



OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY

February 16, 2024

The Honorable Luke H. Clippinger, Chairman
House Judicial Proceedings Committee
Taylor House Office Building, Room 101
Annapolis, MD 21401

RE: HB801 – Criminal Procedure – Committed Persons- Release Hearings

Dear Chairman Clippinger and Members of the House Judiciary Committee,

I am writing on behalf of the Office of State's Attorney for Baltimore City and the Maryland State's Attorney's Association in favor of HB801 with amendments.

HB801 is necessary to clarify Criminal Procedure Sections 3-119 through 3-122 that sets forth the release procedures for committed defendants found Not Criminally Responsible. An individual is found not criminally responsible (NCR) when he commits a crime but because of a mental disorder, he did not appreciate the criminality of his actions or he could not control his behavior. After a NCR finding, the defendant is committed to a State psychiatric hospital for inpatient care and treatment until the doctors determine he not a danger to himself or others. At that point, the court signs a Conditional Release Order in which the Defendant is then able to reside in the community but must participate in court ordered treatment until the court determines he no longer needs the structure of Conditional Release to be safe in the community.

While on Conditional Release, the defendant's compliance is monitored by the Maryland Department of Health (MDH). The statute allows the State and the Defendant to petition the court if they believe a modification of the Conditional Release Order is warranted. In order to adequately file such petitions, the parties require the MDH records. Until recently, the State was provided such records upon request. Suddenly, without any legal justification, MDH refused to provide the records without a subpoena. There is nothing in the statute that requires the parties to subpoena the records. In fact, under Courts and Judicial Proceedings, if a defendant makes his mental condition a defense to his crime, he waives any privilege to records regarding that offense. When a defendant pleads NCR, he is asserting an affirmative defense to a crime claiming his mental condition precludes him from being held legally responsible. Because he is offering his mental condition as a defense, the State and Defendant are entitled to the MDH records related to the NCR offense. This includes records from the defendant's commitment and Conditional Release. HB801 would require MDH to provide the records upon request that the State and Defendant are clearly entitled to under the Statute.



OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY

For these reasons, we support HB801 with the amendment requiring MDH to provide the commitment and Conditional Release records and urge a favorable report with amendments

Sincerely,

Tracy Varda

Tracy Varda
Chief Assistant State's Attorney for Baltimore City