



DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

February 9, 2024

The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
Room 2 Miller Senate Office Building
Annapolis, MD 21401-1991

RE: Senate Bill 554 - Criminal Procedure - Not Criminally Responsible Verdict - Term of Commitment

Dear Chairman Smith and Committee Members,

The Maryland Department of Health (Department) respectfully submits this letter of opposition for Senate Bill (SB) 554 - Criminal Procedure - Not Criminally Responsible Verdict - Term of Commitment. Under current law, if an individual is found to be Not Criminally Responsible (NCR) because of a mental disorder, the individual may be committed to the Department until the individual is determined to not be a danger to themselves, another individual, or another individual's property. As a result, an individual who poses a danger to the public would not be released until they were evaluated by clinically trained professionals and determined to be safe for release.

SB 554 will require an individual who is found NCR and charged with first-degree murder to be committed by the Maryland Judiciary to a Department facility for life. If an individual is charged with second-degree murder, the Judiciary would be required to commit the individual to a Department facility for a maximum of 40 years.

The Department opposes SB 554 because it impacts clinicians' ability to make clinically sound and independent determinations relating to discharge and commitment. The purpose of the Department Healthcare System's psychiatric hospitals is to provide therapeutic treatment to individuals with severe mental illness. SB 554 increases the time an individual would be forced to remain in an inpatient setting, overriding the ability of clinicians to discharge an individual who could be maintained safely and appropriately in a less restrictive community level of care. In addition, it would override a clinician's ability to keep an individual who was charged with second-degree murder, longer than 40 years if the individual still posed a danger after 40 years.

The time frame placed on individual treatment should be based on clinical determinations. The Department's psychiatric hospitals are therapeutic environments, and these commitments are meant to be rehabilitative rather than punitive.

SB 554 also interferes with the Healthcare System's ability to follow the Supreme Court's mandate outlined in *Olmstead v. L.C.*¹ Under *Olmstead*, individuals with disabilities, including behavioral health disabilities, have a right to receive treatment in the community in non-institutional settings. SB 554 would impact the System's ability to discharge individuals to an appropriate level of care even if the individual does not meet medical necessity criteria for inpatient behavioral health treatment, violating community integration requirements of *Olmstead*.

Finally, this bill would make it even more difficult for the Healthcare System to comply with the statutory requirement to admit individuals who are court-committed within 10 days. The Department's adult psychiatric hospitals operate 1,056 adult psychiatric beds, which are always at almost full capacity. Due to the increase in judicial evaluation and commitment orders, the Healthcare System has a court-ordered admissions waitlist for individuals committed to the Department's psychiatric hospitals. Notably, the Clifton T. Perkins Hospital Center (Perkins), the State's only maximum security forensic hospital, has 289 inpatient psychiatric beds dedicated to serving individuals charged with certain felonies and other serious crimes, including first-degree murder. This bill could necessitate adding capacity to the Healthcare System's existing facilities, particularly at Perkins, which is already undergoing a major Capital Improvement Program project², or the building of additional facilities. Any additional capacity added to existing facilities or the establishment of new facilities will require significant construction and additional staffing resources amid an existing behavioral health workforce shortage³.

In summary, the Department respectfully opposes this bill because it impacts the ability of clinicians to make discharge determinations as to whether an individual could be maintained in a less restrictive community level of care, impacts patients' rights in accordance with *Olmstead*, and impacts the ability to admit patients timely to the Department's adult psychiatric hospitals.

¹ 527 U.S. 581 (1999)

² The Moore-Miller Administration's Fiscal Year 2025 Capital Improvement Program includes funding for the continuation of the renovation of the Perkins North Wing. This project will result in 68 additional maximum security beds at the facility through the renovation of 80 minimum/medium security beds. As proposed, total anticipated project costs are \$56.8 million. For further details of the Capital Improvement Program see: FY 2025 Maryland Capital Budget, Office of Capital Budgeting, Md. Dep't of Budget & Mgmt (2024) <https://dbm.maryland.gov/budget/Documents/Capital%20Budget/FY%202025%20Documents/FY2025-Capital-Improvement-Program.pdf>

³Nathaniel Counts, *Understanding the U.S. Behavioral Health Workforce Shortage*, The Commonwealth Fund, Feb. 7, 2024 11:00am), <https://www.commonwealthfund.org/publications/explainer/2023/may/understanding-us-behavioral-health-workforce-shortage>

If you would like to discuss this further, please contact Sarah Case-Herron, Director of Governmental Affairs, at sarah.case-herron@maryland.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "LH Scott". The signature is written in a cursive style with a large initial "LH" and a surname "Scott".

Laura Herrera Scott, M.D., M.P.H.
Secretary