

A012-0102

10 AN ACT CONCERNING

20 **The Competence of Inmates**

30 FOR the purpose of denying inmates the privilege of petitioning an execution based on their own
40 incompetence.

50 BY repealing

60 Article - Correctional Services

70 Section 3 - 904

80 Annotated Code of Maryland

90 (2001 Replacement Volume)

100 SECTION 1. BE IT ENACTED BY THE MARYLAND STUDENT LEGISLATURE:

110 **Article - Correctional Services**

120 § 3 - 904

130 (a) (1) In this section the following words have the meanings indicated.

140 (2) "Incompetent" means the state of mind of an inmate who, as a result of a mental
150 disorder or mental retardation, lacks awareness:

160 (I) of the fact of the inmate's impending execution; and

170 (ii) that the inmate is to be executed for the crime of murder.

180 (3) "Inmate" means an individual who has been convicted of murder and sentenced to
190 death.

200 (b) An inmate is not incompetent under this section merely because the inmate's competence depends
210 on continuing treatment, including the use of medication.

220 (c) The State may not execute a sentence of death against an inmate who has become incompetent.

230 (d) (1) A petition that alleges that an inmate is incompetent and that seeks to revoke a warrant
240 of execution against the inmate may be filed by:

250 (i) ~~the inmate;~~

260 (ii) if the inmate is represented by counsel, counsel for the inmate; or

270 (iii) if the inmate is not represented by counsel, any other person on the inmate's
280 behalf

290 (2) The petition shall be filed in the circuit court of the county in which the inmate is
300 confined.

310 (3) On the filing of the petition, the court may stay any warrant of execution that was
320 previously issued and has not yet expired.

- 330 (4) The petition must be accompanied by an affidavit of at least one psychiatrist that:
- 340 (i) is based, at least in part, on personal examination; and,
- 350 (ii) states that in the psychiatrist's medical opinion the inmate is incompetent; and,
- 360 (iii) states the pertinent facts on which the opinion is based.
- 370 (5) A copy of the petition shall be served on the Attorney General and the Office of the
380 State's Attorney that prosecuted the inmate, in accordance with the service requirements of the
390 Maryland Rules.
- 400 (6) Unless the inmate is already represented by counsel, the court promptly shall appoint the
410 public defender or, if the public defender for good cause declines representation, other counsel to
420 represent the inmate in the proceeding.
- 430 (7) Unless the State's Attorney stipulates to the inmate's incompetence, the State's Attorney
440 shall cause the inmate to be examined and evaluated by one or more psychiatrists selected by the
450 State's Attorney.
- 460 ~~(8) If the inmate's request is reasonable and timely made, an inmate is entitled to be~~
470 ~~independently examined by a psychiatrist that the inmate selects.~~
- 480 (9) Unless, with the court's approval, the parties waive a hearing, the administrative judge
490 of the court shall designate a time for an evidentiary hearing to determine the inmate's
500 competence.
- 510 (e) (1) A hearing under this section shall be held without a jury:
- 520 (i) in court;
- 530 (ii) at the place where the inmate is confined; or
- 540 (iii) at another convenient place.
- 550 (2) At the hearing, the inmate:
- 560 (i) subject to reasonable restrictions related to the inmate's condition, may be
570 present;
- 580 (ii) through counsel, may offer evidence, cross-examine witnesses against the
590 inmate, and make argument; and,
- 600 (iii) has the burden of establishing incompetence by a preponderance of the
610 evidence.
- 620 (f) The court shall enter an order that:
- 630 (1) declares the inmate to be competent or incompetent; and
- 640 (2) states the findings on which the declaration is based.
- 650 (g) If the court finds the inmate to be competent, the court immediately:

660 (1) shall lift any stay of a warrant of execution that was previously issued and has not yet 670
expired; or

680 (2) if all previously issued warrants of execution have expired, shall notify the court that
690 imposed the sentence of death and request that the court issue a new warrant of execution.

700 (h) (1) If the court finds the inmate to be incompetent, the court shall:

710 (i) stay any warrant of execution that was previously issued and has not yet
720 expired; and

730 (ii) remand the case to the court in which the sentence of death was imposed.

740 (2) The court in which the sentence of death was imposed shall strike the sentence of death
750 and enter in its place a sentence of life imprisonment without the possibility of parole.

760 (3) The sentence of life imprisonment without the possibility of parole imposed under
770 paragraph (2) of this subsection is mandatory and may not be suspended wholly or partly.

780 (i) (1) There is no right of appeal from an order issued by a circuit court
790 under this section.

800 (2) Notwithstanding paragraph (1) of this subsection, either party may
810 seek review in the Court of Appeals by filing an application for leave to appeal in accordance
820 with the Maryland Rules.

830 (3) If an application for leave to appeal is filed, the Court of Appeals may stay any warrant
840 of execution that was previously issued and has not yet expired.

850 ~~(j) (1) Not earlier than 6 months after a finding of competence, the inmate may petition the 860
court for a redetermination of competence.~~

870 ~~(2) The petition must be accompanied by an affidavit of at least one psychiatrist that—~~

880 ~~(i) is based, at least in part, on personal examination;—~~

890 ~~(ii) states that in the psychiatrist's medical opinion the inmate is incompetent;—~~

900 ~~(iii) states that the incompetence arose since the previous finding of competence; and,—~~

910 ~~(iv) states the pertinent facts on which each opinion is based, including the facts 920
that show the change in the inmate's condition since the previous finding.—~~

930 ~~(3) Proceedings on a petition under this subsection shall be in accordance with subsections—~~
940 ~~(d) through (i) of this section.—~~

950 (k) The Maryland Rules shall govern:

960 (1) the form of petitions and all other pleadings; and

970 (2) except as otherwise provided in this section, the procedures to be followed by the circuit
980 court in determining competency or incompetency and by the Court of Appeals in reviewing
990 applications for leave to appeal.

1000 (l) This section does not affect the power of the Governor to stay execution of a
1010 sentence of death under § 3-902(f) of this subtitle or to commute a sentence of death
1020 under Article 41, § 4-513 of the Code.

1030 SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect on October 1, 2002.

1040 MANDATES: Governor Parris Glendening
1050 Lieutenant Governor Kathleen Kennedy Townsend

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