

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 507

(Senator Muse)

Judicial Proceedings

Judiciary

**Criminal Procedure – Incompetency to Stand Trial – Dismissal of Charges and
 Victims’ Rights**

This bill alters the time after which a court is required to dismiss a charge of first-degree murder or a crime considered “sexually assaultive behavior” against a defendant found incompetent to stand trial (IST) to the lesser of 10 years or the maximum sentence for the most serious offense charged. A victim or victim’s representative has the right to petition the court for extraordinary cause to extend the time to dismiss a charge against a defendant found IST for a crime of violence if the victim or victim’s representative has submitted a written request to the Maryland Department of Health (MDH) for notification or submitted a victim notification request form.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$111,900 in FY 2024 for the Office of the Public Defender (OPD), as discussed below. General fund expenditures also increase for MDH for extended commitments and related proceedings. The Judiciary can implement the bill with existing resources. Revenues are not affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	111,900	136,300	142,400	148,600	156,400
Net Effect	(\$111,900)	(\$136,300)	(\$142,400)	(\$148,600)	(\$156,400)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill may increase workloads for State’s Attorneys. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Dismissal of Charges for a Defendant Found Incompetent to Stand Trial

By statute, a defendant is IST if the defendant is not able to understand the nature or object of the proceeding or assist in the defense.

Whether or not the defendant is confined in an MDH facility and unless the State petitions the court for extraordinary cause to extend the time, the court must dismiss the charge against a defendant found IST (1) after the lesser of the expiration of five years or the maximum sentence for the most serious offense charged, if charged with a felony or crime of violence or (2) after the lesser of the expiration of three years or the maximum sentence for the most serious offense charged, if charged with an offense other than a felony or crime of violence.

The court is required to dismiss a charge without prejudice if the court considers that resuming the criminal proceeding would be unjust because so much time has passed since the defendant was found IST. Before dismissing a charge, the court must provide the State's Attorney and a victim or victim's representative who has requested notification advance notice and an opportunity to be heard. If charges are dismissed, the court must notify the victim or representative mentioned above and the Criminal Justice Information System.

In 2009, the Maryland Court of Appeals (now the Supreme Court of Maryland) held that the dangerousness and restorability of a defendant adjudged IST are not sufficient for an extraordinary cause determination under the State's incompetency statute. *Ray v. State of Maryland*, 410 Md. 384 (2009). While the State may reindict a defendant after the defendant's charges were dismissed under § 3-107(a) of the Criminal Procedure Article without a showing that the defendant has become competent, the State must overcome the presumption that the defendant is unrestorable before the defendant is placed in incompetency commitment. Otherwise, the circuit court must initiate civil commitment proceedings in accordance with Section 3-106 of the Criminal Procedure Article. *State v. Ray*, 429 Md. 566 (2012).

Crimes of Violence

Section 14-101(a) of the Criminal Law Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual

offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Sexually Assaultive Behavior

“Sexually assaultive behavior” means an act that would constitute a sexual crime under Title 3, Subtitle 3 of the Criminal Law Article; sexual abuse of a minor under § 3-602 of the Criminal Law Article; sexual abuse of a vulnerable adult under § 3-604 of the Criminal Law Article; a violation of 18 U. S. Code Chapter 109A; or a violation of a law of another state, the United States, or a foreign country that is equivalent to any of these offenses.

Victim Notification

Under Maryland law, a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) has a broad range of specific rights during the criminal justice process. On first contact with a victim, a law enforcement officer, District Court commissioner, or juvenile intake officer must give an identified victim a pamphlet that advises the victim of the rights, services, and procedures available in the time before and after the filing of a charging document. Also, within 10 days after the filing or unsealing of an indictment or information, the prosecuting attorney must provide a victim with a pamphlet that describes the rights, services, and procedures available to a victim after the indictment or information is filed and a notification request form by which a victim may request notice of various proceedings.

Many of the rights afforded a victim of crime depend on a victim completing a notification request form or requesting notice by following the Maryland Electronic Courts system protocol.

State Expenditures: Based on existing statute and the classification of and the maximum penalties for the offenses subject to the bill (1) most of the defendants affected by the bill would have their charges dismissed after 10 years instead of 5 years under existing statute and (2) the bill generally does not alter the time before dismissal of charges for the remaining defendants.

Maryland Department of Health

General fund expenditures for MDH increase if the bill increases the amount of time

defendants spend committed in MDH facilities. The extent of this increase cannot be reliably determined at this time and depends on:

- the number of individuals committed to MDH facilities after being found IST for first-degree murder or a sexually assaultive behavior offense;
- whether an individual charged with first-degree murder or a sexually assaultive behavior offense that is subject to the 5-year limit under existing statute who is found IST and not restored to competency within 5 years will be restored to competency in 10 years;
- whether an individual charged with first-degree murder or a sexually assaultive behavior offense who is found IST is also determined to be dangerous; and
- whether an individual charged with first-degree murder or a sexually assaultive behavior offense who is found IST and has his/her charges dismissed after the time limit under existing statute will still be determined to be dangerous and civilly committed to an MDH facility.

This analysis assumes that the cost of maintaining an individual in an MDH facility on a pending charges basis is equal to the cost of maintaining the same individual on a civil commitment basis. MDH advises that the bill may have an effect on facility discharge rates and throughput. Commitments to MDH facilities involve extensive proceedings and evaluations. Depending on the bill's effect on MDH workloads, MDH may incur additional expenditures.

Office of the Public Defender

General fund expenditures increase by at least \$111,880 in fiscal 2024, which accounts for the bill's October 1, 2023 effective date. This estimate reflects the cost of hiring one attorney for the Mental Health Division to assist with legal representation generated by the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Additional general fund expenditures are incurred by OPD for expert fees (\$2,000 per client per year). The magnitude of annual expert fees depends on the number of OPD clients who require experts for their proceedings under the bill, which cannot be reliably determined at this time.

Position	1.0
Salary and Fringe Benefits	\$104,471
Operating Expenses	<u>7,409</u>
Minimum FY 2024 OPD Expenditures	\$111,880

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

OPD advises that the bill extends the time required for representation in applicable cases, which results in increased costs for staff and experts. For anyone committed for IST, an annual court review is required, which generally requires OPD to engage an independent expert evaluator. In addition, MDH is required to provide an updated review report to the court and counsel every six months. Often courts set hearings upon receipt of those reports, in addition to the annual reviews. Thus, the bill could generate two additional court hearings per year per defendant.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 1073 of 2020.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Legislative Services

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