

that a hearing is required under § 12-102 of this title. However, in subsection (a) of this section, the former reference "after receipt of the report" is deleted as inaccurate since examination under § 12-103 of this title is authorized but not required.

In subsections (b)(1) and (d) of this section, the former references "in its discretion" and "if he elects to do so" are deleted as unnecessary in light of the word "may".

In subsection (c) of this section, the references to "§ 7-705 ... of this article" are added to reflect that, if the finding of incompetence is based on mental retardation, then the limitations in § 10-805 of this article, formerly Article 59, § 15(g), would not be applicable. Those provisions require determination as to the existence of a mental disorder.

The Commission to Revise the Annotated Code notes, for consideration by the General Assembly, that subsection (c) of this section may prevent submission of the issue whether the defendant both is mentally retarded and has a mental disorder.

Defined terms: "Court" § 12-101
 "Department" § 1-101 "Mental disorder" § 12-101
 "Incompetent to stand trial" § 12-101

12-105. SAME -- DISMISSAL OF CHARGES.

WHETHER OR NOT THE DEFENDANT IS CONFINED, IF THE COURT CONSIDERS THAT RESUMING THE CRIMINAL PROCEEDING WOULD BE UNJUST BECAUSE SO MUCH TIME HAS PASSED SINCE THE DEFENDANT WAS FOUND INCOMPETENT TO STAND TRIAL, THE COURT MAY DISMISS THE CHARGE. HOWEVER, THE COURT MAY NOT DISMISS A CHARGE:

(1) UNTIL 10 YEARS AFTER THE DEFENDANT WAS FOUND INCOMPETENT TO STAND TRIAL IN ANY CAPITAL CASE; OR

(2) UNTIL 5 YEARS AFTER THE DEFENDANT WAS FOUND INCOMPETENT TO STAND TRIAL IN ANY OTHER CASE WHERE THE PENALTY MAY BE IMPRISONMENT IN THE STATE PENITENTIARY.

REVISOR'S NOTE: This section formerly appeared as the first sentence of Article 59, § 24(b).

The only changes are in style.

Defined terms: "Court" § 12-101
 "Incompetent to stand trial" § 12-101