

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 748 (Senator Lam)
 Judicial Proceedings

Criminal Procedure - Conditional Release

This bill incorporates the Office of the Public Defender (OPD) and the counsel of record for a “committed person” into the notification requirements under § 3-121 of the Criminal Procedure Article (allegation of a violation of a conditional release by a person committed to the Maryland Department of Health (MDH) as not criminally responsible). In addition, the bill requires a petition for revocation or modification of a conditional release to contain an affidavit of the State’s Attorney stating the factual basis to believe that the committed person has violated the terms of conditional release and the grounds for belief that further action by the court is necessary. The bill also makes procedural changes to consideration of an application for change in conditional release of a committed person.

Fiscal Summary

State Effect: General fund expenditures increase by \$1,600 in FY 2020 only. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,600	0	0	0	0
Net Effect	(\$1,600)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill can be implemented with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill makes the following procedural changes to consideration of an application for change in conditional release of a committed person:

- requires a court to hold a hearing after an application is made to the court for change in conditional release of a committed person to determine whether the applicant has satisfied the requirements for release from commitment;
- authorizes a court to shorten the conditional release term after the court considers the application for change in conditional release and evidence; and
- establishes a preponderance of the evidence standard for the burden of proof an applicant must meet to establish any issue raised in an application for change in conditional release.

Current Law:

Allegations of Violations of Conditional Release

If a State's Attorney receives a report that alleges that a person committed to MDH as not criminally responsible ("committed person") has violated a condition of a conditional release, or if the State's Attorney is notified by the court or MDH, the State's Attorney must determine whether there is a factual basis for the complaint. If the State's Attorney determines that there is no factual basis for the complaint, the State's Attorney must notify the person who made the report and take no further action. If the State's Attorney determines that there is a factual basis to believe that the committed person has violated the terms of a conditional release and believes further action by the court is necessary, the State's Attorney must notify MDH of the alleged violation and file with the court a petition for revocation or modification of conditional release and send a copy of the petition to MDH.

If a court receives a report that alleges that a committed person has violated a condition of a conditional release, the court must promptly (1) notify MDH and the State's Attorney and (2) provide the State's Attorney with the name, address, and telephone number of the person who reported the violation and a copy of the order for conditional release. Similar requirements apply if MDH receives such a report.

The petition for revocation or modification of a conditional release must contain:

- a statement that the committed person has violated a term of a conditional release and that there is therefore reason to believe that the committed person no longer meets the criteria for eligibility for conditional release;

- a statement of the conditions violated;
- the factual basis for the aforementioned statements;
- the most recent evaluation report on the committed person; and
- the designation by MDH of the facility to receive the returned committed person.

If the court's review of the petition determines that there is no probable cause to believe that the committed person has violated a conditional release, the court must (1) note the determination on the petition and file it in the court file on the committed person and (2) notify the State's Attorney, MDH, and the person who reported the violation.

If the court's review of the petition determines that there is probable cause to believe that the committed person has violated a conditional release, the court must (1) issue a hospital warrant for the committed person and direct that on execution, the committed person must be transported to the facility designated by MDH and (2) send a copy of the hospital warrant and the petition to specified individuals, including the Office of Administrative Hearings (OAH).

Within 10 days after the committed person is returned to MDH in accordance with the hospital warrant, OAH must hold a hearing, unless the hearing is postponed or waived by agreement of the parties or OAH postpones the hearing for good cause shown.

At the hearing on revocation or modification:

- the committed person is entitled to be represented by counsel including, if the committed person is indigent, the Public Defender or designee of the Public Defender;
- the committed person, MDH, and State's Attorney are entitled to offer evidence, to cross-examine adverse witnesses, and to exercise any other rights that OAH considers necessary for a fair hearing; and
- OAH must find whether, by a preponderance of the evidence, the State has proved that the committed person violated conditional release and the committed person nevertheless has proved eligibility for conditional release.

OAH must (1) send a report of the hearing and determination to the court and (2) send copies of the report to the committed person, counsel for the committed person, the State's Attorney, and MDH. Within 5 days after receipt of OAH's report, the committed person, the State's Attorney, or MDH may file exceptions to the determination of the office.

After the court considers OAH's report, the evidence, and any exceptions filed, the court, must do one of the following within 10 days after receiving OAH's report:

- revoke the conditional release and order the committed person returned to the facility designated by MDH;
- modify the conditional release as required by the evidence;
- continue the present conditions of release; or
- extend the conditional release by an additional term of five years.

Application for Change in Conditional Release

An application to the court for a change in conditional release of a committed person may be made by MDH or the State's Attorney at any time, or by the committed person not earlier than six months after the court ordered the conditional release, unless the court for good cause permits an earlier application.

The applicant for a change in conditional release must notify the court and other parties, in writing, of the application and the reasons for the requested change. The applicant has the burden of proof of any issue raised by the application for change in conditional release.

After the court considers the application for change in conditional release and the evidence, in accordance with specified statutory criteria for eligibility for release, the court must:

- change the conditions;
- impose appropriate additional conditions;
- revoke the conditional release;
- continue the present conditions of release; or
- extend the conditional release by an additional term of five years.

Not earlier than one year after the court's action on the application, and not more than once per year thereafter, a committed person may reapply for a change in conditional release. However, a committed person may apply for a change in conditional release at any time if the application is accompanied by an affidavit of a physician or licensed psychologist that states an improvement in the mental condition of the committed person.

State Expenditures: General fund expenditures by the Judiciary increase by \$1,612 in fiscal 2020 only for computer reprogramming to implement the bill's notification requirements. The Judiciary advises that while the bill results in additional hearings, it does not anticipate a significant fiscal or operational impact on the courts.

OPD advises that incorporating the office into the notification requirements for these violations may result in OPD being able to dispute violations and/or intervene on behalf of a client, which may (1) result in a shortened stay in an MDH hospital; (2) result in possible release; or (3) allow a client to remain in the community. According to OPD, clients are hospitalized during this process, which could take up to two months.

MDH advises that the bill's notification requirements do not result in a fiscal or operational impact on the department.

Local Expenditures: Harford County advises that the bill could have a fiscal impact by requiring a State's Attorney to file an affidavit with the petition for revocation or modification of conditional release and requiring a court to hold a hearing for a change in conditional release. The county advises that it is unable to quantify the fiscal impact to the county at this time.

The Maryland State's Attorneys' Association advises that the bill does not have a fiscal and/or operational impact on prosecutors.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Harford and Montgomery counties; 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; Department of Legislative Services

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