SB 216 Support - Committed Persons Release.pdf
Uploaded by: Giannetti , John
Position: FAV

Maryland Criminal Defense Attorneys' Association

Maryland Senate

Judicial Proceedings Committee

February 4, 2020 1pm

Hearing on SB 216

Committed Persons - Release Proceedings

MCDAA Position: Support

Bill explanation: This bill improves the procedure for release of defendants who were found Not Criminally Responsible during trial. The defendant is committed to a mental health facility. The bill clarifies the procedure for return to public life.

The bill makes the following procedural changes to consideration of an application for change in conditional release of a committed person: 1) requires a court to hold a hearing after an application is made to determine whether the applicant has satisfied the requirements for release from commitment; 2) authorizes a court to shorten the conditional release term after the court considers the application for change in conditional release and evidence; 3) clarifies that a court may extend a committed person's conditional release by a term of up to five years; and 4) establishes a preponderance of the evidence standard as the burden of proof an applicant must meet to establish any issue raised in an application for change in conditional release.

For additional information or questions regarding this legislation, please contact MCDAA Government Relations Contact: John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com or MCDAA legislative committee members: Erica Suter, 202.468.6640 erica@ericasuterlaw.com or Andy Jezic 301.742.7470 avjezic@aol.com

Lam_FAV_SB0216.pdf
Uploaded by: Lam, Clarence
Position: FAV

CLARENCE K. LAM, M.D., M.P.H.
Legislative District 12
Baltimore and Howard Counties

Education, Health, and Environmental Affairs Committee

Executive Nominations Committee

Joint Committee on Ending Homelessness

Chair
Joint Audit and Evaluation Committe

Joint Committee on Fair Practices and State Personnel Oversight

Vice Chair
Baltimore County Senate Delegation

Chair
Howard County Senate Delegation

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SB 216: Criminal Procedure - Committed Persons - Release Proceedings

The Issue:

- Current process related to conditional releases for individuals committed to the Department of Health (MDH) for inpatient care and treatment has many inefficiencies, which lead to delays
- Delays in conditional releases result in lack of available psychiatric beds and increased state spending at an approximate cost of $800 per day for in patient care (on average this can result in excess spending of $70,000 or more)
- An administrative law judge has found that these patients are psychiatrically stable and ready to be in the community
- The language in the statute does not make clear that conditional release can be extended for up to 5 years, but does not need to be 5 years.

What Does SB 216 Do?

- Requires interested parties to attend a conditional release hearing if they want to file an appeal based on the outcome of the hearing
- Allows conditional release hearings to be governed by Circuit Court rules of discovery
- Requires notice of violations of conditional release to the Office of the Public Defender and the committed person's attorney of record
- Permits a hearing to be held on applications for changes to conditional release and permits judges to shorten term of conditional release
- Cleans up the language in the statute to inform the courts that conditional release can be extended for up to 5 years, but does not need to be 5 years.

How SB 216 Helps?

- Encourages Office of the State's Attorney (SAO) to attend conditional release hearings and present evidence regarding conditional release, creating a more complete record for the Court to review

- Allows appropriate individuals to be placed on conditional release without extended delay so they can continue their treatment
- Opens up bed space in state hospitals, which is extremely limited
- Ensures patients receive treatment in the least expensive setting
- Reduces the number of people who are returned to the hospital unnecessarily, ensuring individuals stay on track with treatment and reducing costs
- Encourages the SAO to more closely review allegations of conditional release violations to ensure that state resources are being properly allocated to individuals in need of inpatient care
- It ensures patients the due process rights to discovery that they are entitled to by law in all hearing venues.

Conditional Release Process:

- The patient bears the burden of proving eligibility for conditional release in all hearing venues
- An individual committed to the Maryland Department of Health (MDH) may be conditionally released at a hearing before an Administrative Law Judge (ALJ), a District Court, or a Circuit Court
- Hearings before an ALJ tend to be the most efficient manner of hearing the case, but the patient is entitled to a jury trial in Circuit Court once a year to determine their eligibility for conditional release
- The patient, their counsel, MDH and the SAO are permitted to attend the hearing; all present are permitted to make arguments and offer evidence
- The ALJ writes a report to the committing court with recommendations regarding conditional release and conditions that should apply, copies are given to MDH, the patient, and the SAO
- The patient, the SAO, or the MDH have 10 days to appeal the ALJ's report
- The court has 30 days to, on its own initiative or based on "timely exceptions" (i.e. an appeal), hold a hearing based on the record that was made before the ALJ

Sponsor Amendments:

- Two technical amendments:
    - As written, SB216 says: "In a proceeding held **under the subsection**, the Maryland Rules governing discovery in the Circuit Court shall apply." This should be changed to: "In a proceeding held under **this subtitle to determine eligibility for conditional release or discharge, the Maryland Rules of discovery in the Circuit Court shall apply regardless of hearing venue**." *(Amendment SB216/443026/1)*
    - SB216 as written also has a requirement for an affidavit from the State's Attorneys prior to being able to petition a hospital warrant, which is being deleted in its entirety. *(Amendment SB216/443026/1)*
- While the bill initially required a hearing for all applications in change in conditional release, **the amendment provides for a hearing upon request by any party**. This will enable the moving party the right to be heard on the merits of their motion, and will prevent the courts from being tied up with hearings that are not contested. *(Amendment SB216/953227/1)*

SB0216-Amendments.pdf
Uploaded by: Lam, Clarence
Position: FAV

SB0216/443026/1

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE SERVICES

26 JAN 21
08:39:52

BY: Senator Lam
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 216
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with "requiring" in line 14 down through "information;" in line 16.

AMENDMENT NO. 2

On page 3, strike beginning with "**SUBSECTION**" in line 26 down through "**APPLY**" in line 27 and substitute "**SUBTITLE TO DETERMINE ELIGIBILITY FOR CONDITIONAL RELEASE OR DISCHARGE, THE MARYLAND RULES GOVERNING DISCOVERY IN THE CIRCUIT COURT SHALL APPLY REGARDLESS OF THE VENUE OF THE HEARING**".

On page 6, in line 2, strike the brackets; in line 4, strike "**; AND**" and substitute a period; and strike in their entirety lines 5 through 8, inclusive.

SB0216/953227/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

31 JAN 21
13:57:05

BY: Senator Lam
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 216
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 18, after "hearing" insert ", on the request of any party,".

AMENDMENT NO. 2

On page 6, in line 25, strike "**THE**" and substitute "**ON REQUEST BY ANY PARTY, THE**".

SB216_OPD Statement Unfavorable.pdf
Uploaded by: McCabe, Carroll
Position: FAV

MARYLAND OFFICE OF THE PUBLIC DEFENDER

POSITION ON PROPOSED LEGISLATION

BILL: **SB216 -- STANDARDS FOR INVOLUNTARY ADMISSIONS AND PETITIONS FOR EMERGENCY EVALUATION – SUBSTANCE USE DISORDER**

POSITION: **Unfavorable**

DATE: **February 2, 2021**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 216.

The Mental Health Division of the Maryland Office of the Public Defender represents individuals facing involuntary commitment to psychiatric facilities in over 35 private and State psychiatric hospital/facilities across the State of Maryland. We represent approximately 800 clients per month at involuntary civil commitment hearings. We understand that there is a serious substance abuse crisis in our State, but oppose this bill because it will not help individuals suffering from substance use disorders, and it will cause harm to individuals with mental illness who require treatment in an inpatient setting.

Altering Maryland's current standards for involuntary psychiatric commitment to allow the involuntary commitment of individuals with substance use disorders will pit individuals with substance use disorders against individuals with serious mental disorders as both groups of Marylanders compete for finite mental health treatment resources.

There are a limited number of involuntary inpatient psychiatric beds in Maryland. There is presently a shortage of inpatient psychiatric beds for individuals who meet the current criteria for involuntary commitment. Expanding the criteria to make potentially thousands more Marylanders eligible for involuntary commitment will only compound that problem. Current Maryland law provides a number of due process protections for individuals who have been seized pursuant to an emergency petition and transported to an emergency department for evaluation. These protections include the following requirements:

1. That a physician examine the emergency evaluee within 6 hours of admission to the emergency department to determine whether the evaluee meets the requirements for involuntary admission. *MD Code, Health-General Section 10-624;*
2. That the physician or psychologist who has certified an emergency evaluee for involuntary admission to an inpatient psychiatric facility notify the Department of

For further information please contact Carroll McCabe, Chief Attorney, Mental Health Division, at carroll.mccabe1@maryland.gov or Krystal Williams, Director, Government Relations Division, at krystal.williams@maryland.gov or by phone at 443-908-0241.

Health within 12 hours of certification if the emergency department has not been able to place the certified individual in an inpatient facility. In such cases the Department of Health shall receive and evaluate the individual unless the Department of Health is unable to provide for the placement of the certified individual other than in a facility operated by the Department; and

3. An emergency evaluee may not be kept at an emergency facility for more than 30 hours. *MD Code, Health-General Section 10-624.*

These statutes are violated daily in emergency departments across the State as patients are forced to board in the emergency department for days, weeks and even months waiting for a bed in an inpatient psychiatric facility. This bill would make matters worse leading to over-crowded emergency rooms and longer waits for inpatient beds. The harmful consequences of emergency room boarding have been studied and documented in numerous research articles, including ***The Impact of Psychiatric Patient Boarding in Emergency Departments,*** **B. A. Nicks**[1] **and D. M. Manthey**[1] in which the researchers found that:

"Prolonged ED stays are associated with increased risk of symptom exacerbation or elopement for patients with mental health/substance abuse issues. External stimuli from the busy emergency department can increase patient anxiety and agitation, which is potentially harmful for both patients and staff. Elopement from the emergency department prior to definitive screening and treatment can lead to increased risk of self-harm and suicide. In addition, mental health patients in the emergency department contribute to other system issues such as increased ancillary resource utilization by safety attendants or security officers as a safety measure to protect staff and patients. Poor clinical outcomes, evidenced as delays in care and increases in morbidity and mortality, have been directly associated with ED overcrowding and lack of available emergency beds."

It should also be noted that the Department of Health does not take calls from emergency departments seeking assistance with finding inpatient psychiatric beds, nor does the Department receive and evaluate individuals that emergency departments cannot place.

Involuntary inpatient psychiatric units in Maryland hospitals do not provide drug treatment.

The definition of mental disorder for purposes of involuntary commitment specifically excludes a primary diagnosis of substance abuse. *COMAR 10.21.01.01.02(16)(c)* states that "Mental disorder" does not include mental retardation or a primary diagnosis of alcohol or drug abuse. Consequently, staff at involuntary inpatient units and facilities are not trained substance abuse treatment providers. Some units may offer an occasional AA meeting if there are a sufficient number of patients on a unit who use substances and are interested, but that is the extent of substance abuse treatment available on involuntary inpatient units. A couple of private psychiatric hospitals have co-occurring units that treat individuals with mental health and substance abuse issues but those units treat voluntary patients.

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In 2017, the average stay on an inpatient psychiatric unit in a general hospital in Maryland was 5 days. The average stay in a private psychiatric hospital was 11 days. (Department of Health Joint Chairman Report on Inpatient Psychiatric Bed Capacity, 2018)

The length of stay in both types of inpatient psychiatric facilities has remained constant since at least 2012. Medical insurance companies and Medicaid typically only approve 3-5 days of care upon the hospital's initial request. Inpatient units in general hospitals and private psychiatric hospitals are designed to provide acute care. Patients are stabilized on psychiatric medications and they are released**.** Standard drug treatment for individuals with severe substance abuse disorders typically involves long term stays at inpatient drug treatment rehabilitation facilities. Individuals involuntarily committed to inpatient psychiatric units due to a substance abuse disorders will not receive that type of substance abuse treatment. Substance abusers may not be able to abuse substance while on an inpatient psychiatric unit, but they will be discharged with an essentially untreated substance use disorder.

There are a number of severe collateral consequences resulting from an involuntary civil commitment.

The Maryland Court of Appeals in *D.L. v. Sheppard Pratt Health System, Inc.,et al, 465 Md. 339 (2019)* discussed the significant consequences that flow from an involuntary civil commitment. Those consequences include: (i) potential loss of driving privileges; (ii) prohibitions from engaging in certain occupations; (iii) implications towards child custody disputes; (iv) restrictions on immigration status; (v) implications toward any future involuntary admissions: (vii) certain statutory reporting requirements; and (viii) loss of the second amendment right to own or possess firearms at the State and federal levels. Facilities are required to submit to the Federal Bureau of Investigations National Instant Criminal Background Check System the name and identifying information of the individual admitted, the date of admission and the name of the facility. Individuals with substance use disorders who receive treatment in traditional rehabilitation facilities retain greater privacy over their treatment records, and do not suffer the collateral consequences stemming from an involuntary civil commitment.

For these reasons, the Office of the Public Defender recommends that SB 216 be given an unfavorable report.

For further information please contact Carroll McCabe, Chief Attorney, Mental Health Division, at carroll.mccabe1@maryland.gov or Krystal Williams, Director, Government Relations Division, at krystal.williams@maryland.gov or by phone at 443-908-0241.

SB216.MOPD.pdf
Uploaded by: Varghese, Sanjeev
Position: FAV

``STATE OF MARYLAND

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BILL: SB216
Position: Support
Date: February 4, 2021

Background:

The proposed bill makes changes to statutes that apply to the conditional release process for individuals who are committed to the Maryland Department of Health after a finding of Not Criminally Responsible ("NCR"). Case law in Maryland shows that conditional release is a "therapeutic release of a mentally ill individual from a psychiatric hospital as part of a continuing course of treatment." *Bergstein v. State*, 322 Md. 506 (1991). It is not intended as punishment, but rather to maintain the safety of the community and individual when the individual is released from the hospital. The NCR committee have the right to request a hearing annually, and can choose to have the hearing before an administrative law judge, the committing judge, or a jury. Regardless of which venue is chosen, the NCR committee always bears the burden of proving their eligibility for conditional release.

SB216 does not shift the burden from the patient to prove their eligibility for conditional release, nor would it provide for the release of patients who present as a danger to themselves, others, or the property of others.

As noted in a long line of cases in the U.S. Supreme Court and Maryland's Court of Appeals, confinement in a psychiatric hospital, whether civilly or criminally, must rest on a finding of dangerousness to self or others. *O'Connor v. Donaldson,* 422 U.S. 563, 574-575 (1975), *Jones v. United States*, 463 U.S. 354, 368 (1983), *Foucha v. Louisiana,* 504 U.S. 71, 77 (1992), *Hawkes v. State*, 433 Md. 105, 132-133 (2013). Maryland's current conditional release statute explicitly adopts this standard – requiring that an individual prove, by a preponderance of the evidence, that she would not be dangerous to herself or others due to a mental illness if released.

SB216 ends the practice of frivolous appeals of NCR release cases by litigants who declined to appear or present evidence before the Maryland Office of Administrative Hearings. These appeals (exceptions) are never successful, and only cause needless delays in the individual's release from the hospital. At a minimum, these delays take months to resolve, but the Maryland Office of the Public Defender has been involved in cases where the individual is waiting in the hospital for more than a year as they await resolution of the appeal by litigants who did not appear at the initial hearing. The costs incurred by these delays is substantial as every three months of inpatient care costs the State approximately $70,000.

This bill will have the salutary effect of expanding state inpatient psychiatric bed space by avoiding unnecessary delay and ensuring appropriate discharge of only those patients that are most ready for release.

By providing for the civil rules of discovery to be applied to all conditional release hearings regardless of the venue, SB 216 affords the committee the due process rights that they are currently able

to assert by seeking a jury trial, without tying up the circuit court dockets with jury trials.

This bill also changes portions of two different statutes that apply to NCR committees *after* they have been conditionally released. Criminal Procedure Article 3-121 governs the protocol for violations of conditional release. Subsection (a) outlines the initial steps the Office of the State's Attorney must take if it receives allegations that a committed individual has violated one or more conditions of their release. In theory the State's Attorney could choose whether or not to file a Petition for Revocation and seek an individual's re-hospitalization. It must determine whether there is a "factual basis to believe that the committed person has violated the terms" *and* that "further action by the court is necessary."

In practice, many Offices of the State's Attorney rubber stamp the allegations of the Department of Health's monitor. It is a matter of record that in some offices, "we don't make a determination on our own whether somebody should be, for the lack of a better term, prosecuted. We just pass it along to the court and ask for a hospital warrant in every situation."

Offices of the State's Attorney often receive an unsigned draft Petition for Revocation from the Department, sign it and file it with the Court. This system undermines due process for the individual on conditional release. It minimizes the role of the State and counsel for the individual. For a violation of a technical nature – a missed appointment or being caught smoking in a group home – a Petition for Revocation is issued, a warrant signed, and an individual is taken into confinement. Even in cases where the Department, the Assistant Attorney General, the hospital treatment team and the ALJ all agree that the individual remains eligible for conditional release, the length of confinement as a result of the hospital warrant is routinely at least two months. In many cases individuals are confined for several months, resulting in a loss of access to their outpatient services like housing and day programming.

Sufficient due process for someone facing hospitalization is determining whether the individual poses a *bona fide* danger to self, others or property. Considering the pressure on inpatient beds for acutely ill pre-trial detainees, and that hospitalization within a state psychiatric hospital can average as much as $264,067.00 per year, it is of vital importance to make certain that individuals being confined truly need it. Providing the OPD notice of a client's alleged violation prior to their re-hospitalization affords the OPD the opportunity to investigate the allegations and work with the Office of the State's Attorney and court to ensure that individuals who are psychiatrically stable, not dangerous, and are alleged to have committed minor "technical" violations remain in the community under appropriate conditions of release.

SB 216 also permits a committing court to hold a hearing, upon request, on Petitions to Change the Terms of Conditional Release. It also explicitly authorizes the committing court to shorten the conditional release term. In circumstances where an individual requests a change in their conditions of release, or opposes changes requested by the Department of Health or Office of the State's Attorney, some courts have noted that there is no explicit right to a hearing in the statute. While many grant a hearing, others deny the individual an opportunity to be heard despite a specific request. This bill would clarify an individual's opportunity to be heard and make certain that any party who moves for a change in conditions is heard.

SB216 does not change the notice requirement for hearings, shift the burden of proving eligibility for conditional release away from the patient, or afford any preferential treatment to the patient. SB216 would provide improved access to the fundamental due process rights that everyone is entitled to.

Senate Bill 216-Written Testimony.pdf
Uploaded by: Ahmad, Yousuf
Position: UNF

Bill Number: SB216

Tracy Varda, Assistant State's Attorney for Baltimore City
Opposed

The Unintended Consequences and Why the Bill Must Be Opposed

When a person has been found guilty of a crime but not criminally responsible, the person is committed to the Maryland Department of Health with a focus on treatment and behavioral health. The commitment usually involves a period of time in a state psychiatric hospital which typically leads to a court monitored community release known as Conditional Release which requires the person to adhere to specific conditions in order to remain in the community. **The purpose of Conditional Release is to provide therapeutic support in the community allowing for a safe and structured transition to community living.** Criminal Procedure §§ 3-112 through 3-123 set forth the procedures regarding the commitment and conditional release for those persons found guilty but not criminally responsible.

This bill seeks to amend Criminal Procedure §§3-116, 3-117, 3-119, 3-121 (a) – (d), and 3-122. This encompasses almost every piece of statutory law surrounding Conditional Release, essentially rewriting lengthy, detailed statues that were thoughtfully developed by all interested agencies and affected parties, including the Office of the Public Defender (OPD).

§3-116-117

This Bill would require the presence of an Assistant State's Attorney (ASA) at all Conditional Release and Conditional Release Revocation Hearings or FORFEIT the right to take exceptions to the Administrative Law Judge's (ALJ) opinion.

-Before a committed person is released from commitment, the Office of Administrative Hearings (OAH) conducts a hearing to determine if the person is eligible for release.

-After the hearing, the ALJ sends a report to the Circuit Court judge, the Maryland Department of Health (MDH), the committed person and his attorney, and the State's Attorney's Office (SAO) with a recommendation regarding release eligibility.

-Under the current statute, any party regardless of whether they attended the hearing may file an exception to the ALJ's recommendation.

-The proposed changes to these statutes would have a profound fiscal impact on the 24 State's Attorney's Offices around the State.

- These hearings take place on a weekly basis within the 6 Regional Psychiatric Hospitals and State Residential Centers statewide (from Western Maryland to the Eastern Shore).

- Due to the statutory requirements regarding the timing of these hearings, they are scheduled with VERY little notice to the parties – usually less than one week *(no specified timeline of notice is given in the §3-115).*

- To enable an ASA to be present at each hearing would require each SAO to assign staff to either travel the state to attend the hearings or acquire office space and assign permanent staff in each State Psychiatric Hospital. **There were a total of 19 release/revocation hearings scheduled for the Baltimore City State's Attorney's Office alone for the months of January and February in 2020**.

- The need to arrange calendars for ASA's to attend will likely lead to numerous postponements and would delay the release proceedings. This delay would cause a negative fiscal impact on the MDH.

- If the SAO of each jurisdiction do staff every Conditional Release and Revocation hearing, the ensuing litigation will result in a tremendous increase in time to conduct these hearings. This will also add a substantial staffing burden to the OAH, MDH, and OPD.

- At present, the various SAO's designate staff to attend the hearings in a limited number of cases when a need is identified. The majority of cases can be agreed to by the parties without the presence of an ASA.

- **Requiring the presence of an ASA to preserve and protect any future appellate right places an unneeded burden on multiple agencies, but most egregiously on the 24 State's Attorney's Offices. Most importantly, there is no harm by the existing statutory scheme the proposed amendment would remedy.**

- It is important to note that current case law establishes that the standard of proof to overturn an ALJ opinion to be a showing of an abuse of judicial discretion. *Byers v. State, 184 Md.App. 499*. This existing standard limits the ability of overturning an ALJ opinion, except in the most egregious of circumstances.

§3-119

This Bill seeks to apply the Circuit Court Rules of Discovery to the Conditional Release Hearing process.

-The OAH conducts the hearings. Discovery procedures are addressed in the OAH's regulations. COMAR 28.02.01.16 sets forth the OAH discovery procedures and allows any party to request discovery rendering this provision unnecessary.

-This provision is ambiguous as it fails to specify whether civil or criminal Maryland Discovery rules would apply.

§3-121

The proposed changes to this section require that the OPD and defense attorney of record be given notice of any violations of Conditional Release prior to the issuance of a Hospital Warrant.

-When a person is on Conditional Release, his compliance is monitored by the Community Forensic Aftercare Program (CFAP). If he fails to adhere to the conditions of his Conditional Release, CFAP will notify the State's Attorney's Office. After an Assistant States Attorney (ASA) reviews the documentation and determines the person has violated his Conditional Release, the ASA will file a petition asking the Court to revoke the Conditional Release and issue a Hospital Warrant. **The Court then reviews the petition and if the Court determines that probable cause exists that the person violated his Conditional Release, the Court will issue a Hospital Warrant.** Once the Hospital Warrant is served, the person is immediately returned to the hospital.

-The Hospital Warrant process is an expedited, ex-parte hearing for the purpose of intervening as quickly as possible when a person is not compliant with conditions of release. This is to avoid further psychiatric deterioration, which is deleterious to the defendant and to public safety.

-To notify the defense of a violation before issuance of a warrant presents a substantial risk of harm to:

- **law enforcement who will be serving the warrant**
- **-staff at the treatment provider's program who may be reporting the lack of compliance**
- **-the person on Conditional Release who may abscond from treatment in order to evade service of the warrant**

-A violation of a Conditional Release does not require the issuance of a hospital warrant. When CFAP reports the violation they often recommend the person remain in the community and

enhance the treatment if appropriate. Requiring the defense to be notified with every violation may affect the Conditionally Released person's relationship with his treatment team as it puts an emphasis on noncompliance and flies in the face of the non-punitive therapeutic nature of Conditional Release.

-Under the current provision, the OPD or last attorney of record is sent a copy of the Hospital Warrant once it is issued. This notice is appropriate and sufficient to provide notice to the defense without the corollary risk to the treatment providers or law enforcement agencies.

The proposed changes also require that the State's Attorney's Office submit an affidavit stating that there is a factual basis for any alleged violation.

-To further require an officer of the court to present an affidavit is unnecessary and insinuates that the pleadings filed by the State's Attorney are disingenuous on their face.

In *Romechia Simms v. Maryland Department of Health, et al., No. 20. September Term, 2019,* the Court of Appeals addressed CP §3-121. *(See attached.)*

-Appellant had been on Conditional Release after being found not criminally responsible for the charge of involuntary manslaughter after she was discovered pushing her deceased three-year-old son in a swing for 40 straight hours. She challenged the issuance of a hospital warrant arguing that CP § 3-121 violated her right to due process by not having a dangerousness finding prior to issuance of the hospital warrant.

-The Court of Appeals examined CP §3-121 and determined that the procedures governing violations of Conditional Release did not violate due process. The Court pointed out that the statute requires a full hearing within 10 days of the serving of the Hospital Warrant assuring that the committed person will receive his full due process rights at the "speedy hearing."

-The Court found that a person who violates his Conditional Release is **presumed dangerous**.

-**The Court held that CP § 3-121 "appropriately balances the interests of society against a committed person's conditional liberty interest."**

§3-122

This provision adds the following language: The Court Shall Hold a Hearing After an Application is Made Under This Subsection to Determine Whether the Applicant has Satisfied the Requirements for Release Under §3-114 of this Title.

-This section currently sets forth the procedures for filing an Application for Change in Conditional Release. The proposed additional language is ambiguous. It is unclear whether it is meant to apply to all applications for changes in conditional release or just those applications addressing release eligibility.

-In 2019, there were 56 Applications for Change in Conditional Release filed by the Office of the Attorney General (OAG) or the SAO statewide. Of the 56 Applications, only 14 required a hearing.

-Regardless of its intent, requiring the Courts to hold hearings for all Applications for Change in Conditional Release would be burdensome on all parties. Currently, any party can request a hearing on the matter. This proposed provision would require a hearing regardless of the necessity and does not allow a judge to use her discretion in determining whether to hold a hearing. **This requirement represents a costly and unnecessary burden on the Courts**.

-Scheduling hearings every time an application is filed would require attorneys from the OAG, SAO and OPD to appear. **This is a tremendous waste of resources for all of these agencies when the majority of the applications can be handled without a hearing.**

The proposed change also adds the language "not exceeding five years" to the section that allows a court to extend the Conditional Release by an additional term of five years.

-In its current form, the statue allows the Court to extend a person's Conditional Release indefinitely but for no more than five years at a time. The proposed language is ambiguous as it is unclear if the intent is to allow terms of less than five years or to prohibit the court from extending a Conditional Release for no more than a total of five years definitively.

-Under the current statute, a Conditional Release term can be extended as long as it is clinically necessary. When a person's Conditional Release is close to expiring, the MDH reviews the person's progress and makes a recommendation regarding the extension of the Conditional Release term based on clinical decisions and not arbitrary time limits.

-The statute as written allows the Court flexibility so that treatment services can be provided in the community so long as it is clinically indicated. The five year time limit requires the Court to conduct periodic reviews.

Summary

The purpose of Conditional Release is to provide a therapeutic rather than punitive approach to individuals with major mental illnesses who come through the criminal justice system. The highly structured treatment conditions allow these individuals to live safely in the community with the goal of decreasing hospitalizations and recidivism. The Not Criminally Responsible plea is an affirmative defense for which individuals avail themselves after they have been fully informed that the Court may have long term supervision over them. There are no defects in the current statute and no benefit to the proposed changes. Should the Bill be voted forward as proposed, it would unnecessarily impose a significant fiscal burden on all of the SAOs when there is no harm done by the existing statutory scheme to remedy. It would also increase the risk of harm to the treatment providers, law enforcement as well as the individuals on Conditional Release. Criminal Procedure §§3-116, 3-117, 3-119, 3-121 and 3-122 as they exist are more than sufficient and provide well established statutory protection for both the rights of the defendant/patient and public safety.

For these reasons, I urge an unfavorable report of SB 216.

MD Judiciary - Testimony SB 216.pdf
Uploaded by: Elalamy, Sara
Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO:	Senate Judicial Proceedings Committee
FROM:	Legislative Committee Suzanne D. Pelz, Esq. 410-260-1523
RE:	Senate Bill 216 Criminal Procedure – Committed Persons – Release Proceedings
DATE:	January 27, 2021 (2/4)
POSITION:	Oppose

The Maryland Judiciary opposes Senate Bill 216. This bill makes changes to Title 3 of the Criminal Procedure Article regarding procedures for releasing a defendant who has been committed to a designated health facility based on a finding that the defendant is not criminally responsible.

On page five it is not clear why the court would need to notify the Office of the Public Defender (OPD) of a violation of a condition of release in situations where the committed person has their own attorney of record. This notification is also required on page six regarding a finding of no probable cause. This notification to the OPD seems unnecessary in circumstances where an individual has private representation.

In addition, at Criminal Procedure Article, § 3-119(b)(2)(ii), the bill calls for the Maryland Rules governing discovery to be applied in administrative hearings for committed persons, which could require Judiciary involvement to enforce discovery requirements. For instance, courts could be required to consider motions to compel discovery or motions for sanctions for non-compliance with the rules regarding discovery. This would cause the blending of administrative and judicial proceedings.

cc. Hon. Clarence Lam
Judicial Council
Legislative Committee
Kelley O'Connor

SB 216 - Committed Persons.pdf
Uploaded by: Shellenberger, Scott
Position: UNF

Bill Number: SB 216
Scott D. Shellenberger, States Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION OF SENATE BILL 216
COMMITTED PERSONS – RELEASE PROCEEDINGS

I write in opposition to Senate Bill 216 that changes the long established statutory scheme concerning those found incompetent or not criminally responsible.

Currently, those found not criminally responsible or incompetent to stand trial have a right to contest those findings at a hearing before an Administrative Law Judge. At the hearing, the Health Department typically takes its position to present to the Administrative Law Judge (ALJ) pursuant to Criminal Procedure Article §3-115. Also present at the hearing representing State's interest is the Attorney General's Office.

The State's Attorney are entitled to attend the hearing. Most State Attorney Office's do not send a representative to the hearing. There are a number of reasons for this. First and foremost, is that the Health Department does an excellent job at these hearings presenting the best possible evidence to the ALJ. In addition, the State's Attorney's Office's in this State do not have the resources to travel and to attend these countless hearings.

The next part of this statutory scheme allows all interested parties to appeal the decision of the ALJ. Senate Bill 216 is designed to prevent the State's Attorney the right to appeal unless they attended the hearing.

The State's Attorney is charged with prosecuting the crime that occurred in their jurisdiction. Requiring the State's Attorney to attend each and every ALJ hearing would place an undue financial hardship of the counties resources as more staff would be needed.

I urge an unfavorable report.