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 23, 2026

The Honorable J. Sandy Bartlett, Chairwoman
House Judiciary Committee
Taylor House Office Building, Room 101
6 Bladen Street
Annapolis, MD 21401

RE: HB 180 – Criminal Procedure – Incompetency to Stand Trial Dismissal

Dear Chairwoman Bartlett 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In 2012, the death penalty was repealed and as a result the term "capital case" was stricken from all of the statutes.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.

HB 180 gives the Court the option to keep first degree murder charges open for 10 years. This gives doctors additional time to work with the dangerous incompetent defendant to make him competent to stand trial. It also allows additional time for the dangerous incompetent defendant to receive treatment and services minimizing the risk to public safety.

HB 180 also gives the Court the option to keep first degree rape charges open for 10 years. This provision will help protect society's 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. The defendant 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. Prior to her tragic death, the victim had been diagnosed with an intellectual disability.

After the defendant 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 statute does allow the State to recharge if the charges are dismissed but this provision fails to protect public safety. Once the charges are dismissed, the mentally ill person may be out in the community and unable to be located. It is foreseeable that even if the State refiles an indictment, the defendant will not be apprehended until he commits another violent act.

The passing of HB 180 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 180 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 180 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 the defendant raping her daughter. 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 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 180 will increase the time the Court can mandate the defendant's community treatment while decreasing the threat he poses to public safety.

HB 180 does 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.

HB 180 only allows an extension of the time period for mandatory dismissal of charges for those defendants who are charged with first degree murder or first degree rape and have been found to be a danger to public safety.

HB 180 only applies in cases where the defendant's doctor opines that with additional time the defendant can become competent.

HB 180 restores the balance of protecting the rights of defendants with disabilities and protecting society's right to public safety. For these reasons, on behalf of the Maryland State's Attorney's Association, I urge this committee to issue a favorable report for HB 180.

Thank you for your time and consideration.

Sincerely,

Tracy Varda

Tracy Varda
Chief Assistant State's Attorney for Baltimore City