STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Ninety-Second Report to the Court of Appeals, transmitting thereby proposed new Rule 4-216.1 and amendments to current Rules 4-212, 4-213, 4-213.1, 4-214, 4-215, 4-216, 4-216.1, 4-216.2, 4-217, 4-349, 5-101, and 15-303 and Form 4-217.2.

The Committee's One Hundred Ninety-Second Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before December 22, 2016 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
2011-D Commerce Park Drive
Annapolis, Maryland 21401

Bessie M. Decker
Clerk
Court of Appeals of Maryland

November 22, 2016

The Honorable Mary Ellen Barbera,
Chief Judge
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald,
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Joseph M. Getty,
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Ninety-Second Report, and recommends that the Court adopt new Rule 4-216.1 and conforming amendments to current Rules 4-212, 4-213, 4-213.1, 4-214, 4-215 4-216, 4-216.1, 4-216.2, 4-217, 4-349, 5-101, and 15-303 and Form 4-217.2.

INTRODUCTION

The heart of the proposal is new Rule 4-216.1, the purpose of which is to provide clearer guidance to judicial officers regarding the manner in which certain core principles intended to govern decisions regarding the pretrial release of arrested individuals should be applied. Most of those principles are already either explicit or implicit in current Rule 4-216, but they are not always applied in the manner intended. The central problem, which has been well-documented both nationally and in Maryland, is that, not infrequently, money bail is being set in amounts that many defendants cannot afford. This results in those defendants being incarcerated, prior to trial, for no reason other than poverty.

The impetus for the development of proposed Rule 4-216.1 came from an advice letter issued by the Office of the Attorney General on October 11, 2016, expressing the view that current Rule 4-216, as it is being applied, violates both the due

process rights of defendants and the Constitutional prohibition against excessive bail. Following the issuance of that advice letter, the Attorney General formally requested the Rules Committee to look into the concerns expressed in the advice letter. After consideration by the Criminal Rules Subcommittee, the changes proposed in this Report were approved by the full Committee at an open meeting on November 18, 2016. Copies of the Attorney General's advice letter and request to the Rules Committee will be forwarded as Appendix A.[1]

The debate over "bail reform" has been a contentious one for decades, both in Maryland and nationally. The requirement of money bail has long been a staple in the American criminal justice system, notwithstanding that, at least to the extent it relies on compensated sureties, it has either never been used or has been abandoned in every other country except the Philippines.

Unfortunately, as the system developed, the practice of setting money bail at levels that a defendant could not afford grew, either because the defendant's financial circumstances were not considered in setting the form or amount or, in some instances, as a way of assuring that the defendant would remain incarcerated even though, if the defendant could afford the bail, he or she would be safe to be released. That practice, seemingly blessed in a 2-page 43-year-old Opinion of the Court of Special Appeals (*Simmons v. Warden*, 16 Md. App. 449, 450 (1973) ("The question of excessive bail is not resolved on the basis of an individual's ability or inability to raise a certain sum"), to some extent, has undermined the core principles embedded in Rule 4-216, which need to be restated in a clearer fashion.

There have been several independent, highly credible studies of the pre-trial release system in Maryland. Each of them has found, from documented evidence, that the reliance on money bail set at levels that the defendant cannot afford is (1) not uncommon, (2) irrational, unfair, unnecessary to ensure either the defendant's appearance or public safety, (3) racially and ethnically discriminatory, and (4) fiscally unsound. These studies stress not only the fiscal cost to the State and the counties from incarcerating people who do not need to be incarcerated but also the human cost of incarceration – the loss of employment; the loss of housing, automobiles, and utilities and other services because of the loss of income; the loss of

[1] The Appendices will be bulky. It was not possible to collate and print them in time to attach to this Report. They will be delivered separately.

governmental benefits, such as Medicaid and Social Security SSI payments; the disruption of families - all of which can have a lasting and devastating impact on the defendant and his or her family.

Similar studies in other States have reached similar conclusions, and few groups other than the bail bond industry and its allies have contested those conclusions. The Rules Committee examined those studies, along with Pre-trial Release Standards adopted by the American Bar Association. Copies of them, from here and elsewhere, will be forwarded collectively as Appendix B for the Court's consideration. It is clear that there **is** a problem in the manner in which the current Rules are being applied.

The Attorney General's advice letter concluded that the problem is of Constitutional dimension. That conclusion has been confirmed by an opinion from the law firm of Covington & Burling signed, among others, by former U.S. Attorney General Eric Holder, that will be forwarded as Appendix C. It is confirmed as well by the view of the Department of Justice as expressed in briefs the Department filed in two Federal cases (*Walker v. City of Calhoun* (11th Cir. Case No. 16-10521) and *Varden v. City of Clanton* (M.D.Ala. Case No. 2:15-cv-34)) and in a March 2016 letter from the Civil Rights Division stating unambiguously that "[c]ourts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release." Federal law states expressly that a Federal judicial officer "may not impose a financial condition that results in the pretrial detention of the person." 18 U.S.C. §3142(c)(2).

SUMMARY OF THE PROPOSALS

The proposals before the Court are drawn largely from current Rule 4-216 but are reorganized to follow more closely the Pretrial Release Standards adopted by the American Bar Association. They do **not** prohibit the imposition of financial conditions (money bail); they do **not** do away with compensated sureties (bail bondsmen); and they do **not** permit the release of defendants who are significant flight risks or are likely to be a danger to the community or anyone in the community. Indeed, they expressly **prohibit** the release of such a defendant.

Current Rule 4-216 is predominantly a procedural Rule. It describes the duties and authority of judicial officers at an initial appearance proceeding following the defendant's arrest. Section (e) of the Rule sets forth a list of factors the

judicial officer must consider in determining whether, and on what conditions, the defendant may be released. The only significant change to that Rule is to move that list of considerations to new Rule 4-216.1, which is a self-contained Rule setting forth the standards to be applied in making pre-trial release decisions.

Section (a) of Rule 4-216.1 contains nine definitions, some taken from current Rule 4-217 and some new ones that are largely descriptive. Section (b) sets forth three core general principles:

FIRST: That the Rule should be liberally construed to permit the release of a defendant pending trial except upon a finding that, if the defendant is released, there is a reasonable likelihood that the defendant will not appear when required or will be a danger to an alleged victim, any other person, or the community, **and that, if such a finding is made, the defendant shall not be released**.

SECOND: That a decision whether or on what conditions to release a defendant must be based on a consideration of specific facts and circumstances applicable to the particular defendant, including the financial status of the defendant and the facts and circumstances constituting probable cause for the charges. That is taken in large part from ABA Standard 10-5.3(e).

THIRD: That if the judicial officer determines that a defendant should be released **other than** on personal recognizance or unsecured bond without special conditions, the judicial officer shall impose the least onerous condition or combination of conditions of release set forth in section (e) of the Rule that will reasonably ensure (A) the appearance of the defendant and (B) the safety of the community and persons in the community.

There are statutes that limit the authority of District Court commissioners to release defendants charged with certain crimes. *See* Code, Criminal Procedure Article, §5-202. There is no intent in Rule 4-216.1 or any other Rule to alter in any way the force of those statutes.

Subsection (b)(4) makes clear that those general principles are not intended to preclude a defendant from being held in custody for violating a condition of parole, probation, or pre-trial release.

Section (c) creates a preference for release on personal recognizance or unsecured bond, with or without permissible

conditions, unless the judicial officer finds that no permissible non-financial conditions attached to the release will reasonably ensure the defendant's appearance or the safety of the community and persons in it. The section requires that a judicial officer who makes such a finding state the basis for it on the record so that it can be reviewed, either in a bail review proceeding or a habeas corpus case.

Section (d) provides the guidelines for imposing financial conditions. It expressly permits judicial officers to impose financial conditions, subject to the following:

(1) The judicial officer may not impose a financial condition, in form or amount, that he or she knows or has reason to believe that the defendant is financially incapable of meeting;

(2) Financial conditions are appropriate only to ensure the appearance of the defendant and not to ensure public safety, to punish the defendant, or to placate public opinion; and

(3) Financial conditions may not be set by reference to a predetermined schedule according to the nature of the offense. Subsection (d)(2) provides the clearest guidance regarding the meaning of "least onerous condition." It sets out the sequential preferences for release – personal recognizance, unsecured bond of the defendant, unsecured bond of the defendant and an uncompensated surety (usually a family member), bond secured by collateral security up to ten percent of the penalty amount of the bond, bond secured by collateral security exceeding ten percent of the penalty amount of the bond.

Section (e) sets forth the permissible non-financial conditions that may be attached to a release. Most of them are taken from provisions in current Rule 4-216 (f).

Section (f) incorporates the factors relocated from Rule 4-216 that a judicial officer may consider in determining whether and on what conditions to release the defendant. There is one new provision -- that the judicial officer must give consideration to a recommendation from a pre-trial release services program that has made a risk assessment of the defendant in accordance with a validated risk assessment tool and is willing to provide an acceptable level of supervision if so directed by the judicial officer.

Finally, section (g) requires the judicial officer to inform the defendant that, if any required collateral security is provided by the defendant or an uncompensated surety, it will

be refunded at the conclusion of the criminal proceeding if the defendant has not defaulted in the performance of the conditions of the bond.

As noted, the amendments proposed to the other Rules are merely conforming ones.

CONCLUDING CONSIDERATIONS

The bail bond industry, the Lieutenant Governor, the President of the State Senate, the Chair of the Senate Judicial Proceedings Committee, eighteen States Attorneys, and a number of other groups and individuals offered opposition to these proposals, predominantly on two grounds – (1) that any reform in the standards for pre-trial release should come from the General Assembly (which has consistently, for decades, been unwilling to enact any substantial reform measures), and (2) the cost of implementing the proposed Rules would be substantial. Those arguments were made and considered at both the Subcommittee and full Committee hearings and no doubt will be pursued before the Court. There is an overlap to them.

The decision as to whether a defendant who is under arrest should be released pre-trial and, if so, on what terms, is, and historically has been, committed exclusively to the Judicial Branch of Government – judicial officers acting in judicial proceedings. Although there are statutes that bear on that process, the process itself is governed by Rules adopted by the Court of Appeals. At issue before the Rules Committee, and now the Court, are proposed amendments to Court Rules that operate consistently with existing statutes. The Rules Committee rejected the argument that the amendment of Court Rules is a matter that should be committed solely to the General Assembly.

Also rejected was the argument that adoption of the proposed amendments would have a substantial negative impact. No evidence of that was presented, only unsubstantiated assertions that, if more defendants were released, there would be more failures to appear. A study done in Colorado showed the opposite. Another study showed that merely calling the defendant a few days before trial to remind him or her of the need to be in court reduced FTA's significantly. Indeed, all of the evidence, drawn largely from the various studies that had been conducted in Maryland, also was to the contrary – that the proposed amendments were likely to reduce the number of defendants who are incarcerated pre-trial and thus result in a substantial savings to the State and the counties that operate and fund the detention centers.

That said, although the proposed Rules changes can help make judicial decision-making more fair and more rational and address the Constitutional concerns raised by the Attorney General and others, truly meaningful reform, according to most of the studies that have been done, will require at least two other elements: (1) the development and validation of evidence-based risk assessment tools, and (2) the availability of sufficiently funded pre-trial release services units throughout the State. Several risk assessment tools have been developed, here and elsewhere, but there has yet to be any general consensus that any one is better than another. They all seem to have proponents and detractors. At the moment, fourteen Maryland counties have a pre-trial release services unit of one kind or another, but they vary significantly in terms of the services they offer—whether they use a risk assessment tool in making a recommendation (and, if so, what tool) and in the level of supervision they offer to released defendants.

Those are the devices that will require action of some kind from the General Assembly, and those are the devices that will require start-up funding to create and put in place. The evidence collected by the Rules Committee and that has been available to the General Assembly indicates that these two devices, working together, would result in better decision-making, more releases of individuals who should not be subject to pre-trial incarceration, and considerable savings. Hopefully, with input from the Judiciary, the Legislature will act favorably in this regard, but, whether it does or not, the Committee urges that the proposed Rules be adopted.

For the further guidance of the Court and the public, following the proposed new Rule and amendments to each current Rule is a Reporter's note describing in further detail the reasons for the proposals. *We caution that the Reporter's notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation*. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc
cc: Bessie M. Decker, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

ADD new Rule 4-216.1, as follows:

Rule 4-216.1. PRETRIAL RELEASE – STANDARDS GOVERNING

(a) Definitions

The following definitions apply in this Rule:

(1) Appearance

"Appearance" means the appearance of the defendant in court whenever required.

(2) Bond

"Bond" means a written obligation of the person signing the bond conditioned on the appearance of the defendant and providing for the payment of a penalty sum according to its terms.

(3) Collateral Security

"Collateral security" means any property deposited, pledged, or encumbered to secure the performance of a bond.

(4) Compensated Surety

"Compensated surety" means a person who is licensed to become a surety on bonds written in the county and who charges compensation for acting as surety for defendants.

(5) Financial Condition

"Financial condition" means the requirement of collateral security or the guarantee of the defendant's appearance by a compensated surety as a condition of the defendant's release. The term does not include (A) an unsecured bond by the defendant or (B) the cost associated with a service that is a condition of release and is affordable by the defendant or waived by the court.

Committee note: Examples of a condition of release that is not a financial condition are participation in an ignition interlock program, use of an alcohol consumption monitoring system, and GPS monitoring.

(6) Release on Personal Recognizance

"Release on personal recognizance" means a release, without the requirement of a bond, based on a written promise by the defendant (A) to appear in court when required, (B) to commit no criminal offense while on release, and (C) to comply with all other conditions imposed by the judicial officer pursuant to this Rule, Rule 4-216.2, or by other law while on release.

Committee note: The principal differences between a personal recognizance and a bond are that the former does not provide for payment of a penalty sum if the defendant fails to appear when required and is not subject to any financial conditions.

(7) Surety

"Surety" means a person other than the defendant who, by executing a bond, guarantees the appearance of the defendant and includes an uncompensated or accommodation surety.

(8) Surety Insurer

"Surety insurer" means a person in the business of becoming, either directly or through an agent, a surety on a bond for compensation.

(9) Uncompensated Surety

"Uncompensated surety" means a surety who does not charge or receive compensation for acting as a surety for the defendant.

(b) General Principles

(1) Liberal Construction

This Rule shall be liberally construed to permit the release of a defendant pending trial except upon a finding that, if the defendant is released, there is a reasonable likelihood that the defendant (A) will not appear when required, or (B) will be a danger to an alleged victim, another person, or the community. If such a finding is made, the defendant shall not be released.

(2) Individualized Consideration

A decision whether or on what conditions to release a defendant shall be based on a consideration of specific facts and circumstances applicable to the particular defendant, including the financial status of the defendant and the facts and circumstances constituting probable cause for the charges.

(3) Least Onerous Conditions

If a judicial officer determines that a defendant should be released other than on personal recognizance or unsecured bond without special conditions, the judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release set forth in section (e) of this Rule that will reasonably ensure (A) the appearance of the defendant and (B) the safety of each alleged victim, other persons, and the community and may impose a financial condition only in accordance with section (d) of this Rule.

Committee note: If a defendant was arrested without a warrant and the judicial officer finds no probable cause for any of the charges or for the arrest, Rule 4-216 (a) requires that the defendant be released on personal recognizance, with no conditions imposed.

(4) Exceptions

Nothing in this Rule is intended to preclude a defendant from being held in custody based on an alleged violation of (i) a condition of pretrial release, a release under Rule 4-349, or an order of probation or parole previously imposed in another case, or (ii) a condition of pretrial release previously imposed in the instant case.

(c) Release on Personal Recognizance or Unsecured Bond

(1) Generally

A judicial officer shall release a defendant on personal recognizance or unsecured bond, with or without permissible conditions, unless the judicial officer finds that no permissible non-financial condition attached to such release

will reasonably ensure (i) the appearance of the defendant, and (ii) the safety of each alleged victim, other persons, or the community. If the judicial officer makes such a finding, the judicial officer shall state the basis for it on the record.

Committee note: Pursuant to subsection (b)(3) of this Rule, the preference should be for release on personal recognizance.

Cross reference: See Code, Criminal Procedure Article, §5-101 (c), precluding release on personal recognizance if the defendant is charged with certain crimes.

(2) Permissible Conditions

Permissible conditions for purposes of this section include those embodied in the definition of release on personal recognizance and the non-financial conditions set forth in section (e) of this Rule.

(d) Release on Financial Conditions

(1) Generally

(A) A judicial officer may impose financial conditions only when no other conditions of release will reasonably ensure the defendant's appearance.

(B) A judicial officer may not impose a financial condition in form or amount that the judicial officer knows or has reason to believe the defendant is financially incapable of meeting and that will result in the defendant being detained solely because of that financial incapability.

(C) Financial conditions of release are appropriate only to ensure the appearance of the defendant and may not be imposed

solely to prevent future criminal conduct during the pretrial period or to protect the safety of any person or the community; nor may they be imposed to punish the defendant or to placate public opinion.

(D) Financial conditions may not be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge.

(2) Imposition of Financial Condition

Subject to the conditions set forth in section (b) and subsection (d)(1) of this Rule, upon finding that the defendant should not be released on personal recognizance or unsecured bond, the judicial officer shall require the first of the following alternatives the judicial officer finds sufficient to provide reasonable assurance of the defendant's appearance:

(A) execution of unsecured bonds by the defendant and an uncompensated surety willing to execute such a bond in an amount specified by the judicial officer;

(B) execution of a bond in an amount specified by the judicial officer secured by the deposit of collateral security equal in value to not more than 10% of the penalty amount of the bond or by the obligation of a qualified surety; or

(C) execution of a bond secured by the deposit of collateral security of a value in excess of 10% of the penalty amount of the bond or by the obligation of a qualified surety.

(3) Other Permissible Conditions

If the judicial officer finds that one or more non-financial conditions also may be required to reasonably ensure (A) the appearance of the defendant, and (B) the safety of each alleged victim, other persons, or the community, the judicial officer may impose on the defendant one or more non-financial conditions in accordance with section (e) of this Rule.

(e) Non-financial Conditions of Release

Subject to section (b) of this Rule, non-financial conditions of release imposed by a judicial officer under this Rule may include, to the extent appropriate and capable of implementation:

(1) electronic monitoring;

(2) no-contact orders;

(3) periodic reporting to designated supervisory persons;

(4) committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant’s appearance in court;

(5) reasonable restrictions with respect to travel, association, and place of residence;

(6) a reasonable curfew;

(7) maintenance of employment or education;

(8) imposing upon the defendant, for good cause shown, one or more of the conditions authorized under Code, Criminal Law Article, §9-304 reasonably necessary to stop or prevent the

intimidation of a victim or witness or a violation of Code, Criminal Law Article, §9-302, 9-303, or 9-305; and

(9) any other lawful condition that will help ensure the appearance of the defendant or the safety of each alleged victim, other persons, or the community.

(f) Consideration of Factors

(1) Recommendation of Pretrial Release Services Program

In determining whether a defendant should be released and the conditions of release, the judicial officer shall give consideration to the recommendation of any pretrial release services program that has made a risk assessment of the defendant in accordance with a validated risk assessment tool and is willing to provide an acceptable level of supervision over the defendant during the period of release if so directed by the judicial officer.

(2) Other Factors

In addition to any recommendation made in accordance with subsection (f)(1) of this Rule, the judicial officer shall consider the following factors:

(A) the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;

(B) the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;

(C) the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;

(D) any recommendation of an agency that conducts pretrial release investigations;

(E) any recommendation of the State's Attorney;

(F) any information presented by the defendant or defendant's attorney;

(G) the danger of the defendant to an alleged victim, another person, or the community;

(H) the danger of the defendant to himself or herself; and

(I) any other factor bearing on the risk of a willful failure to appear and the safety of each alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

(g) Disclosure

If the judicial officer requires collateral security, the judicial officer shall advise the defendant that, if the defendant or an uncompensated surety posts the required cash or other property, it will be refunded at the conclusion of the criminal proceedings if the defendant has not defaulted in the performance of the conditions of the bond.

Source: This Rule is new.

REPORTER'S NOTE

In response to a letter from Counsel to the General Assembly concerning Maryland's system of pretrial detention, the Attorney General of Maryland has requested that the Rules Committee consider changes to Rule 4-216. A proposed new Rule 4-216.1, along with conforming amendments to Rule 4-216, a renumbering of current Rules 4-216.1 and 4-216.2, and conforming amendments to Rules 4-212, 4-213, 4-213.1, 4-214, 4-215, 4-216.1, 4-216.2, 4-217, 4-349, 5-101, 15-303, and Form 4-217.2 have been drafted. The main issues being addressed are the defendant's right to an individualized inquiry before determination of pretrial release and the prohibition against ordering bail or other financial conditions of pretrial release clearly exceeding a criminal defendant's ability to pay unless required to ensure a defendant's appearance or the safety of individuals or the community. The main thrust of the new Rule is to require a pretrial defendant's release on the least onerous conditions of release unless the judicial officer concludes that no conditions of release will help ensure the appearance of the defendant or the safety of individuals or the community.

The definitions in section (a) that are derived from the definitions in Rule 4-217 (b) are those of "collateral security," "surety," "surety insurer," and "bond." The definition of "bond" is taken, in part, from the definition of "bail bond" in Rule 4-217 (b). The term "bail" as an adjective has been deleted from these definitions, because it may imply the requirement of financial conditions as security for the bond. The other definitions are new and are merely descriptive.

Subsection (b)(1) is derived from current Rule 4-216 (e)(3).

Subsection (b)(2) is new and was added to address a concern of the Attorney General that a defendant has the right to an individualized inquiry.

Subsection (b)(3) is partly derived from current Rule 4-216 (e)(3) and is partly new. It emphasizes the need for the least onerous conditions of release if a judicial officer imposes conditions on release.

Subsection (b)(4) is new. It makes clear that the preference for pretrial release does not preclude the defendant from being detained for violating a previously imposed condition of pretrial release, release under Rule 4-349, probation, or parole.

Subsection (c)(1) is partly derived from current Rule 4-216 (c) and (e) and is partly new. It makes clear that a judicial

officer shall release a defendant on personal recognizance or unsecured bond unless the judicial officer finds that no permissible non-financial condition attached to the release of a defendant will ensure the defendant's appearance and the safety of the victim, other persons, or the community.

Subsection (c)(2) is new. It explains what permissible conditions of release are.

Subsection (d)(1), which limits the use of financial conditions, is taken primarily from the American Bar Association Criminal Justice Standards on Pretrial Release, mainly Standards 10-1.4, 10-1.8, 10-5.1, 10-5.2, and 10-5.3. The Standards establish the well-recognized precept that the function of financial conditions is solely to ensure the defendant's appearance and not to protect public safety. If the defendant is likely to be a danger to particular persons or the community, if released, the defendant should not be released.

Subsection (d)(2) is new and is intended to implement the requirement that a defendant should be released on the least onerous conditions.

Subsection (d)(3) is partly derived from Rule 4-216 (f) and is partly new.

Section (e) is partly derived from Rule 4-216 (f) and is partly new. To encourage the imposition of the least onerous conditions of release, non-financial conditions have been set out, such as electronic monitoring, no-contact orders, periodic reporting to supervisors, and reasonable restrictions on travel, association, and place of residence.

Subsection (f) (1) is new. It provides for the judicial officer to consider a public pretrial release service program that utilizes validated risk assessment tools and is equipped to provide supervision of the defendant if so directed by the judicial officer. Approximately 13 counties (including Baltimore City) have such programs, but they are not uniform in how they operate, what kinds of risk assessment tools they use, and whether, or to what extent, they provide pretrial release monitoring services. It is suggested that the Legislature provide for these programs on a statewide uniform basis. One danger with county-based programs that vary significantly in their scope and operation is that pretrial release decisions based on them also will vary, which may create equal protection issues.

Subsection (f) (2) is derived from current Rule 4-216 (e)(1). It requires that a judicial officer consider, in addition to any recommendation of a pretrial release services

program made in accordance with subsection (f)(1), the factors set forth in this subsection.

Section (g) is partly derived from Rule 4-217 (j) and is partly new.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-212 to revise internal references, as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR WARRANT

(a) General

When a charging document is filed or a stetted case is rescheduled pursuant to Rule 4-248, a summons or warrant shall be issued in accordance with this Rule. Title 5 of these rules does not apply to the issuance of a summons or warrant.

(b) Summons – Issuance

Unless a warrant has been issued, or the defendant is in custody, or the charging document is a citation, a summons shall be issued to the defendant (1) in the District Court, by a judicial officer or the clerk, and (2) in the circuit court, by the clerk. The summons shall advise the defendant to appear in person at the time and place specified or, in the circuit court, to appear or have counsel enter an appearance in writing at or before that time. A copy of the charging document shall be attached to the summons. A court may order the reissuance of a summons.

(c) Summons – Service

The summons and charging document shall be served on the defendant by mail or by personal service by a sheriff or other peace officer, as directed (1) by a judicial officer in the District Court, or (2) by the State's Attorney in the circuit court.

(d) Warrant - Issuance; Inspection

(1) In the District Court

(A) By Judge

A judge may, and upon request of the State's Attorney shall, issue a warrant for the arrest of the defendant, other than a corporation, upon a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and that (i) the defendant has previously failed to respond to a summons that has been personally served or a citation, or (ii) there is a substantial likelihood that the defendant will not respond to a summons, or (iii) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court, or (iv) the defendant is in custody for another offense, or (v) there is probable cause to believe that the defendant poses a danger to another person or to the community. A copy of the charging document shall be attached to the warrant.

(B) By Commissioner

On review of an application by an individual for a statement of charges, a commissioner may issue a warrant for the arrest of the defendant, other than a corporation, upon a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and that (i) the defendant has previously failed to respond to a summons that has been personally served or a citation, or (ii) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court, or (iii) the defendant is in custody for another offense, or (iv) there is probable cause to believe that the defendant poses a danger to another person or to the community. A copy of the charging document shall be attached to the warrant.

Cross reference: See Code, Courts Article, §2-607.

(2) In the Circuit Court

Upon the request of the State's Attorney, the court may order issuance of a warrant for the arrest of a defendant, other than a corporation, if an information has been filed against the defendant and the circuit court or the District Court has made a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document or if an indictment has been filed against the defendant; and (A) the defendant has not been processed and released pursuant to Rule 4-216 or ~~4-216.1~~ 4-216.2, or (B) the court finds there

is a substantial likelihood that the defendant will not respond to a summons. A copy of the charging document shall be attached to the warrant. Unless the court finds that there is a substantial likelihood that the defendant will not respond to a criminal summons, the court shall not order issuance of a warrant for a defendant who has been processed and released pursuant to Rule 4-216 or ~~4-216.1~~ 4-216.2 if the circuit court charging document is based on the same alleged acts or transactions. When the defendant has been processed and released pursuant to Rule 4-216 or ~~4-216.1~~ 4-216.2, the issuance of a warrant for violation of conditions of release is governed by Rule 4-217.

(3) Inspection of the Warrant and Charging Document

Unless otherwise ordered by the court, files and records of the court pertaining to a warrant issued pursuant to subsection (d)(1) or (d)(2) of this Rule and the charging document upon which the warrant was issued shall not be open to inspection until either (A) the warrant has been served and a return of service has been filed in compliance with section (g) of this Rule or (B) 90 days have elapsed since the warrant was issued. Thereafter, unless sealed pursuant to Rule 4-201 (d), the files and records shall be open to inspection.

Committee note: This subsection does not preclude the release of otherwise available statistical information concerning unserved arrest warrants nor does it prohibit a State's Attorney or peace officer from releasing information pertaining to an

unserved arrest warrant and charging document.

Cross reference: See Rule 4-201 concerning charging documents. See Code, General Provisions Article, §4-316, which governs inspection of court records pertaining to an arrest warrant.

(e) Execution of Warrant - Defendant not in Custody

Unless the defendant is in custody, a warrant shall be executed by the arrest of the defendant. Unless the warrant and charging document are served at the time of the arrest, the officer shall inform the defendant of the nature of the offense charged and of the fact that a warrant has been issued. A copy of the warrant and charging document shall be served on the defendant promptly after the arrest. The defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest or, if the warrant so specifies, before a judicial officer of the circuit court without unnecessary delay and in no event later than the next session of court after the date of arrest. The court shall process the defendant pursuant to Rule 4-216 or ~~4-216.1~~ 4-216.2 and may make provision for the appearance or waiver of counsel pursuant to Rule 4-215 *or 4-215.1*.

Committee note: The amendments made in this section are not intended to supersede Code, Courts Article, §10-912.

Cross reference: See Code, Criminal Procedure Article, §4-109 concerning invalidation and destruction of unserved warrants, summonses, or other criminal process for misdemeanor offenses.

(f) Procedure - When Defendant in Custody

(1) Same Offense

When a defendant is arrested without a warrant, the defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest. When a charging document is filed in the District Court for the offense for which the defendant is already in custody a warrant or summons need not issue. A copy of the charging document shall be served on the defendant promptly after it is filed, and a return shall be made as for a warrant. When a charging document is filed in the circuit court for an offense for which the defendant is already in custody, a warrant issued pursuant to subsection (d)(2) of this Rule may be lodged as a detainer for the continued detention of the defendant under the jurisdiction of the court in which the charging document is filed. Unless otherwise ordered pursuant to Rule 4-216, ~~4-216.1, or 4-216.2~~ 4-216.2, or 4-216.3, the defendant remains subject to conditions of pretrial release imposed by the District Court.

(2) Other Offense

A warrant issued pursuant to section (d) of this Rule for the arrest of a defendant in custody for another offense may be lodged as a detainer for the continued detention of the defendant for the offense charged in the charging document. When the defendant is served with a copy of the charging document and warrant, the defendant shall be taken before a

judicial officer of the District Court, or of the circuit court if the warrant so specifies, without unnecessary delay. In the District Court the defendant's appearance shall be no later than 24 hours after service of the warrant, and in the circuit court it shall be no later than the next session of court after the date of service of the warrant.

(g) Return of Service

The officer who served the defendant with the summons or warrant and the charging document shall make a prompt return of service to the court that shows the date, time, and place of service.

(h) Citation – Service

The person issuing a citation, other than for a parking violation, shall serve it upon the defendant at the time of its issuance.

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rule 720 a and M.D.R. 720 c and in part new.
Section (b) is derived from former Rule 720 a and M.D.R. 720 c.
Section (c) is derived from former Rule 720 b and M.D.R. 720 d.
Section (d) is in part derived from former Rule 720 c and M.D.R. 720 e and is in part new.
Section (e) is derived from former Rule 720 d and e, M.D.R. 720 f, and M.D.R. 723 a.
Section (f) is derived from former Rule 720 f and M.D.R. 720 h.
Section (g) is derived from former M.D.R. 720 g.
Section (h) is derived from former M.D.R. 720 i.

REPORTER'S NOTE

Proposed amendments to Rules 4-212, 4-213, 4-213.1, 4-214, 4-215, 4-216.2, 4-216.3, 4-217, 4-349, 5-101, and 15-303 and Form 4-217.2 conform to proposed new Rule 4-216.1 and to the renumbering of and amendments to current Rules 4-216, 4-216.1, and 4-216.2.

Amendments pending before the Court of Appeals as part of the 191st Report of the Rules Committee are shown in italics and are unrelated to the current proposals.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-213 to revise internal references, as follows:

Rule 4-213. INITIAL APPEARANCE OF DEFENDANT

(a) In District Court Following Arrest

When a defendant appears before a judicial officer of the District Court pursuant to an arrest, the judicial officer shall proceed as follows:

(1) Appointment, Appearance, or Waiver of Attorney for Initial Appearance

If the defendant appears without an attorney, the judicial officer shall first follow the procedure set forth in Rule 4-213.1 to assure that the defendant either is represented by an attorney or has knowingly and voluntarily waived the right to an attorney.

(2) Advice of Charges

The judicial officer shall inform the defendant of each offense with which the defendant is charged and of the allowable penalties, including *any* mandatory *or enhanced* penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is

then available. If one is not then available, the defendant shall be furnished with a copy as soon as possible.

(3) Advice of Right to Counsel

The judicial officer shall require the defendant to read the notice to defendant required to be printed on charging documents in accordance with Rule 4-202 (a), or shall read the notice to a defendant who is unable for any reason to do so. A copy of the notice shall be furnished to a defendant who has not received a copy of the charging document. The judicial officer shall advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

Cross reference: See Rule 4-213.1 with respect to the right to an attorney at an initial appearance before a judicial officer and Rule ~~4-216.1~~ 4-216.2 (b) with respect to the right to an attorney at a hearing to review a pretrial release decision of a commissioner.

(4) Advice of Preliminary Hearing

When a defendant has been charged with a felony that is not within the jurisdiction of the District Court and has not been indicted, the judicial officer shall advise the defendant of the right to have a preliminary hearing by a request made then or within ten days thereafter and that failure to make a timely request will result in the waiver of a preliminary hearing. If the defendant then requests a preliminary hearing,

the judicial officer may either set its date and time or notify the defendant that the clerk will do so.

(5) Pretrial Release

The judicial officer shall comply with the applicable provisions of Rules 4-216, 4-216.1, and ~~4-216.1~~ 4-216.2 governing pretrial release.

(6) Certification by Judicial Officer

The judicial officer shall certify compliance with this section in writing.

(7) Transfer of Papers by Clerk

As soon as practicable after the initial appearance by the defendant, the judicial officer shall file all papers with the clerk of the District Court or shall direct that they be forwarded to the clerk of the circuit court if the charging document is filed there.

Cross reference: Code, Courts Article, §10-912. See Rule 4-231 (d) concerning the appearance of a defendant by video conferencing.

(b) In District Court

(1) Following Summons or Citation

When a defendant appears before the District Court pursuant to a summons or citation, the court shall proceed in accordance with Rule 4-301.

(2) Preliminary Inquiry

When a defendant has (A) been charged by a citation or served with a summons and charging document for an offense that

carries a penalty of incarceration and (B) has not previously been advised by a judicial officer of the defendant's rights, the defendant may be brought before a judicial officer for a preliminary inquiry advisement if no attorney has entered an appearance on behalf of the defendant. The judicial officer shall inform the defendant of each offense with which the defendant is charged and advise the defendant of the right to counsel and the matters set forth in subsection (a)(2), (3), and (4) of this Rule. The judicial officer shall certify in writing the judicial officer's compliance with this subsection.

(c) In Circuit Court Following Arrest or Summons

The initial appearance of the defendant in circuit court occurs when the defendant (1) is brought before the court by reason of execution of a warrant pursuant to Rule 4-212 (e) or (f) (2), or (2) appears in person or by written notice of counsel in response to a summons. In either case, if the defendant appears without counsel the court shall proceed in accordance with Rule ~~*4-215*~~ *4-215.1*. If the appearance is by reason of execution of a warrant, the court shall (1) inform the defendant of each offense with which the defendant is charged, (2) ensure that the defendant has a copy of the charging document, and (3) determine eligibility for pretrial release pursuant to Rules 4-216 and 4-216.1.

Source. This Rule is derived as follows:
Section (a) is derived from former M.D.R. 723.

Section (b) is new.
Section (c) is derived from former Rule 723 a.

REPORTER'S NOTE

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-213.1 to revise internal references, as follows:

Rule 4-213.1. APPOINTMENT, APPEARANCE, OR WAIVER OF ATTORNEY AT INITIAL APPEARANCE

(a) Right to Representation by Attorney

(1) Generally

A defendant has the right to be represented by an attorney at an initial appearance before a judicial officer.

(2) Attorney

Unless the defendant waives that right in accordance with section (e) of this Rule or another attorney has entered an appearance, if the defendant is indigent within the meaning of Code, Criminal Procedure Article, §16-210 (b) and (c):

(A) the defendant shall be represented by the Public Defender if the initial appearance is before a judge; and

(B) the defendant shall be represented by an attorney appointed by the court in accordance with section (b) of this Rule if the initial appearance is before a District Court commissioner, unless the Public Defender enters an appearance

for the defendant.

(b) Appointment of Attorneys for Initial Appearance Before Commissioner

(1) Appointment

After consultation with the State and local bar associations and the Public Defender, the District Administrative Judges shall develop lists of attorneys willing to accept appointment to represent indigent defendants at initial appearances before District Court commissioners in the district on a pro bono basis or at fees equivalent to those paid by the Public Defender to panel attorneys. Attorneys shall be appointed from the lists as needed for specific proceedings or to be available for blocks of time.

(2) Processing of Invoices

Invoices for fees due to court-appointed attorneys shall be processed in accordance with procedures adopted by the State Court Administrator.

(c) General Advice by Judicial Officer

If the defendant appears at an initial appearance without an attorney, the judicial officer shall advise the defendant that the defendant has a right to an attorney at the initial appearance*, of the importance of having an attorney,* and that, if the defendant is indigent, (1) the Public Defender will provide representation if the proceeding is before a judge, or

(2) a court-appointed attorney will provide representation if the proceeding is before a commissioner.

(d) Proceeding Before Commissioner

(1) Determination of Indigence

(A) If the defendant claims indigence and desires a court-appointed attorney for the proceeding, the defendant shall complete a request and affidavit substantially in the form used by the Public Defender and, from those documents and in accordance with the criteria set forth in Code, Criminal Procedure Article, §16-210 (b) and (c), the commissioner shall determine whether the defendant qualifies for an appointed attorney.

(B) If the commissioner determines that the defendant is indigent, the commissioner shall provide a reasonable opportunity for the defendant and a court-appointed attorney to consult in confidence.

(C) If the commissioner determines that the defendant is not indigent, the commissioner shall advise the defendant of the right to a privately retained attorney and provide a reasonable opportunity for the defendant to obtain the services of, and consult in confidence with, a private attorney.

(2) Inability of Attorney to Appear Promptly

The commissioner shall further advise the defendant that, unless the attorney, whether court appointed or privately retained, is able to participate, either in person or by

electronic means or telecommunication, within a reasonable period of time, the initial appearance may need to be continued, in which event, subject to subsection (d)(3) of this Rule, the defendant will be temporarily committed until the earliest opportunity that the defendant can be presented to the next available judicial officer with an attorney present.

(3) If Initial Appearance Continued

If pursuant to subsection (d)(2) of this Rule, the initial appearance needs to be continued, the commissioner, before recessing the proceeding, shall proceed in accordance with this subsection.

(A) Arrest Without Warrant - Determination of Probable Cause

If the defendant was arrested without a warrant, the commissioner shall determine whether there was probable cause for the charges and the arrest pursuant to Rule 4-216 (a). If the commissioner finds no probable cause for the charges or for the arrest, the commissioner shall release the defendant on personal recognizance, with no other conditions of release. If the defendant is released pursuant to subsection (d)(3)(A) of this Rule, the Commissioner shall not make the determination otherwise required by subsection (d)(3)(B) of this Rule, but shall provide the advice required by subsection (d)(3)(C) of this Rule.

(B) Preliminary Determination Regarding Release on Personal Recognizance

Regardless of whether the defendant was arrested with or without a warrant, the commissioner shall make a preliminary determination regarding the commissioner's authority to release the defendant on personal recognizance and the appropriateness of such a release pursuant to Rules 4-216 and 4-216.1. If the commissioner's preliminary determination is that release on personal recognizance with no other conditions of release is authorized and appropriate, the commissioner shall release the defendant on that basis.

(C) Required Compliance Before Release of Defendant

Before releasing the defendant pursuant to subsection (d)(3)(A) or (B) of this Rule, the commissioner shall comply with the applicable provisions of Rules 4-213 and 4-216 ~~(h)~~ (g).

(D) Preliminary Determination Not to Release

Upon a preliminary determination by the commissioner not to release the defendant on personal recognizance, the commissioner shall comply with the applicable provisions of Rule 4-216 (g) and (h) and recess the proceeding. The commissioner's preliminary determination is without prejudice to the right of the defendant to seek release on personal recognizance when the proceeding resumes with the attorney present. If the proceeding resumes before the commissioner who made the preliminary determination not to release the defendant on personal

recognizance, the commissioner, upon request of the defendant, shall recuse, and the proceeding shall be before another judicial officer.

(e) Waiver - Initial Appearance Before Judge or Commissioner

(1) If the defendant indicates a desire to waive the right to an attorney, the judicial officer shall advise the defendant (A) that an attorney can be helpful in explaining the procedure and in advocating that the defendant should be released immediately on recognizance or on bail with minimal conditions, (B) that it may be possible for the attorney to participate electronically or by telecommunication, and (C) that any waiver would be effective only for the initial appearance and not for any subsequent proceedings.

(2) If, upon this advice, the defendant still wishes to waive the right to an attorney and the judicial officer finds that the waiver is knowing and voluntary, the judicial officer shall announce and record that finding.

(3) A waiver pursuant to section (e) of this Rule is effective only for the initial appearance and not for any subsequent proceeding.

(4) Notwithstanding an initial decision not to waive the right to an attorney, a defendant may waive that right at any time during the proceeding, provided that no attorney has already entered an appearance.

(f) Participation by Attorney by Electronic or Telecommunication Means

(1) By State's Attorney

The State's Attorney may participate in the proceeding, but is not required to do so. When the physical presence of the State's Attorney is impracticable, the State's Attorney may participate electronically or by telecommunication if the equipment at the judicial officer's location and the State's Attorney's location provides adequate opportunity for the State's Attorney to participate meaningfully in the proceeding.

(2) By Defense Attorney

When the physical presence of a defense attorney is impracticable, the attorney may consult with the defendant and participate in the proceeding electronically or by telecommunication if the equipment is at the judicial officer's location and the defense attorney's location provides adequate opportunity for the attorney to consult privately with the defendant and participate meaningfully in the proceeding.

(g) Provisional and Limited Appearance

(1) Provisional Representation by Public Defender

Unless the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance shall be provisional. For purposes of this section, eligibility for provisional

representation shall be determined by the Public Defender at the time of the proceeding.

(2) Limited Appearance

Unless a general appearance has been entered pursuant to Rule 4-214, an appearance by a court-appointed or privately retained attorney shall be limited to the initial appearance before the judicial officer and shall terminate automatically upon the conclusion of that stage of the criminal action.

(3) Inconsistency with Rule 4-214

Section (g) of this Rule prevails over any inconsistent provision in Rule 4-214.

Source: This Rule is new but is derived, in part, from amendments proposed to Rule 4-216 in the 181 Report of the Standing Committee on Rules of Practice and Procedure.

REPORTER'S NOTE

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-214 to revise internal references, as follows:

Rule 4-214. DEFENSE COUNSEL

(a) Appearance

Counsel retained or appointed to represent a defendant shall enter an appearance in writing within five days after accepting employment, after appointment, or after the filing of the charging document in court, whichever occurs later. *An appearance may be entered by filing a pleading or motion or by filing a written notice of appearance.* An appearance entered in the District Court will automatically be entered in the circuit court when a case is transferred to the circuit court because of a demand for jury trial. In any other circumstance, counsel who intends to continue representation in the circuit court after appearing in the District Court must re-enter an appearance in the circuit court.

Cross reference: See Rules 4-213.1 and ~~4-216.1~~ 4-216.2 (b) with respect to the automatic termination of the appearance of the Public Defender or court-appointed attorney upon the conclusion of an initial appearance before a judicial officer and upon the conclusion of a hearing to review a pretrial release decision of a commissioner if no general appearance under this Rule is entered.

(b) Extent of Duty of Appointed Counsel

When counsel is appointed by the Public Defender or by the court, representation extends to all stages in the proceedings, including but not limited to custody, interrogations, preliminary hearing, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal. The Public Defender may relieve appointed counsel and substitute new counsel for the defendant without order of court by giving notice of the substitution to the clerk of the court. Representation by the Public Defender's office may not be withdrawn until the appearance of that office has been stricken pursuant to section (d) of this Rule. The representation of appointed counsel does not extend to the filing of subsequent discretionary proceedings including petition for writ of certiorari, petition to expunge records, and petition for post conviction relief.

(c) Inquiry into Joint Representation

(1) Joint Representation

Joint representation occurs when:

(A) an offense is charged that carries a potential sentence of incarceration;

(B) two or more defendants have been charged jointly or joined for trial under Rule 4-253 (a); and

(C) the defendants are represented by the same counsel or by counsel who are associated in the practice of law.

(2) Court's Responsibilities in Cases of Joint Representation

If a joint representation occurs, the court, on the record, promptly and personally shall (A) advise each defendant of the right to effective assistance of counsel, including separate representation and (B) advise counsel to consider carefully any potential areas of impermissible conflict of interest arising from the joint representation. Unless there is good cause to believe that no impermissible conflict of interest is likely to arise, the court shall take appropriate measures to protect each defendant's right to counsel.

Cross reference: See Rule 19-301.7 of the Maryland Attorneys' Rules of Professional Conduct.

(d) Striking Appearance

A motion to withdraw the appearance of counsel shall be made in writing or in the presence of the defendant in open court. If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion. If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving counsel. If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted

only by order of court. The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215.

Cross reference: Code, Courts Article, §6-407 (Automatic Termination of Appearance of Attorney). See Rules 4-213.1 and ~~4-216.1~~ 4-216.2 (b) providing for a limited appearance by the Public Defender or court-appointed attorney in initial appearance proceedings before a judicial officer and hearings to review a pretrial release decision by a commissioner if no general appearance under this Rule is entered.

Source: This Rule is in part derived from former Rule 725 and M.D.R. 725 and in part from the 2009 version of Fed. R. Crim. P. 44.

REPORTER'S NOTE

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-215 to revise a cross reference, as follows:

Rule 4-215. WAIVER OF COUNSEL

(a) First Appearance in Court Without Counsel

At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:

(1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.

(2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.

(3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.

(4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.

(5) If trial is to be conducted on a subsequent date, advise the defendant that if the defendant appears for trial without

counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

(6) If the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel.

The clerk shall note compliance with this section in the file or on the docket.

(b) Express Waiver of Counsel

If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof of the defendant's express waiver of counsel.

After there has been an express waiver, no postponement of a scheduled trial or hearing date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.

(c) Waiver by Inaction - District Court

In the District Court, if the defendant appears on the date set for trial without counsel and indicates a desire to have counsel, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time, comply with section (a) of this Rule, if the record does not show prior compliance, and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the trial only if (1) the defendant received a copy of the charging document containing the notice as to the right to counsel and (2) the defendant either (A) is charged with an offense that is not punishable by a fine exceeding five hundred dollars or by imprisonment, or (B) appeared before a judicial officer of the District Court

pursuant to Rule 4-213 (a) or (b) or before the court pursuant to section (a) of this Rule and was given the required advice.

(d) Waiver by Inaction - Circuit Court

If a defendant appears in circuit court without counsel on the date set for hearing or trial, indicates a desire to have counsel, and the record shows compliance with section (a) of this Rule, either in a previous appearance in the circuit court or in an appearance in the District Court in a case in which the defendant demanded a jury trial, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial.

(e) Discharge of Counsel – Waiver

If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the

defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

Cross reference: See Rule 4-213.1 with respect to waiver of an attorney at an initial appearance before a judge and Rule ~~4-216.1~~ 4-216.2 (b) with respect to waiver of an attorney at a hearing to review a pretrial release decision of a commissioner.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 723 b 1, 2, 3 and 7 and c 1.
Section (b) is derived from former Rule 723.
Section (c) is in part derived from former M.D.R. 726 and in part new.
Section (d) is derived from the first sentence of former M.D.R. 726 d.
Section (e) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 400 – PRETRIAL PROCEDURES

AMEND Rule 4-216 to delete sections (e) and (f) and portions of sections (c) and (d), to transfer those provisions to new Rule 4-216.1, and to make certain conforming amendments, as follows:

Rule 4-216. PRETRIAL RELEASE – AUTHORITY OF JUDICIAL OFFICER; PROCEDURE

(a) Arrest without Warrant

If a defendant was arrested without a warrant, upon the completion of the requirements of Rules 4-213 (a) and 4-213.1, the judicial officer shall determine whether there was probable cause for each charge and for the arrest and, as to each determination, make a written record. If there was probable cause for at least one charge and the arrest, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause for any of the charges or for the arrest, the judicial officer shall release the defendant on personal recognizance, with no other conditions of release, and the remaining sections of this Rule are inapplicable.

Cross reference: See Rule 4-213 (a)(5).

(b) Communications with Judicial Officer

Except as permitted by Rule 18-202.9 (a)(1) and (2) of the Maryland Code of Conduct for Judicial Appointees or Rule 18-102.9 (a)(1) and (2) of the Maryland Code of Judicial Conduct, all communications with a judicial officer regarding any matter required to be considered by the judicial officer under this Rule shall be (1) in writing, with a copy provided, if feasible, but at least shown or communicated by the judicial officer to each party who participates in the proceeding before the judicial officer, and made part of the record, or (2) made openly at the proceeding before the judicial officer. Each party who participates in the proceeding shall be given an opportunity to respond to the communication.

Cross reference: See also Rule 19-303.5 (a) of the Maryland Attorneys' Rules of Professional Conduct.

(c) Defendants Eligible for Release by Commissioner or Judge

In accordance with this Rule, Rule 4-216.1, and Code, Criminal Procedure Article, §§5-101 and 5-201 and except as otherwise provided in section (d) of this Rule or by Code, Criminal Procedure Article, §§5-201 and 5-202, a defendant is entitled to be ~~released~~ considered for release before verdict ~~on personal recognizance or on bail, in either case with or without conditions imposed, unless the judicial officer determines that no condition of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of~~

~~the alleged victim, another person, and the community~~ by a judicial officer.

(d) Defendants Eligible for Release Only by a Judge

(1) A defendant charged with an offense for which the maximum penalty is life imprisonment or with an offense listed under Code, Criminal Procedure Article, §5-202 (a), (b), (c), (d), (e), (f) or (g) may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, ~~if~~ only by a judge ~~determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community~~.

(2) An individual arrested in this State who is subject to extradition under the Uniform Criminal Extradition Act (Code, Criminal Procedure Article, Title 9) may not be released by a Commissioner, but may be released only by a judge in accordance with that Act.

(e) Duties of Judicial Officer

In deciding upon release and any conditions of release, the judicial officer shall apply the standards and comply with the requirements set forth in Rule 4-216.1

~~(1) Consideration of Factors~~

~~In determining whether a defendant should be released and the conditions of release, the judicial officer shall take into account the following information, to the extent available:~~

~~(A) the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;~~

~~(B) the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;~~

~~(C) the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;~~

~~(D) any recommendation of an agency that conducts pretrial release investigations;~~

~~(E) any recommendation of the State's Attorney;~~

~~(F) any information presented by the defendant or defendant's attorney;~~

~~(G) the danger of the defendant to the alleged victim, another person, or the community;~~

~~(H) the danger of the defendant to himself or herself; and~~

~~(I) any other factor bearing on the risk of a wilful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and~~

~~any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.~~

~~(2) Statement of Reasons – When Required~~

~~Upon determining to release a defendant to whom section € of this Rule applies or to refuse to release a defendant to whom section (b) of this Rule applies, the judicial officer shall state the reasons in writing or on the record.~~

~~(3) Imposition of Conditions of Release~~

~~If the judicial officer determines that the defendant should be released other than on personal recognizance without any additional conditions imposed, the judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release set out in section (g) of this Rule that will reasonably:~~

~~(A) ensure the appearance of the defendant as required,~~

~~(B) protect the safety of the alleged victim by ordering the defendant to have no contact with the alleged victim or the alleged victim's premises or place of employment or by other appropriate order, and~~

~~(C) ensure that the defendant will not pose a danger to another person or to the community.~~

~~(4) Advice of Conditions; Consequences of Violation; Amount and Terms of Bail~~

~~The judicial officer shall advise the defendant in writing or on the record of the conditions of release imposed~~

~~and of the consequences of a violation of any condition. When bail is required, the judicial officer shall state in writing or on the record the amount and any terms of the bail.~~

~~(f) Conditions of Release~~

~~The conditions of release imposed by a judicial officer under this Rule may include:~~

~~(1) committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;~~

~~(2) placing the defendant under the supervision of a probation officer or other appropriate public official;~~

~~(3) subjecting the defendant to reasonable restrictions with respect to travel, association, or residence during the period of release;~~

~~(4) requiring the defendant to post a bail bond complying with Rule 4-217 in an amount and on conditions specified by the judicial officer, including any of the following:~~

~~(A) without collateral security;~~

~~(B) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to the greater of $25.00 or 10% of the full penalty amount, and if the judicial officer sets bail at $2500 or less, the judicial officer shall advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount;~~

~~(C) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to a percentage greater than 10% but less than the full penalty amount;~~

~~(D) with collateral security of the kind specified in Rule 4-217 (e)(1) equal in value to the full penalty amount; or~~

~~(E) with the obligation of a corporation that is an insurer or other surety in the full penalty amount;~~

~~(5) subjecting the defendant to any other condition reasonably necessary to:~~

~~(A) ensure the appearance of the defendant as required,~~

~~(B) protect the safety of the alleged victim, and~~

~~(C) ensure that the defendant will not pose a danger to another person or to the community; and~~

~~(6) imposing upon the defendant, for good cause shown, one or more of the conditions authorized under Code, Criminal Law Article, §9-304 reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of Code, Criminal Law Article, §9-302, 9-303, or 9-305.~~

~~Cross reference: See Code, Criminal Procedure Article, §5-201 (a)(2) concerning protections for victims as a condition of release. See Code, Criminal Procedure Article, §5-201 (b), and Code, Business Occupations and Professions Article, Title 20, concerning private home detention monitoring as a condition of release.~~

~~(g)~~ (f) Temporary Commitment Order

If an initial appearance before a commissioner cannot proceed or be completed as scheduled, the commissioner may enter

a temporary commitment order, but in that event the defendant shall be presented at the earliest opportunity to the next available judicial officer for an initial appearance. If the judicial officer is a judge, there shall be no review of the judge's order pursuant to Rule ~~4-216.1~~ 4-216.2.

Committee note: Section ~~(g)~~ (f) of this Rule is intended to apply to a narrow set of compelling circumstances in which it would be inappropriate or impracticable to proceed with or complete the initial appearance as scheduled, such as the illness, intoxication, or disability of the defendant or the inability of an attorney for the defendant to appear within a reasonable time.

~~(h)~~ (g) Record

The judicial officer shall make a brief written record of the proceeding, including:

(1) whether notice of the time and place of the proceeding was given to the State's Attorney and the Public Defender or any other defense attorney and, if so, the time and method of notification;

(2) if a State's Attorney has entered an appearance, the name of the State's Attorney and whether the State's Attorney was physically present at the proceeding or appeared remotely;

(3) if an attorney has entered an appearance for the defendant, the name of the attorney and whether the attorney was physically present at the proceeding or appeared remotely;

(4) if the defendant waived an attorney, a confirmation that the advice required by Rule 4-213.1 (e) was given and the defendant's waiver was knowing and voluntary;

(5) confirmation that the judicial officer complied with each applicable requirement specified in section (g) of this Rule and in Rule 4-213 (a);

(6) whether the defendant was ordered held without bail;

(7) whether the defendant was released on personal recognizance; and

(8) if the defendant was ordered released on conditions pursuant to ~~section (f) of this Rule,~~ Rule 4-216.1 the conditions of the release.

~~(i)~~ (h) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

Source: This Rule is derived in part from former Rule 721, M.D.R. 723 b 4, and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 4-216 are intended to keep the Rule as purely a procedural one and to transfer provisions governing the standards to be applied with respect to release decisions to new Rule 4-216.1. Stylistic changes are made, and a reference to the Uniform Criminal Extradition Act (Code, Criminal Procedure Article, Title 9) is added to section (d).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 400 – PRETRIAL PROCEDURES

AMEND Rule 4-216.1 to renumber it and to add a reference to the standards and requirements set forth in proposed new Rule 4-216.1, as follows:

Rule ~~4-216.1~~ 4-216.2. REVIEW OF COMMISSIONER'S PRETRIAL RELEASE ORDER

(a)..Generally

A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody after a commissioner has determined conditions of release pursuant to Rule 4-216 shall be presented immediately to the District Court if the court is then in session, or if not, at the next session of the court.

Cross reference: See Rule 4-231 (d) concerning the presence of a defendant by video conferencing.

(b) Attorney for Defendant

(1) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has waived the right to an attorney for purposes of the review hearing in accordance with this section, the

Public Defender shall provide representation to an eligible defendant at the review hearing.

(2) Waiver

(A) Unless an attorney has entered an appearance, the court shall advise the defendant that:

(i) the defendant has a right to an attorney at the review hearing;

(ii) an attorney can be helpful in advocating that the defendant should be released on recognizance or on bail with minimal conditions and restrictions; and

(iii) if the defendant is eligible, the Public Defender will represent the defendant at this proceeding.

Cross reference: For the requirement that the court also advise the defendant of the right to counsel generally, see Rule 4-215 (a).

(B) If, after the giving of this advice, the defendant indicates a desire to waive an attorney for purposes of the review hearing and the court finds that the waiver is knowing and voluntary, the court shall announce on the record that finding and proceed pursuant to this Rule.

(C) Any waiver found under this Rule is applicable only to the proceeding under this Rule.

(3) Waiver of Attorney for Future Proceedings

For proceedings after the review hearing, waiver of an attorney is governed by Rule 4-215 *or 4-215.1*.

(c) Determination by Court

The District Court shall review the commissioner's pretrial release determination and take appropriate action in accordance with the standards and requirements set forth in Rule ~~4-216 (e) and (f)~~ 4-216.1. If the court determines that the defendant will continue to be held in custody after the review, the court shall set forth in writing or on the record the reasons for the continued detention.

(d) Juvenile Defendant

If the defendant is a child whose case is eligible for transfer to the juvenile court pursuant to Code, Criminal Procedure Article, §4-202 (b), the District Court, regardless of whether it has jurisdiction over the offense charged, may order that a study be made of the child, the child's family, or other appropriate matters.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court.

(e) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

Source: This Rule is derived from former section (a) of Rule 4-216.1 (2012).

REPORTER'S NOTE

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 400 – PRETRIAL PROCEDURES

AMEND Rule 4-216.2 to renumber it and to add a reference to the standards and requirements set forth in proposed new Rule 4-216.1, as follows:

Rule ~~4-216.2~~ 4-216.3 FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE

(a) Continuance of Previous Conditions

When conditions of pretrial release have been previously imposed in the District Court, the conditions continue in the circuit court unless amended or revoked pursuant to section (b) of this Rule.

(b) Amendment of Pretrial Release Order

After a charging document has been filed, the court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of pretrial release or amend it to impose additional or different conditions of release, subject to the standards and requirements set forth in Rule 4-216.1. If its decision results in the detention of the defendant, the court shall state the reasons for its action in writing or on the record. A judge may alter conditions set by a commissioner or another judge.

(c) Supervision of Detention Pending Trial

In order to eliminate unnecessary detention, the court shall exercise supervision over the detention of defendants pending trial. It shall require from the sheriff, warden, or other custodial officer a weekly report listing each defendant within its jurisdiction who has been held in custody in excess of seven days pending preliminary hearing, trial, sentencing, or appeal. The report shall give the reason for the detention of each defendant.

(d) Violation of Condition of Release

A court may issue a bench warrant for the arrest of a defendant charged with a criminal offense who is alleged to have violated a condition of pretrial release. After the defendant is presented before a court, the court may (1) revoke the defendant's pretrial release or (2) continue the defendant's pretrial release with or without conditions.

Cross reference: See Rule 1-361, Execution of Warrants and Body Attachments. See also, Rule 4-347, Proceedings for Revocation of Probation, which preserves the authority of a judge issuing a warrant to set the conditions of release on an alleged violation of probation.

(e) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

Source: This Rule is new but is derived, in part, from former sections (b), (c), (d), (e), and (f) of Rule 4-216.1 (2012).

REPORTER’S NOTE

See the Reporter’s note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-217 to revise internal references, as follows:

Rule 4-217. BAIL BONDS

(a) Applicability of Rule

This Rule applies to all bail bonds taken pursuant to Rule 4-216, ~~4-216.1, or 4-216.2~~ 4-216.2, or 4-216.3, and to bonds taken pursuant to Rules 4-267, 4-348, and 4-349 to the extent consistent with those rules.

(b) Definitions

As used in this Rule, the following words have the following meanings:

(1) Bail bond

"Bail bond" means a written obligation of a defendant, with or without a surety or collateral security, conditioned on the appearance of the defendant as required and providing for the payment of a penalty sum according to its terms.

(2) Bail bondsman

"Bail bondsman" means an authorized agent of a surety insurer.

(3) Bail Bond Commissioner

"Bail bond commissioner" means any person appointed to administer rules adopted pursuant to Maryland Rule 16-805.

Cross reference: Code, Criminal Procedure Article, §5-203.

(4) Clerk

"Clerk" means the clerk of the court and any deputy or administrative clerk.

(5) Collateral Security

"Collateral security" means any property deposited, pledged, or encumbered to secure the performance of a bail bond.

(6) Surety

"Surety" means a person other than the defendant who, by executing a bail bond, guarantees the appearance of the defendant, and includes an uncompensated or accommodation surety.

(7) Surety Insurer

"Surety insurer" means any person in the business of becoming, either directly or through an authorized agent, a surety on a bail bond for compensation.

(c) Authorization to Take Bail Bond

Any clerk, District Court commissioner, or other person authorized by law may take a bail bond. The person who takes a bail bond shall deliver it to the court in which the charges are pending, together with all money or other collateral security deposited or pledged and all documents pertaining to the bail bond.

Cross reference: Code, Criminal Procedure Article, §§5-204 and 5-205. See Code, Insurance Article, §10-309, which requires a signed affidavit of surety by the defendant or the insurer that shall be provided to the court if payment of premiums charged for bail bonds is in installments.

(d) Qualification of Surety

(1) In General

The Chief Clerk of the District Court shall maintain a list containing: (A) the names of all surety insurers who are in default, and have been for a period of 60 days or more, in the payment of any bail bond forfeited in any court in the State, (B) the names of all bail bondsmen authorized to write bail bonds in this State, and (C) the limit for any one bond specified in the bail bondsman's general power of attorney on file with the Chief Clerk of the District Court. The clerk of each circuit court and the Chief Clerk of the District Court shall notify the Insurance Commissioner of the name of each surety insurer who has failed to resolve or satisfy bond forfeitures for a period of 60 days or more. The clerk of each circuit court also shall send a copy of the list to the Chief Clerk of the District Court.

Cross reference: For penalties imposed on surety insurers in default, see Code, Insurance Article, §21-103 (a).

(2) Surety Insurer

No bail bond shall be accepted if the surety on the bond is on the current list maintained by the Chief Clerk of the District Court of those in default. No bail bond executed by a

surety insurer directly may be accepted unless accompanied by an affidavit reciting that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: For the obligation of the District Court Clerk or a circuit court clerk to notify the Insurance Commissioner concerning a surety insurer who fails to resolve or satisfy bond forfeitures, see Code, Insurance Article, §21-103 (b).

(3) Bail Bondsman

No bail bond executed by a bail bondsman may be accepted unless the bondsman's name appears on the most recent list maintained by the Chief Clerk of the District Court, the bail bond is within the limit specified in the bondsman's general power of attorney as shown on the list or in a special power of attorney filed with the bond, and the bail bond is accompanied by an affidavit reciting that the bail bondsman:

(A) is duly licensed in the jurisdiction in which the charges are pending, if that jurisdiction licenses bail bondsmen;

(B) is authorized to engage the surety insurer as surety on the bail bond pursuant to a valid general or special power of attorney; and

(C) holds a valid license as an insurance broker or agent in this State, and that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: Code, Criminal Procedure Article, §5-203 and Rule 16-805 (Appointment of Bail Bond Commissioner - Licensing and Regulation of Persons Authorized to Write Bonds).

(e) Collateral Security

(1) Authorized Collateral

A defendant or surety required to give collateral security may satisfy the requirement by:

(A) depositing with the person who takes the bond the required amount in cash or certified check, or pledging intangible property approved by the court; or

Cross reference: See Code, Criminal Procedure Article, §§5-203 and 5-205, permitting certain persons to post a cash bail or cash bond when an order specifies that the bail or bond may be posted only by the defendant.

(B) encumbering one or more parcels of real estate situated in the State of Maryland, owned by the defendant or surety in fee simple absolute, or as chattel real subject to ground rent. No bail bond to be secured by real estate may be taken unless (i) a Declaration of Trust of a specified parcel of real estate, in the form set forth at the end of this Title as Form 4-217.1, is executed before the person who takes the bond and is filed with the bond, or (ii) the bond is secured by a Deed of Trust to the State or its agent and the defendant or surety furnishes a verified list of all encumbrances on each parcel of real estate subject to the Deed of Trust in the form required for listing encumbrances in a Declaration of Trust.

(2) Value

Collateral security shall be accepted only if the person who takes the bail bond is satisfied that it is worth the required amount.

(3) Additional or Different Collateral Security

Upon a finding that the collateral security originally deposited, pledged, or encumbered is insufficient to ensure collection of the penalty sum of the bond, the court, on motion by the State or on its own initiative and after notice and opportunity for hearing, may require additional or different collateral security.

(f) Condition of Bail Bond

The condition of any bail bond taken pursuant to this Rule shall be that the defendant personally appear as required in any court in which the charges are pending, or in which a charging document may be filed based on the same acts or transactions, or to which the action may be transferred, removed, or if from the District Court, appealed, and that the bail bond shall continue in effect until discharged pursuant to section (j) of this Rule.

(g) Form and Contents of Bond – Execution

Every pretrial bail bond taken shall be in the form of the bail bond set forth at the end of this Title as Form 4-217.2, and, except as provided in Code, Criminal Procedure Article, §5-214, shall be executed and acknowledged by the defendant and any surety before the person who takes the bond.

(h) Voluntary Surrender of the Defendant by Surety

A surety on a bail bond who has custody of a defendant may procure the discharge of the bail bond at any time before forfeiture by:

(1) delivery of a copy of the bond and the amount of any premium or fee received for the bond to the court in which the charges are pending or to a commissioner in the county in which the charges are pending who shall thereupon issue an order committing the defendant to the custodian of the jail or detention center; and

(2) delivery of the defendant and the commitment order to the custodian of the jail or detention center, who shall thereupon issue a receipt for the defendant to the surety.

Unless released on a new bond, the defendant shall be taken forthwith before a judge of the court in which the charges are pending.

On motion of the surety or any person who paid the premium or fee, and after notice and opportunity to be heard, the court may by order award to the surety an allowance for expenses in locating and surrendering the defendant, and refund the balance to the person who paid it.

(i) Forfeiture of Bond

(1) On Defendant's Failure to Appear - Issuance of Warrant

If a defendant fails to appear as required, the court shall order forfeiture of the bail bond and issuance of a

warrant for the defendant's arrest and may set a new bond in the action. The clerk shall promptly notify any surety on the defendant's original bond, and the State's Attorney, of the forfeiture of that bond and the issuance of the warrant.

Cross reference: Code, Criminal Procedure Article, §5-211.

(2) On Defendant's Posting a Bond After Issuance of Warrant

If a new bond is set under subsection (i)(1) of this Rule and the defendant posts the bond:

(A) a judicial officer shall mark the warrant satisfied; and

(B) the court shall reschedule the hearing or trial.

(3) Striking Out Forfeiture for Cause

If the defendant or surety can show reasonable grounds for the defendant's failure to appear, notwithstanding Rule 2-535, the court shall (A) strike out the forfeiture in whole or in part; and (B) set aside any judgment entered thereon pursuant to subsection (5)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (4) of this section.

Cross reference: Code, Criminal Procedure Article, §5-208 (b)(1) and (2) and *Allegany Mut. Cas. Co. v. State*, 234 Md. 278, 199 A.2d 201 (1964).

(4) Satisfaction of Forfeiture

Within 90 days from the date the defendant fails to appear, which time the court may extend to 180 days upon good cause shown, a surety shall satisfy any order of forfeiture,

either by producing the defendant in court or by paying the penalty sum of the bond. If the defendant is produced within such time by the State, the court shall require the surety to pay the expenses of the State in producing the defendant and shall treat the order of forfeiture satisfied with respect to the remainder of the penalty sum.

(5) Enforcement of Forfeiture

If an order of forfeiture has not been stricken or satisfied within 90 days after the defendant's failure to appear, or within 180 days if the time has been extended, the clerk shall forthwith:

(A) enter the order of forfeiture as a judgment in favor of the governmental entity that is entitled by statute to receive the forfeiture and against the defendant and surety, if any, for the amount of the penalty sum of the bail bond, with interest from the date of forfeiture and costs including any costs of recording, less any amount that may have been deposited as collateral security; and

(B) cause the judgment to be recorded and indexed among the civil judgment records of the circuit court of the county; and

(C) prepare, attest, and deliver or forward to any bail bond commissioner appointed pursuant to Rule 16-805, to the State's Attorney, to the Chief Clerk of the District Court, and to the surety, if any, a true copy of the docket entries in the

cause, showing the entry and recording of the judgment against the defendant and surety, if any.

Enforcement of the judgment shall be by the State's Attorney in accordance with those provisions of the rules relating to the enforcement of judgments.

(6) Subsequent Appearance of Defendant

When the defendant is produced in court after the period allowed under subsection (4) of this section, the surety may apply for the refund of any penalty sum paid in satisfaction of the forfeiture less any expenses permitted by law. The court shall strike out a forfeiture of bail or collateral and deduct only the actual expense incurred for the defendant's arrest, apprehension, or surrender provided that the surety paid the forfeiture of bail or collateral during the period allowed for the return of the defendant under subsection (4) of this section.

(7) Where Defendant Incarcerated Outside this State

(A) If, within the period allowed under subsection (4) of this section, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State and that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, the court shall strike out the forfeiture and shall return the bond or collateral security to the surety.

(B) If, after the expiration of the period allowed under subsection (4) of this section, but within 10 years from the date the bond or collateral was posted, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State, that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, and that the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with Code, Criminal Procedure Article, §5-208 (c), subject to subsection (C) of this section, the court shall strike out the forfeiture and refund the forfeited bail bond or collateral to the surety provided that the surety paid the forfeiture of bail or collateral within the time limits established under subsection (4) of this section.

(C) On motion of the surety, the court may refund a forfeited bail bond or collateral that was not paid within the time limits established under subsection (4) of this section if the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment for fraud, mistake, or irregularity.

(j) Discharge of Bond - Refund of Collateral Security

(1) Discharge

The bail bond shall be discharged when:

(A) all charges to which the bail bond applies have been

stetted, unless the bond has been forfeited and 10 years have elapsed since the bond or other security was posted; or

(B) all charges to which the bail bond applies have been disposed of by a nolle prosequi, dismissal, acquittal, or probation before judgment; or

(C) the defendant has been sentenced in the District Court and no timely appeal has been taken, or in the circuit court exercising original jurisdiction, or on appeal or transfer from the District Court; or

(D) the court has revoked the bail bond pursuant to Rule ~~4-216.2~~ 4-216.3 or the defendant has been convicted and denied bail pending sentencing; or

(E) the defendant has been surrendered by the surety pursuant to section (h) of this Rule.

Cross reference: See Code, Criminal Procedure Article, §5-208 (d) relating to discharge of a bail bond when the charges are stetted. See also Rule 4-349 pursuant to which the District Court judge may deny release on bond pending appeal or may impose different or greater conditions for release after conviction than were imposed for the pretrial release of the defendant pursuant to Rule 4-216, ~~4-216.1, or 4-216.2~~ 4-216.2, or 4-216.3.

(2) Refund of Collateral Security - Release of Lien

Upon the discharge of a bail bond and surrender of the receipt, the clerk shall return any collateral security to the person who deposited or pledged it and shall release any Declaration of Trust that was taken.

Source. This Rule is derived from former Rule 722 and M.D.R. 722.

REPORTER’S NOTE

See the Reporter’s note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-349 to revise internal references, as follows:

Rule 4-349. RELEASE AFTER CONVICTION

(a) General Authority

After conviction the trial judge may release the defendant pending sentencing or exhaustion of any appellate review subject to such conditions for further appearance as may be appropriate. Title 5 of these rules does not apply to proceedings conducted under this Rule.

(b) Factors Relevant to Conditions of Release

In determining whether a defendant should be released under this Rule, the court may consider the factors set forth in Rule ~~4-216~~ 4-216.1 (f) and, in addition, whether any appellate review sought appears to be frivolous or taken for delay. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(c) Conditions of Release

The court may impose different or greater conditions for release under this Rule than had been imposed upon the defendant before trial pursuant to Rule 4-216, ~~Rule 4-216.1, 4-216.2~~ 4-

216.2 or 4-216.3. When the defendant is released pending sentencing, the condition of any bond required by the court shall be that the defendant appear for further proceedings as directed and surrender to serve any sentence imposed. When the defendant is released pending any appellate review, the condition of any bond required by the court shall be that the defendant prosecute the appellate review according to law and, upon termination of the appeal, surrender to serve any sentence required to be served or appear for further proceedings as directed. The bond shall continue until discharged by order of the court or until surrender of the defendant, whichever is earlier.

(d) Amendment of Order of Release

The court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court shall state the reasons for its action in writing or on the record.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 776 a and M.D.R. 776 a.
Section (b) is derived from former Rule 776 c and M.D.R. 776 c.
Section (c) is derived from former Rules 776 b and 778 b and M.D.R. 776 b and M.D.R. 778 b.
Section (d) is new.

REPORTER’S NOTE

See the Reporter’s note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 5-101 to revise internal references, as follows:

Rule 5-101. SCOPE

(a) Generally

Except as otherwise provided by statute or rule, the rules in this Title apply to all actions and proceedings in the courts of this State.

(b) Rules Inapplicable

The rules in this Title other than those relating to the competency of witnesses do not apply to the following proceedings:

(1) Proceedings before grand juries;

(2) Proceedings for extradition or rendition;

(3) Direct contempt proceedings in which the court may act summarily;

(4) Small claim actions under Rule 3-701 and appeals under Rule 7-112 (d)(2);

(5) Issuance of a summons or warrant under Rule 4-212;

(6) Pretrial release under Rule 4-216, ~~4-216.1, or 4-216.2~~ 4-216.2, or 4-216.3 or release after conviction under Rule 4-349;

(7) Preliminary hearings under Rule 4-221;

(8) Post-sentencing procedures under Rule 4-340;

(9) Sentencing under Rule 4-342;

(10) Issuance of a search warrant under Rule 4-601;

(11) Detention and shelter care hearings under Rule 11-112; and

(12) Any other proceeding in which, prior to the adoption of the rules in this Title, the court was traditionally not bound by the common-law rules of evidence.

(c) Discretionary Application

In the following proceedings, the court, in the interest of justice, may decline to require strict application of the rules in this Title other than those relating to the competency of witnesses:

(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 5-104 (a);

(2) Proceedings for revocation of probation under Rule 4-347;

(3) Hearings on petitions for post-conviction relief under Rule 4-406;

(4) Plenary proceedings in the Orphans' Court under Rule 6-462;

(5) Waiver hearings under Rule 11-113;

(6) Disposition hearings under Rule 11-115, including permanency planning hearings under Code, Courts Article, §3-823;

(7) Modification hearings under Rule 11-116;

(8) Catastrophic health emergency proceedings under Title 15, Chapter 1100;

(9) Hearings on petitions for coram nobis under Rule 15-1206; and

(10) Any other proceeding in which, prior to the adoption of the rules in this Title, the court was authorized to decline to apply the common-law rules of evidence.

(d) Privileges

In all actions and proceedings, lawful privileges shall be respected.

Source: This Rule is derived in part from Uniform Rule of Evidence 1101 and is in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 300 – HABEAS CORPUS

AMEND Rule 15-303 to revise internal references, as follows:

Rule 15-303. PROCEDURE ON PETITION

(a) Generally

Upon receiving a petition for a writ of habeas corpus, the judge immediately shall refer it as provided in section (c) of this Rule or act on the petition as provided in section (d) or (e) of this Rule, except that if the petition seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge may proceed in accordance with section (b) of this Rule.

(b) Bail

(1) Pretrial

If a petition by or on behalf of an individual who is confined prior to or during trial seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge to whom the petition is directed may deny the petition without a hearing if a judge has previously determined the individual's eligibility for pretrial release or the conditions for such release pursuant to

Rule 4-216, ~~4-216.1, or 4-216.2~~ 4-216.2, or 4-216.3 and the petition raises no grounds sufficient to warrant issuance of the writ other than grounds that were raised when the earlier pretrial release determination was made.

Cross reference: Rule 4-213 (c).

(2) After Conviction

(A) Except as otherwise provided in subsection (2)(B) of this section, if a petition by or on behalf of an individual confined as a result of a conviction pending sentencing or exhaustion of appellate review seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge to whom the petition is directed may deny the writ and order that the petition be treated as a motion for release or for amendment of an order of release pursuant to Rule 4-349. Upon entry of the order, the judge shall transmit the petition, a certified copy of the order, and any other pertinent papers to the trial judge who presided at the proceeding as a result of which the individual was confined. Upon receiving of the transmittal, the trial judge shall proceed in accordance with Rule 4-349.

(B) If a petition directed to a circuit court judge is filed by or on behalf of an individual confined as a result of a conviction in the District Court that has been appealed to a circuit court, the circuit court judge shall act on the petition and may not transmit or refer the petition to a District Court

judge.

. . .

REPORTER’S NOTE

See the Reporter’s note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

BAIL BOND FORMS

AMEND Form 4-217.2 to delete the phrase "the greater of $25.00 or", as follows:

Form 4-217.2. BAIL BOND FORMS

(Caption)

BAIL BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That I/we, the undersigned, jointly and severally acknowledge that I/we, our personal representatives, successors, and assigns are held and firmly bound unto the State of Maryland in the penalty sum of ..... Dollars ($.....):

[ ] without collateral security;

[ ] with cash or other collateral security equal in value to ~~the greater of $25.00 or~~ .....% of the penalty sum;

[ ] with cash or other collateral security equal in value to the full penalty amount;

[ ] with the obligation of the corporation [ ] which is an insurer or other surety in the full penalty amount.

To secure payment the [ ] defendant [ ] surety [ ] individual has:

[ ] deposited [ ] in cash or [ ] by certified check the amount of $.....

[ ] pledged the following intangible personal property:

.....

[ ] encumbered the real estate described in the Declaration of Trust filed herewith, or in a Deed of Trust dated the ..... day of ....., ..., from the undersigned
(month) (year)

surety to ....., to the use of the State of Maryland.

THE CONDITION OF THIS BOND IS that the defendant personally appear, as required, in any court in which the charges are pending, or in which a charging document may be filed based on the same acts or transactions, or to which the action may be transferred, removed, or, if from the District Court, appealed.

IF, however, the defendant fails to perform the foregoing condition, this bond shall be forfeited forthwith for payment of the above penalty sum in accordance with law.

IT IS AGREED AND UNDERSTOOD that this bond shall continue in full force and effect until discharged pursuant to Rule 4-217.

AND the undersigned surety covenants that the only compensation chargeable in connection with the execution of this bond consisted of a [ ] fee, [ ] premium, [ ] service charge for the loan of money, or other (describe) .....

.....

in the amount of $.....

[ ] Fee or premium paid by .....
(address)

AND the undersigned surety covenants that no collateral was or will be deposited, pledged, or encumbered directly or indirectly in favor of the surety in connection with the execution of this bond except: .....

IN WITNESS WHEREOF, these presents have been executed under seal this ..... day of ....., ...
(month) (year)

..... Defendant	(SEAL) ..... Address of Defendant
..... Personal Surety/Individual	(SEAL) ..... Address of Surety
..... Surety-Insurer	(SEAL) ..... Address of Surety-Insurer
By: ..... Bail Bondsman	(SEAL) ..... Power of Attorney No.

SIGNED, sealed, and acknowledged before me:

.....
Commissioner/Clerk/Judge of the

..... Court for

.....County/City

REPORTER'S NOTE

See the Reporter's note to proposed new Rule 4-216.1.