

SENATE BILL 133

E2
SB 474/10 – JPR

11r1262

By: **Senator Stone**
Introduced and read first time: January 24, 2011
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Discharge from Commitment of Person Previously**
3 **Found Not Criminally Responsible – Judicial Hearing**

4 FOR the purpose of authorizing a court on its own initiative or on motion of a party to
5 hold a certain de novo hearing after receiving a report of recommendations from
6 the Office of Administrative Hearings regarding discharge from commitment of
7 a person previously found not criminally responsible; providing that a certain
8 committed person is entitled to be present and represented at a certain hearing;
9 authorizing a court to continue a certain hearing for the purpose of taking
10 additional evidence; providing that a determination made by a court on whether
11 evidence taken by the Office indicates that a certain committed person proved
12 eligibility for release be made as a matter of law; providing that a determination
13 made by a court on whether evidence taken by the court itself indicates that a
14 certain committed person proved eligibility for release be made as a matter of
15 fact and law; and generally relating to judicial hearings regarding the release
16 from commitment of persons found not criminally responsible.

17 BY repealing and reenacting, without amendments,
18 Article – Criminal Procedure
19 Section 3–114, 3–115, and 3–116
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2010 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Criminal Procedure
24 Section 3–117 and 3–118
25 Annotated Code of Maryland
26 (2008 Replacement Volume and 2010 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 **Article – Criminal Procedure**

2 3–114.

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

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

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

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

15 3–115.

16 (a) Within 50 days after commitment to the Health Department under
17 § 3–112 of this title, a hearing officer of the Health Department shall hold a hearing to
18 consider any relevant information that will enable the hearing officer to make
19 recommendations to the court as to whether the committed person is eligible for
20 release under § 3–114 of this title.

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

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

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

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

30 (i) to the committed person;

31 (ii) to counsel for the committed person;

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

1 (iv) to the Office of Administrative Hearings.

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

3 (i) the committed person;

4 (ii) counsel for the committed person; and

5 (iii) the State's Attorney.

6 (2) The Office shall issue any appropriate subpoena for any person or
7 evidence. The court may compel obedience to the subpoena.

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

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

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

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

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

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

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

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

27 3-116.

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

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

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

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

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

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

12 (1) to the committed person;

13 (2) to counsel for the committed person;

14 (3) to the State's Attorney;

15 (4) to the court; and

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

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

20 3-117.

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

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

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

27 (b) (1) The court shall:

28 (I) hold the hearing on the record that was made before the
29 Office; **OR**

1 **(II) ON ITS OWN INITIATIVE OR ON MOTION BY EITHER**
2 **PARTY, HOLD A DE NOVO HEARING IN WHICH THE COURT MAY RECEIVE**
3 **EVIDENCE, HEAR WITNESSES, AND ENGAGE IN ITS OWN FACT-FINDING.**

4 (2) At [the] A judicial hearing **HELD IN ACCORDANCE WITH**
5 **PARAGRAPH (1) OF THIS SUBSECTION**, the committed person is entitled to be
6 present and to be represented by counsel.

7 (3) The court may:

8 **(I) continue its hearing and remand for the Office to take**
9 **additional evidence; OR**

10 **(II) CONTINUE ITS HEARING FOR THE PURPOSE OF TAKING**
11 **ADDITIONAL EVIDENCE ITSELF.**

12 3–118.

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

14 **(1) (I) determine whether the evidence ON THE RECORD THAT**
15 **WAS MADE BEFORE THE OFFICE indicates AS A MATTER OF LAW that the**
16 **committed person proved by a preponderance of the evidence eligibility for release,**
17 **with or without conditions, in accordance with § 3–114 of this title[, and]; OR**

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

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

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

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

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

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

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

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

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

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

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

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2011.