

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 807

(Senator Frosh, *et al.*)

Judicial Proceedings

Judiciary

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

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This bill makes several changes to the law regarding incompetency of defendants to stand trial. The bill also requires the Department of Health and Mental Hygiene (DHMH) to submit specified reports to the court.

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**Fiscal Summary**

**State Effect:** General fund expenditures for DHMH would increase by \$48,400 in FY 2007. Future year increases reflect annualization and inflation. Revenues would not be affected.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	48,400	59,200	62,600	66,300	70,200
Net Effect	(\$48,400)	(\$59,200)	(\$62,600)	(\$66,300)	(\$70,200)

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

**Local Effect:** Any increase in hearings as a result of this bill can be handled with the existing resources of the circuit courts.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill extends the availability of incompetency determinations to violation of probation proceedings. The bill also provides that courts may reconsider the incompetency of a defendant any time before final judgment. The bill retains provisions

regarding court orders requiring DHMH to conduct competency examinations, confinement of defendants pending these examinations, and DHMH reports of findings from these examinations.

Any statement made by a defendant in the course of a competency examination or contained in a report prepared as a result of a competency examination shall not be admissible in a criminal proceeding to prove the defendant committed a criminal offense or to enhance the defendant's sentence. These statements may be used to impeach the defendant's testimony.

#### *Defendants Who Are Incompetent to Stand Trial and a Danger to Themselves or Society*

If, after a hearing, a court finds that a defendant is incompetent to stand trial and is a danger to self or the person or property of another, a court is authorized to commit the defendant to a DHMH-designated facility until the court finds 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. Courts must hold regular hearings to determine if defendants committed under these circumstances continue to meet the commitment criteria. These hearings must be conducted: (1) every year from the date of commitment; (2) within 30 days after the filing of a motion by the State's Attorney or defense counsel setting forth new facts or circumstances relevant to the determination; and (3) within 30 days after receiving a report from DHMH stating opinions, facts, or circumstances that have not been previously presented to the court and are relevant to the determination.

The bill authorizes courts to hold conferences or hearings on the record to review the status of the case at any time and on the court's own initiative. The State's Attorney and defense counsel will be present at these conferences or hearings.

At these hearings, if a court finds that the defendant remains incompetent and is not likely to become competent in the foreseeable future, the court must (1) order the confinement of the defendant for 21 days as a resident in a Developmental Disability Administration (DDA) facility for initiation of admission proceedings as a result of a court finding that due to mental retardation, the defendant is a danger to self or others; or (2) civilly commit the defendant to a DHMH-designated inpatient medical facility.

In order to civilly commit the defendant, the court must find by clear and convincing evidence that: (1) the defendant has a mental disorder; (2) inpatient care is necessary for the defendant; (3) the defendant presents a danger to the life or safety of self or others; (4) the defendant is unable or unwilling to be voluntarily committed to a medical facility; and (5) no less constrictive form of intervention is available that is consistent with the

welfare and safety of the defendant. Defendants who are civilly committed are still subject to the mental hygiene provisions of the Health-General Article.

*Defendants Who Are Incompetent to Stand Trial But Not A Danger to Themselves or Society*

Courts must hold status hearings for defendants who are released on bail or on recognizance because they were found by a court to be incompetent to stand trial but not dangerous, as a result of mental disorder or retardation, to self or the person or property of others. These hearings: (1) must occur annually from the date of release; (2) may occur at any time, on the court's initiative; and (3) must occur at any time, upon motion of the State's Attorney or defense counsel. At the hearings, courts must reconsider whether the defendant still fits this incompetency classification. Courts are authorized to modify or impose additional conditions of release on the defendant.

If, at the hearing, the court finds that the defendant is incompetent, not likely to become competent in the foreseeable future, and is a danger to self or the person or property of another because of mental retardation or a mental disorder, the court shall revoke the pretrial release of the defendant and must order civil commitment or confinement required for defendants who are incompetent to stand trial and pose a danger to themselves or society.

*Dismissal of Charges*

Whether or not the defendant is confined and unless the State petitions the court for extraordinary cause to extend the time, the court shall dismiss the charge against a defendant: (1) after 10 years, if charged with a capital offense; (2) after the lesser of 5 years or the maximum sentence for the most serious offense charged, if charged with a felony or crime of violence; or (3) after the lesser of the expiration of 3 years or the maximum sentence for the most serious offense charged, if charged with an offense not covered by the two previous categories.

The court is required to dismiss a charge without prejudice if the court considers that resuming the criminal proceeding would be unjust because so much time has passed since the defendant was found incompetent to stand trial. Before dismissing a charge, the court must provide the State's Attorney and a victim or victim's representative who has requested notification advance notice and an opportunity to be heard. If charges are dismissed, the court must notify the victim or representative mentioned above and the Criminal Justice Information System (CJIS).

DHMH must also notify a victim or victim's representative who has requested notification in writing if a defendant committed to DHMH custody escapes, is recaptured,

is transferred to another facility, is released, or has died. This requirement only applies after the dismissal of criminal charges for a defendant who: (1) is found incompetent to stand trial; (2) was charged with a crime and the issue of the individual's competency has been raised, or (3) entered a plea of not criminally responsible.

#### *DHMH Reports*

The bill requires DHMH to submit a report on each defendant committed by the court: (1) every six months from the date of commitment; and (2) if the defendant no longer meets all of the commitment criteria.

If the defendant no longer meets the commitment criteria, DHMH must include a supplemental report for a defendant that provides a plan for services that will allow the defendant to attain competency or no longer remain dangerous to other persons or property. The report must state DHMH's opinion on the defendant's competency or danger to society and that services are necessary to maintain the defendant safely in the community, to maintain competency, or to restore competency. If appropriate, the plan required in the report must include recommended treatment, services, and housing. If the report recommends community placement, the report must include: (1) the location of the placement; (2) the names and addresses of the service providers; (3) statements that the service provider is willing and able to serve the defendant; and (4) if available, the date of placement or service for the defendant.

If the plan in the supplemental report is for a defendant committed to a State residential center, the report shall state whether: (1) the defendant meets the civil commitment requirements; (2) services can be provided for the defendant in a less restrictive setting; and (3) the defendant is eligible for DDA services.

If the supplemental report states an opinion that there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future, the report must state whether the defendant meets the civil commitment criteria.

The admissibility restrictions previously mentioned also apply to supplemental reports. The clerk of the court must give copies of all of these reports to the State's Attorney and defense counsel.

**Current Law:** A defendant who is unable to understand the nature of the proceedings against him or assist in his own defense is considered incompetent to stand trial.

Courts are required to determine the competency of a defendant in a criminal case if the defendant appears to the court to be incompetent or alleges incompetence. Courts can determine competency before or during trial, but may reconsider competency at any time

during the trial and before verdict. If the defendant is found by the court to be competent, the court shall begin or proceed with the trial.

Courts are required to set and may change the conditions under which competency examinations are to be made. Courts have the authority to order DHMH to examine defendants to determine the defendant's competency to stand trial. With the exception of capital cases, the court may require or allow the examination to be done on a custodial or outpatient basis. Defendants ordered to undergo outpatient examinations must be released on bail or recognizance.

Defendants ordered to undergo custodial examinations may be: (1) confined in a correctional facility pending examination; (2) confined in a DHMH-designated medical facility; or (3) undergo a competency examination by a DHMH-approved community forensic screening program or agency. Defendants must be promptly returned to the court after the examination. Defendants may question the legality of their detention pending examination through petitions for writs of habeas corpus.

If the court orders DHMH to conduct a competency examination on a defendant, DHMH must send a complete report of its findings to the court, State's Attorney, and defense counsel. If DHMH reports that the defendant is incompetent to stand trial, DHMH must also report if the defendant is a danger to self or the person or property of others due to mental retardation or mental disorder.

A defendant is entitled to this report within seven days after the court orders the examination, unless the defendant pleads that he was not criminally responsible. Failure of DHMH to send this report is not grounds for dismissal.

Except in a capital case, if the court finds a defendant incompetent to stand trial but not dangerous to self or the person or property of others due to mental retardation or mental disorder, the court may set bail for the defendant or release the defendant on recognizance.

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.

Whether or not the defendant is confined, courts have the authority to dismiss charges if the court considers that resuming the criminal proceeding would be unjust because so much time has passed since the defendant was found incompetent to stand trial. 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. Courts may not dismiss charges without providing advance notice and an opportunity to be heard to the State's Attorney and a victim or victim's representative who has filed a notification request form. If the charges are dismissed, the court must notify CJIS and the victim or victim's representative mentioned above.

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

The clerk of the court is required to provide defense counsel of each person listed in the report notice that their client is listed in the report.

DHMH must send a copy of the report to each State's Attorney who brought charges against a person listed in the report. State's Attorneys who receive a report must send recommendations on disposition of charges for each person listed in the report who has been held long enough to be eligible for release. The recommendations must be sent to defense counsel and each court that ordered commitment for the person.

**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 100 people being held in MHA facilities are not able to stand trial and doctors have determined that 12 of the detainees are not likely to become competent to stand trial. DDA estimates that 35 individuals being held in its facility are not able to stand trial. This population is not an annual occurrence, but has instead accumulated over time.

**State Expenditures:** Individuals found by the courts to be incompetent are primarily handled by two entities within DHMH, MHA and DDA.

The bill requires DDA to provide competency attainment services to DDA eligible individuals. The bill also requires DDA to provide support and services to attain competency and maintain individuals eligible for community placement safely in the community. These services could be handled with existing resources.

MHA expenditures could increase by \$48,383 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring one social worker to assist with additional reporting and services. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1
Salary and Fringe Benefits	\$42,646
Operating Expenses	5,737
<b>Total FY 2007 State Expenditures</b>	<b>\$48,383</b>

MHA advises that it will need six additional staff persons, including three social workers, and three office secretaries, at a cost of \$248,152 for fiscal 2007. DDA advises that it will need two program coordinators, at a cost of \$92,319 in fiscal 2007. The Department of Legislative Services disagrees with this assessment, and believes that given the small size of the current MHA and DDA population affected by this bill (which has accumulated over time), that any increase in duties as a result of this bill could be handled with the increase in expenditures stated above.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** Although HB 795 is designated as a cross file, it is not identical.

**Information Source(s):** State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - February 21, 2006  
ncs/jr Revised - Enrolled Bill - April 24, 2006

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