

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 801
 Judiciary

(Delegate Kaufman, *et al.*)

Judicial Proceedings

Criminal Procedure - Committed Persons - Release Proceedings

This bill makes various changes to procedures related to the release of a person committed to the Maryland Department of Health (MDH) after being found not criminally responsible (NCR). The bill (1) establishes that the Maryland Rules governing discovery in circuit court civil matters apply to a proceeding to determine eligibility for conditional release or discharge; (2) requires a court and MDH to promptly inform the committed person’s counsel of record when they receive a report that a committed person violated a condition of release or violated conditional release, respectively; (3) requires a court, on request by any party, to hold a hearing after an application is made for a change in the conditional release of a committed person to determine whether the applicant has satisfied the requirements for release; (4) establishes that a preponderance of the evidence standard applies to an applicant in change of conditional release proceedings; (5) requires MDH, on written request of the State’s Attorney, the committed person, or the committed person’s counsel, to provide all reports, assessments, evaluations, and similar documents concerning the committed person prepared or conducted by, for, or at the direction of MDH during the period of the committed person’s commitment or conditional release; and (6) clarifies that a court may extend a conditional release by *up to* five years and authorizes a court to shorten or terminate the conditional release.

Fiscal Summary

State Effect: General fund expenditures for MDH increase by *as much as* \$377,000 in FY 2025 to address procedural changes and additional court hearings under the bill. Future year expenditures reflect annualization and inflation. Other potential impacts on State operations are discussed below. Revenues are not affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	377,000	439,700	459,400	479,500	500,600
Net Effect	(\$377,000)	(\$439,700)	(\$459,400)	(\$479,500)	(\$500,600)

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

Local Effect: Other than potential operational efficiencies for State’s Attorneys’ offices (as discussed below), the bill is not expected to materially affect local government finances or operations. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Release After Commitment of Defendants Found to Be Not Criminally Responsible

A committed defendant 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 conditions (conditional release) or without conditions (discharge). Within 50 days after the finding of NCR and commitment to MDH, unless waived by the defendant or otherwise postponed for good cause or by agreement, MDH must hold a hearing at the facility before an administrative law judge from the Office of Administrative Hearings (OAH) on the issue of whether the individual is eligible for discharge or conditional release from inpatient confinement or requires continued commitment. Unless MDH has completed an examination and report during the 90 days preceding the release hearing, it must complete an examination and evaluation of the committed person at least 7 days before the hearing is scheduled. Whether or not the release hearing is waived, MDH must send a copy of the evaluation report to the committed person, counsel for the committed person, the State’s Attorney, and OAH.

At the administrative hearing, the formal rules of evidence and the circuit court rules of discovery (civil or criminal) do not apply. Both conditional release hearings and revocation of conditional release hearings (see below) are governed by Title 3 of the Criminal Procedure Article. Section 3-115(e) provides the rules of evidence that govern the hearing, including discovery rules. Section 3-115(e)(3) requires any record relating to evaluation or treatment to be made available, on request, to the committed person or counsel of record. Generally, most patients are represented by the Office of the Public Defender (OPD) and the hospital provides the records to the attorney of record. OAH may admit and consider any relevant evidence and must issue any appropriate subpoena for any person or evidence. The court may compel obedience to the subpoena. In addition, the OAH Rules of Procedure regarding discovery, contained in COMAR 28.02.01.13, also may 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, MDH and the State's Attorney are entitled to participate in the hearing. MDH, through the hospital, will present 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. If the administrative law judge determines that the committed person proved eligibility for conditional release, the report must also include the recommended conditions of the release, after giving consideration to any specific conditions recommended by the facility, the committed person, or counsel for the committed person. 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 the person 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.

Usual conditions of release include provisions for housing (*e.g.*, residential rehabilitation housing, supervised housing, etc.), mental health treatment, daytime activities (*e.g.*, psychosocial programs, vocational training, etc.), and alcohol or substance abuse treatment. A conditional release continues for the period ordered by the court, not to exceed five years, unless extended by the court for an additional term on application to the court for a change in conditional release made by MDH, the State's Attorney, or the defendant.

The court must notify the Criminal Justice Information System Central Repository whenever it orders conditional release or discharge of a committed person.

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 defendant 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 defendant's mental condition since the last hearing. The defendant may choose to pursue an administrative hearing conducted before an administrative law judge and subject to the same procedures as the initial release hearing. In the alternative, the defendant may file a petition directly with the court that ordered the defendant's commitment. The defendant may request a bench trial before the committing court or a jury trial. If the committing court was the District Court and the individual requests a jury trial, the trial will be held in the circuit court of that jurisdiction.

In addition, MDH may apply at any time to the court to order the defendant's conditional release. MDH is required to send a copy of the application to the defendant, the defendant's counsel, and the State's Attorney. After receipt of the application, the court may hold a hearing on the application and must issue an order within 30 days either continuing commitment or allowing the conditional release.

Revocation or Modification of Conditional Release

If the State's Attorney receives a report that a defendant who was given a conditional release has violated a condition of release, or if the State's Attorney is notified by the court or MDH of a violation, the State's Attorney must determine whether there is a factual basis for the complaint. If the State's Attorney determines that there was a violation and believes that further action is necessary, the State's Attorney must promptly notify MDH and file with the court a petition for modification or revocation of conditional release. If the court determines that there is not probable cause to believe that a violation occurred, the court must note this determination on the petition and notify the State's Attorney, MDH, and the person reporting the violation. If the court decides that there is probable cause to believe that a violation occurred, the court must issue a hospital warrant for the defendant's apprehension and send a copy of the hospital warrant and the petition to the State's Attorney, the Public Defender, the counsel of record for the committed person, MDH, the person reporting the violation, and OAH. The individual is usually returned to the facility from which the individual had been released.

Unless all parties agree to an extension or the administrative law judge finds good cause, a hearing must be held within 10 days after the defendant's return to MDH under the hospital warrant. At the hearing, the defendant is entitled to representation by an attorney, and all parties are entitled to submit evidence and call witnesses. The State is required to show by a preponderance of the evidence that the violation occurred. If the State meets this burden, the defendant may nevertheless prove by a preponderance of the evidence eligibility for continued release. The administrative law judge is required to report the findings and recommendations to the court promptly. The administrative law judge must also send

copies of the report to the parties, and any party may file timely exceptions. After receipt of the report, and after reviewing any exceptions filed, the court may revoke the release, continue the release, modify the terms of release, or extend the conditional release for an additional five-year term.

MDH and the State’s Attorney may petition the court to change the conditions of release at any time. Unless good cause is shown for an earlier hearing, a defendant on conditional release may petition the court for a change in conditions after six months on release. Thereafter, the defendant may petition for a change annually. If, however, the defendant has a physician’s or psychologist’s affidavit stating that the defendant’s mental condition has improved, the defendant may petition for a change at any time.

State Expenditures:

Maryland Department of Health

General fund expenditures for MDH increase *by as much as* \$377,041 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring three paralegals, one administrative officer, and two social workers for the Community Forensic Aftercare Program (the program that monitors individuals on conditional release) to address procedural changes under the bill, including application of circuit court discovery rules in administrative proceedings and additional hearings for changes in conditional release. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	6
Salaries and Fringe Benefits	\$333,505
Operating Expenses	<u>43,536</u>
MDH – FY 2025 Expenditures	\$377,041

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

MDH advises that although it cannot predict how often defense counsel will demand document-related discovery under the bill, it is possible for counsel to request it in every case and for increased opportunities for disputes to occur. MDH is also unable to predict the number of additional court hearings that will occur under the bill at this time. However, according to current data provided by MDH for context, the department has 642 cases with an average of 13 hospital warrants per month; there are 188 people in the MDH hospitals currently awaiting release on conditions.

MDH further advises that prior civil discovery cases have required MDH staff to work closely with the Office of the Attorney General, with staff working more than six hours per case specifically on discovery. MDH hospitals are often represented at administrative hearings by non-attorney hospital personnel; depending on the use of depositions and the overall effect of the bill's provisions, MDH may require additional attorney resources. The Department of Legislative Services advises that any potential need for such resources cannot be determined without actual experience under the bill and have therefore not been accounted for in this analysis. Furthermore, as indicated by OPD below, individuals are opting for court proceedings instead of administrative hearings. To the extent the bill substitutes administrative hearings subject to court discovery rules for court proceedings already subject to court discovery rules, workloads (and corresponding positions) may be less.

Office of Administrative Hearings

Although OAH is unable to estimate the number of additional hearings that may be generated by the bill to address discovery disputes, it does not anticipate a fiscal impact. According to OAH, it can use existing budgeted resources to train its judges on the substantive aspects of the bill and make any operational adjustments needed to address an increase in discovery disputes before the scheduled NCR hearing.

OAH notes that the timelines in the circuit court civil discovery rules do not align with current timelines for administrative NCR release proceedings. For example, Maryland Rule 4-263 requires certain disclosures by the State's Attorney and the defense, and Maryland Rule 4-263(h) requires disclosures within 30 days after the appearance of counsel or the first appearance of the defendant. Currently, for conditional release and revocation hearings, the MDH hospitals submit a weekly docket sheet 2 business days before the scheduled hearing date. This document is also provided to OPD since the office represents the patients scheduled for hearing on any given day.

Office of the Public Defender

Conditional release hearings are civil proceedings and, at the choice of the patient, can occur before an administrative law judge, the committing court (judge), or before a jury trial. Circuit court civil discovery rules apply in circuit court proceedings, including jury trials; the bill applies these discovery rules to administrative proceedings. OPD advises that its attorneys have encountered difficulty in obtaining (1) information regarding OPD clients from MDH, including an inability to speak with healthcare providers for OPD clients and refusals by MDH to provide requested reports and documents; (2) information about decision making in the Community Forensic Aftercare Program, and (3) information regarding Forensic Review Board meetings. According to OPD, because the lack of access to information in administrative proceedings often results in hearings being brought to a

committing court or jury trial (a slower and costlier process), the application of court discovery rules in administrative proceedings would facilitate the provision of this information and potentially lead to efficiencies and reduced redundancy.

Judiciary

The bill is not anticipated to materially affect the finances of the Judiciary.

Local Fiscal Effect: Should the bill's requirement regarding the production of MDH documents on written request by the State's Attorney facilitate the flow of information in NCR cases, the bill may lead to efficiencies in State's Attorneys' offices. According to the Office of the State's Attorney for Baltimore City, until recently, the State was provided MDH records associated with modifications of conditional release upon request. However, MDH now requires subpoenas despite nothing in statute requiring a subpoena for production of these records.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 551 (Senator Sydnor) - Judicial Proceedings.

Information Source(s): Office of the Public Defender; Maryland State's Attorneys' Association; Baltimore City; Maryland Department of Health; Office of Administrative Hearings; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:

(410) 946-5510

(301) 970-5510