

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 743
Judiciary

(Delegate Dumais, *et al.*)

Judicial Proceedings

Criminal Procedure - Incompetency and Criminal Responsibility - Dismissal of
Charges

This bill clarifies that the required dismissal of a criminal charge against a defendant found incompetent to stand trial (IST) under § 3-107(a) of the Criminal Procedure Article is a dismissal without prejudice.

Fiscal Summary

State Effect: The bill clarifies current practice and is not expected to materially affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A dismissal *with* prejudice is the permanent dismissal of a case. However, a case dismissed *without* prejudice can be brought again.

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 10 business 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.

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). The court noted that 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) (emphasis added).

Additional Information

Prior Introductions: None.

Cross File: SB 242 (Senator Lee, *et al.*) - Judicial Proceedings.

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

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Analysis by: Amy A. Devadas

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