

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 752

(Senator Frosh)

Judicial Proceedings

Judiciary

**Criminal Procedure - Criminal Defendants - Incompetency and Criminal
Responsibility**

This bill makes several changes to the law regarding incompetency and criminal responsibility. The bill also requires the health department to submit specified reports to the court.

Fiscal Summary

State Effect: General fund expenditures for the Department of Health and Mental Hygiene (DHMH) would increase by \$96,300 in FY 2006. Future year increases reflect annualization and inflation. Revenues would not be affected.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	96,300	117,500	124,000	130,900	138,300
Net Effect	(\$96,300)	(\$117,500)	(\$124,000)	(\$130,900)	(\$138,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: If the court finds that a defendant is incompetent to stand trial and is a danger to self or the person or property of others, the court may order the defendant committed to a facility designated by DHMH until the court is satisfied that: (1) the

defendant is no longer incompetent to stand trial; (2) the defendant is no longer a danger to self or the person or property of others, due to mental retardation or a mental disorder; or (3) there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future.

On suggestion of the defendant or on its own initiative, upon receipt of a report from the health department on whether the defendant is substantially likely to become competent to stand trial and whether the defendant continues to be a danger to self or the person or property of others, the court must reconsider whether the defendant continues to meet the criteria for commitment.

The health department is required to report to each court that has ordered commitment of a defendant every six months from the date of commitment and whenever the department determines that the defendant is not substantially likely to become competent in the foreseeable future. The report is required to:

- contain a description of the services that the defendant has received;
- provide the basis of the opinions in the report;
- state whether the defendant:
 - is substantially likely to become competent to stand trial in the foreseeable future; and
 - due to mental retardation or a mental disorder, remains a danger to self or the person or property of others.

Current Law: If the court finds that a defendant is incompetent to stand trial and is a danger to self or the person or property of another, the court may order the defendant committed until the court is satisfied that the defendant is no longer incompetent to stand trial or is no longer a danger to self or the person or property of others, because of mental retardation or a mental disorder.

On suggestion of the defendant or on its initiative, the court may reconsider whether the defendant is incompetent to stand trial. If the court orders commitment, the defendant may apply for release.

If the defendant is found incompetent to stand trial, defense counsel may make any legal objection to the prosecution that may be determined fairly before trial and without the personal participation of the defendant.

However, the court may not dismiss a charge until 10 years after the defendant was found incompetent to stand trial in any capital case or until 5 years after the defendant was

found incompetent to stand trial in any other case where the penalty may be imprisonment in a State correctional facility.

The health department is required to file a report annually to each court with a listing of the persons held under commitment orders and any recommendations that the health department considers appropriate.

Background: In August 2004, the Maryland Disability Law Center filed a law suit in the Circuit Court for Baltimore City on behalf of five individuals who were found incompetent to stand trial and committed to DHMH facilities for treatment to restore competency, alleging that the commitment of defendants found incompetent to stand trial violated the defendant's rights under Article 24 of the Maryland Declaration of Rights because it:

- allows people to be institutionalized who are charged with a criminal offense, but who are never going to be restored to competency to stand trial;
- allows for the commitment of people for treatment to restore competency to stand trial on misdemeanor charges beyond the maximum penalty that could have been received if convicted of the charges; and
- fails to provide for review by the courts.

According to the Mental Hygiene Administration (MHA), there are 117 people being held in MHA facilities who are not able to stand trial; doctors have determined that 45 of the detainees are not likely to become competent to stand trial. The Developmental Disabilities Administration (DDA) estimates that there are 32 individuals being held in its facility who are not able to stand trial.

State Expenditures: Persons found incompetent are referred to a State-operated inpatient psychiatric facility, where a more in-depth evaluation is done, and treatment provided. The facility would be responsible for the continued reports to the courts, which are mandated annually under current law. DDA estimates that the reporting requirements can be handled using existing resources.

Mental Health Administration general fund expenditures could increase by an estimated \$96,296 in fiscal 2006, which accounts for the bill's October 1, 2005 effective date. This estimate reflects the cost of hiring one part-time Physician Clinical Specialist and one administrative aide to coordinate evaluations and assist with additional reports. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$82,928
Operating Expenses	<u>13,368</u>
Total FY 2006 State Expenditures	\$96,296

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: HB 804 (Delegate Dumais) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2005
mam/jr Revised - Senate Third Reader - March 29, 2005

Analysis by: Kineta A. Rotan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510