

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 312
Judiciary

(Delegates Cardin and Bartlett)

Criminal Procedure - Incompetency to Stand Trial

This bill alters the time after which a court is required to dismiss a charge of first-degree murder or a crime considered “sexually assaultive behavior” against a defendant found incompetent to stand trial (IST) to the lesser of 10 years or the maximum sentence for the most serious offense charged. A victim who has filed a specified notification request form has the right to petition the court for extraordinary cause to extend the time to dismiss a charge against a defendant found IST. **The bill takes effect July 1, 2025.**

Fiscal Summary

State Effect: General fund expenditures increase by \$175,700 in FY 2026 for the Office of the Public Defender (OPD); future year expenditures reflect annualization and inflation. General fund expenditures also increase, perhaps significantly, for the Maryland Department of Health (MDH) due to extended commitments and related proceedings. Revenues are not affected.

Local Effect: It is anticipated that local State’s Attorneys’ offices can accommodate any increased workload using existing budgeted resources. Local revenues are not materially affected.

Small Business Effect: None.

Analysis

Current Law:

Dismissal of Charges for a Defendant Found Incompetent to Stand Trial

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.

Whether or not the defendant is confined in an MDH facility 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 the expiration 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 (now the Supreme Court of Maryland) 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 of the Criminal Procedure Article. *State v. Ray*, 429 Md. 566 (2012).

Crimes of Violence

Section 14-101(a) of the Criminal Law Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual

offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Sexually Assaultive Behavior

“Sexually assaultive behavior” means an act that would constitute a sexual crime under Title 3, Subtitle 3 of the Criminal Law Article; sexual abuse of a minor under § 3-602 of the Criminal Law Article; sexual abuse of a vulnerable adult under § 3-604 of the Criminal Law Article; a violation of 18 U. S. Code Chapter 109A; or a violation of a law of another state, the United States, or a foreign country that is equivalent to any of these offenses.

Victim Notification

Under Maryland law, a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) has a broad range of specific rights during the criminal justice process. On first contact with a victim, a law enforcement officer, District Court commissioner, or juvenile intake officer must give an identified victim a pamphlet that advises the victim of the rights, services, and procedures available in the time before and after the filing of a charging document. Also, within 10 days after the filing or unsealing of an indictment or information, the prosecuting attorney must provide a victim with a pamphlet that describes the rights, services, and procedures available to a victim after the indictment or information is filed and a notification request form by which a victim may request notice of various proceedings.

Many of the rights afforded a victim of crime depend on a victim completing a notification request form or requesting notice by following the Maryland Electronic Courts system protocol.

State Expenditures: Based on existing statute and the classification of and the maximum penalties for the offenses subject to the bill (1) most of the defendants affected by the bill would have their charges dismissed after 10 years instead of 5 years under existing statute and (2) the bill generally does not alter the time before dismissal of charges for the remaining defendants.

Maryland Department of Health

General fund expenditures for MDH increase, perhaps significantly, if the bill increases the amount of time defendants spend committed in MDH facilities. The extent of this increase cannot be reliably determined at this time and depends on:

- the number of individuals committed to MDH facilities after being found IST for first-degree murder or a sexually assaultive behavior offense;
- whether an individual charged with first-degree murder or a sexually assaultive behavior offense that is subject to the 5-year limit under existing statute who is found IST and not restored to competency within 5 years will be restored to competency in 10 years;
- whether an individual charged with first-degree murder or a sexually assaultive behavior offense who is found IST is also determined to be dangerous; and
- whether an individual charged with first-degree murder or a sexually assaultive behavior offense who is found IST and has his/her charges dismissed after the time limit under existing statute will still be determined to be dangerous and civilly committed to an MDH facility.

This analysis assumes that the cost of maintaining an individual in an MDH facility on a pending charges basis is equal to the cost of maintaining the same individual on a civil commitment basis.

MDH's healthcare system operates 1,056 adult psychiatric beds, which are operating at almost full capacity. Because extended commitments under the bill may reduce the turnover of beds necessary to accommodate the need for psychiatric beds within existing facilities, the bill likely exacerbates ongoing capacity issues.

MDH did not respond to a request for information regarding this legislation. However, with respect to similar legislation, MDH notes that (1) it currently spends \$1.5 million annually on court-imposed fines due to waitlists for admissions to its mental health facilities and (2) annual fines assessed against the department could increase significantly if legislation increases the lengths of stay and impacts admission to facilities.

The bill may impact the need for MDH to construct additional beds at the Clifton T. Perkins Hospital Center (the State's maximum-security hospital), which is already undergoing a major capital improvement project, or the building of additional facilities. Any potential construction has no effect on total capital expenditures, which are fixed annually by the Governor and the General Assembly through the capital budget process, subject to debt affordability limits. To the extent that funds are used for this purpose, funding for other capital projects is either reduced or delayed.

Office of the Public Defender

General fund expenditures increase by \$175,726 in fiscal 2026, which assumes a 90-day delay from the bill's July 1, 2025 effective date before staff is hired. This estimate reflects the cost of hiring one attorney to assist with legal representation generated by the bill. It includes a salary, fringe benefits, one-time start-up costs, ongoing operating expenses, and fees for psychiatric experts.

Position	1.0
Salary and Fringe Benefits	\$88,357
Psychiatric Experts	80,000
Operating Expenses	<u>7,369</u>
Total FY 2026 OPD Expenditures	\$175,726

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

OPD advises that the bill extends the time required for representation in applicable cases, which results in increased costs for staff and experts. For anyone committed for IST, an annual court review is required, which generally requires OPD to engage an independent expert evaluator. In addition, MDH is required to provide an updated review report to the court and counsel every six months. Often courts set hearings upon receipt of those reports, in addition to the annual reviews. Thus, the bill could generate two additional court hearings per year per defendant.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 449 and HB 1470 of 2024; and SB 507 of 2023.

Designated Cross File: None.

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 Legislative Services

Fiscal Note History: First Reader - February 2, 2025
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