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By: **Delegate Dumais**  
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Committee Report: Favorable with amendments  
House action: Adopted  
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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Procedure— Criminal Defendants and Juvenile Respondents -**  
3 **Incompetency and Criminal Responsibility - Task Force to Study Persons**  
4 **Incompetent to Stand Trial or Juvenile Adjudication**

5 FOR the purpose of ~~altering the time period for which a court may commit, to a~~  
6 ~~certain Health Department facility, a defendant whom the court finds is~~  
7 ~~incompetent to stand trial and is a danger; requiring the court to schedule a~~  
8 ~~competency hearing within a certain time period after receipt of a certain report~~  
9 ~~under certain circumstances; authorizing a court to take certain actions after~~  
10 ~~the court makes a certain determination at a competency hearing; requiring the~~  
11 ~~release of a defendant committed to a certain Health Department facility under~~  
12 ~~certain circumstances; requiring a court to dismiss, under certain~~  
13 ~~circumstances, a certain charge by a court after passage of certain time periods;~~  
14 ~~authorizing the court to order commitment of a certain person in a Health~~  
15 ~~Department facility under certain circumstances; authorizing the court to refer~~  
16 ~~a certain person for consideration of services by the Developmental Disabilities~~  
17 ~~Administration under certain circumstances; repealing a prohibition against~~  
18 ~~dismissal under certain circumstances of a certain charge by a court until after~~  
19 ~~passage of certain time periods; requiring the Health Department to submit a~~  
20 ~~certain report containing certain information to the court; requiring the State's~~  
21 ~~Attorney to prepare and send a certain report relating to certain persons;~~  
22 ~~requiring the Health Department to submit certain reports containing certain~~  
23 ~~information within certain time periods to certain persons; establishing a Task~~  
24 ~~Force to Study Persons Incompetent to Stand Trial or Juvenile Adjudication;~~  
25 ~~providing for the membership of the Task Force; providing for the selection of~~  
26 ~~the chair of the Task Force; providing for staffing of the Task Force; providing~~  
27 ~~that the members of the Task Force may not receive compensation but are~~  
28 ~~entitled to a certain reimbursement; establishing the duties of the Task Force;~~

1 requiring the Task Force to submit a certain report to the Governor and the  
 2 General Assembly on or before a certain date; providing for the termination of  
 3 this Act; and generally relating to criminal defendants and juvenile respondents  
 4 and incompetency and criminal responsibility.

5 ~~BY repealing and reenacting, with amendments,~~  
 6 ~~Article—Criminal Procedure~~  
 7 ~~Section 3-106 through 3-108~~  
 8 ~~Annotated Code of Maryland~~  
 9 ~~(2001 Volume and 2004 Supplement)~~

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

12 **~~Article—Criminal Procedure~~**

13 ~~3-106.~~

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

18 (b) (1) ~~If, after a hearing, the court finds that the defendant is incompetent~~  
 19 ~~to stand trial and, because of mental retardation or a mental disorder, is a danger to~~  
 20 ~~self or the person or property of another, the court may order the defendant~~  
 21 ~~committed to the facility that the Health Department [designates until the court is~~  
 22 ~~satisfied that the defendant no longer is incompetent to stand trial or no longer is,~~  
 23 ~~because of mental retardation or a mental disorder, a danger to self or the person or~~  
 24 ~~property of others.] DESIGNATES, SUBJECT TO JUDICIAL REVIEW AS SET FORTH~~  
 25 ~~UNDER SUBSECTION (C) OF THIS SECTION, FOR A PERIOD NOT TO EXCEED THE~~  
 26 ~~LESSER OF 18 MONTHS OR THE MAXIMUM PERIOD OF INCARCERATION THAT COULD~~  
 27 ~~HAVE BEEN IMPOSED IF THE DEFENDANT HAD BEEN CONVICTED OF THE CHARGED~~  
 28 ~~OFFENSE.~~

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

32 (c) (1) ~~On suggestion of the defendant or on its initiative and subject to the~~  
 33 ~~limitations on frequency in § 7-507 or § 10-805 of the Health—General Article, as the~~  
 34 ~~ease may be, the court may reconsider whether the defendant is incompetent to stand~~  
 35 ~~trial.~~

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~~  
 39 ~~ease may be, the date of the commitment order shall be treated as a hearing.] IF THE~~

1 COURT ORDERED COMMITMENT UNDER SUBSECTION (B) OF THIS SECTION, THE  
2 COURT:

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

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

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

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

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

16           (4) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS  
17 SUBSECTION, THE COURT SHALL RELEASE A DEFENDANT COMMITTED TO A  
18 FACILITY UNDER SUBSECTION (B) OF THIS SECTION FROM COMMITMENT:

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

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

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

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

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

35                   (I) IF APPROPRIATE, ORDER THE DEFENDANT RETAINED IN  
36 CUSTODY OF THE HEALTH DEPARTMENT FOR A PERIOD NOT TO EXCEED 10 DAYS TO  
37 ALLOW THE HEALTH DEPARTMENT TO SEEK A CIVIL COMMITMENT UNDER TITLE 10  
38 OF THE HEALTH GENERAL ARTICLE; OR

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

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

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

12 ~~3-107.~~

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

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

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

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

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

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

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

29 ~~3-108.~~

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

35                   (2)     The report shall [contain]:

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

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

5                   (III)   STATE ~~WHETHER THE DEFENDANT:~~

6                             1.     ~~IS COMPETENT TO STAND TRIAL;~~

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

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

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

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

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

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

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

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

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

27           ((c)) (D)   (1)     ~~Within 30 days after a State's Attorney receives the report, the~~  
28 ~~State's Attorney shall send a recommendation on disposition of charges against each~~  
29 ~~person [who has been held long enough to be eligible for release under § 3-107 of this~~  
30 ~~title] IN THE REPORT.~~

31                   (2)     ~~The State's Attorney shall send the recommendation about a person~~  
32 ~~to:~~

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

34                             (ii)    ~~the last counsel for the person.~~

1 ~~[(d)]~~ (E) The facility of the Health Department that has charge of a person  
 2 committed as incompetent to stand trial shall notify the Criminal Justice Information  
 3 System Central Repository if the person escapes.

4 (F) (1) ~~BY JULY 1 OF EACH YEAR, THE HEALTH DEPARTMENT SHALL SUBMIT~~  
 5 ~~TO THE OFFICE OF THE PUBLIC DEFENDER, THE MARYLAND DISABILITY LAW~~  
 6 ~~CENTER, AND THE COUNSEL TO THE HEALTH DEPARTMENT, A REPORT OF ALL~~  
 7 ~~PERSONS IN THE CUSTODY OF THE HEALTH DEPARTMENT DURING THE PREVIOUS~~  
 8 ~~12 MONTH PERIOD WHO WERE COMMITTED UNDER § 3-106 OF THIS TITLE.~~

9 (2) ~~THE REPORT SHALL IDENTIFY FOR EACH PERSON UNDER~~  
 10 ~~COMMITMENT:~~

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

12 (II) ~~THE DATE OF THE INITIAL COMMITMENT AND ANY~~  
 13 ~~SUBSEQUENT HEARINGS; AND~~

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

15 (a) There is a Task Force to Study Persons Incompetent to Stand Trial or  
 16 Juvenile Adjudication.

17 (b) The Task Force consists of the following members:

18 (1) two members of the Senate of Maryland, appointed by the President  
 19 of the Senate;

20 (2) two members of the House of Delegates, appointed by the Speaker of  
 21 the House;

22 (3) the Chief Judge of the Court of Appeals, or the Chief Judge's  
 23 designee;

24 (4) the Secretary of Juvenile Services, or the Secretary's designee;

25 (5) the Secretary of Health and Mental Hygiene, or the Secretary's  
 26 designee; and

27 (6) the following members, appointed by the Governor:

28 (i) one representative of the Maryland Bar Association Criminal  
 29 Law and Practice Section;

30 (ii) one representative of the Maryland Disability Law Center;

31 (iii) one State's Attorney;

32 (iv) one administrative law judge from the Office of Administrative  
 33 Hearings;

- 1                   (v)     one representative of a victims' rights organization;  
2                   (vi)    one representative of the Office of the Public Defender;  
3                   (vii)   one representative from the Mental Health Association of  
4 Maryland;  
5                   (viii)  one representative from On Our Own of Maryland;  
6                   (ix)     one representative of the Arc of Maryland;  
7                   (x)     one representative of the Criminal Appeals Division of the  
8 Office of the Attorney General;  
9                   (xi)     one representative from the Legal Aid Bureau, Incorporated;  
10                  (xii)    one representative of the Brain Injury Association of Maryland;  
11 and  
12                  (xiii)  one member of the public.

13       (c)     (1)     In appointing members of the Task Force, the Governor, to the extent  
14 possible, shall appoint members representing geographically diverse jurisdictions  
15 across the State.

16               (2)     The Governor shall designate the chair of the Task Force.

17       (d)     The Department of Health and Mental Hygiene shall provide staff to the  
18 Task Force.

19       (e)     A member of the Task Force:

20               (1)     may not receive compensation; but

21               (2)     is entitled to reimbursement for expenses under the Standard State  
22 Travel Regulations, as provided in the State budget.

23       (f)     The Task Force shall meet at the times and places that the chair  
24 determines.

25       (g)     The Task Force shall:

26               (1)     study whether and in what manner the State should revise laws  
27 relating to persons incompetent to stand trial or juvenile adjudication;

28               (2)     review Supreme Court precedents on the issue of competency to  
29 stand trial, including Jackson v. Indiana, 406 U.S. 715 (1972);

30               (3)     make legislative recommendations, including recommendations for  
31 legislation regarding criminal defendants and juvenile respondents who are  
32 committed to mental hygiene and developmental disability facilities or other living

1 arrangements after a judicial determination of incompetence to stand trial or juvenile  
2 adjudication;

3           (4) address the standards and mechanisms by which a defendant or  
4 juvenile respondent found incompetent to stand trial or juvenile adjudication might  
5 be retained or released when there is no substantial likelihood that the defendant or  
6 respondent will become competent to stand trial or adjudication in the foreseeable  
7 future;

8           (5) study how recommended improvements would be funded;

9           (6) address the following related topics regarding defendants and  
10 juvenile respondents found incompetent:

11                   (i) continuation or dismissal of pending charges;

12                   (ii) voluntary and involuntary general civil commitment procedures  
13 to mental health facilities and other living arrangements;

14                   (iii) general civil admission procedures to developmental disability  
15 facilities and other living arrangements;

16                   (iv) judicial civil commitment;

17                   (v) conditional release plans and procedures; and

18                   (vi) aftercare planning; and

19           (7) prepare a report summarizing the Task Force's findings and  
20 recommendations.

21           (h) On or before December 31, 2005, the Task Force shall submit a final report  
22 of its findings and recommendations to the Governor and, in accordance with §  
23 2-1246 of the State Government Article, the General Assembly.

24       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 ~~October~~ June 1, 2005. It shall remain effective for a period of 1 year and, at the end of  
26 May 31, 2006, with no further action required by the General Assembly, this Act shall  
27 be abrogated and of no further force and effect.