

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 449
Criminal Procedure – Incompetency to Stand Trial Dismissal
DATE: January 31, 2024
(2/9)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 449.

Senate Bill 449 proposes to amend the language in Criminal Procedure Article § 3-107 to state that whether a defendant is confined and unless a victim who has filed a notification request form under § 11–104 of this article or the State petitions the court for extraordinary cause to extend the time, the court shall dismiss the charge against a defendant found incompetent to stand trial. Most notable is the proposed addition of the language that states the following:

(1) When charged with murder in the first degree in violation of Criminal Law Article § 2–201 or sexually assaultive behavior as defined in Courts Article § 10–923, after the lesser of the expiration of 10 years or the maximum sentence for the most serious offense.

Although the Judiciary understands the intent of the amendment, the Judiciary raises the issue that the statute broadly fails to contemplate the issue of restoration to competency.

Each charge has a term of viability, which the added language attempts to address relating to the charges of first-degree murder and sexually assaultive behavior. However, not all persons charged with criminal offenses are restored to competency. If a competency evaluation indicates that a person remains incompetent and dangerous, the evaluator must address the issue of restorability. The evaluator may determine that the person is not restorable, and that determination may be made during the term of viability for the pending charge(s). The proposed amendment to the bill does not contemplate cases wherein the defendant is not restorable. If a defendant remains incompetent and dangerous and the evaluator determines that the defendant is not restorable, then the court must then consider whether the defendant should be involuntarily civilly committed to the Maryland Department of Health. This determination must be made by the court while

the charges are viable and/or in cases where the charges are nearing the expiration of viability.

Additionally, the amendment on Page 2 in Lines 26 and 27 attempts to grant the court authority to extend the term of viability when the victim or victim's representative petitions the court for extraordinary cause. The Judiciary notes that the term "extraordinary cause" is not defined. And, it must be reiterated that if a defendant remains incompetent and dangerous, the evaluator must determine whether the defendant is restorable. At that point, the court must determine whether the defendant should be involuntarily civilly committed to the Maryland Department of Health. Further, even if a court were to determine that a victim or victim's representative has demonstrated extraordinary cause, a request to extend the time for dismissal without a determination of whether the defendant is likely to be restored to competency is not appropriate. As well, an extension of time with information that the defendant is not restorable is not appropriate.

cc. Hon. C. Anthony Muse
Judicial Council
Legislative Committee
Kelley O'Connor