Sponsor written testimony

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

TESTIMONY by Senator C. Anthony Muse

SB 507: Criminal Procedure – Incompetency to Stand Trial – Dismissal of Charges and Victims' Rights

Good afternoon, Mr. Chairman, Vice Chairman, and members of the House Judiciary Committee. Senate Bill 507 would authorize a victim or a victim's representative to petition the court to extend the time for dismissal of certain charges against a defendant who was found incompetent to stand trial. This legislation aims to fix an issue in the statute, and it helps to give the victim of a crime ***a voice***.

Also, Senate Bill 507 does not mean that the courts will grant a crime victim's request, but it will give victims the ability to ask the court for needed relief in extraordinary cases. Lastly, continued charges and supervision protect victims and the community when a defendant is incompetent to stand trial and dangerous. It is critical to understand that if charges are not continued, the defendant will no longer have supervision.

Therefore, I urge this committee for a FAVORABLE report for SB 507

CVR - IST case - SB507 2023.pdf
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Circuit Court for Washington County
Case No. 21-K-13-048746

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1707

September Term, 2019

M.O.

v.

STATE OF MARYLAND

Shaw Geter,
Gould,
Maloney, John
(Specially Assigned),

Opinion by Shaw Geter, J.
Concurring opinion by Maloney, J.

Filed: March 24, 2021

This appeal arises from the dismissal of a sexual assault case in the Circuit Court for Washington County against Terrel Nowlin. In 2014, the court found Mr. Nowlin incompetent to stand trial and after multiple yearly review hearings, his condition did not improve and the court continued to find him incompetent. In 2019, Mr. Nowlin filed a motion to dismiss his case, pursuant to § 3-107(a) of the Criminal Procedure Article ("CP"). The State filed an opposition and requested that the victim's representative be heard. A hearing was held by the court and following argument by all counsel, the matter was taken under advisement. The court later granted Mr. Nowlin's motion to dismiss the charges. Appellant timely filed this appeal and presents the following questions for our review.

1. Whether a trial court can act on a motion in a criminal case that creates a risk to the safety of the victim, to public safety, and to the defendant, when made by an attorney with no competent client and prior to a guardian being appointed?

2. Whether a trial court has the power under CP §3-107 to refuse for technical reasons to consider the State's Opposition to a Motion to Dismiss the indictment of an incompetent repeat dangerous sex offender, and the supporting crime victim's presentation, and then based on the absence of opposition, dismiss the case while conceding that doing so jeopardized both the crime victim's and the public's safety?

For reasons discussed below, we affirm the dismissal of the charges by the court.

BACKGROUND

Terrell Nowlin, on June 14, 2013, was charged with two counts of Second-Degree Sex Offense and one count of Sodomy. The incident occurred on February 28, 2011 when the victim, J.O., and Mr. Nowlin participated, as athletes, in a Special Olympics event in

Hagerstown. While sharing a hotel room in Hagerstown, J.O. was assaulted. On February 18, 2014, the circuit court found Mr. Nowlin incompetent to stand trial, in accordance with the results of an evaluation performed by the Maryland Department of Health and Mental Hygiene ("DHMH"). The court subsequently held a number of review hearings and continued to find that Mr. Nowlin was incompetent to stand trial.

On February 15, 2019, Mr. Nowlin, pursuant to CP §3-107(a), filed a Motion to Dismiss, arguing that dismissal was mandated because five years had elapsed since he was found incompetent and the State had not petitioned the court to extend the time for extraordinary cause. On February 21, 2019, the State filed an opposition, arguing that (1) "the State is opposed to dismissal" of the case and (2) "the State requests a hearing on the matter, and that attorneys for the victim's representative wanted to be heard at the hearing."

The court held a hearing on May 3, 2019. When asked if the State petitioned for extraordinary cause, the State replied:

> Your Honor, the State did not petition this [c]ourt for extraordinary cause. The victim's representative, the attorney representing the victims in this case did prepare several pleadings in which extraordinary cause is discussed. It was my understanding from reading the statute that the victim, excuse me, that they would be heard from. And so, when [sic] the State's very simple response to the Motion to Dismiss is that we are opposed to the dismissal and that we basically are deferring to Your Honor and whatever argument the victim's attorney makes. But we did not . . . petition this [c]ourt to find extraordinary cause.

Counsel for the victim's representative was allowed to address the court and argued that it was an "unusual extraordinary" case. He asserted because of the nature of the charges and Mr. Nowlin's physique and mental capacity, extraordinary cause existed. At the conclusion of the hearing, the court took the matter under advisement. On September 27,

2019, the court entered an order dismissing the case.[1] It stated:

> **THEREFORE IT IS ORDERED** that considering Defendant's Motion to Dismiss, the State's general Opposition to Motion to Dismiss, but lack of request to extend the time before the case is dismissed, and the Victim's Assertion of Right to be Heard under MD CODE, CRIMINAL PROC. § 3-107(b) on Possible Dismissal, it is this 26 day of September, 2019, by the Circuit Court for Washington County, Maryland, hereby:
>
> **ORDERED** that this case be, and hereby is, dismissed pursuant to MD. CODE ANN., CRIM. PROC. § 3-107(a). Had the State petitioned the [c]ourt to defer dismissal under "extraordinary cause", the [c]ourt would have considered the below circumstances.[2]

[1] Although the Order states September 26, 2019, it was docketed September 27, 2019.

[2] The trial court's order included the following circumstances in a footnote:

> Aside from the statute, MD. CODE ANN, CRIM. PROC. § 3-107(a), there is case law that explains where extraordinary cause may be found. The case law also explains the restriction on freedom of an institutionalized individual, *see, e.g.*, *Ray v. State*, 410 Md. 384 (2009). This restriction on an individual's freedom creates a compelling interest that the statute heavily considers. However, Defendant Nowlin has been living and working in the community. Defendant Nowlin has developmental disabilities and, therefore, regardless of his involvement with the criminal court, he would be residing in a facility that supports the developmentally disabled. Because of this case, he is also subject to an order that creates heavy supervision and structure designed to mitigate the risk that Defendant Nowlin presents to public safety.
>
> Despite this significant structure and supervision in a residential setting that specializes in supporting those with developmental disabilities, Defendant has, in the past, been in contact with the victim and victim's family. Because this Defendant has made prior threats to the victim, the contacts have caused severe distress to the victim and his family in violation of the conditions of the supervision order.
>
> Also, in direct violation of Defendant's release conditions and the structure in his residential program, in the past Defendant was able to create and function with many social media accounts and he was able to download and view large amounts of pornography. Viewing of pornography on the internet creates an increased risk that Defendant Nowlin may sexually assault someone else. To mitigate that risk, the [c]ourt required 24/7 supervision of Defendant. After the 24/7 supervision requirement, Defendant Nowlin made

JURISDICTION

Preliminarily, appellee argues that this Court must dismiss the appeal for lack of jurisdiction because appellant has not appealed from a "final order that denies or fails to consider a right secured by the victim." Appellee also argues that an application for leave to appeal requires specific circumstances, none of which exist in the present case. We note appellant requested this appeal be noted as either an application for leave to appeal or as an appeal. This Court accepted his filing as an appeal.

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no more contact with the victim's family and had no more exposure to pornography.

In terms of the risk that Defendant Nowlin may sexually victimize someone in the future, the [c]ourt must consider that before Defendant Nowlin sexually assaulted the victim in this case, he was convicted of forced sexual assault upon someone else. With two convictions for forced sexual assault, the [c]ourt must conclude that Defendant Nowlin presents a future risk to others.

Even with a prior conviction for forced sexual assault, Defendant Nowlin, with his disabilities, was not supervised adequately to prevent the sexual attack that resulted in this case.

Another compelling circumstance that enhances the public safety risk is that because of Defendant's own developmental disabilities, Defendant lives with and is in programs with other developmental disabled and uniquely vulnerable individuals.

After dismissal of this case, the [c]ourt has little confidence that the 24/7 supervision will continue. The [c]ourt, therefore, would have found (if the statute did not prevent this action) that dismissal of this case creates a significant safety risk that this Defendant will sexually victimize someone else in the future (and perhaps multiple people). Balanced against that significant risk of harm, the [c]ourt would have found that this Defendant is not incarcerated and lives in no more a restrictive environment than is required to provide him with shelter, food and basic necessities. He has the freedom of working and earning an income. The [c]ourt would have found that the supervision from the current order is no more restrictive than is necessary to keep others safe and does not unreasonably infringe upon Defendant.

Appellant argues the victims of crime are permitted to file applications for leave to appeal from an interlocutory order or an appeal from an order that denies or fails to consider a right secured to the victim by CP §11-402 and § 11-403. Because the victim was not meaningfully heard on his "extraordinary cause" argument, appellant argues this matter is appealable because a crime victim had a statutory right to have his views meaningfully considered and not "simply cast aside and never addressed."

Maryland Code CP § 11-103(b) states:

> (b) Although not a party to a criminal or juvenile proceeding, a victim of a crime for which the defendant or child respondent is charged may file an application for leave to appeal to the Court of Special Appeals from an interlocutory order or appeal to the Court of Special Appeals from a final order that denies or fails to consider a right secured to the victim by subsection (e)(4) of this section, § 4-202 of this article, § 11-102 or § 11-104 of this subtitle, § 11-302, § 11-402, § 11-403, or § 11-603 of this title, § 3-8A-06, § 3-8A-13, or § 3-8A-19 of the Courts Article, or § 6-112 of the Correctional Services Article.

There are twelve enumerated circumstances from which a victim may appeal under CP § 11-103(b).[3]

[3]

(1) CP § 11-103(e)(4) refers to victim rights that were not considered.
(2) CP § 4-202 refers to criminal cases that were transferred to a juvenile court.
(3) CP § 11-102 refers to the rights of victims to attend proceedings for those who file a notification request or protection of employment.
(4) CP § 11-104 refers to the notification of the victim or the victim's representative about court proceedings.
(5) CP § 11-302 refers to the victim or the victim's representative about criminal trials or juvenile hearings.
(6) CP § 11-402 refers to the victim's right of a victim impact statement being presented.
(7) CP § 11-403 refers to the right of a victim or the victim's representative to speak to the court at sentencing or disposition hearing.

This appeal, however, stems from a dismissal under CP § 3-107(a), which is not enumerated as a proceeding from which a victim may appeal. It states:

> (a) Whether or not the defendant is confined and unless the State petitions the court for extraordinary cause to extend the time, the court shall dismiss the charge against a defendant found incompetent to stand trial under this subtitle:
>
> > (1) when charged with a felony or a crime of violence as defined under § 14-101 of the Criminal Law Article, after the lesser of the expiration of 5 years or the maximum sentence for the most serious offense charged; or
> >
> > (2) when charged with an offense not covered under item (1) of this subsection, after the lesser of the expiration of 3 years or the maximum sentence for the most serious offense charged.

Md. Code Ann., Crim. Proc. § 3-107(a).

Appellant, nevertheless, claims the language found in CP §11-402 and CP §11-403 is applicable to the proceedings in the present case. We note that CP §11-402 allows a court to consider a victim impact statement in determining whether to transfer jurisdiction under § 4-202 of this article or waive jurisdiction under § 3-8A-06 of the Court and Judicial Proceedings Article. CP §11-403 relates to sentencing or disposition proceedings and states:

> (b) In the sentencing or disposition hearing the court, if practicable, shall allow the victim or the victim's representative to address the court under oath before the imposition of sentence or other disposition:

---

(8) CP § 11-603 refers to the rights of restitution.
(9) Courts Article § 3-8A-06 refers to waivers.
(10) Courts Article 3-8A-13 refers to the "sufficiency of petition."
(11) Courts Article 3-8A-19 refers to child disposition.
(12) CP § 6-112 refers to matters involving probation services, presentence investigations, and other investigations.

> (1) at the request of the prosecuting attorney;
>
> (2) at the request of the victim or the victim's representative; or
>
> (3) if the victim has filed a notification request form under § 11-104 of this title.

In *Lopez-Sanchez v. State*, the petitioner, a victim of a delinquent act, sought to appeal a restitution award because he had not been notified of the proceedings. 388 Md. 214 (2005). This Court dismissed the appeal, holding that the appeal was not authorized by statute. The Court of Appeals granted certiorari and affirmed this court's decision, holding that "any right of a victim to appeal or to file an application for leave to appeal must originate from the General Assembly, not from this Court." *Id.* at 230. At the time of the proceedings, § 11-103(b) of the Criminal Procedure differed from its current form and did not provide for victim appeals from delinquency proceedings.[4] The Court of Appeals concluded:

> . . . not only is § 11-103 silent as to a right of appeal for victims of delinquent acts, but the plain language of the statute reflects a rejection of language that would have created this right. . . . it would be illogical to extend this enlargement to victims of delinquent acts. The Legislature has enacted a statute, § 11-103 of the Criminal Procedure Article, addressing the appellate

[4] The old version of the statute was as follows:

> Right to file for leave to appeal.—Although not a party to a criminal proceeding, a victim of a violent crime for which the defendant is charged may file an application for leave to appeal to the Court of Special Appeals from an interlocutory or final order that denies or fails to consider a right secured to the victim by § 11-302(c), § 11-402, § 11-403, or § 11-404 of this title or § 6-112 of the Correctional Services Article.

Lopez-Sanchez, 388 Md. at 228. The current statute does include delinquent acts.

> rights of victims. The rights granted by that statute do not extend to the victims of delinquent acts.

Id. at 229. Similar to the statute cited in *Lopez-Sanchez,* CP §11-103 is silent as to appeals for victims under CP § 3-107(a).

On review, when analyzing a statute, we examine "the plain language, '[w]e neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, and we do not construe a statute with 'forced or subtle interpretations' that limit or extend its application.'" *Washington v. State,* 450 Md. 319, 330 (2016) (quoting *Willis v. Montgomery Cty.*, 415 Md. 523, 537 (2010)). Here, we hold that the statute is clear and unambiguous and does not provide crime victims a right of appeal from orders dismissing criminal charges. As such, we must decline to extend the statute by judicial decision.

Appellant argues, alternatively, that this Court has discretion to hear this case as a mandamus action. However, an appellate court's jurisdiction over a case under mandamus is limited to circumstances, to "restrain a lower court from acting in excess of its jurisdiction, otherwise grossly exceeding its authority, or failing to act when it ought to act." *In re Petition for Writs of Prohibition*, 312 Md. 280, 307 (1988). The Court of Appeals, in *State v. Manck,* stated:

> we recognized that by making possible the review of a potentially unreviewable question [writs such as mandamus and] prohibition aided the appellate process. These writs are used "to prevent disorder, from a failure of justice, where the law has established no specific remedy, and where in justice and good government there ought to be one. The power to issue prerogatory writs is necessarily incident to this Court, to preserve the usefulness of its appellate jurisdiction. If it were otherwise, cases might arise in which the appeal would be but as a shadow, pending which the substance

might be lost.

385 Md. 581, 587–88 (2005) (internal citations and quotations omitted).

In the present case, the trial court did not exceed its jurisdiction or authority but rather, acted in accordance with CP § 3-107(a), which requires a court to dismiss a case "unless the State petitions the court for extraordinary cause to extend the time" when "a defendant [is] found incompetent to stand trial[.]" It is undisputed that the State did not petition the court to extend the time for "extraordinary cause." While it is not dispositive, it is also undisputed that the victim, through his representative was allowed to present his views on whether the facts demonstrated "extraordinary cause." The court acknowledged those views but was required to comply with the plain language of the statute.

APPEAL DISMISSED. JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

Circuit Court for Washington County
Case No. 21-K-13-048746

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1707

September Term, 2019

M.O.

v.

STATE OF MARYLAND

Shaw Geter,
Gould,
Maloney, John
(Specially Assigned)

Concurring opinion by Maloney, J.

Filed: March 24, 2021

I agree with the Court's excellent analysis explaining how the current state of the law does not permit an avenue for appeal by the victim in this case. I write separately to point out what could be an unintended consequence in §3-107(a) of the Criminal Procedure Article ("CP") that is revealed by the history of this case. The majority opinion highlights that section (a) of the Article indicates that the court "shall dismiss the charge against a defendant found incompetent to stand trial" unless "the State petitions the court for extraordinary cause to extend the time" for dismissal, which is usually five years for felonies pursuant to sub-section (a)(1).[1] The State clearly indicated that it was not seeking extraordinary cause.

[1] The full text of the 7-103 is:

a) Whether or not the defendant is confined and unless the State petitions the court for extraordinary cause to extend the time, the court shall dismiss the charge against a defendant found incompetent to stand trial under this subtitle:

(1) when charged with a felony or a crime of violence as defined under § 14-101 of the Criminal Law Article, after the lesser of the expiration of 5 years or the maximum sentence for the most serious offense charged; or

(2) when charged with an offense not covered under item (1) of this subsection, after the lesser of the expiration of 3 years or the maximum sentence for the most serious offense charged.

Notice and opportunity to be heard

(b) Whether or not the defendant is confined, if the court considers that resuming the criminal proceeding would be unjust because so much time has passed since the defendant was found incompetent to stand trial, the court shall dismiss the charge without prejudice. However, the court may not dismiss a charge without providing the State's Attorney and a victim or victim's representative who has requested notification under § 3-123(c) of this title advance notice and an opportunity to be heard.

Notice to victim, victim's representative, and Criminal Justice Information System Central Repository

(c) If charges are dismissed under this section, the court shall notify:

(1) the victim of the crime charged or the victim's representative who has requested notification under § 3-123(c) of this title; and

(2) the Criminal Justice Information System Central Repository.

It appears that the legislature may not have anticipated a circumstance such as this in which the State and the victim did not share the same views concerning dismissal of the charges. The statute goes on to give the State and the victim the same right to be heard prior to any dismissal. But in this unique circumstance, as the appellant indicates, it is "a hollow right." Here, the victim's words were incapable of influencing the Court's decision as to dismissal since only the State can ask for extraordinary cause. In this case, the trial court, in its well-written opinion, seemed to suggest that the victim's words may have influenced its decision had the statute permitted it.

While it is impossible to anticipate every circumstance that may arise when legislation is crafted, I write simply to say that *if* what occurred procedurally in this instance was not the intent of the legislature, the legislature may want to address this unintended consequence.

Md. Code Ann., Crim. Proc. § 3-107.

SB 507- Summary.pdf
Uploaded by: Tracy Varda
Position: FAV

Bill Number: SB 507

Tracy Varda, Chief Assistant State's Attorney for Baltimore City
Favorable

The current version of CP 3-107 puts the public at unnecessary risk by requiring that dangerous incompetent defendants charged with murder have their charges dismissed after five years. Prior to 2012, CP 3-107 required incompetent defendants who were charged with murder to have their charges dismissed after 10 years as a result of 2006 amendments to the statute. In 2005, numerous public interest groups (including the Office of the Public Defender (OPD) and the Maryland Disabilities Law Center) participated in workgroups that involved long discussions and compromise to balance the rights of defendants with disabilities against society's interest in public safety resulting in significant amendments to CP Title 3. In 2012, when the death penalty was repealed the term "capital case" was stricken from all of the statutes. Therefore, with no discussion or consideration of the consequences, the time period for dismissal of charges in CP 3-107 for dangerous incompetent defendants charged with murder was inadvertently reduced to five years from ten years thus reversing the hard work of the numerous public interest workgroups.

Requiring the charges of defendants who are charged with murder to be dismissed after five years allows dangerous defendants to be released unsupervised into the community. If an incompetent defendant has an intellectual disability and is dangerous, once his charges are dismissed the only option for the court is to commit him to the Developmental Disabilities Administration (DDA) for 21 days to determine if he is eligible for services. DDA cannot consider his dangerousness. They will assess whether he qualifies for DDA services and **offer** such services to him. They are not mandatory and he is under no court order to accept the services. If he refuses the services, he is released into the community with no supervision. If an incompetent defendant has a mental illness and is dangerous, once his charges are dismissed, if he meets certain criteria, the court can civilly commit him to the Maryland Department of Health (MDH). However, there is no oversight and once the hospital determines the defendant is no longer dangerous (which may be a lower threshold that the court), the defendant will be released into the community with no supervision and no requirement to continue mental health treatment. **Allowing the charges to be open for 10 years will allow more time for the dangerous defendant to be restored to competency and will allow additional time for him to receive treatment and services minimizing the risk to public safety.**

Case in Point- Last year in Baltimore City, an incompetent defendant who was charged with murder after he admitted to killing his girlfriend was released into the community with no services. He had tortured the victim over a two day period where he tied her up, beat her about her entire body and knocked out her front teeth. During the assault, he took himself to the hospital to have his hands treated as a result of the punches to her and her teeth piercing his hands. He returned to the apartment and continued the attack in which he also poured boiling water on her, and heated a poker on the stove which he used to burn her about her body and

sexually assault her. After he was charged, he was diagnosed with a mild intellectually disability and found incompetent to stand trial. He was in a community DDA program the last eleven months of his five year incompetency status. At the five year mark, the State filed a petition for extraordinary cause requesting his charges be extended. The director of his DDA program testified that he was receiving court ordered 1:1 services (an aide who is trained to work with individuals who have behavioral issues and stays within arm's length of them to deescalate dangerous behavior) 24 hours a day seven days a week and without his 1:1 aide, he would be a threat to anyone around him. She testified how he needed to be redirected daily and physically kept away from their vulnerable population for their safety. The court found that because of *Ray v. State,* 410 Md. 384 (2009), she could not find extraordinary cause existed and dismissed his charges. Despite his DDA program attempting to convince him to retain their housing and services, he left the program immediately. He is now somewhere unsupervised in the community. And while the State is in the process of recharging him, his location is unknown and is it possible that he will not be found until he hurts or kills someone else.

The passing of SB 507 will not violate the rights of incompetent defendants. One of the reasons for the 2006 amendments to CP 3-107 was a law suit filed by the Maryland Disability Law Center on behalf of incompetent defendants claiming their rights were violated because they could be indefinitely institutionalized, they could be committed for longer than the maximum sentence had they been convicted and there were no court reviews of the commitments. The 2006 amendments provided that there would be no indefinite commitments, a defendant could not be committed longer than the criminal penalty of the crime for which he was charged, and regular court reviews were required. Passing SB 507 will continue to protect these rights and will not affect these three changes to the statute. Another reason for the 2006 amendments was the holding in *Jackson v. Indiana*, 406 U.S. 715 (1972). The *Jackson* court found that it was a violation of due process to commit someone longer than reasonably necessary to determine if they could be restored to competency but specifically declined to make a ruling about whether an incompetent defendant's charges should be dismissed. When discussing *Jackson*, commitment to an institution and dismissal of charges should not be conflated. SB 507 is consistent with the holding in *Jackson.*

SB 507 will not affect the court's ability under 3-107 (b) to dismiss the charges at any time if the court believes resuming the charges would be unjust.

SB 507 will only allow an extension of the time period for mandatory dismissal of charges for those defendants who are dangerous and a threat to public safety.

SB 507 for House.pdf
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Position: UNF

MARYLAND OFFICE OF THE PUBLIC DEFENDER

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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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For further information please Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

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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