

# SENATE BILL 233

J1, J3

8lr2503  
CF HB 111

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By: **Senator Middleton**

Introduced and read first time: January 19, 2018

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 12, 2018

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland Department of Health – Defendants Found Incompetent to Stand**  
3 **Trial or Not Criminally Responsible – Commitment**

4 FOR the purpose of requiring a court to ~~enter a certain commitment order~~ a certain  
5 defendant committed to a certain facility if the court makes a certain finding;  
6 requiring the Maryland Department of Health to ~~facilitate the immediate placement~~  
7 ~~of certain defendants in~~ admit a certain defendant to a certain facility ~~on or before a~~  
8 ~~certain date specified in a commitment order~~ within a certain time period and to  
9 provide certain notification to the court; ~~establishing a rebuttable presumption of~~  
10 ~~contempt in certain circumstances; requiring a court to issue a certain order for the~~  
11 ~~Department to appear and show cause for certain actions under certain~~  
12 ~~circumstances; providing that a lack of available beds in a certain facility is not a~~  
13 ~~sufficient reason for not making a certain placement;~~ authorizing a court to impose  
14 certain sanctions under certain circumstances; ~~making certain stylistic changes~~  
15 altering the number of days after receiving a certain report within which a court is  
16 required to hold a certain hearing; defining a certain term; and generally relating to  
17 the Maryland Department of Health and the commitment of defendants found  
18 incompetent to stand trial or not criminally responsible.

19 BY repealing and reenacting, with amendments,  
20 Article – Criminal Procedure  
21 Section 3–106 and 3–112  
22 Annotated Code of Maryland  
23 (2008 Replacement Volume and 2017 Supplement)

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### 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.



## Preamble

WHEREAS, The unreasonable detention of defendants found incompetent to stand trial or not criminally responsible outside a treatment facility is a serious public safety risk and a violation of the U.S. Constitution; and

WHEREAS, Keeping potentially dangerous, seriously mentally ill defendants from treatment exacerbates their problems and violates their right to due process; and

WHEREAS, These individuals should promptly undergo competency restoration in a hospital designated by the Maryland Department of Health and not in a correctional facility; and

WHEREAS, The crisis of delayed treatment for seriously mentally ill and incompetent defendants in Maryland has been foreseeable for many years and well-documented, facilitated by a steady reduction in capacity and staff of State hospitals while the demand for forensic beds has remained constant; and

WHEREAS, On August 28, 2017, the Maryland Court of Appeals, in Fredia Powell, et al. v. Maryland Department of Health, et al., No. 77, September Term 2016, held that, contrary to the intent of the General Assembly, the Annotated Code of Maryland does not authorize a court to set a deadline for admission of a defendant into a hospital; and

WHEREAS, Seriously mentally ill and incompetent defendants will continue to be unlawfully housed in detention centers unless the courts have authority to impose deadlines to enforce court orders; now, therefore,

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

**Article – Criminal Procedure**

3–106.

(A) (1) IN THIS SECTION, “DESIGNATED HEALTH CARE FACILITY” MEANS:

(I) A STATE FACILITY ~~MAINTAINED BY THE BEHAVIORAL HEALTH ADMINISTRATION UNDER § 10-406~~ AS DEFINED IN § 10-101 OF THE HEALTH – GENERAL ARTICLE; OR

(II) A STATE FORENSIC RESIDENTIAL CENTER ~~MAINTAINED BY THE DEVELOPMENTAL DISABILITIES ADMINISTRATION UNDER TITLE 7 OF THE HEALTH – GENERAL ARTICLE; OR~~

**(III) A HOSPITAL OR PRIVATE RESIDENTIAL FACILITY UNDER CONTRACT WITH THE HEALTH DEPARTMENT TO HOUSE AND TREAT INDIVIDUALS FOUND TO BE INCOMPETENT TO STAND TRIAL OR NOT CRIMINALLY RESPONSIBLE.**

**(2) “DESIGNATED HEALTH CARE FACILITY” DOES NOT INCLUDE A CORRECTIONAL OR DETENTION FACILITY OR A UNIT WITHIN A CORRECTIONAL OR DETENTION FACILITY.**

**[(a)] (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, 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.

**[(b)] (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, is a danger to self or the person or property of another, the court [may] ~~SHALL ENTER AN~~ order ~~THAT~~ the defendant ~~BE~~ committed ~~BY THE DATE SPECIFIED BY THE COURT IN A COMMITMENT ORDER~~ to the facility that the ~~[Health]~~ ~~MARYLAND~~ Department ~~OF HEALTH~~ designates until the court finds that:

**[(i)] 1.** the defendant no longer is incompetent to stand trial;

**[(ii)] 2.** the defendant no longer is, because of mental retardation or a mental disorder, a danger to self or the person or property of others; or

**[(iii)] 3.** there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future.

**[(2)] (II)** If a court commits the defendant because of mental retardation, the ~~[Health]~~ ~~MARYLAND~~ Department ~~OF HEALTH~~ shall require the Developmental Disabilities Administration to provide the care or treatment that the defendant needs.

**(2) ~~(I)~~ ~~THE MARYLAND DEPARTMENT OF HEALTH SHALL:~~**

**1. FACILITATE THE IMMEDIATE PLACEMENT IN A DESIGNATED HEALTH CARE FACILITY OF A DEFENDANT WHO IS COMMITTED UNDER PARAGRAPH (1) OF THIS SUBSECTION ON OR BEFORE THE DATE SPECIFIED BY THE COURT IN A COMMITMENT ORDER; IF THE COURT COMMITS A DEFENDANT TO THE HEALTH DEPARTMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE HEALTH DEPARTMENT SHALL:**

**(I) ADMIT THE DEFENDANT TO A DESIGNATED HEALTH CARE FACILITY AS SOON AS POSSIBLE, BUT NOT LATER THAN 10 BUSINESS DAYS AFTER THE HEALTH DEPARTMENT RECEIVES THE ORDER OF COMMITMENT; AND**

1                    ~~2.~~ **(II) NOTIFY THE COURT OF THE DATE ON WHICH THE**  
2 **DEFENDANT WAS ADMITTED TO THE DESIGNATED HEALTH CARE FACILITY.**

3                    ~~(H) 1. A REBUTTABLE PRESUMPTION OF CONTEMPT SHALL~~  
4 ~~BE ESTABLISHED IF A DEFENDANT WHO HAS BEEN COMMITTED UNDER PARAGRAPH~~  
5 ~~(1) OF THIS SUBSECTION IS NOT PLACED IN A DESIGNATED HEALTH CARE FACILITY~~  
6 ~~ON OR BEFORE THE DATE SPECIFIED BY THE COURT IN A COMMITMENT ORDER.~~

7                    ~~2. THE COURT SHALL ISSUE IMMEDIATELY AN ORDER~~  
8 ~~FOR THE MARYLAND DEPARTMENT OF HEALTH TO APPEAR AND SHOW CAUSE FOR~~  
9 ~~WHY THE DEFENDANT WAS NOT PLACED AS ORDERED IN THE COMMITMENT ORDER.~~

10                    ~~3. A LACK OF AVAILABLE BEDS IN A DESIGNATED~~  
11 ~~HEALTH CARE FACILITY IS NOT A SUFFICIENT REASON FOR NOT PLACING A~~  
12 ~~DEFENDANT AS ORDERED IN A COMMITMENT ORDER.~~

13                    ~~(H) IF A COURT FINDS THE MARYLAND DEPARTMENT OF~~  
14 ~~HEALTH IN CONTEMPT AFTER A PROCEEDING UNDER SUBPARAGRAPH (H) OF THIS~~  
15 ~~PARAGRAPH, IN ADDITION TO ANY OTHER REMEDY OR SANCTION AVAILABLE TO THE~~  
16 ~~COURT IN A CIVIL OR CRIMINAL CONTEMPT PROCEEDING, THE COURT MAY IMPOSE~~  
17 ~~SANCTIONS, INCLUDING:~~

18                    ~~1. CONTEMPT FINES AGAINST THE MARYLAND~~  
19 ~~DEPARTMENT OF HEALTH AND ANY OFFICIAL OF THE MARYLAND DEPARTMENT OF~~  
20 ~~HEALTH NOT TO EXCEED \$160 PER DAY FOR EACH VIOLATION;~~

21                    ~~2. REIMBURSEMENT FOR EXPENSES AND COSTS~~  
22 ~~INCURRED BY A DETENTION FACILITY RESULTING FROM A DEFENDANT'S LACK OF~~  
23 ~~PLACEMENT IN VIOLATION OF A COMMITMENT ORDER; AND~~

24                    ~~3. ANY SANCTION REASONABLY DESIGNED TO COMPEL~~  
25 ~~COMPLIANCE.~~

26                    **(3) IF THE HEALTH DEPARTMENT FAILS TO ADMIT A DEFENDANT TO**  
27 **A DESIGNATED HEALTH CARE FACILITY WITHIN THE TIME PERIOD SPECIFIED IN**  
28 **PARAGRAPH (2)(I) OF THIS SUBSECTION, THE COURT MAY IMPOSE ANY SANCTION**  
29 **REASONABLY DESIGNED TO COMPEL COMPLIANCE, INCLUDING REQUIRING THE**  
30 **HEALTH DEPARTMENT TO REIMBURSE A DETENTION FACILITY FOR EXPENSES AND**  
31 **COSTS INCURRED IN RETAINING THE DEFENDANT BEYOND THE TIME PERIOD**  
32 **SPECIFIED IN PARAGRAPH (2)(I) OF THIS SUBSECTION AT THE DAILY RATE**  
33 **SPECIFIED IN § 9-402(B) OF THE CORRECTIONAL SERVICES ARTICLE.**

1           [(c)] (D)       (1)    To determine whether the defendant continues to meet the  
2 criteria for commitment set forth in subsection [(b)] (C) of this section, the court shall hold  
3 a hearing:

4                       (i)     every year from the date of commitment;

5                       (ii)    within 30 days after the filing of a motion by the State's Attorney  
6 or counsel for the defendant setting forth new facts or circumstances relevant to the  
7 determination; and

8                       (iii)   within ~~30 days~~ **10 BUSINESS DAYS** after receiving a report from  
9 the ~~[Health]~~ **MARYLAND** Department ~~OF HEALTH~~ stating opinions, facts, or  
10 circumstances that have not been previously presented to the court and are relevant to the  
11 determination.

12                   (2)    At any time, and on its own initiative, the court may hold a conference  
13 or a hearing on the record with the State's Attorney and the counsel of record for the  
14 defendant to review the status of the case.

15           [(d)] (E)       At a competency hearing under subsection [(c)] (D) of this section, if the  
16 court finds that the defendant is incompetent and is not likely to become competent in the  
17 foreseeable future, the court shall:

18                   (1)    civilly commit the defendant as an inpatient in a medical facility that  
19 the ~~[Health]~~ **MARYLAND** Department ~~OF HEALTH~~ designates provided the court finds by  
20 clear and convincing evidence that:

21                       (i)     the defendant has a mental disorder;

22                       (ii)    inpatient care is necessary for the defendant;

23                       (iii)   the defendant presents a danger to the life or safety of self or  
24 others;

25                       (iv)   the defendant is unable or unwilling to be voluntarily committed  
26 to a medical facility; and

27                       (v)    there is no less restrictive form of intervention that is consistent  
28 with the welfare and safety of the defendant; or

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

1           **[(e)] (F)**       The provisions under Title 10 of the Health – General Article shall  
2 apply to the continued retention of a defendant civilly committed under subsection **[(d)] (E)**  
3 of this section.

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

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

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

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

11                   (2)     At a hearing under paragraph (1) of this subsection, the court shall  
12 reconsider whether the defendant remains incompetent to stand trial or a danger to self or  
13 the person or property of another because of mental retardation or a mental disorder.

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

16                   (4)     If the court finds, at a hearing under paragraph (1) of this subsection,  
17 that the defendant is incompetent and is not likely to become competent in the foreseeable  
18 future and is a danger to self or the person or property of another because of mental  
19 retardation or a mental disorder, the court shall revoke the pretrial release of the defendant  
20 and:

21                           (i)     civilly commit the defendant in accordance with ~~paragraph (1) of~~  
22 subsection **[(d)] ~~(E)~~ (E)(1)** of this section; or

23                           (ii)    order confinement of the defendant in accordance with  
24 subsection **[(d)(2)] (E)(2)** of this section.

25           **[(g)] (H)**       If the defendant is found incompetent to stand trial, defense counsel  
26 may make any legal objection to the prosecution that may be determined fairly before trial  
27 and without the personal participation of the defendant.

28           **[(h)] (I)**       The court shall notify the Criminal Justice Information System Central  
29 Repository of any commitment ordered or release authorized under this section and of any  
30 determination that a defendant is no longer incompetent to stand trial.

31 3–112.

32           **(A) (1) IN THIS SECTION, “DESIGNATED HEALTH CARE FACILITY” MEANS:**

1 (I) A STATE FACILITY ~~MAINTAINED BY THE BEHAVIORAL~~  
 2 ~~HEALTH ADMINISTRATION UNDER § 10-406~~ AS DEFINED IN § 10-101 OF THE  
 3 HEALTH – GENERAL ARTICLE; OR

4 (II) A STATE FORENSIC RESIDENTIAL CENTER ~~MAINTAINED BY~~  
 5 ~~THE DEVELOPMENTAL DISABILITIES ADMINISTRATION UNDER TITLE 7 OF THE~~  
 6 HEALTH – GENERAL ARTICLE; OR

7 (III) A HOSPITAL OR PRIVATE RESIDENTIAL FACILITY UNDER  
 8 CONTRACT WITH THE HEALTH DEPARTMENT TO HOUSE AND TREAT INDIVIDUALS  
 9 FOUND TO BE INCOMPETENT TO STAND TRIAL OR NOT CRIMINALLY RESPONSIBLE.

10 (2) “DESIGNATED HEALTH CARE FACILITY” DOES NOT INCLUDE A  
 11 CORRECTIONAL OR DETENTION FACILITY OR A UNIT WITHIN A CORRECTIONAL OR  
 12 DETENTION FACILITY.

13 [(a)] (B) Except as provided in subsection [(c)] (E) of this section, after a verdict  
 14 of not criminally responsible, the court [immediately shall commit] ~~SHALL ENTER AN~~  
 15 ~~ORDER THAT~~ the defendant ~~BE COMMITTED BY THE DATE SPECIFIED BY THE COURT~~  
 16 ~~IN A COMMITMENT ORDER~~ to the FACILITY THAT THE ~~{Health}~~ ~~MARYLAND~~  
 17 Department ~~OF HEALTH~~ DESIGNATES for institutional inpatient care or treatment.

18 [(b)] (C) If the court commits a defendant who was found not criminally  
 19 responsible primarily because of mental retardation, the ~~{Health}~~ ~~MARYLAND~~  
 20 Department ~~OF HEALTH~~ shall designate a facility for mentally retarded persons for care  
 21 and treatment of the committed person.

22 (D) ~~(1) THE MARYLAND DEPARTMENT OF HEALTH SHALL:~~

23 ~~(1) FACILITATE THE IMMEDIATE PLACEMENT IN A DESIGNATED~~  
 24 ~~HEALTH CARE FACILITY OF A DEFENDANT WHO IS COMMITTED UNDER SUBSECTION~~  
 25 ~~(B) OF THIS SECTION ON OR BEFORE THE DATE SPECIFIED BY THE COURT IN A~~  
 26 ~~COMMITMENT ORDER; IF THE COURT COMMITS A DEFENDANT TO THE HEALTH~~  
 27 DEPARTMENT UNDER SUBSECTION (B) OR (C) OF THIS SECTION, THE HEALTH  
 28 DEPARTMENT SHALL:

29 (1) ADMIT THE DEFENDANT TO A DESIGNATED HEALTH CARE  
 30 FACILITY AS SOON AS POSSIBLE, BUT NOT LATER THAN 10 BUSINESS DAYS AFTER  
 31 THE HEALTH DEPARTMENT RECEIVES THE ORDER OF COMMITMENT; AND

32 ~~(1)~~ (2) NOTIFY THE COURT OF THE DATE ON WHICH THE  
 33 DEFENDANT WAS ADMITTED TO THE DESIGNATED HEALTH CARE FACILITY.

~~(2) (i) A REBUTTABLE PRESUMPTION OF CONTEMPT SHALL BE ESTABLISHED IF A DEFENDANT WHO HAS BEEN COMMITTED UNDER SUBSECTION (B) OF THIS SECTION IS NOT PLACED IN A FACILITY ON OR BEFORE THE DATE SPECIFIED BY THE COURT IN A COMMITMENT ORDER.~~

~~(ii) THE COURT SHALL ISSUE IMMEDIATELY AN ORDER FOR THE MARYLAND DEPARTMENT OF HEALTH TO APPEAR AND SHOW CAUSE FOR WHY THE DEFENDANT WAS NOT PLACED AS ORDERED.~~

~~(iii) A LACK OF AVAILABLE BEDS IN A DESIGNATED HEALTH CARE FACILITY IS NOT A SUFFICIENT REASON FOR NOT PLACING A DEFENDANT AS ORDERED IN A COMMITMENT ORDER.~~

~~(3) IF A COURT FINDS THE MARYLAND DEPARTMENT OF HEALTH IN CONTEMPT AFTER A PROCEEDING UNDER PARAGRAPH (2) OF THIS SUBSECTION, IN ADDITION TO ANY OTHER REMEDY AND SANCTION AVAILABLE TO THE COURT IN A CIVIL OR CRIMINAL PROCEEDING, THE COURT MAY IMPOSE SANCTIONS, INCLUDING:~~

~~(i) CONTEMPT FINES AGAINST THE MARYLAND DEPARTMENT OF HEALTH AND ANY OFFICIAL OF THE MARYLAND DEPARTMENT OF HEALTH NOT TO EXCEED \$160 PER DAY FOR EACH VIOLATION;~~

~~(ii) REIMBURSEMENT FOR EXPENSES AND COSTS INCURRED BY A DETENTION FACILITY RESULTING FROM A DEFENDANT'S LACK OF PLACEMENT IN VIOLATION OF A COMMITMENT ORDER; AND~~

~~(iii) ANY SANCTION REASONABLY DESIGNED TO COMPEL COMPLIANCE.~~

(E) IF THE HEALTH DEPARTMENT FAILS TO ADMIT A DEFENDANT TO A DESIGNATED HEALTH CARE FACILITY WITHIN THE TIME PERIOD SPECIFIED IN SUBSECTION (D)(1) OF THIS SECTION, THE COURT MAY IMPOSE ANY SANCTION REASONABLY DESIGNED TO COMPEL COMPLIANCE, INCLUDING REQUIRING THE HEALTH DEPARTMENT TO REIMBURSE A DETENTION FACILITY FOR EXPENSES AND COSTS INCURRED IN RETAINING THE DEFENDANT BEYOND THE TIME PERIOD SPECIFIED IN SUBSECTION (D)(1) OF THIS SECTION AT THE DAILY RATE SPECIFIED IN § 9-402(B) OF THE CORRECTIONAL SERVICES ARTICLE.

[(c)] ~~(E)~~ (F) 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}~~ ~~MARYLAND~~ Department ~~OF HEALTH~~, but only if:



1 (1) the court has available an evaluation report within 90 days preceding  
2 the verdict made by an evaluating facility designated by the ~~Health~~ ~~MARYLAND~~  
3 Department ~~OF HEALTH~~;

4 (2) the report indicates that the person would not be a danger, as a result  
5 of mental retardation or mental disorder, to self or to the person or property of others if  
6 released, with or without conditions; and

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

9 [(d)] ~~(F)~~ (G) The court shall notify the Criminal Justice Information System  
10 Central Repository of each person it orders committed under this section.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 2018.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.