

Delegate Aaron Kaufman Sponsor Testimony
HB 801 - Criminal Procedure - Committed Persons - Release Proceedings
2/20/24 1pm hearing

Chair Clippinger, Vice Chair Bartlett and esteemed Judiciary Colleagues – I am Delegate Aaron Kaufman. I am asking for a favorable report on HB 801 – Criminal Procedure – Committed Persons – Release Proceedings.

House bill 801 addresses gaps in 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. Specifically, the Maryland Supreme Court has explained that 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).

All of the components of this bill are fundamental to due process and ensuring that all parties in the Conditional Release processes are properly informed and adequately protected. House bill 801, brought to me by the Maryland Office of the Public Defender with support of the Maryland State’s Attorney’s Association, will improve five processes surrounding NCR - Conditional Release:

- (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.

Both the MOPD and the State's Attorneys agree that House bill 801 will improve the procedures surrounding conditional release resulting in a more efficient and equitable process – specifically by focusing on the systemic issues experts and attorneys have encountered.

For individuals who have been found Not Criminally Responsible, the rehabilitative goal of the system is that through a course of mental health treatment in a state hospital, they will no longer be dangerous to themselves or to others.

The courts commit individuals 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 the committed individuals 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).

Committed individuals 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. A committed individual may only be released through conditional release once they have stabilized through treatment in a psychiatric hospital and there is a finding that the individual is no longer dangerous. After finding that an individual is no longer dangerous, and with the

input from an individual's treatment team, 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.

Once it is clear that an individual has the ability and support to manage their mental illness in the community, conditional release is the next step to rehabilitate and reintegrate these individuals into the community.

Again, I ask for a favorable report on HB 801. Thank you very much for your time.