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## POSITION ON PROPOSED LEGISLATION

**BILL: SB 544: Criminal Procedure- Not Criminally Responsible Verdict- Term of Commitment**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 2/2/2024**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 544 because it is unlikely to pass constitutional review under the principles set forth in *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

The proposed bill would amend the Criminal Procedure Article (CP) § 3-112 regarding verdicts of Not Criminally Responsible (NCR) to require people found guilty of First Degree Murder to be committed to a mental health facility for the remainder of their lives, and people who have been found guilty of Second Degree Murder to be institutionalized for forty years.

### Current NCR procedure and duration of commitment after an NCR verdict:

Someone is Not Criminally Responsible for a Crime when they were unable to either control their conduct or understand the criminal nature of the conduct because of a mental illness or intellectual disability. Commitment after an NCR verdict best understood as a two-step process. First, someone must have been found to have committed a crime; this happens either by way of a guilty plea or a trial before a Judge or Jury. Next a judge or jury decides whether the person was criminally responsible for the crime. If they are found to be NCR for that crime they are sent to a mental hospital for treatment, in lieu of being incarcerated for punishment, until such time as they are no longer a danger to themselves or others. Unlike a prison sentence there is no mandatory release date. A commitment after an NCR verdict is indefinite, meaning people can *only* be released, or conditionally released, if they can prove by a preponderance of the evidence that they are no longer a danger to themselves or others. CP § 3-114. The indefinite commitment is not dependent on the seriousness of the charge or the potential length of sentence. Someone found guilty of a

minor offense, like trespass, can remain hospitalized for the remainder of their lives; as can someone found guilty of murder.

Where people are committed to mental hospitals “[t]he Due Process Clause requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed. The purpose of commitment following an insanity acquittal, like that of civil commitment, is to treat the individual’s mental illness and protect him and society from his potential dangerousness. The committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous.” *Id at 362*. It should be noted that Maryland’s statutes use the term Not Criminally Responsible where many states use the term Not Guilty by Reason of Insanity and therefore the term acquittee is used to described someone who has been committed to a mental hospital because of the commission of a crime.

The proposed bill states that individuals *shall* be committed for specified time periods with no option for any form of release. As Jones makes clear, This flies in the face of the Due Process Clauses of United States Constitution.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 554.**

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