

# The Life of the Not Criminally Responsible Case (NCR)



A defendant may plead Not Criminally Responsible if, due to a mental disorder or intellectual disability, they lack substantial capacity to:

1. Appreciate the criminality of their conduct.
2. Conform their conduct to the law.

Reference: MD Code Criminal Procedure § 3-109 (a).

## Process Overview:

**Evaluation:** A Department of Health forensic psychologist evaluates whether the client is criminally responsible. The OPD may also hire an expert for this evaluation.

**Plea:** The client may plead guilty or be found guilty; subsequently, a judge or jury can find them Not Criminally Responsible.

**Commitment:** Post-NCR plea, the client is committed to the Maryland Department of Health for institutional inpatient care and treatment.

**Hearing:** Within 50 days of the NCR plea, a hearing is held to decide on conditional release or discharge.

## Rights and Hearings:

**Burden of Proof:** The client bears the burden to prove eligibility for discharge or conditional release.

**Annual Hearing:** Clients are entitled to an annual hearing, though not all opt for it each year.

## Treatment and Activities:

**Therapy:** Clients may receive group and individual therapy to help process trauma and understand the crime for which they pleaded NCR.

**Activities:** Clients can earn privileges for supervised activities outside hospital grounds through active treatment participation.

## Conditional Release

**Monitoring:** The Community Forensic Aftercare Program (CFAP) monitors clients on conditional release, involving social workers who oversee the client's reintegration.

**Violations:** If conditions are violated, the CFAP monitor can initiate a process that might lead to the client being brought back to the state hospital.

## CHALLENGES AND RECOMMENDATIONS

**After a hearing and review by the Court that committed our client to the Department of Health, the Community Forensic Aftercare Program (CFAP) monitors our client on conditional release.**

- The monitors are social workers. They communicate with our client's providers about every aspect of their lives, including work, family, education, and ongoing mental health treatment.
- Our client will likely live in supervised housing, such as a group home. They cannot use substances, but they can be randomly drug tested and required to submit to lab work to monitor medication levels. These are just a few of the conditions that our client must follow.
- Conditional release often lasts for 5 years, and it can be extended for decades.

**If our client violates a condition of their release, the CFAP monitor informs the state's attorney, and the state's attorney requests a hospital warrant.**

- After the warrant is served, our client is brought back into a state hospital.
- Our client is entitled to a hearing within 10 days when their conditional release could be revoked.
- In practice, our clients often request postponements to give them more time to recover in the hospital if their mental health has declined, and this gives us more time to gather the facts related to the alleged violation of conditional release.
- Even if a client violates conditional release, they could still be found eligible to go back out on conditional release, but only if they are not a danger to themselves, others, or the property of others.

