

**HB 801 – CRIMINAL PROCEDURE – COMMITTED PERSONS –
RELEASE PROCEEDINGS
BEFORE THE HOUSE JUDICIARY COMMITTEE
ON FEBRUARY 20, 2024**

**OFFICE OF ADMINISTRATIVE HEARINGS’
LETTER OF INFORMATION**

HB 801 would change the discovery rules and would require an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH) to apply the Circuit Court discovery rules, as set forth in the Maryland Rules, during administrative hearings regarding conditional release and discharge of persons committed to the Maryland Department of Health (MDH) after a finding of guilty but not criminally responsible (NCR) on criminal charges. HB 801 would also require the Court and the MDH to provide the counsel of record a copy of the report alleging a violation of conditional release. HB 801 would permit any party to request a hearing and require the Court to hold a conditional release hearing. HB 801 would permit the Court to extend the conditional release up to five (5) years, shorten the term, or terminate the conditional release.

Currently the MDH delegates Involuntary Admissions (IVA) hearings, Clinical Review Panel (CRP) appeal hearings, NCR hearings, and Outpatient Civil Commitment (OCC) hearings to the OAH. On a weekly basis, the OAH presides over hearings at over thirty private and State facilities, including eight State facilities. The OAH issues final decisions from the bench in all IVA, CRP appeal, and OCC hearings, and issues a written recommendation to the committing District or Circuit Court in NCR matters within ten (10) days of the conclusion of the hearing.

Both conditional release hearings and revocation of conditional release hearings 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. Because this is an administrative hearing, the formal rules of evidence and discovery do not apply to the hearing and the OAH may admit and consider any relevant evidence. In addition to the above statute, the OAH Rules of Procedure regarding discovery, COMAR 28.02.01.13, may apply. If there is a discovery dispute, the current OAH Rules of Procedure can address that dispute and the OAH has addressed such disputes in other administrative hearings.

As drafted, HB 801 would require use of either the Circuit Court discovery rules as set forth in Maryland Rule 4-263 for Criminal matters or Maryland Rules 2-401 through 2-434

for Civil matters. MD Rule 4-263 requires certain disclosures by the State's Attorney and by Defense. In addition, MD 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 state hospitals submit a weekly docket sheet two to three business days before the scheduled hearing date. The weekly docket sheet from the hospital provides the patient information. Before receiving this docket sheet, the OAH has no knowledge of the patients held at any given state hospital or those awaiting release hearings. The hospital also provides any proposed exhibits to the OAH and to the OPD or counsel of record. In addition, the hospital provides electronic records access to the OPD or counsel of record. Generally, the State hospital representative is either an Assistant Attorney General or non-lawyer hospital coordinator. MD Rules 2-401 through 2-434 include the use of depositions and interrogatories, which could prove difficult for the flexible due process provided for in these conditional release hearings.

Based on currently available information, the OAH is unable to estimate the number of hearings that may be generated by HB 801. HB 801 would change the discovery rules and likely generate an increase in discovery disputes. At this time, the OAH believes that HB 801 would not fiscally impact OAH, but the increase in discovery disputes could lead to a fiscal impact if the bill is enacted and the increase in discovery disputes is substantial. Operationally, OAH would have to train its ALJs on the substantive aspects of the bill. In addition, the OAH would need to devote ALJ resources to discovery disputes to address the change to discovery rules for NCR hearings.

Submitted by:

Chung K. Pak
Chief Administrative Law Judge
Office of Administrative Hearings
11101 Gilroy Road,
Hunt Valley, Maryland 21031
410-229-4105
Chung.pak@maryland.gov

February 20, 2024

Document #210178