SB90
Uploaded by: Kurt Wolfgang
Position: FAV

MCVRC

Maryland Crime Victims' Resource Center, Inc.

Continuing the Missions of the Stephanie Roper Committee and Foundation, Inc.
Email: mail@mdcrimevictims.org Web Page: www.mdcrimevictims.org
Toll Free: 1-877-VICTIM 1 (1-877-842-8461)

Headquarters
1001 Prince George's Blvd
#750
Upper Marlboro MD 20774
301-952-0063 (phone)
877-842-8461 (toll free)
240-929-0526 (fax)

Baltimore
218 E. Lexington Street
#401
Baltimore MD 21201
410-234-9885 (phone)
410-234-9886 (fax)

Carroll; Howard; Baltimore Counties
Oakland Manor
5430 Vantage Pt. Rd
Columbia, MD 21044

Eastern Shore
310 Gay Street
Cambridge MD 21613

Frederick and Montgomery Counties

Prince George's Family Justice Center (partnership)
14757 Main Street
Upper Marlboro, MD 20774
301-780-7767 (phone)

Western Maryland
59 Prospect Square
#006
Cumberland MD2

TESTIMONY SB 90 JUDICIAL PROCEEDINGS COMMITTEE JANUARY 21, 2025

"Let the public safety be the highest law" – Cicero – 54 BCE or two thousand and seventy seven years ago, Cicero first set this critical thought to paper. It should be a guiding principle for all we do in the realm of criminal justice. Preservation of rights sometimes demand a higher priority, but then the safety of the public should come next.

Our organization has been involved in a number of cases regarding those who have been determined to be incompetent to stand trial after being accused of heinous acts. This bill pours ten gallons of common sense on several problems with the law regarding incompetency.

The first measure of common sense is to allow the victim the opportunity to move for the extension of time for dismissal of charges as opposed to merely the State's Attorney. We have been down this road before. In a recent case, we had the Assistant State's Attorney actually admit to us that she was not concerned to move to extend the time for dismissal, because the Defendant intended to move far outside her county, where he would not be her problem any longer. This kind of attitude is shocking, but not rare. We could get lost in a conversation of other problems within the system that cause prosecutorial frustration levels so high as to take such a callous position openly. But the best remedy to the situation is allowing the victim to independently move for the extension of time for dismissal of the charges.

The second dose of common sense is extending the period of time after which dismissal is required for serious cases. Again, our organization has been down that road, as well. When an accused violent sex offender murderer stands to have their charges dismissed after five years of incompetency, this is a serious mistake in Maryland's current criminal statutes. There need be no showing that the person is no longer a danger to society, only a showing that five years have passed. This law would extend that period to a reasonable amount.

Our State's Attorneys overall are very good at what they do, within the system in which they operate. But that system is exceedingly fast-paced, and requires most of their energy to focus of the tidal wave of new cases facing them every day. It is difficult for them to swim back upstream to address five-year-old issues. This is one of the reasons that it is important to allow the victims to move for extension of the time to dismissal as well. Please give a favorable report to SB 0507. Thanks so much to Bishop Senator Muse for this refreshing assistance to a serious problem.

Kurt W. Wolfgang
Executive Director , on behalf of all crime victims/survivors

SB 90 Support Letter Final.pdf
Uploaded by: Tracy Varda
Position: FAV

State's Attorney
Ivan J. Bates

120 East Baltimore Street
Baltimore, MD 21202
443-984-6000

OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY

January 17, 2025

The Honorable William C. Smith, Jr., Chairman
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

RE: SB90 – Criminal Procedure – Incompetency to Stand Trial Dismissal

Dear Chairman Smith and Members of the Senate Judiciary Committee,

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 (MDLC)) 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. The services 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.

SB 449 will help protect our most vulnerable victims - children and individuals with disabilities.

Often times, the victims of crimes committed by incompetent individuals are either children or other individuals with developmental disabilities. Because of the vulnerability of these victims, they are easy targets and less able to defend themselves against such violent acts.

Case in Point-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 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, broke her nose, 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 those around him.

She testified how he needed to be redirected daily and physically kept away from the program's 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.

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 (now Disability Rights Maryland) 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*. Furthermore, the statute requires that every 6 months the court reassess competency and if an individual is found to be unrestorable to competency, the charges will be dismissed. This safeguard will prevent individuals who are committed as incompetent from being held longer than is reasonably necessary to be restored to competency.

Case in Point- In Baltimore City, a defendant with an intellectual disability was charged with raping a 6-year-old girl over a period of months until the girl's mother walked in on them. He was charged with Rape and Sex Offense of a Minor, found incompetent to stand trial and committed to a State facility for individuals with developmental disabilities. While at the inpatient program, pursuant to CP 3-106, a community treatment plan was developed to allow him to reside in the community on pretrial status. Currently, he resides in a community residential treatment facility receiving numerous services and daily activities to include trips to various outings such as the YMCA, a gym to workout, a community park, various grocery stores, movies, and Walmart. While he remains charged

with rape, the community services he is receiving provides him the least restrictive commitment to MDH, allowing him to reside in the community while mitigating his risk to other children.

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 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.

Sincerely,

Tracy Varda

Tracy Varda
Chief Assistant State's Attorney for Baltimore City

January 16, 2023

The Honorable William C. Smith, Jr., Chairman
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

RE: SB 90– Criminal Procedure – Incompetency to Stand Trial Dismissal

Dear Chairman Smith and Members of the Senate Judiciary Committee,

Dillian Hughes is charged with repeatedly raping my granddaughter who was 6 years old at the time. He is incompetent to stand trial and in the community. We met him through moving into a new neighborhood and purchasing a home. Mr. Hughes and his family lived in this neighborhood the woman we met represented herself as Dillian Hughes guardian/grandmother and introduced Dillian Hughes her grandson to my adult son his wife and three children and myself. Our nightmare begins! Dillian Hughes came to the outside of the home often when my son Thomas would be outside doing yard work, or automotive work he went on to be very friendly always asking Thomas to teach him automotive work Mr. Dillian Hughes said "he really wanted to learn and ask Thomas to mentor him". Dillian grandmother spoke with Thomas and said how much Dillian and her appreciated him being a friend to Dillian in hopes to motivate Dillian.

What we now know is Dillian Hughes used our family to gain our trust and to gain access to my only granddaughter who was six at this time. As things unfolded and sometime passed my family became concerned about Dillian Hughes' interest in Hailey (my granddaughter) he seemed to try to seek chances to try to be alone with Hailey only. My son and I confronted Dillian and his grandmother regarding our concerns. To which we were both told "there was nothing to worry about Dillian was a bit of a slow learner but he was harmless". However, concern still grew when Dillian tried to get Hailey to sit in his lap and give him hugs. This happened within a week of speaking with Dillian and his grandmother. My son Thomas addressed this again to Dillian who stated, "I am not stupid I just play stupid well dude I like being around Hailey we play games you aren't taking that from me" My son Thomas argued with Dillian Hughes told him "To leave the house and stay away since he could not respect boundaries regarding Hailey". Dillian Hughes left the home angry.

The next day while Thomas was at work Dillian came to the home of my daughter in law who was home with the children while COVID was happening, and the children were doing virtual learning. Dillian said "I was coming to see Tom and apologize for my actions of not respecting his rules". My daughter in law tells Dillian" You will have to come talk to Tom when he is home" She then says" can you give me just a few minutes " I have to grab the laundry out of the dryer then I will have to see you out and you can come back this evening and speak to Tom".

Lisa steps away and within 15 minutes she is back in the dining area and doesn't see Dillian or Hailey. She only sees her son's she asks her oldest son Noah who was 8 years old "where is your sister Hailey?" Noah states Dillian told her to come upstairs with him and Hailey followed. Lisa immediately called up the stairs as she was hearing some noises from Haileys bedroom. Lisa goes up the stairs she has to push hard to get the bedroom door open and finds Dillian Hughes performing an oral sex act on her child and trying to close his zipper also. Lisa was screaming at Dillian Hughes as he pushed past her running down the stairs and out the door.

Police were immediately called, and Hailey was taken to the hospital and Dillian Hughes was found close by and arrested. It was discovered and disclosed by Hailey that "Dillian played special games with her,

but they hurt often times". Hailey kept Dillian's secret at his request. He told Hailey I can't play special games and be your friend if you tell on me" Dillian Hughes raped and molested Hailey several times we discovered. Dillian even used "butter he would have her get for him he told her "It wouldn't hurt as much when he put his penis in her"

I am graphic because I want people to know what he was and still is capable of Dillian Hughes will without a doubt offend and harm again if given the chance. Is Dillian Hughes mentally, right? Of course not! But my granddaughter will never be mentally right now either thanks to him. An innocent child, her life and relationships with people that she trusted will never be right again. Her future has been forever changed. Doesn't she matter? Doesn't her mental health matter? We must do all that we can to protect our children and vulnerable people from predators and while Mr. Dillian Hughes may have some issue's he needs help with don't dismiss the fact he is a skillful predator! Maybe his clinicians see potential I see plenty of potential too Mr. Hughes has the potential to harm more innocent victims he has the potential to wreck other lives and families maybe even your children, your grandchildren, your nieces or nephews don't ever think it couldn't happen to your family it can happen to any of us!
The laws need to change let's protect the victim's and the families who deserve it let's give Justice to those who need it who deserve it the most I beg you! I could go on forever advocating for the victims, for my granddaughter and my family, but I will just leave you with this for now and pray we change these laws and change this bill for all of us who deserve protection and who deserve justice! My god we need to protect the victims I beg you!

Sincerely,

Stephanie Williams

January 16, 2023

The Honorable William C. Smith, Jr., Chairman
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

RE: SB 90– Criminal Procedure – Incompetency to Stand Trial Dismissal

Dear Chairman Smith and Members of the Senate Judiciary Committee,

I am a grieving mother whose daughter, Tyra Womack was murdered in cold blood. These past four years have been very hard for my entire family, especially for my grandson, her only child. The defendant in her case was initially found to be competent and soon after, he was found to be incompetent. Not knowing how long this will go on and whether he will be held accountable for killing my daughter leaves us in limbo. It gives the criminal more rights than the victim's family.

It is imperative that this bill be passed in order to extend the length of time to 10 years oppose to 5 years. If the bill is passed, he will continue to be held, evaluated and hopefully found to be competent and held responsible for his crime.

The defendant is very dangerous and should not be allowed to be released. I urge you to pass this bill and bring justice to families such as mine.

Thank You,

Acquanetta Phillips

SB 90 - Incompentent to Stand Trial - Testimony JP
Uploaded by: C. Anthony Muse
Position: FWA

C. Anthony Muse
Legislative District 26
Prince George's County

Committees
Judicial Proceedings
Vice Chair, Executive Nominations
Rules

Miller Senate Office Building
11 Bladen Street, Room 422
Annapolis, Maryland 21401
410-841-3092
800-492-7122 *Ext.* 3092
Anthony.Muse@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB 90: Criminal Procedure – Incompetency to Stand Trial Dismissal

Good afternoon, Mr. Chairman, Vice Chair, and members of the Judicial Proceedings Committee.

Senate Bill 90, seeks to alter the time period after which a court is required to dismiss a certain charge against a defendant found incompetent to stand trial under specific circumstances. It also requires the court to provide notice and offer an opportunity to be heard to the State's Attorney and the victim or the victim's representative before dismissing the charge against a defendant found incompetent to stand trial.

Currently, there is a provision requiring the dismissal of charges if a defendant is found incompetent to stand trial. SB 90 seeks to modify the timeline for dismissal, mandating that the charges be dismissed within 10 years for those defendants charged with First-Degree Murder or First-Degree Rape. This ensures that the legal process moves forward in a timely manner, while respecting the complexities of cases involving defendants who are unable to stand trial due to incompetence.

Two amendments have been proposed to clarify certain language in the bill:

1. **Amendment 1**: The language on page 2, lines 11-15, which is redundant with language found on lines 18-23, this will eliminate confusion. The revised language will read as follows:
   "…under § 3-123 of this title and § 11-104 of this article advance notice and an opportunity to be heard."

2. **Amendment 2**: The word "charge" will be struck on page 2, lines 16-17, to avoid any implication that the court has the authority to extend the maximum penalty for the charge itself. This will remove potential ambiguity, and the sentence will now end simply after "time."

In conclusion, SB 90 is an important piece of legislation that seeks to balance the interests of justice with the rights of victims. The proposed amendments will ensure clarity and prevent confusion, enhancing the effectiveness of the bill.

Therefore, I respectfully urge the committee to issue a **FAVORABLE** report for SB 90 as amended.

CVR - IST - testimony - senate - 2025 - MCASA FWA
Uploaded by: Lisae C Jordan
Position: FWA

MCASA
Maryland Coalition Against Sexual Assault

Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
www.mcasa.org

Testimony Supporting Senate Bill 90 with Amendments
Lisae C. Jordan, Executive Director & Counsel
January 21, 2025

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 90 with Amendments.

Senate Bill 90 – Crime Victim Rights – Right to Petition to Extend Charges Based on Extraordinary Circumstances and Continued Supervision of IST Defendants
Maryland law correctly limits the length of time a person may be detained after a finding that they are incompetent to stand trial (IST). If the defendant was charged with a felony or a crime of violence under § 14-101 of the Criminal Law Article, the court must dismiss the charge after the lesser of the expiration of five years or the maximum sentence for the most serious offense charged. For all other defendants, the court must dismiss the charge after the lesser of the expiration of three years or the maximum sentence for the most serious offense charged. Both the State's Attorney and the victim must be notified of the contemplated dismissal, however, only the State's Attorney may file a motion to continue charges based on extraordinary cause. **This bill would expands the maximum period of supervision when there are charges of rape in the first degree or first degree murder to 10 years. Unlike past versions of this bill, it would not grant victims the right to petition the court to extend the time to dismiss a charge regarding a defendant who has been found incompetent to stand trial. MCASA believes it is critical to provide crime victims with this right to petition.**

Continued charges and supervision protect victims and the community when a defendant is both IST and dangerous. It is critical to understand that if charges are not continued, the defendant will no longer have supervision. Two sessions ago, this bill was introduced following the unreported opinion, *MO v. State*, filed by the Court of Special Appeals, March 24, 2021, and submitted with this testimony. In this case, a known and dangerous sex offender was approaching the 5 year limit on his IST status and a motion to dismiss charges was filed. The State's Attorney failed to file a motion to continue the charges, although they did oppose the motion to dismiss. The victim presented compelling testimony regarding the danger the defendant posed.

In the case prompting this bill, Terrell Nowlin 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. Mr. Nowlin was found incompetent to stand trial. In reviewing the motion to dismiss charges, the court made a number of findings regarding the risk the defendant poses:

> Because of this case, [the Defendant] 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 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.

The Court also highlighted the effect the dismissal of charges has on supervision of the IST defendant, noting:

> 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).

Both the trial court and the appellate court noted that the Courts' hands are tied because the statute does not permit the Court to accept the victim's petition to extend the time to dismiss charges and the State's Attorney filed to file the appropriate motion. Senate Bill 90 corrects this deficiency in the statute and helps make the promise of crime victim rights a reality. Senate Bill 90 does not mean 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.

Amendments
This case illustrates the importance of allowing crime victims and survivors the right to petition the Court. This Committee reported favorably on this right last session, and we urge the Committee to do so once again:

On page 2, in line 16, following "**THE STATE**" insert "**OR A VICTIM WHO HAS FILED A NOTIFICATION REQUEST FORM UNDER § 11–104 OF THIS ARTICLE"**

The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 90 with Amendments

CVR - IST case - SB90 FWA 2025.pdf
Uploaded by: Lisae C Jordan
Position: FWA

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 is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

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.

---

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.

SB0090_MHAMD_Unfav.pdf
Uploaded by: Ann Geddes
Position: UNF

MENTAL HEALTH ASSOCIATION OF MARYLAND

Heaver Plaza
1301 York Road, #505
Lutherville, MD 21093
phone 443.901.1550
fax 443.901.0038
www.mhamd.org

SB 90 – Incompetency to Stand Trial Dismissal
Senate Judicial Proceedings Committee
January 21, 2025
Position: Oppose

Mental Health Association of Maryland (MHAMD) is a nonprofit education and advocacy organization that brings together consumers, families, clinicians, advocates and concerned citizens for unified action in all aspects of mental health and substance use disorders (collectively referred to as behavioral health). We appreciate the opportunity to provide this testimony in opposition to SB 90.

SB 90 would extend the period of time that a person, who has been determined incompetent to stand trial, could be detained in a state hospital from a maximum of five years to a maximum of ten years, if the person has been charged with first-degree murder or first-degree rape.

It is vital to remember that a person determined incompetent to stand trial has not been found guilty of any crime by a court of law.

The purpose of current Maryland law on incompetency is to provide rehabilitative services to permit an individual to become competent to stand trial on criminal charges. The National Judicial College has stated that best practice is for the initial competency restoration to be no more than 120 days. If at the end of the 120-day period, a treating mental health professional states that there is a substantial probability that the defendant can be restored to competency in the **foreseeable future**, it may be appropriate to extend treatment for an additional, limited number of days.[1] Research has shown that if a person has not been restored to competency within this period of time, it is highly unlikely that they will ever be restored to competency.

The guidance of the National Judicial College has been adopted by twenty states, which have a maximum treatment period of one year or less.

Extending in statute the time period for dismissal of charges far beyond the time during which the person is likely to be restored to competency is unjust, pointless, expensive, and would strain the state's already overcrowded state hospital system.

For these reasons MHAMD opposes SB 90 and urges an unfavorable report.

[1] "Mental Competency Best Practices Model," the National Judicial College, 2011. http://jec.unm.edu/about-jec/news/njc-launches-mental-competency-best-practices-website

For more information, please contact Ann Geddes at (443) 926-3396

SB.90.pdf
Uploaded by: Ashley Clark
Position: UNF

MARYLAND PSYCHIATRIC SOCIETY

OFFICERS 2024-2025

Theodora G. Balis, M.D.
President

Ronald F. Means, M.D
President-Elect

Tyler Hightower, M.D.
Secretary-Treasurer

Carol Vidal, M.D., Ph.D.
Council Chair

EXECUTIVE DIRECTOR

Meagan H. Floyd

COUNCIL

Benedicto R. Borja, M.D.
Kim L. Bright, M.D.
Mary Cutler, M.D.
Mark S. Komrad, M.D.
Cynthia Major Lewis, M.D.
Rachna S. Raisinghani, M.D
Traci J. Speed, M.D., Ph.D.
Michael A. Young, M.D., M.S.

EARLY CAREER PSYCHIATRIST COUNCILOR

Jamie D. Spitzer, M.D.

RESIDENT-FELLOW MEMBER COUNCILOR

Hannah Paulding, M.D.

PAST PRESIDENTS

Virginia L. Ashley, M.D.
Jessica V. Merkel-Keller, M.D.

APA ASSEMBLY REPRESENTATIVES

Annette L. Hanson, M.D.
Elias K. Shaya, M.D.
Brian Zimnitzky, M.D.

MEDCHI DELEGATE

Enrique I. Oviedo, M.D.

APA AREA 3 TRUSTEE

Geetha Jayaram, M.D.

January 17, 2025

The Honorable William C. Smith Jr.
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

RE: Oppose – SB 90: Criminal Procedure - Incompetency to Stand Trial Dismissal

Dear Chairman Smith and Honorable Members of the Committee:

The Maryland Psychiatric Society (MPS) and the Washington Psychiatric Society (WPS) are state medical organizations whose physician members specialize in diagnosing, treating, and preventing mental illnesses, including substance use disorders. Formed more than sixty-five years ago to support the needs of psychiatrists and their patients, both organizations work to ensure available, accessible, and comprehensive quality mental health resources for all Maryland citizens and strive through public education to dispel the stigma and discrimination of those suffering from a mental illness. As the district branches of the American Psychiatric Association covering the state of Maryland, MPS/WPS represent over 1100 psychiatrists and physicians currently in psychiatric training.

MPS/WPS oppose SB 90: Criminal Procedure - Incompetency to Stand Trial Dismissal as the dismissal of charges, and therefore eligibility for civil commitment, should be based upon clinical status, not the nature of the crime or the victim's status. Thus, holding an individual incompetent to stand trial (IST) for ten years does not reflect the reality of clinical care. Almost every other state has a one-year statutory limit for individuals IST.

MPS/WPS would also like to note that the current wait list for transfer to a state hospital exceeds one hundred individuals. Couple that with a statutory time limit with fines if Perkins does not admit within ten days per law, you have an insurmountable problem.

MPS/WPS, therefore, ask this honorable committee for an unfavorable report on SB 90. If you have any questions regarding this testimony, please contact Lisa Harris Jones at lisa.jones@mdlobbyist.com.

Respectfully submitted,
The Maryland Psychiatric Society & Washington Psychiatric Society
Legislative Action Committee

1211 Cathedral Street, Baltimore, Maryland 21201, 410 625-0232, Fax 410 547-0915
mps@mdpsych.org, www.mdpsych.org

1 21 2025 SB90 HB 195 IST Dismissal time MOPD Oppo

Uploaded by: Kimberlee Watts

Position: UNF

MARYLAND OFFICE OF THE PUBLIC DEFENDER

NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
DIRECTOR OF GOVERNMENT RELATIONS

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

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 in 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.[1] According to BHA the average length of stay at Maryland's State Psychiatric Hospitals is 850 days, a little more than two years.[2] 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.[3] 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[4] and are

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

[2] 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

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

[4] 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-

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
For further information please Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

therefore likely to have the highest number of IST findings. In those cases court reviews are required yearly,[5] 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.[6] 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[7], 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.[8] This problem will only be worsened by extending the time for dismissal in first degree murder and first degree rape cases.

3: Unnecessary legislation:

---

bhc/Documents/Slides%20October%20Joint%20BHC_BHAC%20Criminal%20Justice%20Workgroup%20Meeting.pdf

[5] CP § 3-106(d)(1)(i).

[6] 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

[7] 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/

[8] 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/

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
For further information please Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

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.[9]

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.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.
Authored by: Kimber D. Watts, Supervising Attorney Forensic Mental Health Division
Kimberlee.watts@maryland.gov, 410-767-1839

[9] See Md. Criminal Procedure Article 3-106(e)(2), and Md. Health General Article 7-502.

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
For further information please Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

SB 90 IST Dismissal of Charges.pdf
Uploaded by: Luciene Parsley
Position: UNF

Disability Rights Maryland

Empowerment. Integration. Equality.

1500 Union Ave., Suite 2000, Baltimore, MD 21211
Phone: 410-727-6352 | Fax: 410-727-6389
www.DisabilityRightsMD.org

Senate Judicial Proceedings Committee
SB 90: Criminal Procedure – Incompetency to Stand Trial Dismissal
January 21, 2025
POSITION: OPPOSE

Disability Rights Maryland (DRM) is the federally-mandated Protection and Advocacy agency for the State of Maryland, charged with defending and advancing the rights of persons with disabilities. DRM is tasked with monitoring state facilities for persons with disabilities, including the state psychiatric hospitals, to protect against abuse and neglect and ensure the civil rights of their patients are protected. DRM has very significant concerns about the constitutionality of SB 90 as written and concludes that if enacted, it may be wasteful and unlikely to produce its intended result.

The purpose of Maryland's laws related to incompetency is to provide restoration services to permit an individual to become competent to stand trial on criminal charges.[1] Individuals found IST and committed to an MDH facility have not been found guilty for any crime by a court of law; thus it is illogical to tie the maximum treatment period to length of time charges are outstanding, since the crime has no bearing on restoration capability.

The weight of the social science research demonstrates that an individual who is found Incompetent to Stand Trial (IST) and not restored to competency within 5 years is not likely to be restored to competency in 10 years. A number of states base this time limit on research that shows that most people (over 80%) will be restored within 90-120 days, and continued treatment and detention to restore competency beyond this time period is unnecessary and wasteful.[2] As an example, Washington State's code provides that the maximum time for competency restoration treatment can be 0, 29, 315 or 360 days, depending on the charges. For a Class A Felony, the maximum restoration period can last up to one year.[3] If the individual's charges are dismissed, the individual is committed to state hospital for evaluation on whether they are dangerous and should be involuntarily committed.

As a matter of practice, in Maryland individuals found IST and dangerous are typically held in state facilities for the longest period allowed by law, since MDH evaluators rarely determine that an individual is not restorable to competency, and typically opine that an individual is dangerous based on the individual's charges and mental health diagnosis.

---

[1] See Bergstein v. State, 322 Md. 506, 516 (1991) ("The deprivation of liberty involved in the initial hospitalization or in rehospitalization clearly is not imposed as a punishment."
[2] Pirelli G, Gottdiener WH, Zapf PA: A meta-analytic review of competency to stand trial research. Psychol Pub Pol'y & L 17:1–53, 2011.
[3] WA Rev Code § 10.77.086 (2020).

DRM concludes that SB 90 will result in additional people detained in our state hospitals for longer periods of time, whether or not they require this level of care. Currently, Maryland has more than 200 individuals detained in detention centers who are waiting for transfer to state hospitals. This problem will be exacerbated significantly if SB 90 is passed, since fewer hospital beds will be available as current patients are kept in the state hospitals for longer periods of time. Further, maintaining charges for extended periods of time with no practical possibility of restoration to competency is particularly inappropriate when the person has a co-occurring developmental disability, a traumatic brain injury, or dementia that increases the challenge of restoring the individual to competency to stand trial. The National Judicial Conference agrees, saying "[f]or a person charged with a felony, it is best practice for the initial competency restoration to be no more than 120 days. By or before the end of the 120-day period, it is also best practice for the treating mental health professional to file a report with the court stating his or her opinion as to whether he or she believes that there is a substantial probability that the defendant can be restored to competency in the foreseeable future, or by no longer than an additional 245 days."[4]

While Md. Code Ann., Criminal Procedure (CP) § 3-107 currently provides that the state should dismiss charges upon the lesser of five years or the maximum period of incarceration for a felony or a crime of violence as defined under § 14-101 of the Criminal Law Article, or the lesser of three years or the maximum period of incarceration for all other crimes, the state already retains the ability under the statute to petition the court to extend the time period for charges for "extraordinary cause." Further, under Section 3-107 of the Criminal Procedure Article, any dismissal is without prejudice to the State refiling the charges, and involuntarily committing the individual under Title 10 of Health-General is always a possibility.

In 1972, the U.S. Supreme Court ruled in *Jackson v. Indiana* that the defendant "cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future."[5] The Court did not set a maximum time limit on attempts to restore competency, leaving it up to the states to make this determination. Yet Maryland bases its maximum treatment period not on the probability that the individual will become competent, but rather on other conditions, including the maximum possible sentence for the alleged offense, a practice that goes against research and against the purpose of competency treatment.

Individuals who are held IST in our state hospitals are typically provided with medication, monitoring, and short "competency restoration" classes where they learn about the criminal justice system, the role of their lawyer, the judge, the state's attorney, etc. They are rarely provided with individual therapy, robust mental health programming, or substance abuse treatment, and are unable to progress through the hospital's level system until their charges are resolved. Maintaining individuals as IST for a longer

[4] See "Mental Competency Best Practices Model," the National Judicial College, 2011 (available online at http://jec.unm.edu/about-jec/news/njc-launches-mental-competency-best-practices-website.)
[5] 406 U.S. 715, 738 (1972).

period of time means that these individuals will wait far longer in our state hospitals before receiving the mental health treatment and programming that they need.

Given the facts that 1) MDH is already required to involuntarily commit someone whose charges have been dismissed and is still adjudged to be dangerous, and 2) Maryland law already contains an exception to extend time prior to dismissal of charges on a showing of good cause to the court, there is very little risk that someone who is dangerous would be released from a state psychiatric hospital after five years solely because their charges were dismissed because they have not been restored to competency. Extending the time period for dismissal of charges far beyond the time period during which the person is likely to be restored to competency simply makes their treatment in the psychiatric hospital punishment by another name. While many other states are developing innovative treatment programs to restore IST defendants to competency more quickly, Maryland is unfortunately focused on extending the maximum period of time charges remain pending.

For these reasons, we urge that Senate Bill 90 be given an unfavorable report. Should you have any further questions, please contact Luciene Parsley, Litigation Director at Disability Rights Maryland, at 443-692-2494 or lucienep@disabilityrightsmd.org.