

defendant was committed to the Department for only a limited time for the purpose of examination or evaluation. The State could not further commit the defendant to the Department unless, at a hearing to consider the question of commitment, the State proved by clear and convincing evidence the criteria for commitment: mental disorder or retardation, and dangerousness. After commitment, the committed individual was permitted release hearings at various intervals and on request under certain conditions. At a release hearing, the State again had the burden to prove that the individual should remain in confinement. On the recommendation of the Task Force, the burden is shifted to the committed individual to prove, by a preponderance of the evidence, that he or she is no longer, as a result of mental disorder or mental retardation, dangerous to self or the person or property of others.

These changes and the accompanying procedural changes have been approved in similar provisions by the Supreme Court. See Jones v. United States, 463 U.S._____, 103 S. Ct. 3043 (1983).

12-114. RELEASE HEARING.

(A) HEARING REQUIRED.

WITHIN 50 DAYS AFTER COMMITMENT TO THE DEPARTMENT UNDER § 12-111 OF THIS TITLE, A HEARING OFFICER OF THE DEPARTMENT SHALL HOLD A HEARING TO CONSIDER ANY RELEVANT INFORMATION THAT WILL ENABLE THE HEARING OFFICER TO MAKE RECOMMENDATIONS TO THE COURT AS TO WHETHER THE COMMITTED INDIVIDUAL IS ELIGIBLE FOR RELEASE UNDER § 12-113 OF THIS TITLE.

(B) POSTPONEMENT AND WAIVER.

(1) THE RELEASE HEARING MAY BE POSTPONED FOR GOOD CAUSE OR BY AGREEMENT OF THE COMMITTED INDIVIDUAL AND THE DEPARTMENT.

(2) THE COMMITTED INDIVIDUAL MAY WAIVE THE RELEASE HEARING.

(C) EVALUATION AND REPORT.

(1) UNLESS THE DEPARTMENT HAS COMPLETED AN EXAMINATION AND REPORT DURING THE 90 DAYS PRECEDING THE RELEASE HEARING, AT LEAST 7 DAYS BEFORE THE RELEASE HEARING IS SCHEDULED, THE DEPARTMENT SHALL COMPLETE AN EXAMINATION AND EVALUATION OF THE COMMITTED INDIVIDUAL.

(2) WHETHER OR NOT THE RELEASE HEARING IS WAIVED, THE DEPARTMENT SHALL SEND A COPY OF AN EVALUATION REPORT THAT MEETS THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION TO:

(1) THE COMMITTED INDIVIDUAL;