
By: **Delegate Dumais**
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Assigned to: Judiciary

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CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of requiring a court, under certain circumstances, to determine, on
5 evidence presented on the record, whether a defendant is incompetent to stand
6 trial for a violation of probation proceeding; authorizing a court to reconsider the
7 question of whether a defendant is incompetent to stand trial at any time before
8 ~~the verdict is final~~ judgment; prohibiting the admissibility of a statement made
9 by a defendant in the course of a certain evaluation or a report prepared as the
10 result of a certain evaluation from being used to prove the commission of a
11 criminal offense or to enhance the sentence of the defendant; authorizing a court
12 to take certain actions after the court makes a certain determination at a
13 competency hearing; authorizing the court to order commitment of a certain
14 person in a Health Department facility under certain circumstances; requiring a
15 court to hold a hearing to determine whether a certain person continues to meet
16 certain criteria for commitment to a Health Department facility under certain
17 circumstances; authorizing a court to hold a certain conference or hearing to
18 review the status of the case of a certain person; requiring a court to order
19 commitment of a certain person to a certain medical facility under certain
20 circumstances; requiring a court to reconsider, under certain circumstances, a
21 certain determination for a certain person released on bail or on recognizance;
22 requiring a court to dismiss, under certain circumstances, a certain charge after
23 passage of certain time periods; requiring a certain notification to a certain
24 person who has filed a certain request for notification; requiring the Health
25 Department to submit a certain report containing certain information to the
26 court; requiring the Health Department to submit certain reports containing
27 certain information within certain time periods to certain persons; requiring a
28 certain clerk of court to give a certain report to certain persons; requiring that a

1 certain victim or victim's representative be notified regarding a certain
2 individual who is committed to the custody of a Health Department facility
3 under certain circumstances if certain events occur after certain criminal
4 charges are dismissed; and generally relating to criminal defendants and
5 incompetency and criminal responsibility.

6 BY repealing and reenacting, with amendments,
7 Article - Criminal Procedure
8 Section 3-104 through 3-108, inclusive
9 Annotated Code of Maryland
10 (2001 Volume and 2005 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article - Criminal Procedure
13 Section 3-123(a), (b), and (c)
14 Annotated Code of Maryland
15 (2001 Volume and 2005 Supplement)

16 BY adding to
17 Article - Criminal Procedure
18 Section 3-123(l)
19 Annotated Code of Maryland
20 (2001 Volume and 2005 Supplement)

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

23 **Article - Criminal Procedure**

24 3-104.

25 (a) If, before or during a trial, the defendant in a criminal case OR A
26 VIOLATION OF PROBATION PROCEEDING appears to the court to be incompetent to
27 stand trial or the defendant alleges incompetence to stand trial, the court shall
28 determine, on evidence presented on the record, whether the defendant is
29 incompetent to stand trial.

30 (b) If, after receiving evidence, the court finds that the defendant is competent
31 to stand trial, the trial shall begin as soon as practicable or, if already begun, shall
32 continue.

33 (c) At any time [during the trial and] before ~~THE VERDICT IS FINAL~~
34 JUDGMENT, the court may reconsider the question of whether the defendant is
35 incompetent to stand trial.

1 3-105.

2 (a) (1) For good cause and after giving the defendant an opportunity to be
3 heard, the court may order the Health Department to examine the defendant to
4 determine whether the defendant is incompetent to stand trial.

5 (2) The court shall set and may change the conditions under which the
6 examination is to be made.

7 (b) Except in a capital case, on consideration of the nature of the charge, the
8 court:

9 (1) may require or allow the examination to be done on an outpatient
10 basis; and

11 (2) if an outpatient examination is authorized, shall set bail for the
12 defendant or authorize release of the defendant on recognizance.

13 (c) (1) If a defendant is to be held in custody for examination under this
14 section, the defendant may be confined in a correctional facility until the Health
15 Department can conduct the examination. If the court finds it appropriate for the
16 health or safety of the defendant, the court may order confinement in a medical wing
17 or other isolated and secure unit of the correctional facility.

18 (2) (i) If the court finds that, because of the apparent severity of the
19 mental disorder or mental retardation, a defendant in custody would be endangered
20 by confinement in a correctional facility, the court may order that the Health
21 Department, in the Health Department's discretion:

22 1. confine the defendant, pending examination, in a medical
23 facility that the Health Department designates as appropriate; or

24 2. immediately conduct a competency examination of the
25 defendant by a community forensic screening program or other agency that the
26 Health Department finds appropriate.

27 (ii) Unless the Health Department retains the defendant, the
28 defendant shall be promptly returned to the court after the examination.

29 (3) A defendant who is held for examination under this section may
30 question at any time the legality of the detention by petition for a writ of habeas
31 corpus.

32 (d) (1) If a court orders an examination under this section, the Health
33 Department shall:

34 (i) examine the defendant; and

35 (ii) send a complete report of its findings to:

36 1. the court;

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

4 (c) (1) [On suggestion of the defendant or on its initiative and subject to the
5 limitations on frequency in § 7-507 or § 10-805 of the Health - General Article, as the
6 case may be, the court may reconsider whether the defendant is incompetent to stand
7 trial.] TO DETERMINE WHETHER THE DEFENDANT CONTINUES TO MEET THE
8 CRITERIA FOR COMMITMENT SET FORTH IN SUBSECTION (B) OF THIS SECTION, THE
9 COURT SHALL HOLD A HEARING:

10 (I) EVERY YEAR FROM THE DATE OF COMMITMENT;

11 (II) WITHIN 30 DAYS AFTER THE FILING OF A MOTION BY THE
12 STATE'S ATTORNEY OR COUNSEL FOR THE DEFENDANT SETTING FORTH NEW FACTS
13 OR CIRCUMSTANCES RELEVANT TO THE DETERMINATION; AND

14 (III) WITHIN 30 DAYS AFTER RECEIVING A REPORT FROM THE
15 HEALTH DEPARTMENT STATING OPINIONS, FACTS, OR CIRCUMSTANCES THAT HAVE
16 NOT BEEN PREVIOUSLY PRESENTED TO THE COURT AND ARE RELEVANT TO THE
17 DETERMINATION.

18 (2) [If the court orders commitment under subsection (b) of this section,
19 the defendant may apply for release under § 7-507 or § 10-805 of the Health -
20 General Article. In computing the availability of review under those sections, as the
21 case may be, the date of the commitment order shall be treated as a hearing.] AT ANY
22 TIME, AND ON ITS OWN INITIATIVE, THE COURT MAY HOLD A CONFERENCE OR A
23 HEARING ON THE RECORD WITH THE STATE'S ATTORNEY AND THE COUNSEL OF
24 RECORD FOR THE DEFENDANT TO REVIEW THE STATUS OF THE CASE.

25 (D) AT A COMPETENCY HEARING UNDER SUBSECTION (C) OF THIS SECTION, IF
26 THE COURT FINDS THAT THE DEFENDANT IS INCOMPETENT AND IS NOT LIKELY TO
27 BECOME COMPETENT IN THE FORESEEABLE FUTURE, THE COURT SHALL:

28 (1) CIVILLY COMMIT THE DEFENDANT AS AN INPATIENT IN A MEDICAL
29 FACILITY THAT THE HEALTH DEPARTMENT DESIGNATES PROVIDED THE COURT
30 FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:

31 (I) THE DEFENDANT HAS A MENTAL DISORDER;

32 (II) INPATIENT CARE IS NECESSARY FOR THE DEFENDANT;

33 (III) THE DEFENDANT PRESENTS A DANGER TO THE LIFE OR
34 SAFETY OF OTHERS;

35 (IV) THE DEFENDANT IS UNABLE OR UNWILLING TO BE
36 VOLUNTARILY COMMITTED TO A MEDICAL FACILITY; AND

37 (V) THERE IS NO LESS RESTRICTIVE FORM OF INTERVENTION
38 THAT IS CONSISTENT WITH THE WELFARE AND SAFETY OF THE DEFENDANT; OR

1 (2) ORDER THE CONFINEMENT OF THE DEFENDANT FOR 21 DAYS AS A
2 RESIDENT IN A DEVELOPMENTAL DISABILITIES ADMINISTRATION FACILITY FOR THE
3 INITIATION OF ADMISSION PROCEEDINGS UNDER § 7-503 OF THE HEALTH - GENERAL
4 ARTICLE PROVIDED THE COURT FINDS THAT THE DEFENDANT, BECAUSE OF MENTAL
5 RETARDATION, IS A DANGER TO SELF OR OTHERS.

6 (E) THE PROVISIONS UNDER TITLE 10 OF THE HEALTH - GENERAL ARTICLE
7 SHALL APPLY TO THE CONTINUED RETENTION OF A DEFENDANT CIVILLY
8 COMMITTED UNDER SUBSECTION (D) OF THIS SECTION.

9 (F) (1) FOR A DEFENDANT WHO HAS BEEN FOUND INCOMPETENT TO STAND
10 TRIAL BUT NOT DANGEROUS, AS A RESULT OF A MENTAL DISORDER OR MENTAL
11 RETARDATION, TO SELF OR THE PERSON OR PROPERTY OF OTHERS, AND RELEASED
12 ON BAIL OR ON RECOGNIZANCE, THE COURT:

13 (I) SHALL HOLD A HEARING ANNUALLY FROM THE DATE OF
14 RELEASE;

15 (II) MAY HOLD A HEARING, AT ANY TIME, ON ITS OWN INITIATIVE;
16 OR

17 (III) SHALL HOLD A HEARING, AT ANY TIME, UPON MOTION OF THE
18 STATE'S ATTORNEY OR THE COUNSEL FOR THE DEFENDANT.

19 (2) AT A HEARING UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE
20 COURT SHALL RECONSIDER WHETHER THE DEFENDANT REMAINS INCOMPETENT TO
21 STAND TRIAL OR A DANGER TO SELF OR THE PERSON OR PROPERTY OF ANOTHER
22 BECAUSE OF MENTAL RETARDATION OR A MENTAL DISORDER.

23 (3) AT A HEARING UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE
24 COURT MAY MODIFY OR IMPOSE ADDITIONAL CONDITIONS OF RELEASE ON THE
25 DEFENDANT.

26 (4) IF THE COURT FINDS, AT A HEARING UNDER PARAGRAPH (1) OF THIS
27 SUBSECTION, THAT THE DEFENDANT IS INCOMPETENT AND IS NOT LIKELY TO
28 BECOME COMPETENT IN THE FORESEEABLE FUTURE AND IS A DANGER TO SELF OR
29 THE PERSON OR PROPERTY OF ANOTHER BECAUSE OF MENTAL RETARDATION OR A
30 MENTAL DISORDER, THE COURT SHALL REVOKE THE PRETRIAL RELEASE OF THE
31 DEFENDANT AND:

32 (I) CIVILLY COMMIT THE DEFENDANT IN ACCORDANCE WITH
33 PARAGRAPH (1) OF SUBSECTION (D) OF THIS SECTION; OR

34 (II) ORDER CONFINEMENT OF THE DEFENDANT IN ACCORDANCE
35 WITH SUBSECTION (D)(2) OF THIS SECTION.

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

1 [(e)] (H) The court shall notify the Criminal Justice Information System
2 Central Repository of any commitment ordered or release authorized under this
3 section and of any determination that a defendant is no longer incompetent to stand
4 trial.

5 3-107.

6 (a) WHETHER OR NOT THE DEFENDANT IS CONFINED AND UNLESS THE
7 STATE PETITIONS THE COURT FOR EXTRAORDINARY CAUSE TO EXTEND THE TIME,
8 THE COURT SHALL DISMISS THE CHARGE AGAINST A DEFENDANT FOUND
9 INCOMPETENT TO STAND TRIAL UNDER THIS SUBTITLE:

10 (1) WHEN CHARGED WITH A CAPITAL OFFENSE, AFTER THE EXPIRATION
11 OF 10 YEARS;

12 (2) WHEN CHARGED WITH A FELONY OR A CRIME OF VIOLENCE AS
13 DEFINED UNDER § 14-101 OF THE CRIMINAL LAW ARTICLE, AFTER THE LESSER OF
14 THE EXPIRATION OF 5 YEARS OR THE MAXIMUM SENTENCE FOR THE MOST SERIOUS
15 OFFENSE CHARGED; OR

16 (3) WHEN CHARGED WITH AN OFFENSE NOT COVERED UNDER
17 PARAGRAPH (1) OR (2) OF THIS SUBSECTION, AFTER THE LESSER OF THE EXPIRATION
18 OF 3 YEARS OR THE MAXIMUM SENTENCE FOR THE MOST SERIOUS OFFENSE
19 CHARGED.

20 (B) Whether or not the defendant is confined, if the court considers that
21 resuming the criminal proceeding would be unjust because so much time has passed
22 since the defendant was found incompetent to stand trial, the court [may] SHALL
23 dismiss the charge ~~WITH~~ WITHOUT PREJUDICE. However, the court may not dismiss a
24 [charge:

25 (1)] CHARGE without providing the State's Attorney and a victim or
26 victim's representative who has [filed a notification request form] REQUESTED
27 NOTIFICATION under [§ 11-104] § 3-123(C) of this [article] TITLE advance notice and
28 an opportunity to be heard[; and

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

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

34 [(b)] (C) If charges are dismissed under this section, the court shall notify:

35 (1) the victim of the crime charged or the victim's representative who has
36 [filed a notification request form] REQUESTED NOTIFICATION under [§ 11-104] §
37 3-123(C) of this article; and

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

1 3-108.

2 (a) (1) In addition to any other report required under this title, the Health
3 Department shall report [annually to each] TO THE court that has ordered
4 commitment of a [person] DEFENDANT under § 3-106 of this title; ;

5 (I) EVERY 6 MONTHS FROM THE DATE OF COMMITMENT OF THE
6 DEFENDANT; AND

7 (II) WHENEVER THE HEALTH DEPARTMENT DETERMINES THAT:

8 1. THE DEFENDANT NO LONGER IS INCOMPETENT TO STAND
9 TRIAL;

10 2. THE DEFENDANT NO LONGER IS, BECAUSE OF MENTAL
11 RETARDATION OR A MENTAL DISORDER, A DANGER TO SELF OR THE PERSON OR
12 PROPERTY OF OTHERS; OR

13 3. THERE IS NOT A SUBSTANTIAL LIKELIHOOD THAT THE
14 DEFENDANT WILL BECOME COMPETENT TO STAND TRIAL IN THE FORESEEABLE
15 FUTURE.

16 (2) [The report shall contain:

17 (i) a list of the persons held under commitment orders; and

18 (ii) any recommendations that the Health Department considers
19 appropriate.] ~~IF A REPORT REQUIRED UNDER THIS TITLE STATES AN OPINION THAT~~
20 ~~THE DEFENDANT IS COMPETENT TO STAND TRIAL OR IS NOT DANGEROUS, AS A~~
21 ~~RESULT OF A MENTAL DISORDER OR MENTAL RETARDATION, TO SELF OR THE~~
22 ~~PERSON OR PROPERTY OF OTHERS, THE DEPARTMENT SHALL INCLUDE A~~
23 ~~SUPPLEMENTAL REPORT STATING A PLAN FOR SERVICES TO FACILITATE THE~~
24 ~~DEFENDANT REMAINING:~~

25 ~~(I) COMPETENT TO STAND TRIAL; OR~~

26 ~~(II) NOT DANGEROUS, AS A RESULT OF MENTAL DISORDER OR~~
27 ~~MENTAL RETARDATION, TO SELF OR THE PERSON OR PROPERTY OF OTHERS.~~

28 ~~(3) IF NECESSARY TO MAINTAIN THE DEFENDANT SAFELY IN THE~~
29 ~~COMMUNITY OR TO MAINTAIN OR RESTORE COMPETENCY, THE PLAN REQUIRED IN~~
30 ~~THE REPORT UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL INCLUDE~~
31 ~~RECOMMENDED THE DEPARTMENT SHALL INCLUDE A SUPPLEMENTAL REPORT~~
32 ~~THAT PROVIDES A PLAN FOR SERVICES TO FACILITATE THE DEFENDANT REMAINING~~
33 ~~COMPETENT TO STAND TRIAL OR NOT DANGEROUS, AS A RESULT OF MENTAL~~
34 ~~RETARDATION OR A MENTAL DISORDER, TO SELF OR THE PERSON OR PROPERTY OF~~
35 ~~OTHERS, IF:~~

36 ~~(I) A REPORT REQUIRED UNDER THIS TITLE STATES AN OPINION~~
37 ~~THAT THE DEFENDANT IS COMPETENT TO STAND TRAIL OR IS NOT DANGEROUS, AS A~~

1 RESULT OF MENTAL RETARDATION OR A MENTAL DISORDER, TO SELF OR THE
 2 PERSON OR PROPERTY OF OTHERS; AND

3 (II) A PLAN IS NECESSARY TO MAINTAIN THE DEFENDANT SAFELY
 4 IN THE COMMUNITY, TO MAINTAIN COMPETENCY, OR TO RESTORE COMPETENCY.

5 (3) IF APPROPRIATE, THE PLAN REQUIRED IN THE REPORT UNDER
 6 PARAGRAPH (2) OF THIS SUBSECTION SHALL INCLUDE RECOMMENDED:

7 (I) MENTAL HEALTH TREATMENT, INCLUDING PROVIDERS OF
 8 CARE;

9 (II) VOCATIONAL, REHABILITATIVE, OR SUPPORT SERVICES;

10 (III) HOUSING;

11 (IV) CASE MANAGEMENT SERVICES;

12 (V) ALCOHOL OR SUBSTANCE ABUSE TREATMENT; AND

13 (VI) OTHER CLINICAL SERVICES, AS CLINICALLY APPROPRIATE.

14 (4) IF THE REPORT REQUIRED UNDER PARAGRAPH (2) OF THIS
 15 SUBSECTION RECOMMENDS:

16 (H) COMMUNITY PLACEMENT FOR THE DEFENDANT, THE REPORT
 17 SHALL INCLUDE:

18 1- (I) THE LOCATION OF THE RECOMMENDED COMMUNITY
 19 PLACEMENT;

20 2- (II) THE NAMES AND ADDRESSES OF THE
 21 RECOMMENDED SERVICE PROVIDERS;

22 3- (III) A STATEMENT INDICATING IF THE SERVICE
 23 PROVIDER IS WILLING AND ABLE TO SERVE THE DEFENDANT; AND

24 4- (IV) IF AVAILABLE, THE DATE OF PLACEMENT OR
 25 SERVICE FOR THE DEFENDANT.

26 (H) COMMITMENT TO A STATE RESIDENTIAL FACILITY, THE
 27 REPORT SHALL STATE WHETHER:

28 (5) IF THE PLAN REQUIRED IN THE REPORT UNDER PARAGRAPH (2) OF
 29 THIS SUBSECTION IS FOR A DEFENDANT COMMITTED TO A STATE RESIDENTIAL
 30 FACILITY, THE REPORT SHALL STATE WHETHER:

31 1- (I) THE DEFENDANT MEETS THE REQUIREMENTS FOR
 32 COMMITMENT UNDER § 3-106(D) OF THIS TITLE;

1 3-123.

2 (a) (1) In this section the following terms have the meanings indicated.

3 (2) "Defendant" means:

4 (i) a committed individual;

5 (ii) an individual found incompetent to stand trial; or

6 (iii) an individual charged with a crime and the issue of whether the
7 individual is incompetent to stand trial has been raised or where a plea of not
8 criminally responsible has been entered.

9 (3) "Victim" means a victim of a crime of violence or a victim who has
10 filed a notification request form under § 11-104 of this article.

11 (4) "Victim's representative" includes a family member or guardian of a
12 victim who is:

13 (i) a minor;

14 (ii) deceased; or

15 (iii) disabled.

16 (b) A State's Attorney shall notify a victim or victim's representative of all
17 rights provided under this section.

18 (c) (1) A victim or victim's representative may request notification under
19 this section by:

20 (i) notifying the State's Attorney and the Health Department of the
21 request for notification; or

22 (ii) filing a notification request form under § 11-104 of this article.

23 (2) A request for notification under paragraph (1)(i) of this subsection
24 shall designate:

25 (i) the address and telephone number of the victim; or

26 (ii) the name, address, and telephone number of a victim's
27 representative.

28 (3) A victim or victim's representative may, at any time, withdraw a
29 request for notification.

30 (L) (1) THIS SUBSECTION APPLIES ONLY TO A DEFENDANT AS DEFINED IN
31 SUBSECTION (A)(2)(II) OR (III) OF THIS SECTION AFTER THE CRIMINAL CHARGES

1 AGAINST THE DEFENDANT HAVE BEEN DISMISSED UNDER § 3-107 OR § 3-108 OF THIS
2 SUBTITLE.

3 (2) IF A VICTIM OR VICTIM'S REPRESENTATIVE HAS REQUESTED
4 NOTIFICATION IN THE MANNER PROVIDED UNDER SUBSECTION (C) OF THIS
5 SECTION, THE HEALTH DEPARTMENT SHALL PROMPTLY NOTIFY THE VICTIM OR THE
6 VICTIM'S REPRESENTATIVE IN WRITING IF THE DEFENDANT:

7 (I) ESCAPES;

8 (II) IS RECAPTURED;

9 (III) IS TRANSFERRED TO ANOTHER FACILITY;

10 (IV) IS RELEASED; OR

11 (V) HAS DIED.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2006.