

Department of Legislative Services  
 Maryland General Assembly  
 2021 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 728 (Delegate Moon)  
 Judiciary

Criminal Procedure - Committed Persons - Release Proceedings

This bill makes several changes to procedures related to conditional release of a person who has been committed to the Maryland Department of Health (MDH) as not criminally responsible, including (1) clarifying who can file an exception to an administrative report; (2) establishing that the Maryland Rules governing discovery in the circuit courts apply to administrative hearings and judicial determinations of eligibility for release from commitment; (3) altering the requirements for a waiver of a court hearing; (4) altering notification requirements regarding allegations of a violation of conditional release; and (5) expanding requirements for the contents of a petition for revocation or modification of conditional release.

Fiscal Summary

**State Effect:** General fund expenditures for the Judiciary increase by \$1,700 in FY 2022 only. Otherwise, the bill is not anticipated to materially affect State finances, as discussed below. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,700	0	0	0	0
Net Effect	(\$1,700)	\$0	\$0	\$0	\$0

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

**Local Effect:** The bill is not anticipated to materially affect local finances or operations.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The bill establishes that a State's Attorney, 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 only if the filer of the exceptions 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.

The bill establishes that the Maryland Rules governing discovery in the circuit courts apply to an administrative hearing and judicial determination of eligibility for release on an application for release from commitment filed with MDH following the initial hearing (§ 3-119(b) of the Criminal Procedure Article).

The 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). In addition, the bill requires a petition for revocation or modification of a conditional release to contain an affidavit from 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 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 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;
- clarifies that a court may extend a committed person's conditional release by a term of *up to* five years; and
- 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.

## **Current Law:**

### *Release from Commitment*

A committed person is eligible for release only if the person proves by a preponderance of the evidence that he or she 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 committed person, MDH must hold a hearing at the facility before an administrative law judge (ALJ) 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 committed person 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 committed individuals. MDH and the State's Attorney are also entitled to participate in the hearing. MDH, through the hospital, presents its opinion regarding the defendant's eligibility for discharge. Within 10 days after the hearing, OAH 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 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 OAH'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 OAH'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 recommendations within 30 days after receiving the report. The court may not enter an order that is not in accordance with the recommendations unless the court holds a hearing or the hearing is waived.

If the court orders continued commitment, the defendant may apply for release no earlier than one year after the initial release hearing ends or is waived and no more than once a year thereafter. However, the committed person may file an application for release at any

time outside of these time restrictions if the defendant's application is accompanied by an affidavit of a physician or psychologist stating that there has been an improvement in the person's mental condition since the last hearing. The committed person may choose to pursue an administrative hearing conducted before an ALJ and subject to the same procedures as the initial release hearing or file a petition directly with the court that ordered the commitment. The committed person may request a bench trial before the committing court or a jury trial, as specified.

In addition, statutory provisions authorize MDH to apply at any time to the court to order the committed person's conditional release.

### *Allegations of Violations of Conditional Release*

If a State's Attorney receives a report that alleges that a 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, 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 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 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 eligible, representation by OPD;
- 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. 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 5 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 no 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.

No earlier than one year after the court's action on the application, and no 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 for the Judiciary increase by \$1,684 in fiscal 2022 only for computer reprogramming to implement the bill's notification requirements. Otherwise, the bill is not anticipated to materially affect State expenditures. The bill may have an operational effect on affected agencies, as discussed below.

While OAH can handle the bill's requirements with existing budgeted resources, the bill may have an operational effect. Currently, OAH applies its own procedural rules under COMAR 28.02.01. The bill requires OAH to apply circuit court rules of discovery to § 3-119 administrative hearings. According to OAH, circuit court discovery rules permit parties to take depositions, issue written interrogatories, and request mental examinations, none of which are permitted under regulation. This may result in slight delays in scheduling hearings as parties attempt to complete discovery prior to the hearing and may increase the amount of evidence ALJs need to consider prior to submitting recommendations to the court. Also, the bill may increase the number of requests for administrative hearings and reduce the number of circuit court trials regarding release from commitment, since the only

way to obtain discovery in a § 3-119 proceeding under existing statute is to pursue the judicial track in the circuit courts. OAH maintains combined statistics for hearings conducted under § 3-115 and § 3-119 and advises that in fiscal 2019, OAH conducted 166 hearings under both of these statutes.

The Judiciary advises that while the bill results in additional hearings by requiring a hearing for consideration of a change to conditional release, it does not anticipate a significant fiscal or operational impact on the courts. The bill may also reduce the number of hearings due to exceptions to an OAH report on a § 3-115 hearing, as the bill establishes that only parties that appeared at the § 3-115 hearing may file an exception.

MDH has historically advised that the bill's alteration of procedures for conditional release from commitment may result in delays that reduce bed turnover at MDH facilities and necessitate additional staff time to attend depositions conducted under discovery for administrative hearings and other proceedings under the bill. It is assumed that any minimal expenditures associated with this impact do not materially affect MDH finances.

OPD advises that the bill reduces OPD's workload by reducing the number of postponements in applicable cases and the corresponding compounding effect on the agency's workload of unresolved cases carrying over.

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### **Additional Information**

**Prior Introductions:** SB 731 of 2020 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1576, was referred to the House Rules and Executive Nominations Committee, but no further action was taken. In general, the bill is also a combination of SB 748 and SB 750 of 2019. Both of those bills received hearings in the Senate Judicial Proceedings Committee, but no further action was taken.

**Designated Cross File:** SB 216 (Senator Lam)(By Request) - Judicial Proceedings.

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

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