This section replaces former Health - General Article, § 12-111(d), "Report on hearing". The only substantive changes recommended by the Governor's Task Force to Review the Defense of Insanity are as follows.

In subsection (a) of this section, the hearing officer determines whether the committed individual has proved by a preponderance of the evidence eligibility for release, with or without conditions. Formerly, the hearing officer determined whether the State proved that the individual had a mental disorder or mental retardation and, as a result of the mental condition, was dangerous.

Subsections (a)(3) and (b) of this section are new provisions which make clear that any conditions recommended by the hearing officer are based on specific recommendations from the facility and the committed individual. The Task Force recommends this new procedure on the advice of the Department. Formerly, the hearing officer prepared the conditions without this consideration.

12-116. JUDICIAL HEARING ON HEARING OFFICER'S REPORT.

(A) JUDICIAL HEARING; WAIVER.

WITHIN 30 DAYS AFTER THE COURT RECEIVES THE HEARING OFFICER'S REPORT OF RECOMMENDATIONS:

(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 INDIVIDUAL AND THE STATE'S ATTORNEY WAIVE THE HEARING.

(B) SAME -- PROCEDURE.

(1) THE COURT SHALL HOLD THE HEARING ON THE RECORD THAT WAS MADE BEFORE THE ADMINISTRATIVE HEARING OFFICER OF THE DEPARTMENT.

(2) AT THE JUDICIAL HEARING, THE COMMITTED INDIVIDUAL IS ENTITLED TO BE PRESENT AND TO BE REPRESENTED BY COUNSEL.

(3) THE COURT MAY CONTINUE ITS HEARING AND REMAND FOR THE HEARING OFFICER TO TAKE ADDITIONAL EVIDENCE.

TASK FORCE COMMENT TO § 12-116.

This section replaces former Health - General Article, § 12-112(b) and (c). The only substantive change recommended to this section by the Governor's Task Force to Review the Defense of Insanity is a new provision in subsection (a)(1)