

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 743  
Judiciary

(Delegate Dumais)

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Criminal Procedure - Incompetency and Criminal Responsibility - Dismissal of  
Charges

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This bill increases, from 5 to 10 years, the time after which a court is required to dismiss a charge of first-degree murder against a defendant found incompetent to stand trial (IST).

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Fiscal Summary

**State Effect:** The bill is not expected to materially affect State finances, as discussed below.

**Local Effect:** The bill is not expected to materially affect local finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** By statute, a defendant is IST if the defendant is not able to understand the nature or object of the proceeding or assist in the defense. After a hearing, a court may order the Maryland Department of Health (MDH) to examine the defendant to determine whether the defendant is IST. If the court finds that the defendant is IST *but is not a danger* as a result of a mental disorder or mental retardation (intellectual disability) to self or the person or property of others, the court may set bail or authorize the release of the defendant on recognizance.

If the court finds that the defendant is IST and, because of mental retardation or a mental disorder, *is a danger* to self or the person or property of others, the court may order the defendant committed to a facility designated by MDH until the court finds that the

defendant is (1) no longer IST; (2) no longer a danger to self or the person or property of others due to a mental disorder or mental retardation; or (3) not substantially likely to become competent to stand trial in the foreseeable future.

If a court commits a defendant because of mental retardation, MDH must require the Developmental Disabilities Administration (DDA) to provide appropriate treatment.

In order to determine whether a defendant continues to meet the criteria for commitment, the court must hold a hearing (1) every year from the date of the commitment; (2) within 30 days after a filing by the State's Attorney or the defendant's counsel detailing new and relevant information; and (3) within 10 business days after receiving a report from MDH stating new and relevant information. The court may also hold a conference or hearing on its own initiative to review the status of the case. If the court finds that the defendant is still incompetent and is not likely to become competent in the foreseeable future, the court must civilly commit the defendant (as long as other specified criteria are met) or order the confinement of the defendant in a DDA facility in accordance with specified proceedings.

Whether or not the defendant is confined and unless the State petitions the court for extraordinary cause to extend the time, the court must dismiss the charge against a defendant found IST (1) after the lesser of five years or the maximum sentence for the most serious offense charged, if charged with a felony or crime of violence, or (2) after the lesser of the expiration of three years or the maximum sentence for the most serious offense charged, if charged with an offense other than a felony or crime of violence.

The court is required to dismiss a charge without prejudice if the court considers that resuming the criminal proceeding would be unjust because so much time has passed since the defendant was found IST. Before dismissing a charge, the court must provide the State's Attorney and a victim or victim's representative who has requested notification advance notice and an opportunity to be heard. If charges are dismissed, the court must notify the victim or representative mentioned above and the Criminal Justice Information System.

In 2009, the Maryland Court of Appeals held that the dangerousness and restorability of a defendant adjudged IST are not sufficient for an extraordinary cause determination under the State's incompetency statute. *Ray v. State of Maryland*, 410 Md. 384 (2009). While the State may reindict a defendant after the defendant's charges were dismissed under § 3-107(a) of the Criminal Procedure Article without a showing that the defendant has become competent, the State must overcome the presumption that the defendant is unrestorable before the defendant is placed in incompetency commitment. Otherwise, the circuit court must initiate civil commitment proceedings in accordance with Section 3-106(d)(1) of the Criminal Procedure Article. *State v. Ray*, 429 Md. 566 (2012).

**State Expenditures:** The bill is not expected to materially affect State finances, since individuals affected by the bill's provisions are likely, under current law, to spend the 5 years added to the statutory time period under the bill housed in MDH facilities, where they likely remain during the time specified under the bill. This estimate assumes that:

- a small number of defendants are affected by the bill's provisions;
- an individual charged with first-degree murder who is found IST and not restored to competency within 5 years is not likely to be restored to competency in 10 years;
- an individual charged with first-degree murder who is found IST is also determined to be dangerous;
- an individual charged with first-degree murder who is found IST and has his/her charges dismissed after 5 years under existing statute will still be determined to be dangerous and civilly committed to an MDH facility; and
- the cost of maintaining an individual in an MDH facility on a pending charges basis is equal to the cost of maintaining the same individual on a civil commitment basis.

MDH advises that the bill's requirements can be met with existing resources.

The Office of the Public Defender (OPD), the most likely legal counsel for these defendants, was not able to provide statistics on the number of its clients in recent years who meet the bill's criteria in time for the publication of this fiscal and policy note. However, the office did advise that it continues to represent an individual who has been involuntarily committed to a State psychiatric hospital. OPD represents these individuals at involuntary admission commitment hearings every six months to determine if they still meet criteria for involuntary commitment. An individual who continues to meet criteria for involuntary civil commitment can remain in a State hospital for life.

**Local Fiscal Effect:** The bill is not expected to materially affect local finances. The Maryland State's Attorneys' Association advises that the bill does not have a fiscal or operational impact on its members.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 242 (Senator Lee, *et al.*) - Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of

Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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md/kdm

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Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510