

Bill Number: SB 507

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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 In 2012, when the death penalty was repealed the term "capital case" was stricken from all of the statutes.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 than 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 intellectual 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.

