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## POSITION ON PROPOSED LEGISLATION

**BILL: SB713: Criminal Procedure- Verdict of Not Criminally Responsible Verdict-  
Eligibility for Evaluation for Discharge**

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

**POSITION: Unfavorable**

**DATE: 2/20/2026**

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.

### **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.

### **Constitutional Due Process 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. The committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous.”<sup>1</sup> 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 describe someone who has been committed to a mental hospital because of the commission of a crime. Therefore the Supreme Court makes clear that the duration of commitment to the Department of Health after a finding of NCR must be reasonably related to the therapeutic goals of the hospitalized person.

### **Discrimination and non-compliance with Americans with Disabilities Act (ADA)**

The ADA provides that no individual with a disability shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity based on that disability. This bill conflicts with ADA in two ways, first it denies patients the ability to receive treatment in the community as deemed appropriate by clinicians. The U.S. Supreme Court has ruled that people with disabilities, including mental disorders, have a constitutional right to receive treatment in the community when their clinical treatment providers determine that outpatient treatment is appropriate.<sup>2</sup> If passed, this bill would deny individuals with mental disorders the ability to participate in community based treatments even when such treatment would be appropriate. Those community based treatments are incredibly important both to the individual being treated but also for MDH’s ability to effectively run the state mental hospitals. MDH would lose the ability to conditionally release patients to supported housing

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<sup>1</sup> Jones at 362

<sup>2</sup> Olmstead v. L.C., 527 U.S. 581 (1999).

such as group homes, assisted living, and nursing care. This, in turn, will limit MDH's ability to admit new patients, which will exacerbate problems caused by the lack of bedspace in Maryland's state run mental hospitals.<sup>3</sup>

Second, it denies people with disabilities opportunities they would have had but for their disability, specifically the opportunity for release on parole or to receive a lesser sentence. People found guilty of first-degree murder may have portions of their sentences suspended and be eligible for parole before the expiration for that sentence. For example someone found guilty of first degree murder might be sentenced to Life but is still eligible for parole after 15 years.<sup>4</sup>

**Practical Impact of this bill:**

The requirement of a lifetime hospitalization will likely have the unintended consequence of requiring hospitals to hold elderly individuals who are mentally stable and no longer dangerous, but who have significant medical problems. The geriatric population in particular would be better served in less restrictive environments such as group homes, assisted living facilities, and nursing homes. Not only can the needs of these patients can be met in less restrictive housing, but they can be met in ways that also maintain safety for the public.

The proposed bill requires individuals to be committed for specified time periods with no consideration for their clinical needs. As *Jones* makes clear, this flies in the face of the Due Process Clauses of United States Constitution, further this bill is in conflict with the ADA.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 713.**

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<sup>3</sup> The inability of MDH to admit people into hospitals in a timely manner when committed by courts based on being found incompetent to stand trial is well documented. *MDH v. Boulden*, No. 1291, Sept.term,2024, 2025 WL 1571550 (Md. Ct. Spec. App. June 3, 2025).

<sup>4</sup> Criminal Procedure Article §6-218.

