

SB 551 NCR Release Proceedings.pdf

Uploaded by: Luciene Parsley

Position: FAV

Senate Judicial Proceedings Committee
SB 551: Criminal Procedure - Committed Persons - Release Proceedings
February 9, 2024
POSITION: SUPPORT

Disability Rights Maryland (DRM) is the federally-mandated Protection and Advocacy agency for the State of Maryland, charged with defending and advancing the rights of persons with disabilities. DRM is tasked with monitoring state facilities for persons with disabilities, including the state psychiatric hospitals, to protect against abuse and neglect and ensure the civil rights of its patients are protected. DRM supports the changes proposed in SB 551 as creating a more just conditional release process for state hospital patients found NCR who are working to be discharged on Conditional Release, are already in community on a Conditional Release, or seeking termination or changes to their Conditional Release orders.

DRM has worked with clients who have had to return to the hospital after being accused of violating a conditional release order, sometimes for a technical reason. The Office of the Public Defender reports that often they find they have not been notified of the allegations that the person violated the terms of their Conditional Release until after a hospital warrant has been issued or the individual has been returned to the hospital, when they might have been able to explain the technical violation and prevent the individual from being returned to the hospital. This conserves valuable court and hospital resources, allowing our state hospitals to treat patients who are most in need of their services, while safely permitting those on conditional release to remain in the community.

SB 551 would require the court to hold a hearing upon request after a party makes application for an annual release hearing, to determine whether the applicant has satisfied the requirements for release. Currently the statute only requires a hearing in cases involving violations, a striking omission, since revocation or extension of conditional release has significant liberty implications for the individual, including remand to an institution for an indeterminate period, or extending mandated community treatment and monitoring for up to an additional five years.

SB 551 would also clarify the burden of proof standard when an applicant requests a change in conditional release, and would provide the court with more flexibility to extend a conditional release order by timeframes less than 5 years, if the court considers that appropriate, or to shorten or terminate the conditional release, none of which are currently specified in Criminal Procedure § 3-119(c). All of these changes are aimed at clarifying, streamlining, and conserving hospital and court resources, while creating a fairer process for conditional release of individuals found NCR.

For these reasons, we urge that Senate Bill 551 be given a favorable report.

Should you have any further questions, please contact Luciene Parsley, Litigation Director at Disability Rights Maryland, at 443-692-2494 or lucienep@disabilityrightsmd.org.

SB 551 Conditional Release Bill Written Testimony.

Uploaded by: Sanjeev Varghese

Position: FAV



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POSITION ON PROPOSED LEGISLATION

BILL: SB 551 - CRIMINAL PROCEDURE - COMMITTED PERSONS - RELEASE PROCEEDINGS

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 02/09/2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 551. We support the sponsor's amendments.

OPD represents clients who were found Not Criminally Responsible (NCR) throughout their civil commitments for inpatient care and treatment and during their conditional release. We represent hundreds of clients with serious mental illnesses each year who are found NCR in cases with charges ranging from trespass to first degree murder. The courts commit our clients who are found NCR to the Department of Health for the purpose of care and treatment of their mental illness. After judicial commitment, Maryland's conditional release statute places the burden on our clients to show, by a preponderance of the evidence, that they would not be dangerous to themselves or others due to a mental illness if released. MD Code, Criminal Procedure, § 3-114(d).

A conditional release is the "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). With appropriate care and treatment, our clients recover. When their mental health improves such that they are no longer a danger to themselves or others, conditional release is available for our clients to transition into the community in a manner that is safe and medically appropriate.

During their commitment, our clients have the right to an annual conditional release hearing where they may invoke their right to a jury trial or request a bench trial before the committing court or an administrative law judge. When a client has stabilized through treatment in a psychiatric hospital and after a finding that our client is no longer dangerous, a court may order conditional release to reintegrate the client with the community in a manner that assists them with managing their chronic mental illness.

This bill will improve the judicial procedures surrounding conditional release for people who are found to be no longer dangerous after their mental health has improved through psychiatric treatment at a state hospital. OPD supports this legislation to protect due process and address inequitable procedures. This bill will (1) apply the Maryland Rules governing discovery in the circuit court to cases on conditional release or discharge, regardless of venue; (2) clarify that courts have discretion to extend conditional release for up to five years; (3) require a hearing upon request of any party on the extension of conditional release; (4) require courts to notify a patient's counsel of record if a warrant is issued for a patient on conditional release; and (5) clarify that the Maryland Department of Health must provide documents, reports, assessments, and evaluations related to treatment or conditional release upon request of any party. These objectives of the bill are described in detail below.

I. Apply the Maryland Rules governing discovery in the circuit court to cases on conditional release or discharge, regardless of venue.

Currently, all of our clients committed as not criminally responsible under MD Code, Criminal Procedure Title 3 have the right to a jury trial when seeking release from the hospital. This bill would amend the Criminal Procedure Article to apply the civil rules of discovery to all conditional release hearings regardless of the hearing setting. This change would ensure that our clients have discovery tools to fully exercise their right to due process without the need to pray a jury trial in every case.

Discovery does not benefit one party over the other. It is a fundamental process that provides for a fair exchange of information about witnesses and evidence prior to trial.

Further, access to discovery is critical to help resolve cases before trial. Therefore, this change will result in greater judicial economy by easing the burden on circuit court dockets and affording the opportunity for more cases to be resolved administratively.

II. Clarify that courts have discretion to extend conditional release for up to five years.

Conditional release lasts for up to five years during the first term. At the expiration of the initial period of conditional release, the Department can request an additional term of conditional release. The Department can also request modification of the terms of release. MD Code, Criminal Procedure, § 3-122(c).

Some Maryland courts have interpreted the law to mean that any extension of conditional release must be for a term of five years. This bill will clarify that subsequent conditional release terms can be five years or less, and the length of the term is at the court's discretion. Courts must have flexibility in these critical and life-changing decisions.

III. Require a hearing upon request of any party on the extension of conditional release.

Our clients are entitled to due process at conditional release proceedings because, as a restraint on liberty, conditional release is an extension of the commitment. *Harrison-Solomon v. State*, 442 Md. 254, 287, 112 A.3d 408, 428 (2015). As such, our clients are entitled to a hearing upon request on the extension of their conditional release.

This bill permits a committing court to hold a hearing, upon request of any party, on Petitions to Change the Terms of Conditional Release. 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 ensure that any party who moves for a change in conditions is heard.

IV. Require courts to notify a patient’s counsel of record if a warrant is issued for a patient on conditional release.

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,¹ it is of vital importance to make certain that individuals being confined genuinely need it.

Providing OPD notice of a client’s alleged violation prior to their re-hospitalization affords OPD the opportunity to investigate the allegations and work with the Office of the State’s Attorney and the 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. OPD receives notice in jurisdictions that use MDEC, so this language is important to obtain notice from Baltimore City which is still not on MDEC.

V. Clarify that the Maryland Department of Health must provide documents, reports, assessments, and evaluations related to treatment or alteration in conditional release upon request of any party.

OPD collaborated with the Maryland State’s Attorneys Association on this aspect of the bill. We support the sponsor amendment adding this provision. Both sides of the table need access to the same information on treatment upon request. Ensuring that all parties to the proceeding have access to treatment documentation generated by the Department of Health will encourage more productive negotiations and informed discussion of conditional release options.

¹ According to the Perkins Hospital Financial Department the average cost of inpatient care per year at Perkins in fiscal year 2017 was \$264,067.00. The figure is likely much higher now, but additional data is needed from the Maryland Department of Health.

CONCLUSION

Conditional release is a critically important step in rehabilitating and reintegrating our clients into the community. Through targeted changes, this bill will improve the conditional release process in direct response to systemic issues experts and attorneys have encountered.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 551.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

Authored by: Carroll McCabe, Chief Attorney of the Mental Health Division

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SB 551 Draft Final Testimony.pdf

Uploaded by: Charles E. Sydnor III

Position: FWA

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DEPUTY MAJORITY WHIP

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Executive Nominations Committee

Joint Committees

Administrative, Executive, and
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Children, Youth, and Families

Senate Chair, Legislative Ethics

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony for Senate Bill 551
Criminal Procedure – Committed Persons – Release Proceedings
February 9, 2024

Good afternoon, Chair Smith, and members of the Judicial Proceedings Committee,

When an individual is found Not Criminally Responsible (“NCR”), courts commit that individual to the Department of Health for the care and treatment of their mental illnesses. Conditional release is the release of these individuals from psychiatric hospitals while requiring continuing treatment. Under current law, following judicial commitment, these individuals may request conditional release. At a hearing, the individual must show, by preponderance of the evidence that, if released, they would not be dangerous to themselves or others due to a mental illness.¹

Senate Bill 551 (“SB 551”) enhances judicial procedures involving conditional release for committed persons in a multitude of ways. First, regarding conditional release or discharge hearings, SB 551 applies the Maryland Rules governing discovery in the Circuit Court, regardless of venue. This ensures that individuals found NCR and petitioning for conditional release have discovery tools to fully exercise their constitutional rights.

Second, SB 551 explicitly states that courts have discretion to extend conditional release for up to five years. This clarification is intended to benefit the courts interpreting the law. Third, when a committed person requests a hearing regarding conditional release, SB 551 requires a hearing. Some courts have noted that in the current law, there is no explicit right to a hearing—SB 551 ensures these individuals the right to be heard.

Fourth, SB 551 requires courts to notify a committed person’s counsel of record if a warrant is issued for the person on conditional release. Providing notice of an alleged conditional release violation grants the individual’s counsel the opportunity to investigate the accusations and advocate for their clients.

¹ Md Code, Criminal Procedure § 3-114(d).

Finally, SB 551 clarifies that the Maryland Department of Health must provide certain records relating to treatment or conditional release upon request of any party. This modification recognizes that all parties need access to treatment information to foster more productive negotiations, and informed discussions.

For the reasons stated above, I respectfully request a favorable report for SB 551.

NCR Commitment SB554.pdf

Uploaded by: Kimberlee Watts

Position: UNF



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POSITION ON PROPOSED LEGISLATION

BILL: SB 544: Criminal Procedure- Not Criminally Responsible Verdict- Term of Commitment

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/2/2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 544 because it is unlikely to pass constitutional review under the principles set forth in *Jones v. United States*, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

The proposed bill would amend the Criminal Procedure Article (CP) § 3-112 regarding verdicts of Not Criminally Responsible (NCR) to require people found guilty of First Degree Murder to be committed to a mental health facility for the remainder of their lives, and people who have been found guilty of Second Degree Murder to be institutionalized for forty years.

Current NCR procedure and duration of commitment after an NCR verdict:

Someone is Not Criminally Responsible for a Crime when they were unable to either control their conduct or understand the criminal nature of the conduct because of a mental illness or intellectual disability. Commitment after an NCR verdict best understood as a two-step process. First, someone must have been found to have committed a crime; this happens either by way of a guilty plea or a trial before a Judge or Jury. Next a judge or jury decides whether the person was criminally responsible for the crime. If they are found to be NCR for that crime they are sent to a mental hospital for treatment, in lieu of being incarcerated for punishment, until such time as they are no longer a danger to themselves or others. Unlike a prison sentence there is no mandatory release date. A commitment after an NCR verdict is indefinite, meaning people can *only* be released, or conditionally released, if they can prove by a preponderance of the evidence that they are no longer a danger to themselves or others. CP § 3-114. The indefinite commitment is not dependent on the seriousness of the charge or the potential length of sentence. Someone found guilty of a

minor offense, like trespass, can remain hospitalized for the remainder of their lives; as can someone found guilty of murder.

Where people are committed to mental hospitals “[t]he Due Process Clause requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed. The purpose of commitment following an insanity acquittal, like that of civil commitment, is to treat the individual’s mental illness and protect him and society from his potential dangerousness. The committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous.” *Id at 362*. It should be noted that Maryland’s statutes use the term Not Criminally Responsible where many states use the term Not Guilty by Reason of Insanity and therefore the term acquittee is used to described someone who has been committed to a mental hospital because of the commission of a crime.

The proposed bill states that individuals *shall* be committed for specified time periods with no option for any form of release. As Jones makes clear, This flies in the face of the Due Process Clauses of United States Constitution.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 554.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.
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sb551.pdf

Uploaded by: Linda Miller

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

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 551
Criminal Procedure – Committed Persons – Release Proceedings
DATE: January 31, 2024
(2/9)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 551.

The language that the bill seeks to add to the statute provides that the circuit court rules governing discovery will apply to proceedings that determine release conditions for committed persons. It is unclear, however, whether the civil discovery rules or the criminal discovery rules would apply. Second, the bill would require the court to hold a hearing if requested by any party, including self-represented litigants, and permit additional hearings. This is unworkable. Further, locating the counsel of record for the committed person years later is not practicable, especially if they were panel attorneys. These issues may be more appropriate for the Standing Committee on Rules of Practice and Procedure.

cc. Hon. Charles Sydnor
Judicial Council
Legislative Committee
Kelley O'Connor