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January 24, 2025

The Honorable Luke H. Clippinger, Chairman
House Judicial Proceedings Committee
Taylor House Office Building, Room 101
6 Bladen Street
Annapolis, MD 21401

RE: HB195 – Criminal Procedure – Incompetency to Stand Trial Dismissal

Dear Chairman Clippinger and Members of the House 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In 2012, when the death penalty was repealed the term "capital case" was stricken from all of the statutes.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, 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.

HB 195 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 HB 195 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 HB 195 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. HB 195 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.

HB 195 will only allow an extension of the time-period for mandatory dismissal of charges for those defendants charged with first degree murder or first degree rape who are dangerous and a threat to public safety.

HB 195 will only apply to incompetent defendants whom doctors have determined are able to be restored to competency.

HB 195 will not increase hospitalizations because mentally ill defendants are committed to a State psychiatric hospital when they are incompetent AND dangerous. Dismissing the charges will result in the dangerous defendant being civilly committed and remaining in the hospital until he is no longer dangerous. Dismissing the charges will not release the defendant from his commitment to the hospital.

HB 195 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. The court will not be required to keep the charges open for a longer time-period, but instead be provided the option to do so when dismissal of the charges will result in a substantial risk to public safety.

Sincerely,

Tracy Varda

Tracy Varda
Chief Assistant State's Attorney for Baltimore City