

House Judiciary Committee
HB 312: Criminal Procedure – Incompetency to Stand Trial

February 4, 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 HB 312 as written and concludes that if enacted, it may be wasteful and unlikely to produce its intended result.

To improve the constitutionality and effectiveness of HB 312, DRM recommends the following amendments be made: 1) Remove the reference to “ten years” in line 1 of page 2, and replace it with “five years.” (2) Remove the inclusion of “sexually assaultive behavior as denied in § 10-923 of the Courts Article” (lines 22-23 on page 1). Sexually assaultive crimes were not subject to the previous 10-year limit for charges, so inclusion of these crimes extends the time period beyond what the term was in 2013 when the death penalty was abolished in Maryland. Further, inclusion of sexually assaultive crimes under Courts § 10-923 would include crimes that are currently a misdemeanor and subject to a three-year limit on pendency of charges, such as fourth degree rape. (3) Third, add an amendment that an extension of charges to ten years is specifically for individuals with IDD who are found restorable to competency and released to the community with conditions while charges are pending. It is DRM’s understanding that these individuals are being released to DDA residential services with services due to a finding that they would not be dangerous if they received adequate services in the community. This amendment would address the bill proponents’ concern that the SETT is releasing people with Intellectual and Developmental Disabilities to community programs, and the people are discharging themselves when they time out, potentially risking their committing additional crimes. (4) Finally, we recommend that the Committee consider an amendment clarifying what constitutes “extraordinary cause,” in cases where the individual’s treatment team and the MDH evaluator find that the person can be restored to competency but the person is intentionally doing things to avoid becoming competent.

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.

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.”)

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.

DRM concludes that HB 312 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 HB 312 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

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).

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.>)

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 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 House Bill 3 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.

⁵ 406 U.S. 715, 738 (1972).