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POSITION ON PROPOSED LEGISLATION

BILL: HB822

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 02/11/2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 822.

House Bill 822 proposes to amend Crim. Proc. Art. §3-107(a) by providing victims with the opportunity to petition the court to extend the time for dismissal after a client remains continually incompetent to stand trial (IST). The proposed law reflects a misunderstanding of the intent of the laws regarding competence to stand trial, and essentially seeks a solution for which there is no problem. Additionally, the bill conflates the provisions of the competency and criminal responsibility laws, which are distinctly different. Regarding the proposed language to §11-506, Crim. Proc. Art. §3-112 refers to commitment after a finding of not criminally responsible and has nothing to do with competency to stand trial. Under those circumstances, charges have already been adjudicated so are not subject to dismissal.

It is necessary to make clear the important objective of competence to stand trial proceedings. Competence to stand trial refers to the ability of the defendant to be able to understand the nature and object of the proceedings and to assist in the defense. It is a measurement having to do with court proceedings and not the substantive issues in the case. It is unconstitutional to allow an incompetent person to stand trial. The purpose of the comprehensive statutory scheme regarding competence to stand trial found in Crim. Proc. §3-101, *et seq.* is to insure that due process is served. The law is not intended to provide for indefinite care and treatment of un-adjudicated mentally ill individuals.

HB 822 ignores the constitutional principle set forth in *Jackson v. Indiana*, 406 U.S. 715 (1972), that persons charged with a criminal offense who are committed solely on account of their incapacity to stand trial cannot be held more than a reasonable time necessary to determine whether they will ever be competent. The current Crim. Proc. Art. §3-107(a) comports with the dictates of *Jackson v. Indiana*, 406 U.S. 715 (1972) regarding IST defendants, and provides sufficient safeguards to protect victims and the public.

Whether or not an individual remains mentally ill, IST, and dangerous, thus needing continued commitment, requires clinical decision making from a forensic psychologist or psychiatrist, upon which a judge can make a ruling. Victim input may offer a perspective of the impact of the alleged crime, but it has nothing to do with whether the individual has a present ability to participate in the proceedings or a present ability to remain safely in the community. Competency proceedings serve procedural due process; they are not intended to address the final disposition of the proceedings.

As the law stands now, a case must be dismissed after a certain period of time, depending on the seriousness of the offense, if the defendant has remained IST for that period of time. However, dismissal does not mean that a dangerous individual is summarily released. At the time of dismissal, if the individual remains dangerous due to a mental illness, the court may civilly commit that person to protect the person and the public. Additionally, dismissal does not necessarily terminate all reference to the offense. Dismissal is without prejudice, which means that the offense could be recharged if the individual becomes competent or there is a likelihood that they will become competent in the foreseeable future.

Currently, the State's Attorney has the ability to petition the court to extend the time for dismissal for extraordinary cause. Additionally, §3-123 provides an opportunity for a victim to offer to the State's Attorney and to the facility of the Health Department that has charge of a defendant any information that the victim considers relevant, and a request that the defendant be prohibited from having any contact with the victim or victim's representative, as a condition of release. The court and the Department must consider this information. Thus, there is a mechanism in place for the victim's concerns to be addressed. A victim is not privy to a defendant's ongoing medical and mental health information and can offer no further information on the relevant issue.

Furthermore, "extraordinary cause" has not been specifically defined. And, while it might be expected that victims may be most concerned with ongoing danger, the Court of Appeals has made clear that dangerousness and restorability are not "extraordinary cause" for purposes of extending the dismissal time. *Ray v. State*, 410 Md 384 (2009).

It is unlikely that the terms of HB822 have not been previously considered by the General Assembly. The statute governing incompetency matters has undergone several iterations over the years in response to constitutional and logistical considerations.¹

In 2006, the Legislature was moved to scrutinize the entire competency statute following a lawsuit brought by the Maryland Disability Law Center (MDLC) challenging the constitutionality of the statute. MDLC argued that Maryland must adhere to the dictates of *Jackson v. Indiana*, 406 U.S. 715 (1972) and require "that the nature and duration of confinement bear some reasonable relation to its purpose." 429 Md. at 581.

House Bill 795² was the result of "long discussion and compromise" among members of a multidisciplinary work group convened to examine the statute. *Id.* at 582. Significant changes were made to the statute, including to §3-107 and §3-123. HB 795 added a paragraph that mandated dismissal of charges upon expiration of requisite time periods and additional victim notice rights. The revised version also added the language that dismissal is "without prejudice."

In accordance with *Jackson*, the statutory time frames for dismissal are outer limits of when a case must be dismissed, rather than a discrete point in time when dismissal must be considered. The Court of Appeals in *State v. Ray*, 429 M. 566, 595 (2012), said, "[t]he General Assembly created the upper limit on how long the State may attempt to work toward the goal of making an incompetent defendant become competent." 429 Md. 566, 595 (2012)

As is evidenced by the legal chronology, HB822 proposes changes that the General Assembly and the Court of Appeals, in accordance with established law, have soundly rejected.

¹ For a very detailed review of the historical evolution of the competency laws, see *Ray v. State*, 410 Md. 384, 407–419 (2009) and *State v. Ray*, 429 Md. 566, 579-584 (2012).

² 2006 Regular Session, Entitled: Criminal Procedure - Criminal Defendants - Incompetency and Criminal Responsibility; Chapter Number: 353, File Code: Criminal Law – Procedure; Crossfiled with Senate Bill 807.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB822

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