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POSITION ON PROPOSED LEGISLATION

BILL: HB 801 - CRIMINAL PROCEDURE - COMMITTED PERSONS - RELEASE PROCEEDINGS

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 02/20/2024

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.

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