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## POSITION ON PROPOSED LEGISLATION

**BILL: SB90 Criminal Procedure - Incompetency to Stand Trial Dismissal**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: January 21, 2025**

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The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on SB90 as it has been drafted. We are, however, in conversations with the State's Attorneys and are willing to continue discussing amendments that address these concerns..

Senate Bill 190 proposes to Amend Criminal Procedure Article (CP) §3-107(a) in two ways. First, it seeks to extend the time for dismissal after a continuous finding of Incompetency to Stand Trial for charges of First Degree Murder or First Degree Rape from five years to ten. Second, SB 190 seeks to enable State's Attorneys to petition to extend the time for dismissal based on extraordinary cause in any case at *any* time.

The Office of the Public Defender requests an unfavorable report on this bill for several reasons. First, it is unlikely to pass constitutional review under the principles set forth in *Jackson v. Indiana*, 406 U.S. 715 (1972.) Second, the language permitting prosecutors to petition to extend time for dismissal at any time is unconstitutionally vague. Third, extending the dismissal or the time during which the State can petition to extend time for dismissal is likely to worsen an already intractable and costly problem of limited bed space in state mental hospitals. Fourth, it is unnecessary as the vast majority of people become competent within our current statutory time frame.

### 1: Constitutional requirements of reasonableness:

People charged with criminal offenses who are committed solely because they are Incompetent to Stand Trial (IST) cannot be held for more than a reasonable time necessary to determine whether they will ever become competent. *Jackson v. Indiana*, 406 U.S. 715 (1972.) Commitment for

incompetency is for the purpose of restoring the individual's ability to participate in a constitutionally fair trial. Certainly murder and rape are the most serious offenses and cause the most harm. Nevertheless, tying the length of hospitalization to the severity of the charge is based on a rationale of punishment rather than treatment, even though these individuals have not—and in fact may never be—convicted of a crime. The time frames outlined in the current statute are reasonable. The vast majority of people will become competent to stand trial well within our current statutory time frame. Studies have variously reported restorability between 75% and 95% within a year.<sup>1</sup> According to BHA the average length of stay at Maryland's State Psychiatric Hospitals is 850 days, a little more than two years.<sup>2</sup> While this does not tell us the average amount of time it takes for someone in Maryland's hospitals to become competent, this number does demonstrate the likelihood that relatively few people remain incompetent at the end of five years—the current statutory time frame for dismissal.

2: The provision allowing prosecutors to petition to extend the dismissal time at any time is unconstitutionally vague and invites arbitrary enforcement.

The Fifth Amendment's Due Process Clause requires a statute to be clear enough to give ordinary people fair notice of the conduct it punishes, and set standards to avoid inviting arbitrary enforcement.<sup>3</sup> CP § 3-107 already permits the State's Attorney to file a petition to extend the dismissal time for extraordinary cause. This bill, however, would allow the State to petition the court “at any time”. It does not specify whether “any time” is limited to before the required dismissal date or also includes after the dismissal date has passed. Particularly in minor misdemeanors where the maximum time is three years there is great potential for arbitrary enforcement. Although MDH does not publish the number of IST commitments for misdemeanors specifically, District Courts have the highest number of orders for competency evaluations<sup>4</sup> and are

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<sup>1</sup> Zapf, Patricia, and Roesch, Ronald. Evaluation of Competence to Stand Trial. Chapter 3, p.55. Oxford University Press (2009)

<sup>2</sup> MDH Presentation to Commission on Behavioral Health Care Treatment and Access - Criminal Justice Involved Workgroup & BHAC Criminal Justice Forensic Subcommittee given on October 1, 2024. Slide 17. Which can be found: [https://health.maryland.gov/commission-bhc/Documents/Slides%20October%20Joint%20BHC\\_BHAC%20Criminal%20Justice%20Workgroup%20Meeting.pdf](https://health.maryland.gov/commission-bhc/Documents/Slides%20October%20Joint%20BHC_BHAC%20Criminal%20Justice%20Workgroup%20Meeting.pdf)

<sup>3</sup> Johnson v. United States, 576 U.S. 591, 595, 135 S. Ct. 2551, 2556, 192 L. Ed. 2d 569 (2015).

<sup>4</sup> MDH Presentation to Commission on Behavioral Health Care Treatment and Access - Criminal Justice Involved Workgroup & BHAC Criminal Justice Forensic Subcommittee given on October 1, 2024. Slide 23. Which can be found: [https://health.maryland.gov/commission-bhc/Documents/Slides%20October%20Joint%20BHC\\_BHAC%20Criminal%20Justice%20Workgroup%20Meeting.pdf](https://health.maryland.gov/commission-bhc/Documents/Slides%20October%20Joint%20BHC_BHAC%20Criminal%20Justice%20Workgroup%20Meeting.pdf)

therefore likely to have the highest number of IST findings. In those cases court reviews are required yearly,<sup>5</sup> but Courts often hold hearings every six months in order to ensure that cases are not lost and that the statutory time frame does not pass without a competency hearing. It is not overly burdensome to petition the court to extend time at or before a competency hearing.

### 3: Costs Associated with this Bill and Hospital Bed Unavailability

When a similar bill was introduced last year (SB449) the fiscal note indicated that while MDH could not give a specific cost, extended commitments could create other costly problems by reducing the turnover of beds necessary to accommodate the need for psychiatric beds within existing facilities. In Maryland people who are hospitalized as a result of an IST finding are committed either at the Spring Grove Hospital Center, Springfield Hospital Center, and Clifton T. Perkins Hospital; unless they are Intellectually Disabled in which case they go to a Secure Evaluation and Therapeutic Treatment (SETT) Center operated by DDA. While people are committed to those facilities for reasons other than being IST, 99% of the patients there are court involved.<sup>6</sup> BHA has also had a record high number of competency evaluation orders, causing lengthy wait lists. At the present time MDH has insufficient number of beds available for all of those people who have been committed to hospitals in criminal cases. In fact, MDH is currently being sued because people are languishing in jails waiting to get into hospitals<sup>7</sup>, and a Baltimore County Judge ordered MDH to pay \$608,000 as a penalty for failing to move people from jails to hospitals in a timely manner.<sup>8</sup> This problem will only be worsened by extending the time for dismissal in first degree murder and first degree rape cases.

### 3: Unnecessary legislation:

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[bhc/Documents/Slides%20October%20Joint%20BHC\\_BHAC%20Criminal%20Justice%20Workgroup%20Meeting.pdf](https://health.maryland.gov/commission-bhc/Documents/Slides%20October%20Joint%20BHC_BHAC%20Criminal%20Justice%20Workgroup%20Meeting.pdf)

<sup>5</sup> CP § 3-106(d)(1)(i).

<sup>6</sup> MDH Presentation to Commission on Behavioral Health Care Treatment and Access - Criminal Justice Involved Workgroup & BHAC Criminal Justice Forensic Subcommittee given on October 1, 2024. Slide 9. Which can be found at [https://health.maryland.gov/commission-bhc/Documents/Slides%20October%20Joint%20BHC\\_BHAC%20Criminal%20Justice%20Workgroup%20Meeting.pdf](https://health.maryland.gov/commission-bhc/Documents/Slides%20October%20Joint%20BHC_BHAC%20Criminal%20Justice%20Workgroup%20Meeting.pdf)

<sup>7</sup> Mann, Alex "Maryland Department of Health sued for leaving mentally ill criminal defendants languishing in jails." January 10, 2025, Baltimore Sun: <https://www.baltimoresun.com/2025/01/09/health-lawsuit-mentally-ill-defendants/>

<sup>8</sup> Conarck, Ben et al, "People with severe mental illness are languishing in jail. Now the State has to pay." May 10, 2024, Baltimore Banner. <https://www.thebaltimorebanner.com/community/criminal-justice/mental-health-care-maryland-jails-Q23LUZSBSNC2JH4RTUAAWIUCUQ/>

The proposed legislation is not necessary to achieve the purported goals. As CP §3-107(a) currently stands the time required for dismissal is determined by the seriousness of the offense and longest possible sentence. However, dismissal is not necessarily the end of the road for the defendant. People deemed to still be mentally ill and dangerous may be involuntarily civilly committed to a hospital until such time as they are no longer mentally ill and dangerous— that commitment could last a lifetime. For individuals who are Intellectually Disabled, there are separate administrative procedures in place to address placement and public safety, but this commitment could also last a lifetime.<sup>9</sup>

Under the current law the State’s Attorney can already petition the court to find extraordinary cause to extend the time for dismissal. Further, the statutorily required dismissal of the case is without prejudice, meaning that offense could be re-charged by the State’s Attorney if they believe the defendant has become competent or there is a likelihood that the defendant will become competent in the foreseeable future. For first degree murder and rape, there is no statute of limitations, so all of those offenses could be re-charged at any time.

In short, further extending the time for dismissal of the specified charges is punitive, not restorative. Allowing the State’s Attorney to Petition to Extend time at any time is unconstitutionally vague and invites arbitrary enforcement.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB90.**

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<sup>9</sup> See Md. Criminal Procedure Article 3-106(e)(2), and Md. Health General Article 7-502.

