
By: ~~Senator Frosh~~ **Senators Frosh, Giannetti, Green, and Jacobs**

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Assigned to: Judicial Proceedings

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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 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

1 relating to criminal defendants and incompetency and criminal responsibility.

2 BY repealing and reenacting, with amendments,

3 Article - Criminal Procedure

4 Section 3-104 through 3-108, inclusive

5 Annotated Code of Maryland

6 (2001 Volume and 2005 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Criminal Procedure**

10 3-104.

11 (a) If, before or during a trial, the defendant in a criminal case OR A
12 VIOLATION OF PROBATION PROCEEDING appears to the court to be incompetent to
13 stand trial or the defendant alleges incompetence to stand trial, the court shall
14 determine, on evidence presented on the record, whether the defendant is
15 incompetent to stand trial.

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

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

22 3-105.

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

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

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

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

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

34 (c) (1) If a defendant is to be held in custody for examination under this
35 section, the defendant may be confined in a correctional facility until the Health

1 Department can conduct the examination. If the court finds it appropriate for the
2 health or safety of the defendant, the court may order confinement in a medical wing
3 or other isolated and secure unit of the correctional facility.

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

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

10 2. immediately conduct a competency examination of the
11 defendant by a community forensic screening program or other agency that the
12 Health Department finds appropriate.

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

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

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

20 (i) examine the defendant; and

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

22 1. the court;

23 2. the State's Attorney; and

24 3. the defense counsel.

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

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

35 (4) A STATEMENT MADE BY THE DEFENDANT IN THE COURSE OF AN
36 EXAMINATION UNDER THIS SECTION IS NOT ADMISSIBLE IN A CRIMINAL

1 PROCEEDING FOR THE PURPOSE OF PROVING THE COMMISSION OF A CRIMINAL
2 OFFENSE OR TO ENHANCE THE SENTENCE OF THE DEFENDANT.

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

8 3-106.

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

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

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

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

22 (III) THERE IS NOT A SUBSTANTIAL LIKELIHOOD THAT THE
23 DEFENDANT WILL BECOME COMPETENT TO STAND TRIAL IN THE FORESEEABLE
24 FUTURE.

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

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

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

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

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

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

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

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

18 (I) THE DEFENDANT HAS A MENTAL DISORDER;

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

20 (III) THE DEFENDANT PRESENTS A DANGER TO THE LIFE OR
21 SAFETY OF OTHERS;

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

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

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

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

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

1 (I) SHALL HOLD A HEARING ANNUALLY FROM THE DATE OF
2 RELEASE;

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

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

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

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

14 (4) IF THE COURT FINDS, AT A HEARING UNDER PARAGRAPH (1) OF THIS
15 SUBSECTION, THAT THE DEFENDANT IS INCOMPETENT AND IS NOT LIKELY TO
16 BECOME COMPETENT IN THE FORESEEABLE FUTURE AND IS A DANGER TO SELF OR
17 THE PERSON OR PROPERTY OF ANOTHER BECAUSE OF MENTAL RETARDATION OR A
18 MENTAL DISORDER, THE COURT SHALL REVOKE THE PRETRIAL RELEASE OF THE
19 DEFENDANT AND:

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

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

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

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

31 3-107.

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

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

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

5 (3) WHEN CHARGED WITH AN OFFENSE NOT COVERED UNDER
6 PARAGRAPH (1) OR (2) OF THIS SUBSECTION, AFTER THE LESSER OF THE EXPIRATION
7 OF 3 YEARS OR THE MAXIMUM SENTENCE FOR THE MOST SERIOUS OFFENSE
8 CHARGED.

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

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

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

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

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

23 (1) the victim of the crime charged or the victim's representative who has
24 [filed a notification request form] REQUESTED NOTIFICATION under [§ 11-104] §
25 3-123(C) of this article; and

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

27 3-108.

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

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

33 (II) WHENEVER THE HEALTH DEPARTMENT DETERMINES THAT:

34 1. THE DEFENDANT NO LONGER IS INCOMPETENT TO STAND
35 TRIAL;

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

4 3. THERE IS NOT A SUBSTANTIAL LIKELIHOOD THAT THE
5 DEFENDANT WILL BECOME COMPETENT TO STAND TRIAL IN THE FORESEEABLE
6 FUTURE.

7 (2) [The report shall contain:

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

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

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

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

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

23 (I) MENTAL HEALTH TREATMENT, INCLUDING PROVIDERS OF
24 CARE;

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

26 (III) HOUSING;

27 (IV) CASE MANAGEMENT SERVICES;

28 (V) ALCOHOL OR SUBSTANCE ABUSE TREATMENT; AND

29 (VI) OTHER CLINICAL SERVICES.

30 (4) IF THE REPORT REQUIRED UNDER PARAGRAPH (2) OF THIS
31 SUBSECTION RECOMMENDS COMMUNITY PLACEMENT FOR THE DEFENDANT, THE
32 REPORT SHALL INCLUDE:

33 (I) THE LOCATION OF THE RECOMMENDED COMMUNITY
34 PLACEMENT;

1 (II) THE NAMES AND ADDRESSES OF THE RECOMMENDED SERVICE
2 PROVIDERS;

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

5 (IV) IF AVAILABLE, THE DATE OF PLACEMENT OR SERVICE FOR THE
6 DEFENDANT.

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

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

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

14 (III) THE DEFENDANT IS ELIGIBLE FOR SERVICES PURSUANT TO §
15 7-404 OF THE HEALTH - GENERAL ARTICLE.

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

21 (7) A STATEMENT MADE BY THE DEFENDANT IN THE COURSE OF ANY
22 EXAMINATION FOR A REPORT UNDER THIS SECTION IS NOT ADMISSIBLE AS
23 EVIDENCE IN ANY CRIMINAL PROCEEDING FOR THE PURPOSE OF PROVING THE
24 COMMISSION OF A CRIMINAL OFFENSE OR TO ENHANCE THE SENTENCE OF THE
25 DEFENDANT.

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

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

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

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

1 (2) The State's Attorney shall send the recommendation about a person

2 to:

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

4 (ii) the last counsel for the person.

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

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