



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB782: Criminal Procedure- Not Criminally Responsible Verdict- Term of Commitment

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/27/2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 782 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). While the Office of the Public Defender understands the emotional impetus behind this bill, it is always our duty to defend the U.S. Constitution and we must therefore oppose this bill.

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 or Second Degree Murder to be committed to a mental health facility for a minimum of ten years. In essence this creates a mandatory minimum term of hospitalization, which is unconstitutional.

Procedure for Not Criminally Responsible Findings

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 rehabilitative treatment, in lieu of being incarcerated for retributive 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 as a result of a mental disorder or intellectual disability. 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.

Constitutional Requirements

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.” *Id* at 362.¹ Committed individuals are entitled to release when they have recovered sanity or are no longer dangerous.

The proposed bill states that individuals *shall* be committed for a specified time period with no option for any form of release and without regard for whether individuals continue to be a danger to themselves or others. IAs *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 782.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.
Authored by: Kimber D. Watts, Supervising Attorney Forensic Mental Health Division
Kimberlee.watts@maryland.gov, 410-767-1839**

¹ It should be noted that Maryland uses the term Not Criminally Responsible rather than Not Guilty By Reason of Insanity, and therefore we use the terms NCR Finding rather than Insanity Acquittal.