CVR - IST - testimony - senate in house - 2024 - M
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MCASA
Maryland Coalition Against Sexual Assault

Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 449
Lisae C. Jordan, Executive Director & Counsel
April 1, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judiciary Committee to report favorably on Senate Bill 449.

Senate Bill 449 – Crime Victim Rights – Right to Petition to Extend Charges Based on Extraordinary Circumstances and Continued Supervision of IST Defendants
Maryland law correctly limits the length of time a person may be detained after a finding that they are incompetent to stand trial (IST). If the defendant was charged with a felony or a crime of violence under § 14-101 of the Criminal Law Article, the court must dismiss the charge after the lesser of the expiration of five years or the maximum sentence for the most serious offense charged. For all other defendants, the court must dismiss the charge after the lesser of the expiration of three years or the maximum sentence for the most serious offense charged. Both the State's Attorney and the victim must be notified of the contemplated dismissal, however, only the State's Attorney may file a motion to continue charges based on extraordinary cause. **This bill would grant victims the right to petition the court to extend the time to dismiss a charge regarding a defendant who has been found incompetent to stand trial. Senate Bill 449 also expands the maximum period of supervision when there are charges of sexually assaultive behavior or first degree murder to 10 years.**

Continued charges and supervision protect victims and the community when a defendant is both IST and dangerous. It is critical to understand that if charges are not continued, the defendant will no longer have supervision. Last session, this bill was introduced following the unreported opinion, *MO v. State*, filed by the Court of Special Appeals, March 24, 2021, and submitted with this testimony. In this case, a known and dangerous sex offender was approaching the 5 year limit on his IST status and a motion to dismiss charges was filed. The State's Attorney failed to file a motion to continue the charges, although they did oppose the motion to dismiss. The victim presented compelling testimony regarding the danger the defendant posed.

In the case prompting this bill, Terrell Nowlin was charged with two counts of Second-Degree Sex Offense and one count of Sodomy. The incident occurred on February 28, 2011 when the victim, J.O., and Mr. Nowlin participated, as athletes, in a Special Olympics event. Mr. Nowlin was found incompetent to stand trial. In reviewing the motion to dismiss charges, the court made a number of findings regarding the risk the defendant poses:

> Because of this case, [the Defendant] is also subject to an order that creates heavy supervision and structure designed to mitigate the risk that Defendant Nowlin presents to public safety. Despite this significant structure and supervision in a residential setting that specializes in supporting those with developmental disabilities, Defendant has, in the past, been in contact with the victim and victim's family. Because this Defendant has made prior threats to the victim, the contacts have caused severe distress to the victim and his family in violation of the conditions of the supervision order.
>
> Also, in direct violation of Defendant's release conditions and the structure in his residential program, in the past Defendant was able to create and function with many social media accounts and he was able to download and view large amounts of pornography. Viewing of pornography on the internet creates an increased risk that Defendant Nowlin may sexually assault someone else. To mitigate that risk, the [c]ourt required 24/7 supervision of Defendant. After the 24/7 supervision requirement, Defendant Nowlin made no more contact with the victim's family and had no more exposure to pornography.
>
> In terms of the risk that Defendant Nowlin may sexually victimize someone in the future, the [c]ourt must consider that before Defendant Nowlin sexually assaulted the victim in this case, he was convicted of forced sexual assault upon someone else. With two convictions for forced sexual assault, the [c]ourt must conclude that Defendant Nowlin presents a future risk to others. Even with a prior conviction for forced sexual assault, Defendant Nowlin, with his disabilities, was not supervised adequately to prevent the sexual attack that resulted in this case. Another compelling circumstance that enhances the public safety risk is that because of Defendant's own developmental disabilities, Defendant lives with and is in programs with other developmental disabled and uniquely vulnerable individuals.

The Court also highlighted the effect the dismissal of charges has on supervision of the IST defendant, noting:

> After dismissal of this case, the [c]ourt has little confidence that the 24/7 supervision will continue. The [c]ourt, therefore, would have found (if the statute did not prevent this action) that dismissal of this case creates a significant safety risk that this Defendant will sexually victimize someone else in the future (and perhaps multiple people).

Both the trial court and the appellate court noted that the Courts' hands are tied because the statute does not permit the Court to accept the victim's petition to extend the time to dismiss charges and the State's Attorney filed to file the appropriate motion. Senate Bill 449 corrects this deficiency in the statute and helps make the promise of crime victim rights a reality. Senate Bill 449 does not mean the Courts will grant a crime victim's request, but it will give victims the ability to ask the Court for needed relief in extraordinary cases.

The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 449

SB 449 - Amendment - March 24, 2024.pdf
Uploaded by: C. Anthony Muse
Position: FWA

SB0449/963223/1

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE SERVICES

18 MAR 24
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BY: Senator Muse
(To be offered in the Judiciary Committee)

AMENDMENTS TO SENATE BILL 449
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with "authorizing" in line 5 down through "trial" in line 7 and substitute "requiring a court to provide a certain notice and provide an opportunity to be heard to the State's Attorney and a certain victim or victim representative before dismissing a certain charge against a defendant found incompetent to stand trial".

AMENDMENT NO. 2

On page 2, in line 1, strike "Whether" and substitute "**SUBJECT TO SUBSECTION (B) OF THIS SECTION, WHETHER**"; strike beginning with "and" in line 1 down through "time" in line 3; strike beginning with "**SEXUALLY**" in line 6 down through "**COURTS**" in line 7 and substitute "**RAPE IN THE FIRST DEGREE IN VIOLATION OF § 3–303 OF THE CRIMINAL LAW**"; after line 16, insert:

"**(B) (1) AS PART OF THE PROCESS OF THE COURT DISMISSING A CHARGE, THE COURT SHALL PROVIDE THE STATE'S ATTORNEY AND A VICTIM OR VICTIM'S REPRESENTATIVE WHO HAS FILED A NOTIFICATION REQUEST FORM UNDER § 11–104 OF THIS ARTICLE ADVANCE NOTICE OF THE DISMISSAL AND AN OPPORTUNITY TO BE HEARD.**

(2) AT ANY TIME, THE STATE MAY PETITION THE COURT FOR EXTRAORDINARY CAUSE TO EXTEND THE TIME OF THE CHARGE.";

and in lines 17 and 23, strike "(b)" and "(c)", respectively, and substitute "**(C)**" and "**(D)**", respectively.

SB 449 IST Dismissal of Charges - House Hearing.pd
Uploaded by: Luciene Parsley
Position: UNF

Disability Rights Maryland

Empowerment. Integration. Equality.

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Phone: 410-727-6352 | Fax: 410-727-6389
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House Judiciary Committee
SB 449: Criminal Procedure – Incompetency to Stand Trial Dismissal
April 1, 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 very significant 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; it is illogical to tie the maximum treatment period to length of time charges are outstanding, since the crime has no bearing on restoration capability. As a matter of practice, this means that individuals are typically held IST for the longest period allowed by law, since MDH evaluators rarely opine on dangerousness or restorability unless directed to do so by the courts. SB 449 will result in additional people detained in our state hospitals for longer periods of time, whether or not they require this level of care. As it stands right now, Maryland has more than 200 individuals detained in detention centers who are waiting for transfer to state hospitals. This problem will be exacerbated significantly if SB 449 is to pass. 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. The National Judicial Conference agrees, saying "[f]or a person charged with a felony, it is best practice for the initial competency restoration to be no more than 120 days. By or before the end of the 120-day period, it is also best practice for the treating mental health professional to file a report with the court stating his or her opinion as to whether he or she belies that there is a substantial probability that the defendant can be restored to competency in the foreseeable future, or no longer than by an additional 245 days."[2]

SB 449 proposes to expand the category of crimes that would be eligible for a maximum 10-year period of detention for competency restoration. Specifically, it pro-

[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."
[2] See "Mental Competency Best Practices Model," the National Judicial College, 2011 (available online at http://jec.unm.edu/about-jec/news/njc-launches-mental-competency-best-practices-website.)

poses 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, a misdemeanor crime. 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. The maximum penalty for 4th degree sex offense is one year on a first offense. To the extent that SB 449 would permit an individual charged with a third-degree sex offense to be detained longer than one year for competency restoration, it would be unconstitutional.

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.[3] 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.[4] Twenty states have a maximum treatment period of one year or less.[5] 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[6]; 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 substan-

[3] 406 U.S. 715, 738 (1972).
[4] 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).
[5] Based on a 2005 review of the 50 state statutes and District of Columbia, conducted by the Maryland Disability Law Center.
[6] 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.

tial 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.

Individuals who are held IST in our state hospitals are typically provided with medication, monitoring, and short "competency restoration" classes where they learn about the criminal justice system, the role of their lawyer, the judge, the state's attorney, etc. They are almost never provided with individual therapy, robust mental health programming, and are unable to progress through the level system until their charges are resolved. Maintaining individuals as IST for a longer period of time means that these individuals will wait far longer in our state hospitals before receiving the mental health treatment and programming that they need.

Given the facts that 1) MDH is required 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 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.

SB 449 - JUD - HOSP - LOO.pdf
Uploaded by: Meghan Lynch
Position: UNF

Maryland
DEPARTMENT OF HEALTH
Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

April 1, 2024

The Honorable Luke Clippinger
Chair, Judiciary Committee
Room 101 House Office Building
Annapolis, MD 21401-1991

RE: Senate Bill 449 – Criminal Procedure – Incompetency to Stand Trial Dismissal – Letter of Opposition

Dear Chairman Clippinger and Committee Members,

The Maryland Department of Health (Department) respectfully submits this letter of opposition for Senate Bill 449 (SB) 449 entitled "Criminal Procedure – Incompetency to Stand Trial Dismissal." Under current law, when a defendant is charged with a felony or a crime of violence, is found Incompetent to Stand Trial (IST), and is not resorted to competency, the Maryland Judiciary must dismiss the charges after the individual has remained incompetent for the lesser of five years, or the passage of time that is equal to the maximum sentence for the most severe crime charged.

SB 449 would double the amount of time in which the Judiciary must wait before dismissing the charges against an IST individual who is charged with first-degree murder or sexually assaultive behavior. Specifically, the judiciary would be required to dismiss the charges after the individual has remained incompetent for the lesser of ten years, or the passage of time that is equal to the maximum sentence for the most severe crime charged.

The Department opposes SB 449 because it impacts the clinicians' ability to make clinically sound and independent determinations relating to discharge. The purpose of the Department Healthcare System's psychiatric hospitals is to provide therapeutic treatment to individuals with severe mental illness. This legislation increases the time an individual would be forced to remain in an inpatient setting, overriding the ability of clinicians to discharge an individual who could be maintained safely and appropriately in a less restrictive community level of care. Department's

psychiatric hospitals are therapeutic environments, and these commitments are meant to be rehabilitative rather than punitive.

SB 449 also interferes with the Healthcare System's ability to follow the Supreme Court's mandate outlined in *Olmstead v. L.C.*[1] Under *Olmstead*, individuals with disabilities, including behavioral health disabilities, have a right to receive treatment in the community in non-institutional settings. SB 449 would impact the System's ability to discharge individuals to an appropriate level of care for a longer period of time, even if the individual does not meet medical necessity criteria for inpatient behavioral health treatment, violating community integration requirements of *Olmstead*.

Finally, this bill would make it even more difficult for the Department's Healthcare System to comply with the statutory requirement to admit individuals who are court committed within 10 days. The Department's adult psychiatric hospitals operate 1,056 adult psychiatric beds, which are always at almost full capacity. Due to the increase in judicial evaluation and commitment orders, the Healthcare System has a court-ordered admissions waitlist for individuals who have been committed to the Department's psychiatric hospitals. Therefore, this bill could necessitate adding capacity to the existing Healthcare System facilities, particularly at Perkins, which is already undergoing a major Capital Improvement Project, or the building of additional facilities. Any additional capacity added to existing facilities or the establishment of new facilities will require significant construction.

In summary, the Department respectfully opposes this bill because it impacts the ability of clinicians to make discharge determinations as to whether an individual could be maintained in a less restrictive community level of care, impacts patients' rights in accordance with *Olmstead,* and impacts the ability to admit patients timely to the Department's adult psychiatric facilities.

If you would like to discuss this further, please contact Sarah Case-Herron, Director of Governmental Affairs, at sarah.case-herron@maryland.gov.

Sincerely,

Laura Herrera Scott, M.D., M.P.H.
Secretary

[1] 527 U.S. 581 (1999)

SB 449 - Oppose - MPS WPS - House.pdf
Uploaded by: Thomas Tompsett
Position: UNF

March 28, 2024

The Honorable Luke Clippinger
House Judiciary Committee
House Office Building, Room 101
Annapolis, MD 21401

RE: Oppose – Senate Bill 449: Criminal Procedure – Incompetency to Stand Trial Dismissal

Dear Chairman Clippinger and Honorable Members of the Committee:

The Maryland Psychiatric Society (MPS) and the Washington Psychiatric Society (WPS) are state medical organizations whose physician members specialize in diagnosing, treating, and preventing mental illnesses, including substance use disorders. Formed more than sixty-five years ago to support the needs of psychiatrists and their patients, both organizations work to ensure available, accessible, and comprehensive quality mental health resources for all Maryland citizens and strive through public education to dispel the stigma and discrimination of those suffering from a mental illness. As the district branches of the American Psychiatric Association covering the state of Maryland, MPS/WPS represent over 1000 psychiatrists and physicians currently in psychiatric training.

MPS/WPS, despite the Senate amendments, oppose Senate Bill 449: Criminal Procedure – Incompetency to Stand Trial Dismissal (SB 449).

Before we turn to our opposition, we would first like to highlight the rigor of Maryland law when determining if someone is and/or remains incompetent to stand trial. Maryland law defines incompetence to stand trial as the defendant's inability to understand the nature or object of the proceedings against them or to assist effectively in their own defense due to mental disorder or developmental disability. To get to this determination, a mental health professional evaluates the defendant and assesses the defendant's mental state and ability to understand and participate in the legal process. The mental health professional will consider the defendant's ability to communicate with their attorney, their understanding of the charges against them, their ability to make decisions regarding their defense, and any mental health diagnoses or treatment history. These findings are then presented to the Court, who, after hearing arguments from both the State and the defense, may find the defendant incompetent to stand trial and then postpone the trial proceedings until the defendant's mental competency is restored. The Maryland Department of Health then provides services aimed at restoring a defendant's competency to stand trial. These services may include mental health treatment, medication, therapy, or other interventions designed to address the underlying mental health issues affecting the defendant's competency. The court may order periodic evaluations to assess whether the defendant's competency has been restored. If the defendant’s competency can be restored, the trial proceedings may proceed. If a defendant's competency cannot be

restored within a reasonable period of time, however, the court may dismiss the charges without prejudice, or in some cases, civil commitment proceedings may be initiated.

MPS/WPS is concerned that allowing an alleged victim of a crime who has simply filed a crime victim notification form to petition the court for extraordinary cause to extend the time to dismiss a charge against a defendant found incompetent to stand trial for a crime of violence or sexually assaultive behavior could result in unintended consequences. For example, an alleged victim could petition the court to keep a defendant charged with 4th degree sex offense, a misdemeanor crime but still "sexually assaultive behavior" under Title 3, Subtitle 3 of the Criminal Law Article, to be held for up to ten years. The maximum penalty for 4th degree sex offense is one year on a first offense. This reality could have profound impacts on seriously mentally ill defendants who are sitting in jail while waiting for a hospital bed and are counterproductive to restorative practices.

MPS/WPS, therefore, ask this honorable committee for an unfavorable report on SB 449. If you have any questions regarding this testimony, please contact Thomas Tompsett Jr. at tommy.tompsett@mdlobbyist.com.

Respectfully submitted,
The Maryland Psychiatric Society and the Washington Psychiatric Society
Legislative Action Committee