

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 579

(Senators Lee and Feldman)

Judicial Proceedings

---

Criminal Procedure - Incompetency and Criminal Responsibility - Dismissal of  
Charges

---

This bill authorizes the State to petition to delay the dismissal of criminal charges against a defendant found incompetent to stand trial (IST) in order to protect a victim or potential victim who is a minor.

---

Fiscal Summary

**State Effect:** The bill is not expected to materially affect State finances, as discussed below.

**Local Effect:** The bill does not materially affect local finances.

**Small Business Effect:** None.

---

Analysis

**Current Law:** By statute, a defendant is IST if the defendant is not able to understand the nature or object of the proceeding or assist in the defense. After a hearing, a court may order the Maryland Department of Health (MDH) to examine the defendant to determine whether the defendant is IST. If the court finds that the defendant is IST *but is not a danger* as a result of a mental disorder or mental retardation (intellectual disability) to self or the person or property of others, the court may set bail or authorize the release of the defendant on recognizance.

If the court finds that the defendant is IST and, because of mental retardation or a mental disorder, *is a danger* to self or the person or property of others, the court may order the

defendant committed to a facility designated by MDH until the court finds that the defendant is (1) no longer IST; (2) no longer a danger to self or the person or property of others due to a mental disorder or mental retardation; or (3) not substantially likely to become competent to stand trial in the foreseeable future.

If a court commits a defendant because of mental retardation, MDH must require the Developmental Disabilities Administration (DDA) to provide appropriate treatment.

In order to determine whether a defendant continues to meet the criteria for commitment, the court must hold a hearing (1) every year from the date of the commitment; (2) within 30 days after a filing by the State's Attorney or the defendant's counsel detailing new and relevant information; and (3) within 30 days after receiving a report from MDH stating new and relevant information. The court may also hold a conference or hearing on its own initiative to review the status of the case. If the court finds that the defendant is still incompetent and is not likely to become competent in the foreseeable future, the court must civilly commit the defendant (as long as other specified criteria are met) or order the confinement of the defendant in a DDA facility in accordance with specified proceedings.

Whether or not the defendant is confined and unless the State petitions the court for extraordinary cause to extend the time, the court must dismiss the charge against a defendant found IST (1) after the lesser of five years or the maximum sentence for the most serious offense charged, if charged with a felony or crime of violence, or (2) after the lesser of the expiration of three years or the maximum sentence for the most serious offense charged, if charged with an offense other than a felony or crime of violence.

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 IST. 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 IST 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 IST 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 IST, 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 IST and committed to State facilities for treatment to restore competency. Chapter 353 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, MDH, and proponents of victims' rights.

In 2009, the Maryland Court of Appeals held that the dangerousness and restorability of a defendant adjudged IST are not sufficient for an extraordinary cause determination under the State's incompetency statute. *Ray v. State of Maryland*, 410 Md. 384 (2009). While the State may reindict a defendant after the defendant's charges were dismissed under § 3-107(a) of the Criminal Procedure Article without a showing that the defendant has become competent, the State must overcome the presumption that the defendant is unrestorable before the defendant is placed in incompetency commitment. Otherwise, the circuit court must initiate civil commitment proceedings in accordance with Section 3 106(d)(1) of the Criminal Procedure Article. *State v. Ray*, 429 Md. 566 (2012).

**State Expenditures:** The Behavioral Health Administration (BHA) advises that the bill may have an operational impact on BHA should a defendant's stay in an MDH facility be extended as a result of a petition filed under the bill and granted by the court. According to BHA, while this may have an operational impact on available bed space for future placements, it is not expected to have a fiscal impact.

---

### Additional Information

**Prior Introductions:** None.

**Cross File:** HB 1030 (Delegate Dumais) - Judiciary.

**Information Source(s):** Harford and Wicomico counties; City of College Park; Department of Health; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - February 12, 2018  
mag/kdm

---

Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510