
By: **Senator Frosh**

Introduced and read first time: February 4, 2005

Assigned to: Judicial Proceedings

A BILL ENTITLED

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, under certain
12 circumstances, a certain charge by a court after passage of certain time periods;
13 authorizing the court to order commitment of a certain person in a Health
14 Department facility under certain circumstances; authorizing the court to refer
15 a certain person for consideration of services by the Developmental Disabilities
16 Administration under certain circumstances; repealing a prohibition against
17 dismissal under certain circumstances of a certain charge by a court until after
18 passage of certain time periods; requiring the Health Department to submit a
19 certain report containing certain information to the court; requiring the State's
20 Attorney to prepare and send a certain report relating to certain persons;
21 requiring the Health Department to submit certain reports containing certain
22 information within certain time periods to certain persons; and generally
23 relating to criminal defendants and incompetency and criminal responsibility.

24 BY repealing and reenacting, with amendments,
25 Article - Criminal Procedure
26 Section 3-106 through 3-108
27 Annotated Code of Maryland
28 (2001 Volume and 2004 Supplement)

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

1

Article - Criminal Procedure

2 3-106.

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

7 (b) (1) If, after a hearing, the court finds that the defendant is incompetent
8 to stand trial and, because of mental retardation or a mental disorder, is a danger to
9 self or the person or property of another, the court may order the defendant
10 committed to the facility that the Health Department [designates until the court is
11 satisfied that the defendant no longer is incompetent to stand trial or no longer is,
12 because of mental retardation or a mental disorder, a danger to self or the person or
13 property of others] DESIGNATES, SUBJECT TO JUDICIAL REVIEW AS SET FORTH
14 UNDER SUBSECTION (C) OF THIS SECTION, FOR A PERIOD NOT TO EXCEED THE
15 LESSER OF 18 MONTHS OR THE MAXIMUM PERIOD OF INCARCERATION THAT COULD
16 HAVE BEEN IMPOSED IF THE DEFENDANT HAD BEEN CONVICTED OF THE CHARGED
17 OFFENSE.

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

21 (c) [(1) On suggestion of the defendant or on its initiative and subject to the
22 limitations on frequency in § 7-507 or § 10-805 of the Health - General Article, as the
23 case may be, the court may reconsider whether the defendant is incompetent to stand
24 trial.

25 (2) If the court orders commitment under subsection (b) of this section,
26 the defendant may apply for release under § 7-507 or § 10-805 of the Health -
27 General Article. In computing the availability of review under those sections, as the
28 case may be, the date of the commitment order shall be treated as a hearing.] IF THE
29 COURT ORDERED COMMITMENT UNDER SUBSECTION (B) OF THIS SECTION, THE
30 COURT:

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

35 (2) MAY ORDER CONTINUED COMMITMENT OF THE DEFENDANT UPON A
36 FINDING THAT:

37 (1) THE DEFENDANT CONTINUES TO BE INCOMPETENT TO STAND
38 TRIAL AND, BECAUSE OF MENTAL RETARDATION OR A MENTAL DISORDER, IS A
39 DANGER TO SELF OR THE PERSON OR PROPERTY OF ANOTHER;

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

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

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

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

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

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

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

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

24 (I) IF APPROPRIATE, ORDER THE DEFENDANT RETAINED IN
25 CUSTODY OF THE HEALTH DEPARTMENT FOR A PERIOD NOT TO EXCEED 10 DAYS TO
26 ALLOW THE HEALTH DEPARTMENT TO SEEK A CIVIL COMMITMENT UNDER TITLE 10
27 OF THE HEALTH-GENERAL ARTICLE; OR

28 (II) IF THE DEFENDANT HAS BEEN COMMITTED UNDER THIS TITLE
29 DUE TO MENTAL RETARDATION, REFER THE DEFENDANT TO THE DEVELOPMENTAL
30 DISABILITIES ADMINISTRATION FOR CONSIDERATION OF SERVICES IN ACCORDANCE
31 WITH TITLE 7 OF THE HEALTH-GENERAL ARTICLE.

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

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

1 3-107.

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

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

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

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

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

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

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

18 3-108.

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

24 (2) The report shall [contain]:

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

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

29 (III) STATE WHETHER THE DEFENDANT:

30 1. IS COMPETENT TO STAND TRIAL;

31 2. REMAINS INCOMPETENT, BUT MAY BE ABLE TO BECOME
32 COMPETENT IN THE FORESEEABLE FUTURE; OR

33 3. REMAINS INCOMPETENT, AND IS UNLIKELY TO BECOME
34 COMPETENT IN THE FORESEEABLE FUTURE; AND

1 (IV) STATE WHETHER THE DEFENDANT REMAINS, DUE TO MENTAL
2 RETARDATION OR A MENTAL DISORDER, A DANGER TO SELF OR THE PERSON OR
3 PROPERTY OF ANOTHER.

4 (b) THE HEALTH DEPARTMENT SHALL REPORT TO THE COURT AS SOON AS
5 PRACTICABLE UPON MAKING A DETERMINATION THAT:

6 (1) THE DEFENDANT IS COMPETENT TO STAND TRIAL;

7 (2) THE DEFENDANT IS NO LONGER, BECAUSE OF MENTAL
8 RETARDATION OR A MENTAL DISORDER, A DANGER TO SELF OR THE PERSON OR
9 PROPERTY OF ANOTHER; OR

10 (3) IT IS NOT LIKELY THAT THE INDIVIDUAL WILL BECOME COMPETENT
11 TO STAND TRIAL.

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

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

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

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

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

24 (ii) the last counsel for the person.

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

28 (F) (1) BY JULY 1 OF EACH YEAR, THE HEALTH DEPARTMENT SHALL SUBMIT
29 TO THE OFFICE OF THE PUBLIC DEFENDER, THE MARYLAND DISABILITY LAW
30 CENTER, AND THE COUNSEL TO THE HEALTH DEPARTMENT, A REPORT OF ALL
31 PERSONS IN THE CUSTODY OF THE HEALTH DEPARTMENT DURING THE PREVIOUS
32 12-MONTH PERIOD WHO WERE COMMITTED UNDER § 3-106 OF THIS TITLE.

33 (2) THE REPORT SHALL IDENTIFY FOR EACH PERSON UNDER
34 COMMITMENT:

35 (I) THE CRIMINAL CASE NUMBER;

1 (II) THE DATE OF THE INITIAL COMMITMENT AND ANY
2 SUBSEQUENT HEARINGS; AND

3 (III) THE CHARGES AGAINST THE PERSON.

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