

# HOUSE BILL 34

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(PRE-FILED)

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CF SB 298

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By: **Delegate Smigiel**

Requested: July 13, 2011

Introduced and read first time: January 11, 2012

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 6, 2012

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## CHAPTER \_\_\_\_\_

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

19 BY repealing and reenacting, without amendments,  
20 Article – Criminal Procedure  
21 Section 3–114, 3–115, and 3–116  
22 Annotated Code of Maryland  
23 (2008 Replacement Volume and 2011 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,  
2 Article – Criminal Procedure  
3 Section 3–117 ~~and 3–118~~  
4 Annotated Code of Maryland  
5 (2008 Replacement Volume and 2011 Supplement)

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

8 **Article – Criminal Procedure**

9 3–114.

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

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

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

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

22 3–115.

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

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

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

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

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

- 3                   (i) to the committed person;
- 4                   (ii) to counsel for the committed person;
- 5                   (iii) to the State's Attorney; and
- 6                   (iv) to the Office of Administrative Hearings.

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

- 8                   (i) the committed person;
- 9                   (ii) counsel for the committed person; and
- 10                  (iii) the State's Attorney.

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

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

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

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

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

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

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

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

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

4 3-116.

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

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

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

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

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

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

19 (1) to the committed person;

20 (2) to counsel for the committed person;

21 (3) to the State's Attorney;

22 (4) to the court; and

23 (5) to the facility of the Health Department that has charge of the  
24 committed person.

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

27 3-117.

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

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

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

4 (b) (1) ~~(I) The~~ SUBJECT TO SUBPARAGRAPH (II) OF THIS  
 5 PARAGRAPH, THE court shall:

6 ~~(I)~~ hold the hearing on the record that was made before the  
 7 Office; ~~OR.~~

8 ~~(II) ON ITS OWN INITIATIVE OR ON MOTION BY EITHER~~  
 9 ~~PARTY, HOLD A DE NOVO HEARING IN WHICH THE COURT MAY RECEIVE~~  
 10 ~~EVIDENCE, HEAR WITNESSES, AND ENGAGE IN ITS OWN FACT FINDING IN CASES~~  
 11 ~~WHERE THE UNDERLYING CONVICTION IS FOR A CRIME OF VIOLENCE, AS~~  
 12 ~~DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE, ON ITS OWN INITIATIVE~~  
 13 ~~OR ON MOTION BY EITHER PARTY, THE COURT MAY RECEIVE ADDITIONAL~~  
 14 ~~EVIDENCE TO ASSIST IN MAKING ITS DETERMINATION.~~

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

18 (3) The court may:

19 ~~(I)~~ continue its hearing and remand for the Office to take  
 20 additional evidence; ~~OR~~

21 ~~(II) CONTINUE ITS HEARING FOR THE PURPOSE OF TAKING~~  
 22 ~~ADDITIONAL EVIDENCE ITSELF.~~

23 ~~§ 118.~~

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

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

29 ~~(II) DETERMINE WHETHER THE EVIDENCE TAKEN BY THE~~  
 30 ~~COURT INDICATES AS A MATTER OF FACT AND LAW THAT THE COMMITTED~~  
 31 ~~PERSON PROVED BY A PREPONDERANCE OF THE EVIDENCE ELIGIBILITY FOR~~  
 32 ~~RELEASE, WITH OR WITHOUT CONDITIONS, IN ACCORDANCE WITH § 3-114 OF~~  
 33 ~~THIS TITLE; AND~~

1 ~~(2) enter an appropriate order containing a concise statement of the~~  
 2 ~~findings of the court, the reasons for those findings, and ordering.~~

3 ~~[(1)] (I) continued commitment;~~

4 ~~[(2)] (II) conditional release; or~~

5 ~~[(3)] (III) discharge from commitment.~~

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

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

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

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

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 23 October 1, 2012.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.