
By: **Senator Frosh**

Introduced and read first time: February 3, 2006

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 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 final judgment; prohibiting the admissibility of a statement made by a
9 defendant in the course of a certain evaluation or a report prepared as the result
10 of a certain evaluation from being used to prove the commission of a criminal
11 offense or to enhance the sentence of the defendant; authorizing a court to take
12 certain actions after the court makes a certain determination at a competency
13 hearing; authorizing the court to order commitment of a certain person in a
14 Health Department facility under certain circumstances; requiring a court to
15 hold a hearing to determine whether a certain person continues to meet certain
16 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; and generally
29 relating to criminal defendants and incompetency and criminal responsibility.

30 BY repealing and reenacting, with amendments,
31 Article - Criminal Procedure
32 Section 3-104 through 3-108, inclusive
33 Annotated Code of Maryland
34 (2001 Volume and 2005 Supplement)

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

3 **Article - Criminal Procedure**

4 3-104.

5 (a) If, before or during a trial, the defendant in a criminal case OR A
6 VIOLATION OF PROBATION PROCEEDING appears to the court to be incompetent to
7 stand trial or the defendant alleges incompetence to stand trial, the court shall
8 determine, on evidence presented on the record, whether the defendant is
9 incompetent to stand trial.

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

13 (c) At any time [during the trial and] before [verdict] FINAL JUDGMENT, the
14 court may reconsider the question of whether the defendant is incompetent to stand
15 trial.

16 3-105.

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

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

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

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

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

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

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

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

3 2. immediately conduct a competency examination of the
4 defendant by a community forensic screening program or other agency that the
5 Health Department finds appropriate.

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

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

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

13 (i) examine the defendant; and

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

15 1. the court;

16 2. the State's Attorney; and

17 3. the defense counsel.

18 (2) Unless there is a plea that the defendant was not criminally
19 responsible under § 3-109 of this title, the defendant is entitled to have the report
20 within 7 days after the court orders the examination. However, failure of the Health
21 Department to send the complete report within that time is not, of itself, grounds for
22 dismissal of the charges. On good cause shown, the court may extend the time for
23 examination.

24 (3) If the Health Department reports that, in its opinion, the defendant
25 is incompetent to stand trial, the report shall state, in a complete supplementary
26 opinion, whether, because of mental retardation or mental disorder, the defendant
27 would be a danger to self or the person or property of another, if released.

28 (4) A STATEMENT MADE BY THE DEFENDANT IN THE COURSE OF AN
29 EXAMINATION UNDER THIS SECTION IS NOT ADMISSIBLE IN A CRIMINAL
30 PROCEEDING FOR THE PURPOSE OF PROVING THE COMMISSION OF A CRIMINAL
31 OFFENSE OR TO ENHANCE THE SENTENCE OF THE DEFENDANT.

32 (5) EXCEPT FOR THE PURPOSE OF IMPEACHING THE TESTIMONY OF THE
33 DEFENDANT, A REPORT PREPARED AS THE RESULT OF AN EXAMINATION UNDER
34 THIS SECTION IS NOT ADMISSIBLE IN A CRIMINAL PROCEEDING FOR THE PURPOSE
35 OF PROVING THE COMMISSION OF A CRIMINAL OFFENSE OR TO ENHANCE THE
36 SENTENCE OF THE DEFENDANT.

1 3-106.

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

6 (b) (1) If, after a hearing, the court finds that the defendant is incompetent
7 to stand trial and, because of mental retardation or a mental disorder, is a danger to
8 self or the person or property of another, the court may order the defendant
9 committed to the facility that the Health Department designates until the court [is
10 satisfied that] FINDS THAT:

11 (I) the defendant no longer is incompetent to stand [trial or]
12 TRIAL;

13 (II) THE DEFENDANT no longer is, because of mental retardation or
14 a mental disorder, a danger to self or the person or property of others; OR

15 (III) THERE IS NOT A SUBSTANTIAL LIKELIHOOD THAT THE
16 DEFENDANT WILL BECOME COMPETENT TO STAND TRIAL IN THE FORESEEABLE
17 FUTURE.

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.] TO DETERMINE WHETHER THE DEFENDANT CONTINUES TO MEET THE
25 CRITERIA FOR COMMITMENT SET FORTH IN SUBSECTION (B) OF THIS SECTION, THE
26 COURT SHALL HOLD A HEARING:

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

28 (II) WITHIN 30 DAYS AFTER THE FILING OF A MOTION BY THE
29 STATE'S ATTORNEY OR COUNSEL FOR THE DEFENDANT SETTING FORTH NEW FACTS
30 OR CIRCUMSTANCES RELEVANT TO THE DETERMINATION.

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

35 (2) [If the court orders commitment under subsection (b) of this section,
36 the defendant may apply for release under § 7-507 or § 10-805 of the Health -
37 General Article. In computing the availability of review under those sections, as the
38 case may be, the date of the commitment order shall be treated as a hearing.] AT ANY
39 TIME, AND ON ITS OWN INITIATIVE, THE COURT MAY HOLD A CONFERENCE OR A

1 HEARING ON THE RECORD WITH THE STATE'S ATTORNEY AND THE COUNSEL OF
2 RECORD FOR THE DEFENDANT TO REVIEW THE STATUS OF THE CASE.

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

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

9 (I) THE DEFENDANT HAS A MENTAL DISORDER;

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

11 (III) THE DEFENDANT PRESENTS A DANGER TO THE LIFE OR
12 SAFETY OF OTHERS;

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

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

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

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

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

29 (I) SHALL HOLD A HEARING ANNUALLY FROM THE DATE OF
30 RELEASE;

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

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

35 (2) AT A HEARING UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE
36 COURT SHALL RECONSIDER WHETHER THE DEFENDANT REMAINS INCOMPETENT TO

1 STAND TRIAL OR A DANGER TO SELF OR THE PERSON OR PROPERTY OF ANOTHER
2 BECAUSE OF MENTAL RETARDATION OR A MENTAL DISORDER.

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

6 (4) IF THE COURT FINDS, AT A HEARING UNDER PARAGRAPH (1) OF THIS
7 SUBSECTION, THAT THE DEFENDANT IS INCOMPETENT AND IS NOT LIKELY TO
8 BECOME COMPETENT IN THE FORESEEABLE FUTURE AND IS A DANGER TO SELF OR
9 THE PERSON OR PROPERTY OF ANOTHER BECAUSE OF MENTAL RETARDATION OR A
10 MENTAL DISORDER, THE COURT SHALL REVOKE THE PRETRIAL RELEASE OF THE
11 DEFENDANT AND:

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

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

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

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

23 3-107.

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

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

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

34 (3) WHEN CHARGED WITH AN OFFENSE NOT COVERED UNDER
35 PARAGRAPH (1) OR (2) OF THIS SUBSECTION, AFTER THE LESSER OF THE EXPIRATION
36 OF 3 YEARS OR THE MAXIMUM SENTENCE FOR THE MOST SERIOUS OFFENSE
37 CHARGED.

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

5 (1)] CHARGE without providing the State's Attorney and a victim or
6 victim's representative who has [filed a notification request form] REQUESTED
7 NOTIFICATION under [§ 11-104] § 3-123(C) of this [article] TITLE advance notice and
8 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)] (C) 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] REQUESTED NOTIFICATION under [§ 11-104] §
17 3-123(C) of this article; and

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

19 3-108.

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

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

25 (II) WHENEVER THE HEALTH DEPARTMENT DETERMINES THAT:

26 1. THE DEFENDANT NO LONGER IS INCOMPETENT TO STAND
27 TRIAL;

28 2. THE DEFENDANT NO LONGER IS, BECAUSE OF MENTAL
29 RETARDATION OR A MENTAL DISORDER, A DANGER TO SELF OR THE PERSON OR
30 PROPERTY OF OTHERS; OR

31 3. THERE IS NOT A SUBSTANTIAL LIKELIHOOD THAT THE
32 DEFENDANT WILL BECOME COMPETENT TO STAND TRIAL IN THE FORESEEABLE
33 FUTURE.

34 (2) [The report shall contain:

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

1 (ii) any recommendations that the Health Department considers
2 appropriate.] THE DEPARTMENT SHALL INCLUDE A SUPPLEMENTAL REPORT THAT
3 PROVIDES A PLAN FOR SERVICES TO FACILITATE THE DEFENDANT REMAINING
4 COMPETENT TO STAND TRIAL OR NOT DANGEROUS, AS A RESULT OF MENTAL
5 RETARDATION OR A MENTAL DISORDER, TO SELF OR THE PERSON OR PROPERTY OF
6 OTHERS, IF:

7 (I) A REPORT REQUIRED UNDER THIS TITLE STATES AN OPINION
8 THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL OR IS NOT DANGEROUS, AS A
9 RESULT OF MENTAL RETARDATION OR A MENTAL DISORDER, TO SELF OR THE
10 PERSON OR PROPERTY OF OTHERS; AND

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

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

15 (I) MENTAL HEALTH TREATMENT, INCLUDING PROVIDERS OF
16 CARE;

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

18 (III) HOUSING;

19 (IV) CASE MANAGEMENT SERVICES;

20 (V) ALCOHOL OR SUBSTANCE ABUSE TREATMENT; AND

21 (VI) OTHER CLINICAL SERVICES.

22 (4) IF THE REPORT REQUIRED UNDER PARAGRAPH (2) OF THIS
23 SUBSECTION RECOMMENDS COMMUNITY PLACEMENT FOR THE DEFENDANT, THE
24 REPORT SHALL INCLUDE:

25 (I) THE LOCATION OF THE RECOMMENDED COMMUNITY
26 PLACEMENT;

27 (II) THE NAMES AND ADDRESSES OF THE RECOMMENDED SERVICE
28 PROVIDERS;

29 (III) A STATEMENT INDICATING IF THE SERVICE PROVIDER IS
30 WILLING AND ABLE TO SERVE THE DEFENDANT; AND

31 (IV) IF AVAILABLE, THE DATE OF PLACEMENT OR SERVICE FOR THE
32 DEFENDANT.

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

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

3 (II) THE SERVICES REQUIRED FOR THE DEFENDANT MAY BE
4 PROVIDED IN A LESS RESTRICTIVE SETTING; AND

5 (III) THE DEFENDANT IS ELIGIBLE FOR SERVICES PURSUANT TO §
6 7-404 OF THE HEALTH - GENERAL ARTICLE.

7 (6) IF THE REPORT REQUIRED UNDER PARAGRAPH (2) OF THIS
8 SUBSECTION STATES AN OPINION THAT THERE IS NOT A SUBSTANTIAL LIKELIHOOD
9 THAT THE DEFENDANT WILL BECOME COMPETENT IN THE FORESEEABLE FUTURE,
10 THE REPORT SHALL CONTAIN AN OPINION REGARDING WHETHER THE DEFENDANT
11 MEETS THE CRITERIA FOR COMMITMENT UNDER § 3-106(D) OF THIS TITLE.

12 (7) A STATEMENT MADE BY THE DEFENDANT IN THE COURSE OF ANY
13 EXAMINATION FOR A REPORT UNDER THIS SECTION IS NOT ADMISSIBLE AS
14 EVIDENCE IN ANY CRIMINAL PROCEEDING FOR THE PURPOSE OF PROVING THE
15 COMMISSION OF A CRIMINAL OFFENSE OR TO ENHANCE THE SENTENCE OF THE
16 DEFENDANT.

17 (8) A REPORT PREPARED UNDER THIS SECTION IS NOT ADMISSIBLE IN A
18 CRIMINAL PROCEEDING FOR THE PURPOSE OF PROVING THE COMMISSION OF A
19 CRIMINAL OFFENSE OR TO ENHANCE THE SENTENCE OF THE DEFENDANT.

20 (b) [(1)] The clerk of court shall give THE STATE'S ATTORNEY AND the last
21 counsel [for each person, as shown by the court records, notice that the client is listed
22 in the report and a copy of any recommendation that relates to the client] OF RECORD
23 FOR THE DEFENDANT A COPY OF ANY REPORT RECEIVED UNDER THIS SECTION.

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

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

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

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

33 (ii) the last counsel for the person.

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

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