Disability Rights Maryland

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Senate Judicial Proceedings Committee
SB 449: Criminal Procedure – Incompetency to Stand Trial Dismissal
February 9, 2024
POSITION: OPPOSE

Disability Rights Maryland (DRM) is the federally-mandated Protection and Advocacy agency for the State of Maryland, charged with defending and advancing the rights of persons with disabilities. DRM is tasked with monitoring state facilities for persons with disabilities, including the state psychiatric hospitals, to protect against abuse and neglect and ensure the civil rights of its patients are protected. DRM has concerns about the constitutionality of SB 449 as written and concludes that if enacted, it may be wasteful and unlikely to produce its intended result.

The purpose of Maryland's laws related to incompetency is to provide restoration services to permit an individual to become competent to stand trial on criminal charges.[1] The weight of the social science research concludes that an individual who is found Incompetent to Stand Trial (IST) and not restored to competency within 5 years is not likely to be restored to competency in 10 years. It is important to remember that such individuals have not been found guilty for any crime by a court of law. Further, it is particularly inappropriate when the person has a co-occurring developmental disability, a traumatic brain injury, or dementia that increases the challenge of restoring the individual to competency to stand trial. Extending the period of time a person can be held as IST before charges can be dismissed will not rectify this problem.

SB 449 proposes to expand the category of crimes that would be eligible for a maximum 10-year period of incompetency prior to dismissal of charges. Specifically, it proposes to include sexually assaultive behavior as defined in § 10-923 of the Courts Article, expanding the list of crimes eligible for the expanded IST timeframe to include such crimes as third-degree sex offense, for example. To the extent that the proponents for this bill argue that the original timeframe for dismissal of charges was 10 years until 2012 and was only dropped to 5 years when the death penalty was abolished, the inclusion of sexually assaultive crimes under § 10-923 of the Courts article is without precedent and overinclusive.

Under Maryland statute, a defendant is found IST if the court finds the defendant is unable to understand the nature or object of the legal proceedings against them or able to assist in their defense. If the court finds a defendant IST and, because of mental retardation or a mental disorder, they are a danger to self or others, the court may order the defendant committed to a facility designated by the Maryland Department of Health (MDH) until the court finds that the defendant is (1) no longer IST; (2) no longer a danger to self or others; or (3) not restorable to competency in the foreseeable future. As a

[1] See Bergstein v. State, 322 Md. 506, 516 (1991) ("The deprivation of liberty involved in the initial hospitalization or in rehospitalization clearly is not imposed as a punishment."

matter of practice, this means that individuals are typically held IST for the longest period allowed by law. MDH evaluators rarely opine on dangerousness or restorability unless directed to do so by the courts, or if they do, it is a conclusory statement without facts to back up that conclusion.

While Criminal Procedure (CP) § 3-107 currently provides that the state should dismiss charges upon the lesser of five years or the maximum period of incarceration for a felony or a crime of violence as defined under § 14-101 of the Criminal Law Article, or the lesser of three years or the maximum period of incarceration for all other crimes, the state already retains the ability under the statute to petition the court to extend the time period for charges for "extraordinary cause." Further, under Section 3-107 of the Criminal Procedure Article, any dismissal is without prejudice to the State refiling the charges, and civil commitment under Title 10 of Health-General is always a possibility.

In 1972, the U.S. Supreme Court ruled in *Jackson v. Indiana* that people "cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future.[2] The Court did not set a maximum time limit on attempts to restore competency, leaving it up to the states to make this determination. A number of states base this time limit on research that shows that most people will be restored within six months to a year, and continued treatment and detention to restore competency beyond this time period is unnecessary.[3] Twenty states have a maximum treatment period of one year or less.[4] Yet Maryland bases its maximum treatment period on other conditions, including the maximum possible sentence for the alleged offense, a practice that goes against research and against the purpose of competency treatment. Research on competency restoration for people with mental illness shows that 70 percent or more become competent within six months of starting treatment[5]; nine out of ten will be restored within a year. A very small percentage of people do take longer to be restored to competency, and if substantial progress is shown, and the state's interest in prosecution is great, it may be appropriate to continue treatment for a brief additional period through use of the "extraordinary cause" provision in the statute.

Given the facts that 1) MDH is <u>required</u> to involuntarily commit someone whose charges have been dismissed and is still adjudged to be dangerous, and 2) Maryland law already contains an exception to extend time prior to dismissal of charges on a

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[2] 406 U.S. 715, 738 (1972).

[3] See Grant H. Morris and J. Reid Meloy, "Out of Mind? Out of Sight: The Uncivil Commitment of Permanently Incompetent Criminal Defendants," U.C. Davis Law Review, 1, no.27 (1993).

[4] Based on a 2005 review of the 50 state statutes and District of Columbia, conducted by the Maryland Disability Law Center.

[5] See, G. Bennett and G. Kish, "Incompetency to stand trial: Treatment unaffected by demographic variables," *Journal of Forensic Sciences* 35 (1990): 403-412; S.L. Golding, D. Eaves, and A. Kowacz, "The assessment and community outcome of insanity acquittees: Forensic history and response to treatment," *International Journal of Law and Psychiatry* 12 (1989):149-179; D.R. Morris and G.F. Parker, "Jackson's Indiana: State hospital competence restoration in Indiana," *Journal of the American Academy of Psychiatry and Law* 36 (2008): 522-534; R. Nicholson and J. McNulty, "Outcome of hospitalization for defendants found incompetent to stand trial," *Behavioral Sciences and the Law* 10 (1998): 371-383.

showing of good cause to the court, there is little risk that someone who is dangerous would be released from a state psychiatric hospital after five years solely because their charges were dismissed because they have not been restored to competency. Extending the time period for dismissal of charges far beyond the time period during which the person is likely to be restored to competency simply makes their treatment in the psychiatric hospital punishment by another name.

For these reasons, we urge that Senate Bill 449 be given an unfavorable report. Should you have any further questions, please contact Luciene Parsley, Litigation Director at Disability Rights Maryland, at 443-692-2494 or lucienep@disabilityrightsmd.org.