

HOUSE BILL 1112

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CF SB 556

By: **Delegates Mitchell, Clippinger, Cluster, Hough, Lee, McDermott,
B. Robinson, and Valentino-Smith**

Introduced and read first time: February 8, 2013

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Persons Committed as Not Criminally Responsible –**
3 **Release**

4 FOR the purpose of requiring the State's Attorney to be a party to, and have certain
5 rights in, certain proceedings relating to the release of a person committed to
6 the Department of Health and Mental Hygiene as not criminally responsible
7 under the test for criminal responsibility; requiring that notice to the State's
8 Attorney of a certain release hearing be sent at least a certain period of time
9 before the hearing and include a certain evaluation and report; requiring the
10 Office of Administrative Hearings, in recommending the conditions of a
11 conditional release, to give consideration to specific conditions recommended by
12 the State's Attorney; providing for certain de novo hearings in certain release
13 cases where the underlying crime is a certain crime of violence; authorizing a
14 court considering a certain release to continue its hearing to take additional
15 evidence; altering the determination that a court is required to make with
16 regard to certain evidence in considering whether to order continued
17 commitment, conditional release, or discharge from commitment; requiring the
18 Office to schedule a hearing on an application for release and provide a certain
19 notice; repealing the authority of a committed person to request a trial by jury
20 in certain circumstances; requiring a court to hold, and provide a certain notice
21 of, a hearing on certain applications related to release of a certain committed
22 person, under certain circumstances; making certain conforming changes; and
23 generally relating to the release of persons committed to the Department of
24 Health and Mental Hygiene as not criminally responsible.

25 BY repealing and reenacting, with amendments,
26 Article – Criminal Procedure
27 Section 3–114 through 3–120 and 3–122
28 Annotated Code of Maryland
29 (2008 Replacement Volume and 2012 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Criminal Procedure**

4 3–114.

5 (a) (1) A committed person may be released under the provisions of this
6 section and §§ 3–115 through 3–122 of this title.

7 (2) **IN ANY HEARING REGARDING RELEASE, DISCHARGE, OR A**
8 **CHANGE IN CONDITIONAL RELEASE BEFORE THE OFFICE OR THE COURT, THE**
9 **STATE’S ATTORNEY SHALL:**

10 (I) **BE A PARTY TO THE PROCEEDINGS; AND**

11 (II) **HAVE THE RIGHT TO BE PRESENT, PRESENT EVIDENCE,**
12 **AND EXAMINE AND CROSS-EXAMINE WITNESSES.**

13 (b) A committed person is eligible for discharge from commitment only if that
14 person would not be a danger, as a result of mental disorder or mental retardation, to
15 self or to the person or property of others if discharged.

16 (c) A committed person is eligible for conditional release from commitment
17 only if that person would not be a danger, as a result of mental disorder or mental
18 retardation, to self or to the person or property of others if released from confinement
19 with conditions imposed by the court.

20 (d) To be released, a committed person has the burden to establish by a
21 preponderance of the evidence eligibility for discharge or eligibility for conditional
22 release.

23 3–115.

24 (a) Within 50 days after commitment to the Health Department under §
25 3–112 of this title, a hearing officer of the Health Department shall hold a hearing to
26 consider any relevant information that will enable the hearing officer to make
27 recommendations to the court as to whether the committed person is eligible for
28 release under § 3–114 of this title.

29 (b) (1) The release hearing may be postponed for good cause or by
30 agreement of the committed person and the Health Department.

31 (2) The committed person may waive the release hearing.

1 (c) (1) Unless the Health Department has completed an examination and
2 report during the 90 days preceding the release hearing, at least 7 days before the
3 release hearing is scheduled, the Health Department shall complete an examination
4 and evaluation of the committed person.

5 (2) Whether or not the release hearing is waived, the Health
6 Department shall send a copy of the evaluation report:

7 (i) to the committed person;

8 (ii) to counsel for the committed person;

9 (iii) to the State's Attorney; and

10 (iv) to the Office of Administrative Hearings.

11 (d) (1) The Health Department shall send notice of the release hearing to:

12 (i) the committed person;

13 (ii) counsel for the committed person; and

14 (iii) the State's Attorney.

15 (2) **THE NOTICE SENT TO THE STATE'S ATTORNEY SHALL BE**
16 **PROVIDED AT LEAST 10 DAYS BEFORE THE DATE OF THE HEARING AND SHALL**
17 **INCLUDE A COPY OF THE EVALUATION AND REPORT PREPARED FOR THE**
18 **HEARING.**

19 (3) The Office shall issue any appropriate subpoena for any person or
20 evidence. The court may compel obedience to the subpoena.

21 (e) (1) Formal rules of evidence do not apply to the release hearing, and
22 the Office may admit and consider any relevant evidence.

23 (2) The hearing shall be recorded, but the recording need not be
24 transcribed unless requested. The requesting party shall pay the costs of the
25 transcript and, if exceptions have been filed, provide copies to other parties and the
26 court. If the court orders a transcript, the court shall pay the costs of the transcript.

27 (3) Any record that relates to evaluation or treatment of the
28 committed person by this State shall be made available, on request, to the committed
29 person or counsel for the committed person.

30 (4) The Health Department shall present the evaluation report on the
31 committed person and any other relevant evidence.

1 (5) At the release hearing, the committed person is entitled:

2 (i) to be present, to offer evidence, and to cross-examine
3 adverse witnesses; and

4 (ii) to be represented by counsel, including, if the committed
5 person is indigent, the Public Defender or a designee of the Public Defender.

6 (6) At the release hearing, the State's Attorney and the Health
7 Department are entitled to be present, to offer evidence, and to cross-examine
8 witnesses.

9 3-116.

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

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

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

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

19 (b) In recommending the conditions of a conditional release, the Office shall
20 give consideration to any specific conditions recommended by:

21 (I) the facility of the Health Department that has charge of the
22 committed person, the committed person, or counsel for the committed person; AND

23 (II) **THE STATE'S ATTORNEY.**

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

25 (1) to the committed person;

26 (2) to counsel for the committed person;

27 (3) to the State's Attorney;

28 (4) to the court; and

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

3 (d) The committed person, the State's Attorney, or the Health Department
4 may file exceptions to the report of the Office within 10 days after receiving the report.

5 3-117.

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

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

9 (2) if timely exceptions are filed, or if the court requires more
10 information, the court shall hold a hearing unless the committed person and the
11 State's Attorney waive the hearing.

12 (b) (1) The court shall:

13 (I) hold the hearing on the record that was made before the
14 Office; OR

15 (II) **IN CASES WHERE THE UNDERLYING CONVICTION IS FOR**
16 **A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THE CRIMINAL LAW**
17 **ARTICLE, ON ITS OWN INITIATIVE OR ON MOTION BY EITHER PARTY, HOLD A DE**
18 **NOVO HEARING IN WHICH THE COURT MAY RECEIVE EVIDENCE, HEAR**
19 **WITNESSES, AND ENGAGE IN ITS OWN FACT-FINDING.**

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

22 (3) The court may:

23 (I) continue its hearing and remand for the Office to take
24 additional evidence; OR

25 (II) **CONTINUE ITS HEARING SO THAT THE COURT MAY TAKE**
26 **ADDITIONAL EVIDENCE.**

27 3-118.

28 (a) Within 15 days after a judicial hearing ends or is waived, the court shall:

29 (1) (I) determine whether the evidence **ON THE RECORD THAT**
30 **WAS MADE BEFORE THE OFFICE** indicates **AS A MATTER OF LAW** that the

1 committed person proved by a preponderance of the evidence eligibility for release,
2 with or without conditions, in accordance with § 3–114 of this title[.]; OR

3 **(II) DETERMINE WHETHER THE EVIDENCE TAKEN BY THE**
4 **COURT INDICATES AS A MATTER OF FACT AND LAW THAT THE COMMITTED**
5 **PERSON PROVED BY A PREPONDERANCE OF THE EVIDENCE ELIGIBILITY FOR**
6 **RELEASE, WITH OR WITHOUT CONDITIONS, IN ACCORDANCE WITH § 3–114 OF**
7 **THIS TITLE; and**

8 **(2)** enter an appropriate order containing a concise statement of the
9 findings of the court, the reasons for those findings, and ordering:

10 **[(1)] (I)** continued commitment;

11 **[(2)] (II)** conditional release; or

12 **[(3)] (III)** discharge from commitment.

13 (b) (1) If timely exceptions are not filed, and, on review of the report of
14 recommendations from the Office, the court determines that the recommendations are
15 supported by the evidence and a judicial hearing is not necessary, the court shall enter
16 an order in accordance with the recommendations within 30 days after receiving the
17 report from the Office.

18 (2) A court may not enter an order that is not in accordance with the
19 recommendations from the Office unless the court holds a hearing or the hearing is
20 waived.

21 (c) Unless the conditional release is extended under § 3–122 of this title, the
22 court may not continue the conditions of a conditional release for more than 5 years.

23 (d) The court shall notify the Criminal Justice Information System Central
24 Repository whenever it orders conditional release or discharge of a committed person.

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

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

29 3–119.

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

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

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

9 (2) The provisions of this title governing administrative hearing and
10 judicial determination of eligibility for release apply to any application for release
11 under this subsection.

12 **(3) THE OFFICE SHALL SCHEDULE A HEARING ON THE**
13 **APPLICATION FOR RELEASE AND SHALL PROVIDE NOTICE TO THE HEALTH**
14 **DEPARTMENT, THE COMMITTED PERSON, COUNSEL FOR THE COMMITTED**
15 **PERSON, AND THE STATE'S ATTORNEY AT LEAST 10 DAYS BEFORE THE**
16 **HEARING.**

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

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

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

23 (4) The [trier of fact] **JUDGE** shall:

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

26 (ii) render a verdict for:

27 1. continued commitment;

28 2. conditional release; or

29 3. discharge from commitment.

30 **[(5) (4)]** If the [trier of fact] **JUDGE** renders a verdict for conditional
31 release, within 30 days after the verdict, the court shall release the committed person
32 under conditions it imposes in accordance with specific recommendations for
33 conditions under § 3-116(b) of this title.

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

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

5 3–120.

6 (a) (1) If at any time the Health Department considers that a committed
7 person is eligible for conditional release, the Health Department may apply for the
8 conditional release to the court that committed the person.

9 (2) The Health Department shall send a copy of the application for
10 conditional release:

11 (i) to the committed person;

12 (ii) to counsel for the committed person; and

13 (iii) to the State’s Attorney, by certified mail, return receipt
14 requested.

15 (b) **(1) [Within] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
16 **SUBSECTION, WITHIN** 30 days after receipt of the application from the Health
17 Department, the court shall **CONDUCT A HEARING AND** issue an order that is in
18 accordance with § 3–114 of this title for:

19 **[(1)] (I)** continued commitment; or

20 **[(2)] (II)** conditional release under the conditions it imposes after
21 giving consideration to the recommendations of specific conditions from the Health
22 Department.

23 **(2) A HEARING UNDER THIS SUBSECTION NEED NOT BE HELD IF**
24 **WAIVED BY THE STATE’S ATTORNEY, THE COMMITTED PERSON, AND COUNSEL**
25 **FOR THE COMMITTED PERSON.**

26 **(3) THE STATE’S ATTORNEY, THE HEALTH DEPARTMENT, AND**
27 **THE COMMITTED PERSON SHALL BE GIVEN NOTICE OF A HEARING UNDER THIS**
28 **SUBSECTION AND THE OPPORTUNITY TO BE HEARD.**

29 (c) If the court orders a conditional release of the committed person under
30 this section, the committed person, the State’s Attorney, or the Health Department
31 may apply for a revocation, change, or extension under § 3–122 of this title.

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

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

5 3-122.

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

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

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

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

16 (b) The burden of proof of any issue raised by the application for change in
17 conditional release rests with the applicant.

18 (c) (1) [After the court considers the application for change in conditional
19 release and the evidence,] **EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**
20 **SUBSECTION, THE COURT SHALL CONDUCT A HEARING WITHIN 30 DAYS OF THE**
21 **APPLICATION FOR CHANGE IN CONDITIONAL RELEASE.**

22 (2) **AFTER CONSIDERING THE APPLICATION FOR CHANGE IN**
23 **CONDITIONAL RELEASE AND ANY EVIDENCE PRESENTED IN A HEARING UNDER**
24 **THIS SUBSECTION, THE COURT, in accordance with § 3-114 of this title, [the court]**
25 **shall:**

26 [(1)] (I) change the conditions;

27 [(2)] (II) impose appropriate additional conditions;

28 [(3)] (III) revoke the conditional release;

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

30 [(5)] (V) extend the conditional release by an additional term of 5
31 years.

1 **(3) A HEARING UNDER THIS SUBSECTION NEED NOT BE HELD IF**
2 **WAIVED BY THE STATE’S ATTORNEY, THE COMMITTED PERSON, AND COUNSEL**
3 **FOR THE COMMITTED PERSON.**

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

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

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2013.