuntary admission under Title 10, Subtitle 6, Part III of the Health – General Article.

3–8A–19.

(i) The court may not commit a child to the custody of the Maryland Department of Health under this section for inpatient care and treatment in a State [mental retardation] facility **FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY** unless the court finds on the record based upon clear and convincing evidence that:

(1) The child [is mentally retarded] **HAS AN INTELLECTUAL DISABILITY**;

(2) The condition is of such a nature that for the adequate care or protection of the child or others, the child needs in–residence care or treatment; and

(3) There is no less restrictive form of care and treatment available which is consistent with the child’s welfare and safety.

(j) (3) If, at any time after the commitment of the child to a State [mental retardation] facility **FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY** under this section, the individualized plan of habilitation developed under § 7–1006 of the Health – General Article recommends that a child no longer meets the standards specified in subsection (i) of this section, then the court shall grant a hearing to review the commitment order. The court may grant a hearing at any other time for the purpose of determining if the standards specified in subsection (i) of this section continue to be met.

Article – Criminal Procedure

3–101.

(g) (3) “Mental disorder” does not include [mental retardation] **AN INTELLECTUAL DISABILITY**.

3–105.

(c) (2) (i) If the court finds that, because of the apparent severity of the mental disorder or [mental retardation] **INTELLECTUAL DISABILITY**, a defendant in custody would be endangered by confinement in a correctional facility, the court may order that the Health Department, in the Health Department’s discretion:

1. confine the defendant, pending examination, in a medical facility that the Health Department designates as appropriate; or

2. immediately conduct a competency examination of the defendant by a community forensic screening program or other agency that the Health Department finds appropriate.

(d) (3) If the Health Department reports that, in its opinion, the defendant is incompetent to stand trial, the report shall state, in a complete supplementary opinion, whether, because of [mental retardation or] **A mental disorder OR AN INTELLECTUAL DISABILITY**, the defendant would be a danger to self or the person or property of another, if released.

3–106.

(b) If, after a hearing, the court finds that the defendant is incompetent to stand trial but is not dangerous, as a result of a mental disorder or [mental retardation] **AN INTELLECTUAL DISABILITY**, to self or the person or property of others, the court may set bail for the defendant or authorize release of the defendant on recognizance.

(c) (1) (i) If, after a hearing, the court finds that the defendant is incompetent to stand trial and, because of [mental retardation or] a mental disorder **OR AN INTELLECTUAL DISABILITY**, is a danger to self or the person or property of another, the court shall order the defendant committed to the facility that the Health Department designates until the court finds that:

1. the defendant no longer is incompetent to stand trial;
2. the defendant no longer is, because of [mental retardation or] a mental disorder **OR AN INTELLECTUAL DISABILITY**, a danger to self or the person or property of others; or
3. there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future.

(ii) If a court commits the defendant because of [mental retardation] **AN INTELLECTUAL DISABILITY**, the Health Department shall require the Developmental Disabilities Administration to provide the care or treatment that the defendant needs.

(e) At a competency hearing under subsection (d) of this section, if the court finds that the defendant is incompetent and is not likely to become competent in the foreseeable future, the court shall:

(2) order the confinement of the defendant for 21 days as a resident in a Developmental Disabilities Administration facility for the initiation of admission proceedings under § 7–503 of the Health – General Article provided the court finds that the defendant, because of [mental retardation] **AN INTELLECTUAL DISABILITY**, is a danger to self or others.

(g) (1) For a defendant who has been found incompetent to stand trial but not dangerous, as a result of a mental disorder or [mental retardation] **AN INTELLECTUAL DISABILITY**, to self or the person or property of others, and released on bail or on recognizance, the court:

(i) shall hold a hearing annually from the date of release;

(ii) may hold a hearing, at any time, on its own initiative; or

(iii) shall hold a hearing, at any time, upon motion of the State's Attorney or the counsel for the defendant.

(2) At a hearing under paragraph (1) of this subsection, the court shall reconsider whether the defendant remains incompetent to stand trial or a danger to self or the person or property of another because of [mental retardation or] a mental disorder **OR AN INTELLECTUAL DISABILITY**.

(3) At a hearing under paragraph (1) of this subsection, the court may modify or impose additional conditions of release on the defendant.

(4) If the court finds, at a hearing under paragraph (1) of this subsection, that the defendant is incompetent and is not likely to become competent in the foreseeable future and is a danger to self or the person or property of another because of [mental retardation or] a mental disorder **OR AN INTELLECTUAL DISABILITY**, the court shall revoke the pretrial release of the defendant and:

(i) civilly commit the defendant in accordance with subsection (e)(1) of this section; or

(ii) order confinement of the defendant in accordance with subsection (e)(2) of this section.

3-108.

(a) (1) In addition to any other report required under this title, the Health Department shall report to the court that has ordered commitment of a defendant under § 3-106 of this title:

(i) every 6 months from the date of commitment of the defendant;
and

(ii) whenever the Health Department determines that:

1. the defendant no longer is incompetent to stand trial;

2. the defendant no longer is, because of [mental retardation or] a mental disorder **OR AN INTELLECTUAL DISABILITY**, a danger to self or the person or property of others; or

3. there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future.

(2) The Department shall include a supplemental report that provides a plan for services to facilitate the defendant remaining competent to stand trial or not dangerous, as a result of [mental retardation or] a mental disorder **OR AN INTELLECTUAL DISABILITY**, to self or the person or property of others, if:

(i) a report required under this title states an opinion that the defendant is competent to stand trial or is not dangerous, as a result of [mental retardation or] a mental disorder **OR AN INTELLECTUAL DISABILITY**, to self or the person or property of others; and

(ii) services are necessary to maintain the defendant safely in the community, to maintain competency, or to restore competency.

3–109.

(a) A defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of a mental disorder or [mental retardation] **AN INTELLECTUAL DISABILITY**, lacks substantial capacity to:

(1) appreciate the criminality of that conduct; or

(2) conform that conduct to the requirements of law.

3–110.

(a) (1) If a defendant intends to rely on a plea of not criminally responsible, the defendant or defense counsel shall file a written plea alleging, in substance, that when the alleged crime was committed, the defendant was not criminally responsible by reason of [insanity] **A MENTAL DISORDER OR AN INTELLECTUAL DISABILITY** under the test for criminal responsibility in § 3–109 of this title.

(2) A written plea of not criminally responsible by reason of [insanity] **A MENTAL DISORDER OR AN INTELLECTUAL DISABILITY** shall be filed at the time provided for initial pleading, unless, for good cause shown, the court allows the plea to be filed later.

(c) If the trier of fact finds that the State has proved beyond a reasonable doubt that the defendant committed the criminal act charged, then, if the defendant has pleaded

not criminally responsible, the trier of fact separately shall find whether the defendant has established, by a preponderance of the evidence, that the defendant was at the time criminally responsible or not criminally responsible by reason of [insanity] **A MENTAL DISORDER OR AN INTELLECTUAL DISABILITY** under the test for criminal responsibility in § 3–109 of this title.

3–112.

(d) If the court commits a defendant who was found not criminally responsible primarily because of [mental retardation] **AN INTELLECTUAL DISABILITY**, the Health Department shall designate a facility for [mentally retarded persons] **INDIVIDUALS WITH AN INTELLECTUAL DISABILITY** for care and treatment of the committed person.

(g) After a verdict of not criminally responsible, a court may order that a person be released, with or without conditions, instead of committed to the Health Department, but only if:

(1) the court has available an evaluation report within 90 days preceding the verdict made by an evaluating facility designated by the Health Department;

(2) the report indicates that the person would not be a danger, as a result of [mental retardation or] **A mental disorder OR AN INTELLECTUAL DISABILITY**, to self or to the person or property of others if released, with or without conditions; and

(3) the person and the State’s Attorney agree to the release and to any conditions for release that the court imposes.

3–114.

(b) A committed person is eligible for discharge from commitment only if that person would not be a danger, as a result of **A mental disorder** or [mental retardation] **AN INTELLECTUAL DISABILITY**, to self or to the person or property of others if discharged.

(c) A committed person is eligible for conditional release from commitment only if that person would not be a danger, as a result of **A mental disorder** or [mental retardation] **AN INTELLECTUAL DISABILITY**, to self or to the person or property of others if released from confinement with conditions imposed by the court.

SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act are intended solely to correct technical errors in the law and there is no intent to supplant or otherwise disturb the decisional law interpreting “mental retardation” or “insanity”.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.

Approved by the Governor, May 9, 2024.