

SENATE BILL 748

E2

9lr2266

By: **Senator Lam**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Conditional Release**

3 FOR the purpose of requiring a State’s Attorney who makes a certain determination and
4 believes certain action by a court is necessary to provide a certain notice to certain
5 persons; requiring a court that receives a certain report to promptly notify certain
6 persons; requiring the Maryland Department of Health to notify the court and
7 certain persons if the Department receives a certain report; requiring a petition for
8 revocation or modification of a conditional release to contain a certain affidavit
9 stating certain information; requiring a court that determines that there is no
10 probable cause supporting a certain petition to notify certain persons; requiring a
11 court to hold a hearing after a certain application is made; establishing that a certain
12 applicant has a certain burden of proof to establish a certain issue by a
13 preponderance of the evidence; authorizing a court to modify a certain conditional
14 release in a certain manner at a certain time; making conforming changes; and
15 generally relating to conditional release.

16 BY repealing and reenacting, with amendments,
17 Article – Criminal Procedure
18 Section 3–121(a) through (d) and 3–122
19 Annotated Code of Maryland
20 (2018 Replacement Volume)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
22 That the Laws of Maryland read as follows:

23 **Article – Criminal Procedure**

24 3–121.

25 (a) (1) If the State’s Attorney receives a report that alleges that a committed
26 person has violated a condition of a conditional release, or if the State’s Attorney is notified

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 by the court or Health Department under subsection (b) of this section, the State's Attorney
2 shall determine whether there is a factual basis for the complaint.

3 (2) If the State's Attorney determines that there is no factual basis for the
4 complaint, the State's Attorney shall notify the person who made the report and take no
5 further action.

6 (3) If the State's Attorney determines that there is a factual basis to believe
7 that the committed person has violated the terms of a conditional release and believes
8 further action by the court is necessary, the State's Attorney promptly shall:

9 (i) notify the Health Department, **THE PUBLIC DEFENDER, AND**
10 **THE COUNSEL OF RECORD FOR THE COMMITTED PERSON** of the alleged violation; and

11 (ii) file with the court a petition for revocation or modification of
12 conditional release and send a copy of the petition to the Health Department.

13 (b) (1) If a court receives a report that alleges that a committed person has
14 violated a condition of a conditional release, the court promptly shall:

15 (I) **NOTIFY:**

16 [(i)] 1. [notify] the Health Department; [and]

17 [(ii)] 2. [notify] the State's Attorney [and];

18 3. **THE PUBLIC DEFENDER; AND**

19 4. **THE COUNSEL OF RECORD FOR THE COMMITTED**
20 **PERSON; AND**

21 (II) provide **THE STATE'S ATTORNEY WITH** the name, address, and
22 telephone number of the person who reported the violation and a copy of the order for
23 conditional release.

24 (2) If the Health Department receives a report that alleges that a
25 committed person has violated conditional release, the Department shall:

26 (I) **NOTIFY:**

27 [(i)] 1. [notify] the court [and];

28 2. the State's Attorney;

29 3. **THE PUBLIC DEFENDER; and**

1 4. **THE ATTORNEY OF RECORD FOR THE COMMITTED**
2 **PERSON; AND**

3 (ii) provide the State’s Attorney with the name, address, and
4 telephone number of the person who reported the violation and a copy of the order for
5 conditional release.

6 (c) The petition for revocation or modification of a conditional release shall
7 contain:

8 (1) a statement that the committed person has violated a term of a
9 conditional release and that there is therefore reason to believe that the committed person
10 no longer meets the criteria for eligibility for conditional release;

11 (2) a statement of the conditions violated;

12 (3) the factual basis for the statements in items (1) and (2) of this
13 subsection;

14 (4) the most recent evaluation report on the committed person; [and]

15 (5) the designation by the Health Department of the facility to receive the
16 returned committed person; **AND**

17 **(6) AN AFFIDAVIT OF THE STATE’S ATTORNEY STATING THE FACTUAL**
18 **BASIS TO BELIEVE THAT THE COMMITTED PERSON HAS VIOLATED THE TERMS OF**
19 **CONDITIONAL RELEASE AND THE GROUNDS FOR BELIEF THAT FURTHER ACTION BY**
20 **THE COURT IS NECESSARY.**

21 (d) If the court’s review of the petition determines that there is no probable cause
22 to believe that the committed person has violated a conditional release, the court shall:

23 (1) note the determination on the petition and file it in the court file on the
24 committed person; and

25 (2) notify the State’s Attorney, the Health Department, **THE PUBLIC**
26 **DEFENDER, THE COUNSEL OF RECORD FOR THE COMMITTED PERSON,** and the person
27 who reported the violation.

28 3–122.

29 (a) (1) An application to the court for a change in conditional release of a
30 committed person may be made by:

31 (i) the Health Department or the State’s Attorney at any time; or

1 (ii) the committed person not earlier than 6 months after the court
2 ordered the conditional release, unless the court for good cause permits an earlier
3 application.

4 (2) The applicant for a change in conditional release shall notify the court
5 and other parties, in writing, of the application and the reasons for the requested change.

6 **(3) THE COURT SHALL HOLD A HEARING AFTER AN APPLICATION IS**
7 **MADE UNDER THIS SUBSECTION TO DETERMINE WHETHER THE APPLICANT HAS**
8 **SATISFIED THE REQUIREMENTS FOR RELEASE UNDER § 3-114 OF THIS TITLE.**

9 (b) The [burden of proof of any issue raised by the application for change in
10 conditional release rests with the applicant] **APPLICANT HAS THE BURDEN OF PROOF**
11 **TO ESTABLISH ANY ISSUE RAISED IN AN APPLICATION FOR CHANGE IN CONDITIONAL**
12 **RELEASE MADE UNDER SUBSECTION (A) OF THIS SECTION BY A PREPONDERANCE OF**
13 **THE EVIDENCE.**

14 (c) After the court considers the application for change in conditional release and
15 the evidence, in accordance with § 3-114 of this title, the court shall:

16 (1) change the conditions;

17 (2) impose appropriate additional conditions;

18 (3) revoke the conditional release;

19 (4) continue the present conditions of release; [or]

20 (5) **SHORTEN THE CONDITIONAL RELEASE TERM; OR**

21 **(6) extend the conditional release by an additional term [of] NOT**
22 **EXCEEDING 5 years.**

23 (d) (1) Not earlier than 1 year after the court action on the application for
24 change filed by the committed person, and not more than once a year thereafter, a
25 committed person may reapply for a change in conditional release.

26 (2) Notwithstanding the time restrictions in paragraph (1) of this
27 subsection, a committed person may apply for a change in conditional release at any time
28 if the application is accompanied by an affidavit of a physician or licensed psychologist that
29 states an improvement in the mental condition of the committed person.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2019.