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POSITION ON PROPOSED LEGISLATION

BILL: SB507/HB703

Criminal Procedure- Diagnosis of Developmental Disability or Intellectual Disability Evidence

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: February 5, 2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House 703/Senate Bill 507.

Relationship between Competency to Stand Trial and Intellectual Disability

It should be noted at the outset that people who are not able to understand court proceedings or assist in their defense are not competent to stand trial (and therefore can not be tried, convicted, or sentenced unless and until they become competent).¹ However, ability to understand, and quality of understanding are separate things. Hallmark characteristics of all Intellectual Disabilities are that people experience deficits in reasoning, problem solving, planning, abstract thinking, judgement, and in learning from past experiences.² There is no requirement that someone be capable of making *good* decisions about their case, only that they be capable of making decisions. In short, people with intellectual disabilities can learn enough to become competent to stand trial, although they are still functioning at a deficit that makes it difficult for them to assist in defense and understand the trial proceedings as they are happening.

Vulnerability to Harm in Jails and Prisons

People with Intellectual Disabilities are significantly more vulnerable while incarcerated than those without. Aside from being victims of institutional violence, they may be coerced into giving other people their food and commissary or allowing other inmates to use their phone calls. Once in the

¹ Criminal Procedure Article §3-101(f), and

² DSM-5_TR, Section II: Neurodevelopmental Disorders.

criminal justice system, people with Intellectual Disabilities often experience more confusion about court procedures, and diminished capacity to assist in their defense which can lead to them serving longer and harder sentences than those without these disabilities. While incarcerated, failure to quickly comply with orders, which may be related to difficulty processing information or anxiety in high stress situations, can lead to disciplinary reports, and can eventually result in solitary confinement or prolonged sentences.³

SB507/ HB703 enables evidence of a defendant's Intellectual Disability to be introduced and considered at trial.

As it currently stands the burden of proving criminal intent (mens rea, or mental state) is on the state, however a defendant's intent may be shown by surrounding circumstances and the judge or jury may infer that a person ordinarily intends the natural and probable consequences of their conduct.⁴ Particularly for people with Intellectual Disabilities, it is not always fair to assume that they intended the consequences of their actions. Again, people with intellectual disabilities experience deficits in reasoning, problem solving, and planning in ways that mean they did not understand or intend the consequences of their actions.

While the Defense is entitled to put forth evidence that the required mens rea did not exist in specific intent crimes⁵ the law is less clear as to general intent crimes such as second-degree assault, possession of controlled dangerous substances, or malicious destruction of property. This bill would clarify that evidence of intellectual disability can be introduced by the Defendant and be considered at all stages of a case.

Consideration of Intellectual Disability in Pre-Trial Detention Facilities

While Attorneys are permitted to raise a person's intellectual disabilities there is currently no requirement that Commissioners or Courts consider that information at bail review hearings. When considering pre-trial release judicial officers are required by Rule to consider a number of factors,

³ Jennifer C. Sarrett, Alexa Ucar, Beliefs about and perspectives of the criminal justice system of people with intellectual and developmental disabilities: A qualitative study, Social Sciences & Humanities Open, Volume 3, Issue 1, 2021, <https://doi.org/10.1016/j.ssaho.2021.100122>

⁴ See Maryland Pattern Jury Instructions- Criminal 3:31, Proof of Intent.

⁵ Hoey v. State, 311 Md. 473 (1998).

but intellectual disability is not listed among those factors.⁶ This bill would require intellectual disability to be a consideration during pre-trial release proceedings and empower judicial officers to craft conditions of release that consider an individual's needs and abilities.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB507/HB703.

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⁶ Md. Rule 4-216.1(f).