

**Department of Legislative Services**  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

House Bill 1262

(Delegate Sophocleus, *et al.*)

Judiciary

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**Criminal Procedure - Incompetency and Criminal Responsibility - Dismissal of Charges**

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This bill alters current statutory provisions pertaining to the dismissal of charges against a person found incompetent to stand trial. Under the bill, whether or not the defendant is confined and unless the State petitions for good cause to maintain the charges, the court may dismiss the charge against a defendant found incompetent to stand trial: (1) after 30 years, if the defendant is charged with a capital offense; (2) after 20 years, if the defendant was charged with a felony or crime of violence for which the maximum penalty is life imprisonment without the possibility of parole; (3) after the lesser of 15 years or the maximum sentence for the most serious of the defendant's charged crimes, if the defendant was charged with a felony or crime of violence that is not a capital offense or not subject to life imprisonment without the possibility of parole; or (4) after the lesser of five years or the maximum sentence for the most serious of the defendant's charged crimes if the offense is not a felony or a crime of violence.

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**Fiscal Summary**

**State Effect:** Potential significant increase in general fund expenditures for the Department of Health and Mental Hygiene (DHMH) if defendants who would ordinarily be released from DHMH custody remain under DHMH care as a result of the bill.

**Local Effect:** None. The bill is not expected to materially affect local finances.

**Small Business Effect:** None.

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## Analysis

**Current Law:** 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 found incompetent to stand trial: (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 three 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.

**Background:** Prior to 1967, a defendant adjudged incompetent to stand trial was committed to an institution and his/her criminal charges were stayed until the defendant could stand trial. No statutory mechanism existed through which a defendant adjudged incompetent who could not be restored to competency could have his/her criminal charges dismissed. Chapter 709 of 1967 authorized a judge to dismiss criminal charges against an incompetent defendant after (1) 10 years from the date of the finding of incompetent to stand trial for defendants charged with capital offenses and (2) 5 years from the date of the incompetency finding for defendants charged with noncapital crimes punishable by imprisonment. These components of the incompetency statute remained essentially the same until 2006.

Chapter 353 of 2006 made significant changes to the incompetency laws. Among the changes was the current requirement that a court dismiss charges against a defendant found incompetent to stand trial, barring a showing of extraordinary cause by the State, within the current statutorily prescribed time period. The motivation behind Chapter 353 was the filing of a lawsuit in August 2004 by the Maryland Disability Law Center on behalf of five individuals who were found incompetent to stand trial and committed to DHMH facilities for treatment to restore competency. The lawsuit alleged 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.

The statute proposed for amendment by the bill was enacted as part of Chapter 353 of 2006. The law was the result of a workgroup convened during the 2005 interim. The workgroup contained representatives from various stakeholders, including the courts, the Office of the Public Defender, State's Attorneys, the Maryland Disability Law Center, DHMH, and proponents of victims' rights. The resulting legislation was the product of extensive discussion and compromise.

In 2009, the Maryland Court of Appeals held that the dangerousness and restorability of a defendant adjudged incompetent to stand trial are not sufficient for an extraordinary cause determination under the State's incompetency statute. *Ray v. State of Maryland*, 410 Md. 384 (2009).

**State Expenditures:** General fund expenditures for DHMH may increase significantly as a result of the bill. If a defendant is incompetent to stand trial and dangerous, the defendant is likely to remain in a DHMH facility as a civil commitment when his/her charges are dropped. Defendants who are not dangerous are not subject to continued civil commitment. The bill changes the statutory time period before a court must dismiss charges against a defendant found incompetent to stand trial and lowers the showing the State must make when objecting to the dismissal of charges. Therefore, the bill will have the most effect on those defendants not subject to civil commitment and those defendants who a court is unlikely to release until charges are dismissed.

DHMH advises that in 2008, at least four defendants had their charges dismissed due to statutory time limits. It is unclear how many of these patients were eligible for civil commitments. According to DHMH, the annual cost of care per forensic patient at a State psychiatric facility is approximately \$137,000 at Perkins Hospital, \$100,000 at Springfield Hospital Center, and \$83,500 at Spring Grove Hospital.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

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

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