

(6) AT THE RELEASE HEARING, THE STATE'S ATTORNEY AND THE DEPARTMENT ARE ENTITLED TO BE PRESENT, TO OFFER EVIDENCE, AND TO CROSS-EXAMINE WITNESSES.

TASK FORCE COMMENT TO § 12-114.

The section replaces former Health - General Article, § 12-111(b) and (c), "Hearing on report -- Scheduling, notice, and summons." and "Same -- Conduct.", respectively. The following are the only substantive changes recommended by the Governor's Task Force to Review the Defense of Insanity.

The former law related to a hearing after an "insanity" trial. The purpose of this initial hearing then was to determine whether the State could prove that the individual was suffering from the same mental state, was dangerous, and therefore should be committed. This hearing was held within 30 days after the court ordered the Department to examine and evaluate the individual.

This change recommended by the Task Force provides instead an initial hearing held 50 days after an automatic commitment, at which the burden is shifted to the committed individual to prove by a preponderance of the evidence that he or she is no longer dangerous as a result of mental retardation or a mental disorder. See §§ 12-111 and 12-113 of this title and the Task Force comments.

In subsection (a) of this section, the hearing officer considers "any relevant evidence" to determine whether the committed individual should be released. The former provision stated that the hearing officer considered the "evaluation and any other relevant information". Since this title provides the justification for committing the individual on the basis of the verdict, the reference to "evaluation" is deleted as possibly misleading.

In subsection (b) of this section, the Task Force recommends a new provision to permit the committed individual to waive the initial hearing. The Department advises that in many instances the individual remains seriously ill and does not wish to be released nor go through a release hearing.

Subsection (c) of this section is a new provision added to require that at the time provided for the initial release hearing, even if the hearing is waived, the Department will have a current evaluation of the committed individual and provide a copy of it to all parties.

In subsection (e)(2) of this section, a new provision makes clear that any entity, whether court or party, that orders a transcript of the administrative release hearing also pays for the transcript and, in certain appropriate circumstances, provides copies to other.