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BILL: SB 507 Incompetency to Stand Trial – Dismissal of Charges

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 04/042023

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 507. However, the MOPD acknowledges that the proposed amendments are necessary and appropriate, should the bill pass.

Senate Bill 507 proposes to amend Crim. Proc. Art. §3-107(a) by adding an additional reason to extend the time for dismissal after a client remains continually incompetent to stand trial (IST). The proposed law is constitutionally unsound and unnecessary.

SB 507 offers no guidance as to how extending the time for dismissal will protect anyone, and 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. Moreover, research indicates that the vast majority of people become competent well within our statutory timeframe. Studies have variously reported restorability between 75% and 95% within a year.[1]

[1] Zapf, Patricia, and Roesch, Ronald. Evaluation of Competence to Stand Trial. Chapter 3, p.55. Oxford

It is important to remember that competence to stand trial is a legal construct. Commitment for incompetency is for the purpose of restoring the individual's ability to participate in a constitutionally fair trial. Tying the length of hospitalization to the severity of the charge is based on a rationale of punishment rather than treatment, though these individuals have not, and in fact may never be convicted of any crime. The current Crim. Proc. Art. §3-107(a) contemplates the dictates of *Jackson v. Indiana*, 406 U.S. 715 (1972) regarding IST defendants, and provides sufficient safeguards to protect victims, the public, and the defendant.

As the law stands now, a case must be dismissed after a certain length of time, depending on the seriousness of the offense, if the defendant has remained IST for that entire time. However, dismissal does not necessarily terminate all reference to the offense. Dismissal is without prejudice, which means that the offense could be recharged if the defendant becomes competent or there is a likelihood that the defendant will become competent in the foreseeable future. Nor does dismissal 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. In cases where the individual is deemed incompetent and dangerous as a result of intellectual disability or mental retardation, there are administrative procedures to address placement safety.[2]

Additionally, if the state so petitions, the court may consider if there is extraordinary cause to extend the time for dismissal. The law also requires notice to any

University Press (2009)

[2] *See,* Md. Code Ann. Crim. Proc. Art. §3-106(e)(2); Md. Code Ann. Health-Gen Art. §7-502

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victim who has requested notification. Thus, the state currently has the ability, as it sees fit, to petition the court for extraordinary cause on behalf of a victim, if necessary. In any event, an extension of the dismissal time does not guarantee that a defendant will remain hospitalized or otherwise detained. If at some point the individual is deemed IST and not dangerous, a court may order release. Hence, the extension of the dismissal time serves no real protective purpose.

The statute governing incompetency matters has undergone several iterations over the years in response to constitutional and logistical considerations.[3] Prior to 1967, there was no statutory law providing for dismissal of criminal charges against an individual who could not be restored to competency. Rather, if a defendant was adjudged incompetent to stand trial, he or she would be committed to an institution, and criminal charges would be stayed until such time as he or she could stand trial. *Ray v. State*, 410 Md. 384, 407 (2009), *State v. Ray*, 429 M. 566, 579-380 (2012).

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 795 was the result of "long discussion and compromise" among members of a multidisciplinary work group convened to examine the statute. *Id.* at 582. Significant

[3] 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)

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changes were made to the statute, including to section §3-107. HB 795 added a paragraph that mandated dismissal of charges upon expiration of requisite time periods. The revised version also added the language that dismissal is "without prejudice." A ten-year dismissal date was reserved solely for capital cases, no doubt with the understanding that "death is different." *See, Ford v. Wainwright*, 477 U.S. 399, 411 (1986). In 2013, the statute was again revised to remove the ten-year dismissal time to address the abolition of the death penalty. There was no need to otherwise change the statute.

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 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)(Emphasis supplied).

Acknowledging that, the Court considered the issue of dismissal of charges in *State v. Ray*, 429 Md. 566 (2012) and its progeny. *See Ray v. State*, 410 Md. 384 (2009) (*Ray I*) and *Adams and Ray v. State*, 204 Md. App 418 (2012)(*Ray II*). In *Ray I*, the Court held that extraordinary cause "must require more than dangerousness and restorability," *Ray v. State*, 410 Md. 384, 419 (2009). In accordance with *Jackson v. Indiana*, the Court reasoned that if restorability and dangerousness amounted to extraordinary cause, it "could result in indefinite institutionalization, without procedural protection." *Id.* at 415.

In the final *Ray* chapter, *State v. Ray*, 429 Md. 566 (2012), the Court of Appeals took no issue with re-indictment, but remanded with directions to make findings as to whether Ray could be restored to competence, a fact which had never been raised or established,

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Id. at 496, again recognizing the constitutional principle set forth in *Jackson v. Indiana*, that commitment for competency reasons is just that. Further extending the time for dismissal of the specified charges is punitive, not restorative.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 507.

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