

**Department of Legislative Services**  
Maryland General Assembly  
2019 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 750

(Senator Lam)

Judicial Proceedings

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**Incompetency and Criminal Responsibility - Release Hearing - Exceptions**

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This bill establishes that a State’s Attorney, the Maryland Department of Health (MDH) or a person committed to MDH as not criminally responsible (“committed person”) may file exceptions to the report by the Office of Administrative Hearings (OAH) regarding the committed person’s eligibility for conditional release or discharge within 10 days after receiving the report only if the filer of the exception(s) appeared at the release hearing. The bill also alters the existing requirements for waiver of a court hearing on OAH’s recommendations by requiring that all parties that appeared at the release hearing waive the hearing.

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**Fiscal Summary**

**State Effect:** The bill is procedural and does not materially affect State finances.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A committed person is eligible for release only if the defendant proves by a preponderance of the evidence that the defendant will not be a danger to self or to the person or property of others due to a mental disorder or mental retardation if released from commitment with or without conditions. Within 50 days after the finding of not criminally responsible and commitment to MDH, unless waived by the defendant, the department must hold a hearing at the facility before an administrative law judge from OAH on the

issue of whether the individual is eligible for discharge or conditional release from inpatient confinement or requires continued commitment.

At the hearing, the formal rules of evidence do not apply. The defendant is entitled to be present at the hearing and to have legal representation. An assistant Public Defender is assigned to each facility and represents most of the defendants. In addition, the department and the State's Attorney are entitled to participate in the hearing. The department, through the hospital, presents its opinion regarding the defendant's eligibility for discharge. Within 10 days after the hearing, the administrative law judge must submit a written report to the court with a summary of the evidence presented at the hearing and a recommendation as to whether the committed person is eligible for conditional release or discharge. Any party may file exceptions to the administrative law judge's recommendations within 10 days after receiving the report.

The court may hold a hearing on its own initiative within 30 days after the court receives the administrative law judge's report. Unless the committed person and the State's Attorney waive the hearing, the court must hold a hearing within this 30-day timeframe if timely exceptions are filed or the court requires more information. The committed person is entitled to be present at the hearing and to have legal representation. Within 15 days after a judicial hearing ends or is waived, the court must determine whether the evidence indicates that the committed person has proven by a preponderance of the evidence that he or she is eligible for release (with or without conditions), and order the continued commitment, conditional release, or discharge from commitment of the defendant.

If timely exceptions are not filed and the court determines that the administrative law judge's recommendations are supported by the evidence and that a judicial hearing is not necessary, the court must enter an order in accordance with the administrative law judge's recommendations within 30 days after receiving the report. The court may not enter an order that is not in accordance with the administrative law judge's recommendations unless the court holds a hearing or the hearing is waived.

**State Fiscal Effect:** While the bill is procedural and does not materially affect State finances, it may lead to operational efficiencies for the Office of the Public Defender (OPD). OPD advises that the bill may reduce the number of court hearings its mental health attorneys have to attend to address exceptions raised after OAH's initial findings. However, the Judiciary advises that the bill's waiver provisions may increase the number of court hearings.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Harford County; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Office of Administrative Hearings; Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2019  
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