

# SENATE BILL 216

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SB 731/20 – JPR

(PRE-FILED)

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By: **Senator Lam (By Request – Office of the Public Defender)**

Requested: October 30, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Committed Persons – Release Proceedings**

3 FOR the purpose of providing that a certain person may file exceptions to a certain report  
4 of the Office of Administrative Hearings only if that person appeared at a certain  
5 release hearing; altering a provision of law to require a court to hold a certain hearing  
6 unless all parties that appeared at a certain prior hearing waive the hearing, rather  
7 than requiring the court to hold a certain hearing unless a certain committed person  
8 and the State's Attorney waive the hearing; providing that certain provisions of the  
9 Maryland Rules relating to discovery apply in a certain administrative proceeding;  
10 requiring a State's Attorney who makes a certain determination and believes certain  
11 action by a court is necessary to provide a certain notice to certain persons; requiring  
12 a court that receives a certain report to promptly notify certain persons; requiring  
13 the Maryland Department of Health to notify the court and certain persons if the  
14 Department receives a certain report; requiring a petition for revocation or  
15 modification of a conditional release to contain a certain affidavit stating certain  
16 information; requiring a court that determines that there is no probable cause  
17 supporting a certain petition to notify certain persons; requiring a court to hold a  
18 hearing after a certain application is made; establishing that a certain applicant has  
19 a certain burden of proof to establish a certain issue by a preponderance of the  
20 evidence; authorizing a court to modify a certain conditional release in a certain  
21 manner at a certain time; making conforming changes; and generally relating to  
22 release proceedings.

23 BY repealing and reenacting, with amendments,  
24 Article – Criminal Procedure  
25 Section 3–116, 3–117, 3–119, 3–121(a) through (d), and 3–122  
26 Annotated Code of Maryland  
27 (2018 Replacement Volume and 2020 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



That the Laws of Maryland read as follows:

**Article – Criminal Procedure**

3–116.

(a) Within 10 days after the hearing ends, the Office shall prepare a report of recommendations to the court that contains:

(1) a summary of the evidence presented at the hearing;

(2) recommendations of the Office as to whether the committed person proved, by a preponderance of the evidence, eligibility for conditional release or eligibility for discharge; and

(3) if the Office determines that the committed person proved eligibility for conditional release, the recommended conditions of the release in accordance with subsection (b) of this section.

(b) In recommending the conditions of a conditional release, the Office shall give consideration to any specific conditions recommended by the facility of the Health Department that has charge of the committed person, the committed person, or counsel for the committed person.

(c) The Office shall send copies of the report of recommendations:

(1) to the committed person;

(2) to counsel for the committed person;

(3) to the State's Attorney;

(4) to the court; and

(5) to the facility of the Health Department that has charge of the committed person.

(d) The committed person, the State's Attorney, or the Health Department, **IF APPEARING AT THE RELEASE HEARING UNDER § 3–115 OF THIS TITLE**, may file exceptions to the report of the Office within 10 days after receiving the report.

3–117.

(a) Within 30 days after the court receives the report of recommendations from the Office:

(1) the court on its own initiative may hold a hearing; or

(2) if timely exceptions are filed, or if the court requires more information, the court shall hold a hearing unless [the committed person and the State's Attorney] **ALL PARTIES THAT APPEARED AT THE RELEASE HEARING UNDER § 3-115 OF THIS TITLE** waive the hearing.

(b) (1) The court shall hold the hearing on the record that was made before the Office.

(2) At the judicial hearing, the committed person is entitled to be present and to be represented by counsel.

(3) The court may continue its hearing and remand for the Office to take additional evidence.

3-119.

(a) (1) Not earlier than 1 year after the initial release hearing ends or was waived, and not more than once a year thereafter, a committed person may apply for release under either subsection (b) or (c) of this section, but not both.

(2) Notwithstanding the time restrictions in paragraph (1) of this subsection, a committed person may file an application for release at any time if the application is accompanied by an affidavit of a physician or licensed psychologist that states an improvement in the mental condition of the committed person since the last hearing.

(b) (1) To apply for release under this subsection, the committed person shall file an application for release with the Health Department and notify the court and State's Attorney, in writing, of this request.

(2) **(I) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE** provisions of this title governing administrative hearing and judicial determination of eligibility for release apply to any application for release under this subsection.

**(II) IN A PROCEEDING HELD UNDER THIS SUBSECTION, THE MARYLAND RULES GOVERNING DISCOVERY IN THE CIRCUIT COURT SHALL APPLY.**

(c) (1) To apply for release under this subsection, the committed person shall file a petition for release with the court that ordered commitment.

(2) The committed person shall send a copy of the petition for release to the Health Department and the State's Attorney.

(3) If the committed person requests a trial by jury, the trial shall be held in a circuit court with a jury as in a civil action at law.

(4) The trier of fact shall:

(i) determine whether the committed person has proved eligibility for release by a preponderance of the evidence; and

(ii) render a verdict for:

1. continued commitment;
2. conditional release; or
3. discharge from commitment.

(5) If the trier of fact renders a verdict for conditional release, within 30 days after the verdict, the court shall release the committed person under conditions it imposes in accordance with specific recommendations for conditions under § 3–116(b) of this title.

(d) (1) An appeal from a District Court order shall be on the record in the circuit court.

(2) An appeal from a circuit court order shall be by application for leave to appeal to the Court of Special Appeals.

3–121.

(a) (1) If the State's Attorney receives a report that alleges that a committed person has violated a condition of a conditional release, or if the State's Attorney is notified by the court or Health Department under subsection (b) of this section, the State's Attorney shall determine whether there is a factual basis for the complaint.

(2) If the State's Attorney determines that there is no factual basis for the complaint, the State's Attorney shall notify the person who made the report and take no further action.

(3) If the State's Attorney determines that there is a factual basis to believe that the committed person has violated the terms of a conditional release and believes further action by the court is necessary, the State's Attorney promptly shall:

(i) notify the Health Department, **THE PUBLIC DEFENDER, AND THE COUNSEL OF RECORD FOR THE COMMITTED PERSON** of the alleged violation; and

(ii) file with the court a petition for revocation or modification of conditional release and send a copy of the petition to the Health Department.

(b) (1) If a court receives a report that alleges that a committed person has

violated a condition of a conditional release, the court promptly shall:

(i) notify:

1. the Health Department; [and]

[(ii)] 2. [notify] the State's Attorney [and];

3. **THE PUBLIC DEFENDER; AND**

4. **THE COUNSEL OF RECORD FOR THE COMMITTED  
PERSON; AND**

(II) provide **THE STATE'S ATTORNEY WITH** the name, address, and telephone number of the person who reported the violation and a copy of the order for conditional release.

(2) If the Health Department receives a report that alleges that a committed person has violated conditional release, the Department shall:

(i) notify:

1. the court [and];

2. the State's Attorney;

3. **THE PUBLIC DEFENDER; AND**

4. **THE ATTORNEY OF RECORD FOR THE COMMITTED  
PERSON; and**

(ii) provide the State's Attorney with the name, address, and telephone number of the person who reported the violation and a copy of the order for conditional release.

(c) The petition for revocation or modification of a conditional release shall contain:

(1) a statement that the committed person has violated a term of a conditional release and that there is therefore reason to believe that the committed person no longer meets the criteria for eligibility for conditional release;

(2) a statement of the conditions violated;

(3) the factual basis for the statements in items (1) and (2) of this

subsection;

(4) the most recent evaluation report on the committed person; [and]

(5) the designation by the Health Department of the facility to receive the returned committed person; AND

**(6) AN AFFIDAVIT FROM THE STATE'S ATTORNEY STATING THE FACTUAL BASIS TO BELIEVE THAT THE COMMITTED PERSON HAS VIOLATED THE TERMS OF CONDITIONAL RELEASE AND THE GROUNDS FOR BELIEF THAT FURTHER ACTION BY THE COURT IS NECESSARY.**

(d) If the court's review of the petition determines that there is no probable cause to believe that the committed person has violated a conditional release, the court shall:

(1) note the determination on the petition and file it in the court file on the committed person; and

(2) notify the State's Attorney, the Health Department, **THE PUBLIC DEFENDER, THE COUNSEL OF RECORD FOR THE COMMITTED PERSON**, and the person who reported the violation.

3-122.

(a) (1) An application to the court for a change in conditional release of a committed person may be made by:

(i) the Health Department or the State's Attorney at any time; or

(ii) the committed person not earlier than 6 months after the court ordered the conditional release, unless the court for good cause permits an earlier application.

(2) The applicant for a change in conditional release shall notify the court and other parties, in writing, of the application and the reasons for the requested change.

**(3) THE COURT SHALL HOLD A HEARING AFTER AN APPLICATION IS MADE UNDER THIS SUBSECTION TO DETERMINE WHETHER THE APPLICANT HAS SATISFIED THE REQUIREMENTS FOR RELEASE UNDER § 3-114 OF THIS TITLE.**

(b) The [burden of proof of any issue raised by the application for change in conditional release rests with the applicant] **APPLICANT HAS THE BURDEN OF PROOF TO ESTABLISH ANY ISSUE RAISED IN AN APPLICATION FOR CHANGE IN CONDITIONAL RELEASE MADE UNDER SUBSECTION (A) OF THIS SECTION BY A PREPONDERANCE OF THE EVIDENCE.**

(c) After the court considers the application for change in conditional release and the evidence, in accordance with § 3–114 of this title, the court shall:

(1) change the conditions;

(2) impose appropriate additional conditions;

(3) revoke the conditional release;

(4) continue the present conditions of release; [or]

(5) **SHORTEN THE CONDITIONAL RELEASE TERM; OR**

**(6)** extend the conditional release by an additional term [of] **NOT EXCEEDING 5** years.

(d) (1) Not earlier than 1 year after the court action on the application for change filed by the committed person, and not more than once a year thereafter, a committed person may reapply for a change in conditional release.

(2) Notwithstanding the time restrictions in paragraph (1) of this subsection, a committed person may apply for a change in conditional release at any time if the application is accompanied by an affidavit of a physician or licensed psychologist that states an improvement in the mental condition of the committed person.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.