
By: ~~Senator Frosh~~ **Senators Frosh and Green**

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Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

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CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure - Criminal Defendants - Incompetency and Criminal**
3 **Responsibility**

4 FOR the purpose of ~~altering the time period for which a court may commit, to a~~
5 ~~certain Health Department facility, a defendant whom the court finds is~~
6 ~~incompetent to stand trial and is a danger; requiring the court to schedule a~~
7 ~~competency hearing within a certain time period after receipt of a certain report~~
8 ~~under certain circumstances; authorizing a court to take certain actions after~~
9 ~~the court makes a certain determination at a competency hearing; requiring the~~
10 ~~release of a defendant committed to a certain Health Department facility under~~
11 ~~certain circumstances; requiring a court to dismiss reconsider, under certain~~
12 ~~circumstances, a certain charge by a court after passage of certain time periods;~~
13 ~~circumstances, a certain determination after receiving a certain report from the~~
14 ~~Health Department; authorizing the court to order commitment of a certain~~
15 ~~person in a Health Department facility under certain circumstances;~~
16 ~~authorizing the court to refer a certain person for consideration of services by~~
17 ~~the Developmental Disabilities Administration under certain circumstances;~~
18 ~~repealing a prohibition against dismissal under certain circumstances of a~~
19 ~~certain charge by a court until after passage of certain time periods; requiring~~
20 ~~the Health Department to submit a certain report containing certain~~
21 ~~information to the court; requiring the State's Attorney to prepare and send a~~
22 ~~certain report relating to certain persons; requiring the Health Department to~~
23 ~~submit certain reports containing certain information within certain time~~
24 ~~periods to certain persons; and generally relating to criminal defendants and~~
25 ~~incompetency and criminal responsibility.~~

26 BY repealing and reenacting, with amendments,
27 Article - Criminal Procedure

1 Section 3-106 ~~through and~~ 3-108
 2 Annotated Code of Maryland
 3 (2001 Volume and 2004 Supplement)

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

6 **Article - Criminal Procedure**

7 3-106.

8 (a) Except in a capital case, if, after a hearing, the court finds that the
 9 defendant is incompetent to stand trial but is not dangerous, as a result of a mental
 10 disorder or mental retardation, to self or the person or property of others, the court
 11 may set bail for the defendant or authorize release of the defendant on recognizance.

12 (b) (1) If, after a hearing, the court finds that the defendant is incompetent
 13 to stand trial and, because of mental retardation or a mental disorder, is a danger to
 14 self or the person or property of another, the court may order the defendant
 15 committed to the facility that the Health Department ~~designates~~ until the court is
 16 satisfied that:

17 (I) the defendant no longer is incompetent to stand trial ~~or~~;

18 (II) THE DEFENDANT no longer is, because of mental retardation or
 19 a mental disorder, a danger to self or the person or property of others; ~~DESIGNATES,~~
 20 ~~SUBJECT TO JUDICIAL REVIEW AS SET FORTH UNDER SUBSECTION (C) OF THIS~~
 21 ~~SECTION, FOR A PERIOD NOT TO EXCEED THE LESSER OF 18 MONTHS OR THE~~
 22 ~~MAXIMUM PERIOD OF INCARCERATION THAT COULD HAVE BEEN IMPOSED IF THE~~
 23 ~~DEFENDANT HAD BEEN CONVICTED OF THE CHARGED OFFENSE; OR~~

24 (III) THERE IS NOT A SUBSTANTIAL LIKELIHOOD THAT THE
 25 DEFENDANT WILL BECOME COMPETENT TO STAND TRIAL IN THE FORESEEABLE
 26 FUTURE.

27 (2) If a court commits the defendant because of mental retardation, the
 28 Health Department shall require the Developmental Disabilities Administration to
 29 provide the care or treatment that the defendant needs.

30 (c) ~~(1)~~ On suggestion of the defendant or on its initiative ~~and subject to the~~
 31 ~~limitations on frequency in § 7-507 or § 10-805 of the Health - General Article, as the~~
 32 ~~case may be,~~ ON RECEIPT OF A REPORT FROM THE HEALTH DEPARTMENT REQUIRED
 33 UNDER § 3-108 OF THIS SUBTITLE, the court ~~may~~ SHALL reconsider whether the
 34 defendant ~~is incompetent to stand trial~~ CONTINUES TO MEET THE CRITERIA FOR
 35 COMMITMENT SET FORTH IN SUBSECTION (B) OF THIS SECTION.

36 (2) If the court orders commitment under subsection (b) of this section,
 37 the defendant may apply for release under § 7-507 or § 10-805 of the Health -
 38 General Article. In computing the availability of review under those sections, as the

1 case may be, the date of the commitment order shall be treated as a hearing. ~~IF THE~~
2 ~~COURT ORDERED COMMITMENT UNDER SUBSECTION (B) OF THIS SECTION, THE~~
3 ~~COURT:~~

4 ~~(1) SHALL SCHEDULE A HEARING WITHIN 14 DAYS OF RECEIPT OF THE~~
5 ~~REPORT REQUIRED FROM THE HEALTH DEPARTMENT UNDER § 3-108(A) OR (B) OF~~
6 ~~THIS SUBTITLE TO RECONSIDER WHETHER THE DEFENDANT IS INCOMPETENT TO~~
7 ~~STAND TRIAL; AND~~

8 ~~(2) MAY ORDER CONTINUED COMMITMENT OF THE DEFENDANT UPON A~~
9 ~~FINDING THAT:~~

10 ~~(I) THE DEFENDANT CONTINUES TO BE INCOMPETENT TO STAND~~
11 ~~TRIAL AND, BECAUSE OF MENTAL RETARDATION OR A MENTAL DISORDER, IS A~~
12 ~~DANGER TO SELF OR THE PERSON OR PROPERTY OF ANOTHER;~~

13 ~~(II) THE DEFENDANT HAS MADE SUBSTANTIAL PROGRESS TOWARD~~
14 ~~BECOMING COMPETENT TO STAND TRIAL; AND~~

15 ~~(III) THERE IS A SUBSTANTIAL LIKELIHOOD THAT THE DEFENDANT~~
16 ~~WILL BECOME COMPETENT TO STAND TRIAL IN THE FORESEEABLE FUTURE.~~

17 ~~(D) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS~~
18 ~~SUBSECTION, THE COURT SHALL RELEASE A DEFENDANT COMMITTED TO A~~
19 ~~FACILITY UNDER SUBSECTION (B) OF THIS SECTION FROM COMMITMENT:~~

20 ~~(I) AT THE END OF ANY PERIOD SPECIFIED IN SUBSECTION (B) OF~~
21 ~~THIS SECTION;~~

22 ~~(II) IF, DUE TO MENTAL RETARDATION OR A MENTAL DISORDER,~~
23 ~~THE DEFENDANT IS NO LONGER A DANGER TO SELF OR THE PERSON OR PROPERTY~~
24 ~~OF ANOTHER; OR~~

25 ~~(III) IF THE DEFENDANT IS NOT LIKELY TO BECOME COMPETENT IN~~
26 ~~THE FORESEEABLE FUTURE.~~

27 ~~(2) EXCEPT WHEN THE MAXIMUM PERIOD OF INCARCERATION THAT~~
28 ~~COULD HAVE BEEN IMPOSED IF THE DEFENDANT HAD BEEN CONVICTED OF THE~~
29 ~~CHARGED OFFENSE HAS PASSED, BEFORE A DEFENDANT IS RELEASED UNDER~~
30 ~~PARAGRAPH (1) OF THIS SUBSECTION, THE STATE'S ATTORNEY MAY REQUEST A~~
31 ~~HEARING TO SHOW THAT EXTRAORDINARY CIRCUMSTANCES EXIST TO WARRANT AN~~
32 ~~ADDITIONAL 6 MONTH PERIOD OF COMMITMENT.~~

33 ~~(3) AT A COMPETENCY HEARING UNDER SUBSECTION (C) OF THIS~~
34 ~~SECTION, IF THE COURT DETERMINES THAT THE DEFENDANT IS NOT LIKELY TO~~
35 ~~BECOME COMPETENT IN THE FORESEEABLE FUTURE, THE COURT MAY:~~

36 ~~(I) IF APPROPRIATE, ORDER THE DEFENDANT RETAINED IN~~
37 ~~CUSTODY OF THE HEALTH DEPARTMENT FOR A PERIOD NOT TO EXCEED 10 DAYS TO~~

1 ~~ALLOW THE HEALTH DEPARTMENT TO SEEK A CIVIL COMMITMENT UNDER TITLE 10~~
 2 ~~OF THE HEALTH GENERAL ARTICLE; OR~~

3 ~~(II) IF THE DEFENDANT HAS BEEN COMMITTED UNDER THIS TITLE~~
 4 ~~DUE TO MENTAL RETARDATION, REFER THE DEFENDANT TO THE DEVELOPMENTAL~~
 5 ~~DISABILITIES ADMINISTRATION FOR CONSIDERATION OF SERVICES IN ACCORDANCE~~
 6 ~~WITH TITLE 7 OF THE HEALTH GENERAL ARTICLE.~~

7 ~~{(d)}~~ ~~(E)~~ If the defendant is found incompetent to stand trial, defense counsel
 8 may make any legal objection to the prosecution that may be determined fairly before
 9 trial and without the personal participation of the defendant.

10 ~~{(e)}~~ ~~(F)~~ The court shall notify the Criminal Justice Information System
 11 Central Repository of any commitment ordered or release authorized under this
 12 section and of any determination that a defendant is no longer incompetent to stand
 13 trial.

14 ~~3-107.~~

15 ~~(a) Whether or not the defendant is confined, if the court considers that~~
 16 ~~resuming the criminal proceeding would be unjust because so much time has passed~~
 17 ~~since the defendant was found incompetent to stand trial, the court [may] SHALL~~
 18 ~~dismiss the charge. However, the court may not dismiss a [charge:~~

19 ~~(1) CHARGE without providing the State's Attorney and a victim or~~
 20 ~~victim's representative who has filed a notification request form under § 11-104 of~~
 21 ~~this article advance notice and an opportunity to be heard]; and~~

22 ~~(2) (i) until 10 years after the defendant was found incompetent to~~
 23 ~~stand trial in any capital case; or~~

24 ~~(ii) until 5 years after the defendant was found incompetent to~~
 25 ~~stand trial in any other case where the penalty may be imprisonment in a State~~
 26 ~~correctional facility].~~

27 (b) If charges are dismissed under this section, the court shall notify:

28 (1) the victim of the crime charged or the victim's representative who has
 29 filed a notification request form under § 11-104 of this article; and

30 (2) the Criminal Justice Information System Central Repository.

31 ~~3-108.~~

32 (a) (1) In addition to any other report required under this title, {the Health
 33 Department shall report ~~annually~~ to each court that has ordered commitment of a
 34 person under § 3-106 of this title} ~~EVERY 6 MONTHS FROM THE DATE OF~~
 35 ~~COMMITMENT, THE HEALTH DEPARTMENT SHALL REPORT TO EACH COURT THAT~~
 36 ~~HAS ORDERED COMMITMENT OF A PERSON UNDER § 3-106 OF THIS TITLE;~~

1 (I) EVERY 6 MONTHS FROM THE DATE OF COMMITMENT; AND

2 (II) WHENEVER THE HEALTH DEPARTMENT DETERMINES THAT
 3 THE DEFENDANT IS NOT SUBSTANTIALLY LIKELY TO BECOME COMPETENT TO
 4 STAND TRIAL IN THE FORESEEABLE FUTURE.

5 (2) The report shall [contain]:

6 (i) [a list of the persons held under commitment orders; and]
 7 CONTAIN A DESCRIPTION OF THE SERVICES THAT THE DEFENDANT HAS RECEIVED;

8 (ii) [any recommendations that the Health Department considers
 9 appropriate] PROVIDE THE BASIS OF ANY OPINIONS CONTAINED IN THE REPORT;

10 (III) STATE WHETHER THE DEFENDANT:

11 1. IS SUBSTANTIALLY LIKELY TO BECOME COMPETENT TO
 12 STAND TRIAL IN THE FORESEEABLE FUTURE; AND

13 2. ~~REMAINS INCOMPETENT, BUT MAY BE ABLE TO BECOME~~
 14 ~~COMPETENT IN THE FORESEEABLE FUTURE; OR~~

15 3. ~~REMAINS INCOMPETENT, AND IS UNLIKELY TO BECOME~~
 16 ~~COMPETENT IN THE FORESEEABLE FUTURE; AND~~

17 (IV) ~~STATE WHETHER THE DEFENDANT REMAINS, DUE TO MENTAL~~
 18 ~~RETARDATION OR A MENTAL DISORDER, A DANGER TO SELF OR THE PERSON OR~~
 19 ~~PROPERTY OF ANOTHER.~~

20 (b) ~~THE HEALTH DEPARTMENT SHALL REPORT TO THE COURT AS SOON AS~~
 21 ~~PRACTICABLE UPON MAKING A DETERMINATION THAT:~~

22 (1) ~~THE DEFENDANT IS COMPETENT TO STAND TRIAL;~~

23 (2) ~~THE DEFENDANT IS NO LONGER, BECAUSE OF MENTAL~~
 24 ~~RETARDATION OR A MENTAL DISORDER, A DANGER TO SELF OR THE PERSON OR~~
 25 ~~PROPERTY OF ANOTHER; OR~~

26 (3) ~~IT IS NOT LIKELY THAT THE INDIVIDUAL WILL BECOME COMPETENT~~
 27 ~~TO STAND TRIAL.~~

28 (C) (1) The clerk of court shall give the last counsel for each person, as
 29 shown by the court records, notice that the client is listed in the report and a copy of
 30 any recommendation that relates to the client.

31 (2) The Health Department shall send a copy of the report to each State's
 32 Attorney who brought charges against a person in the report.

33 (c) (D) (1) Within 30 days after a State's Attorney receives the report, the
 34 State's Attorney shall send a recommendation on disposition of charges against each

1 person {who has been held long enough to be eligible for release under § 3-107 of this
2 title} ~~IN THE REPORT.~~

3 (2) The State's Attorney shall send the recommendation about a person
4 to:

5 (i) the court that ordered commitment of the person; and

6 (ii) the last counsel for the person.

7 ~~{(d)}~~ ~~(E)~~ The facility of the Health Department that has charge of a person
8 committed as incompetent to stand trial shall notify the Criminal Justice Information
9 System Central Repository if the person escapes.

10 ~~(F) (1) BY JULY 1 OF EACH YEAR, THE HEALTH DEPARTMENT SHALL SUBMIT~~
11 ~~TO THE OFFICE OF THE PUBLIC DEFENDER, THE MARYLAND DISABILITY LAW~~
12 ~~CENTER, AND THE COUNSEL TO THE HEALTH DEPARTMENT, A REPORT OF ALL~~
13 ~~PERSONS IN THE CUSTODY OF THE HEALTH DEPARTMENT DURING THE PREVIOUS~~
14 ~~12 MONTH PERIOD WHO WERE COMMITTED UNDER § 3-106 OF THIS TITLE.~~

15 ~~(2) THE REPORT SHALL IDENTIFY FOR EACH PERSON UNDER~~
16 ~~COMMITMENT:~~

17 ~~(I) THE CRIMINAL CASE NUMBER;~~

18 ~~(II) THE DATE OF THE INITIAL COMMITMENT AND ANY~~
19 ~~SUBSEQUENT HEARINGS; AND~~

20 ~~(III) THE CHARGES AGAINST THE PERSON.~~

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2005.