

Defender Act. Consequently, if a defendant qualifies for public defender representation, a bail hearing may not occur at the initial appearance unless the defendant has been afforded appointed counsel or waived the right to counsel. . . . [Thus] whenever a person purporting to be indigent has not waived public defender representation at the initial appearance, the [judicial officer] may not proceed to the bail determination in the absence of a public defender who has assumed representation. If a public defender is not immediately available to assume representation, then the [judicial officer] must delay the bail hearing until such representation can be provided or is waived by the defendant."

and

"It also follows quite naturally from our holding that there is an entitlement to public defender representation at the subsequent District Court bail review hearing, pursuant to Maryland Rule 4-216 (f)."

Slip Opinion, at 37-38.

In footnote 25, immediately following the last-quoted passage, the Court also confirmed, on equal protection principles, that "a person with means to obtain his [or her] own lawyer has a right to representation by his [or her] own counsel which is equally as broad as an indigent's right under the Public Defender Act."

Promptly upon the filing of the *DeWolfe* opinion, representatives from the Office of the Public Defender (OPD), the District Court, the Attorney General's Office, elected State's Attorneys, the Rules Committee, and other interested groups met to consider and resolve how to implement the Court's decision. The logistical issues are significant but solvable, although the ultimate forms of implementation will take time and require additional resources. In 2011, there were over 176,000 initial appearances conducted throughout the State, an increase of about 5,000 over 2010. A chart prepared by the District Court showing, for each of those years, the total number of such appearances at each location, broken down by those occurring on weekdays and weekends and during morning, evening, and late-night hours, is attached as Exhibit A. The initial appearances, which also deal with matters other than pretrial release, last, on average, about

25 to 35 minutes. Space at many of the judicial officers' locations is constricted.

Three basic decisions were made at that first meeting: (1) there needs to be a legal structure for implementing the Court's decision, which could best be achieved by emergency Rules, (2) some amendments to the Public Defender Law may be required, and (3) the precise logistical problems, which vary from one location to another and from one part of the day to another, would need to be resolved by collaboration between the OPD, the District Court, the several State's Attorneys, and other necessary participants (sheriffs, police officials, and detention centers that, in some areas, serve as locations for initial appearances).

It was understood that any Rules changes necessarily had to be guided by logistical and other practical considerations and that the Rules adopted immediately on an emergency basis will have to be monitored as the major participants, over time, work out new logistical arrangements. Among the immediate issues that need to be considered are:

(1) How, given the time and space constraints on the arranging and conduct of initial appearances, OPD would effectively be able to determine whether defendants are eligible for OPD representation before deciding whether to represent them at an initial appearance or subsequent review hearing;

(2) The likely prospect that, in light of the immediacy with which that decision must be made if the process is to proceed efficiently and the fact that many, perhaps most, defendants so recently arrested are unlikely to have financial resources available at the time of an initial appearance, the determination of eligibility for OPD representation will need to focus less on the defendant's overall resources that might be available weeks later and more on the defendant's financial situation at the time of the initial appearance or review hearing;

(3) How to assure that a provisional representation of defendants at an initial appearance or review hearing does not lock OPD into representation at all further stages of the criminal action if it turns out, through a subsequently-conducted inquiry, that the defendant is not an indigent individual and thus not eligible for further OPD representation; and

(4) How to conduct a proper and relevant waiver of counsel hearing for purposes of an initial appearance or review hearing and limiting any waiver to those proceedings.

It was agreed that the best way to deal with those issues was to regard the initial appearance and an ensuing review at the next session of the court, for purposes of OPD representation, as

separate and distinct stages of the criminal action. By doing so:

(1) Indigence (eligibility) would be viewed in terms of the defendant's circumstances at the time of those proceedings. As a practical matter, that may mean that, unless the defendant is somehow able to obtain another attorney on such short notice or the defendant effectively waives counsel *with respect to that proceeding*, OPD may be providing provisional representation to defendants with respect to the pretrial release part of the initial appearance and at an ensuing review hearing who may not qualify for OPD representation thereafter. In light of the facts that (i) delaying the initial appearance until a private attorney can be found may well result in the defendant being incarcerated until an initial appearance can be rescheduled or, if the initial appearance is waived, the hearing at the next court session which, if a weekend or holiday intervenes, could be a matter of several days, and (ii) a public defender may need to be present anyway in order to determine whether the defendant qualifies, any such temporary over-inclusion is both justified by and not inconsistent with the Public Defender Law. See Code, Criminal Procedure Article, §16-210 (b) (4).¹

(2) The appearance of OPD would extend only to the initial appearance and to any review hearing at the next court session and would automatically terminate at the conclusion of those proceedings, subject to the defendant qualifying for further OPD representation in accordance with the applicable sections of the Public Defender Law.

(3) When the personal presence of either the State's Attorney or defense counsel is impracticable, which may be the case in late-night hours or in some rural areas, they could participate by telephone or other remote electronic means, provided that adequate equipment exists to allow meaningful participation.

and

(4) The judicial officer would be authorized to conduct a truncated waiver hearing based solely on what the defendant is facing with respect to that proceeding - pretrial release. The assistance that counsel can provide in selecting a jury, arguing

¹ There are a number of circumstances in which only a judge, and not a commissioner, may authorize pretrial release. See Code, Criminal Procedure Article, §5-202 and Rule 4-216 (c). The Committee was advised that there were over 7,500 such circumstances in 2011. In those instances, an initial appearance before a commissioner would not involve any question of pretrial release and counsel would not be required under *DeWolfe*.

motions, cross-examining witnesses, proposing instructions is not relevant at that point. At present, waiver hearings are provided for by Rule 4-215, which occur when a defendant appears *in court*, and are conducted only by judges.

That structure, embodying those elements, are provided for in a new section (d) to Rule 4-216 and in new Rule 4-216.1. As a matter of convenience and style, current Rule 4-216, which covers both the initial appearance before a judicial officer and the subsequent review hearing, has been split, so that Rule 4-216 will deal only with the initial appearance and Rule 4-216.1 will deal with the review hearing and other subsequent matters.

Subsection (d) (1), added to Rule 4-216, declares the initial appearance before a judicial officer to be a separate and distinct stage of the criminal action, which commences with the appearance of the defendant and ends when the judicial officer makes the requisite determinations and disposition. Subsection (d) (2) requires OPD to provide provisional representation to *eligible* defendants unless another attorney has entered an appearance or the defendant waives counsel. It makes clear, however, that, for purposes of that Rule, eligibility is determined as of the time of the proceeding. That section also provides that an appearance by OPD at that stage is limited solely to the initial appearance, that it automatically terminates upon the conclusion of the proceeding, and that it extends only to pretrial release issues and not to a determination of probable cause.² OPD representation at a review hearing is provided for through parallel provisions in Rule 4-216.1.

Subsection (d) (3) requires the judicial officer (1) to inform the defendant that, if the defendant is eligible for OPD representation under the standard set forth in subsection (d) (2) (A), the public defender will provide representation limited to that proceeding, (2) if the defendant indicates a desire to waive counsel, to provide advice limited to the help that an attorney can provide with respect to pretrial release, which is consistent with the scope of the limited representation, and (3) to make a determination whether, in light of that advice, any waiver is knowing and voluntary. The Rule makes clear that a waiver is effective only for that proceeding. Subsection (d) (4) provides for telephone or other remote electronic appearance on

² In the circumstance of a warrantless arrest, the commissioner must determine whether probable cause exists for the arrest. That matter, we are informed, is determined mostly on the documents and is resolved before pretrial release is considered. If the commissioner finds no probable cause for the arrest, the defendant must be released on recognizance, and that ends the proceeding. See Rule 4-216 (a).

the part of both the State's Attorney and defense counsel where personal presence of the attorney is impracticable. Finally, subsection (d) (5) addresses a concern expressed by the Court in the *DeWolfe* opinion regarding *ex parte* communications between the State's Attorney and the judicial officer. Except for the limited purposes authorized in Rule 2.9 of the Code of Conduct for Judicial Officers and the Code of Judicial Conduct, subsection (d) (5) prohibits such communications.

As noted, Rule 4-216.1 embodies the existing provisions of current Rule 4-216 that apply to review hearings and alterations to a pretrial release decision. The new material, which appears in subsection (a) (2), is parallel to the new material in Rule 4-216. The amendments to Rules 4-202 (a), 4-213 (a) and (d), 4-214, 4-215, 4-231 (d), 4-263 (h), and 4-349 (b) are conforming ones.

For the further guidance of the Court and the public, following the proposed new Rule and the proposed amendments to each of the existing Rules 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

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 to clarify section (a) regarding a finding of probable cause, to require a written record of certain determinations by the judicial officer, to add section (d) outlining the duties of the Office of the Public Defender and judicial officers with respect to a defendant's right to counsel, to add provisions concerning waiver of counsel, to allow attorneys to appear remotely under certain circumstances, to add section (g) requiring a judicial officer to make a written record of the proceeding, and to make stylistic changes, as follows:

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

(a) Arrest Without Warrant

If a defendant was arrested without a warrant, the judicial officer shall determine whether there was probable cause for the arrest and, as to each charge, make a written record of the determination. If there was probable cause for at least one charge, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause for any of the charges, 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) (4).

(b) Defendants Eligible for Release by Commissioner or Judge

In accordance with this Rule and Code, Criminal Procedure Article, §§5-101 and 5-201 and except as otherwise provided in section (c) of this Rule or by Code, Criminal Procedure Article, §§5-201 and 5-202, a defendant is entitled to be released 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.

(c) Defendants Eligible for Release Only by a Judge

A defendant charged with an offense for which the maximum penalty is death or 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 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.

(d) Counsel

(1) Generally

For purposes of this section, an initial appearance before a judicial officer shall be separate and distinct from any

other stage of a criminal action. This stage commences with the appearance of the defendant before the judicial officer and ends when the judicial officer has complied with all applicable requirements of sections (e) and (f) of this Rule.

(2) Duty of Public Defender

(A) Provisional Representation

Unless the Public Defender has entered a general appearance pursuant to Rule 4-214, another attorney has entered an appearance, or the defendant has waived the right to counsel for purposes of the initial appearance in accordance with this section, the Public Defender shall provide provisional representation for eligible defendants at the initial appearance with respect to all issues relevant to the duties and determinations made by the judicial officer pursuant to sections (e) and (f) of this Rule. For purposes of this Rule, eligibility for provisional representation shall be determined by the Office of the Public Defender as of the time of the proceeding.

(B) Entry of Limited Appearance

If the Public Defender provides provisional representation, the attorney shall enter an appearance in writing stating that the appearance is limited, but if a written entry of appearance is impracticable under the circumstances, the judicial officer shall make a written record of the appearance and the name of the attorney. Provisional representation shall be limited solely to the initial appearance before the judicial officer and shall terminate automatically upon the conclusion of

that stage of the criminal action.

(C) Effect of Conflict with Rule 4-214

This section prevails over any inconsistent provision in Rule 4-214.

(3) Waiver

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

(i) the defendant has a right to counsel at the initial appearance and for any proceeding under Rule 4-216.1;

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

(iii) if the defendant is eligible, the Public Defender will represent the defendant at the initial appearance and in any proceeding under Rule 4-216.1, although a different attorney may be designated to represent the defendant in each proceeding; but

(iv) any further representation by the Public Defender will depend on a timely application for such representation by the defendant and a determination that the defendant is an indigent individual, as defined in Code, Criminal Procedure Article, §§16-101 (d) and 16-210 (b).

Committee note: Rule 4-213(a) (2) requires the judicial officer to advise the defendant of the right to counsel generally. In providing that advice, the judicial officer should explain that it pertains to the right to counsel for all proceedings after the initial appearance under this Rule and a review hearing under Rule 4-216.1.

(B) If the defendant indicates a desire to waive counsel

and the judicial officer finds that the defendant knowingly and voluntarily waives the right to counsel for purposes of the initial appearance, the judicial officer shall announce and record that finding and proceed pursuant to sections (e) and (f) of this Rule.

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

(4) Appearance Remotely

(A) 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 under the circumstances, the State's Attorney may participate in the proceeding by means of a telephone call, live closed circuit television, live internet or satellite video transmission, or other available means of communication, provided that the equipment at the judicial officer's location and the State's Attorney's location is adequate to permit the State's Attorney to participate meaningfully in the proceeding.

(B) By Defense Attorney

When the physical presence of a defense attorney is impracticable under the circumstances, the attorney may consult with the defendant and participate in the proceeding by means of a telephone call, live closed circuit television, live internet or satellite video transmission, or other available means of communication, provided that the equipment at the judicial

officer's location and the defense attorney's location is adequate to permit the attorney to consult privately with the defendant and participate meaningfully in the proceeding.

(5) Ex parte Communications

Except as permitted by Rule 2.9 (a) (1) and (2) of the Maryland Code of Conduct for Judicial Appointees or Rule 2.9 (a) (1) and (2) of the Maryland Code of Judicial Conduct, ex parte communications between (A) the State's Attorney, the defendant, an attorney for the defendant, or a law enforcement officer and (B) the judicial officer are prohibited.

Cross reference: See also Rule 3.5 (a) of the Maryland Lawyers' Rules of Professional Conduct.

Committee note: Rule 2.9 (a) (1) of both the Code of Conduct for Judicial Appointees and the Code of Judicial Conduct permits ex parte communications for scheduling, administrative, and emergency purposes, so long as they do not address substantive matters, no party will gain a procedural, substantive, or tactical advantage as a result of the communication, and the judicial officer promptly notifies the other parties and gives them an opportunity to respond.

~~(d)~~ (e) Duties of Judicial Officer

(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 counsel;

(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 (c) 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 ~~(e)~~ (f) 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.

~~(e)~~ (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 \$100.00 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) Record

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

(1) whether notice was given to the State's Attorney and defense counsel 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 counsel, a confirmation that the advice required by subsection (d) (3) of this Rule was given and that the defendant's waiver was knowing and voluntary;

(5) confirmation that the judicial officer complied with each requirement specified in section (e) 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, the conditions of the
release.

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

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

**[Sections (f), (g), (h), (i), and (j) of this Rule have been
amended and transferred to proposed new Rule 4-216.1]**

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

In *DeWolfe v. Richmond* _____ Md. _____ (2012), the Court of Appeals held that, under the Public Defender Statute, indigent defendants are entitled to counsel at the initial appearance before a judicial officer making a 4-216 bail determination, and at any subsequent District Court bail review hearing. See also Code, Criminal Procedure Article, §§16-101 through 16-403. In order to implement the Court's decision, amendments are proposed to Rule 4-216, Pretrial Release, and new Rule 4-216.1, Further Proceedings Regarding Pretrial Release, is proposed for adoption.

Amendments to Rule 4-216 and new Rule 4-216.1 outline the duties of the Office of the Public Defender ("OPD") and judicial officers with respect to the right to counsel during initial appearances and subsequent bail review hearings. The Rules treat eligibility for representation provided by the OPD during the initial appearance and subsequent bail review hearing as separate from each other and from all other stages of the prosecution. Because it is not always practicable for the OPD to conduct a full eligibility inquiry prior to those proceedings, and because of the equal protection concerns noted by the Court (see *DeWolfe*, footnote 25), the Rule allows for provisional representation that

would automatically terminate at the conclusion of the proceeding. The OPD can determine eligibility for provisional representation at the time of the proceeding, and any further representation would be contingent upon a determination that the defendant is indigent as defined in Code, Criminal Procedure Article, §§16-101 (d) and 16-210 (b). Provisional representation is authorized by the Public Defender statute. See Code, Criminal procedure, §16-210 (c)(4) (“[i]f eligibility cannot be determined before the Office ... begins representation, the Office may represent an applicant provisionally.”).

The State’s Attorney may participate in the initial appearance and any subsequent bail review hearing, but is not required to do so. Any attorney who wishes to participate may do so remotely if the attorney’s physical presence is not practicable. The language regarding remote appearances is derived from Rule 15-1104 (d)(2); however, references to a “telephonic conference call” and a video “conference transmission” are replaced by the more general terms “telephone call” and “video transmission” in light of the requirement that a defense attorney and the defendant must be able to communicate privately.

If the defendant wishes to waive the right to counsel, the judicial officer shall determine whether the waiver is knowing and voluntary. Any waiver shall apply only to that proceeding.

Rule 4-216 (d)(5) makes clear that ex parte communications are not permitted between the State’s Attorney, the defendant, defense counsel, or a law enforcement officer and the judicial officer, except as otherwise provided by Rule 2.9 of the Maryland Code of Conduct for Judicial Appointees and the Maryland Code of Judicial Conduct.

Section (g) of Rule 4-216 is entirely new. It requires the judicial officer to make a brief written record of the proceedings, which shall include whether notice was given to the State’s Attorney and defense counsel and the time and method of notification, whether any attorneys appeared (either in person or remotely), whether the defendant waived the right to counsel, and the outcome of the proceeding.

Conforming amendments are made to Rules 4-202, 4-231, 4-263, and 4-349.

Cross references to Rules 4-216 and 4-216.1 are added to Rules 4-213, 4-214, and 4-215.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

ADD new Rule 4-216.1, as follows:

Rule 4-216.1. FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE

**[showing changes from current Rule 4-216 (f), (g), (h),
(i), and (j)]**

~~(f)~~ (a) Review of ~~Commissioner's~~ Pretrial Release Order
Entered by Commissioner

(1) Generally

A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody for 24 hours after a commissioner has determined conditions of release pursuant to ~~this~~ 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. The District Court shall review the commissioner's pretrial release determination and take appropriate action in accordance with Rule 4-216 (e) and (f). If the defendant will remain the court determines that the defendant will continue to be held in custody after the review, the ~~District Court~~ court shall set forth in writing or on the record the reasons for the continued detention.

(2) Duty of Public Defender

(A) Provisional Representation

Unless the Public Defender has entered a general

appearance pursuant to Rule 4-214, another attorney has entered an appearance, or the defendant has waived the right to counsel for purposes of the review hearing in accordance with this section, the Public Defender shall provide provisional representation to eligible defendants at the review hearing. For purposes of this Rule, eligibility for provisional representation shall be determined by the Office of the Public Defender as of the time of the review hearing.

(B) Entry of Limited Appearance

If the Public Defender provides provisional representation, the attorney shall enter an appearance in writing stating that the appearance is limited, but if a written entry of appearance is impracticable under the circumstances, the court shall make a written record of the appearance and the name of the attorney. The attorney may, but need not be, the same attorney who represented the defendant at the initial appearance before a commissioner. Provisional representation shall be limited solely to the review hearing and shall terminate automatically upon the conclusion of the hearing.

(C) Effect of Conflict with Rule 4-214

This section prevails over any inconsistent provision in Rule 4-214.

(3) Waiver

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

(i) the defendant has a right to counsel 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;

(iii) if the defendant is eligible, the Public Defender will represent the defendant for purposes of the review hearing;

but

(iv) any further representation by the Public Defender will depend on a timely application for such representation by the defendant and a determination that the defendant is an indigent individual, as defined in Code, Criminal Procedure Article, §§16-101 (d) and 16-210 (b).

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 the defendant indicates a desire to waive counsel and the court finds that the defendant knowingly and voluntarily waives the right to counsel for purposes of the review hearing, 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.

(4) Appearance Remotely

(A) By State's Attorney

The State's Attorney may participate in the review hearing, but is not required to do so. When the physical presence of the State's Attorney is impracticable under the

circumstances, the State's Attorney may participate in the proceeding by means of a telephone call, live closed circuit television, live internet or satellite video transmission, or other available means of communication, provided that the equipment at the court facility and the State's Attorney's location is adequate to permit the State's Attorney to participate meaningfully in the proceeding.

(B) By Defense Attorney

When the physical presence of a defense attorney is impracticable under the circumstances, the attorney may consult with the defendant and participate in the proceeding by means of a telephone call, live closed circuit television, live internet or satellite video transmission, or other available means of communication, provided that the equipment at the court facility and the attorney's location is adequate to permit the attorney to consult privately with the defendant and participate meaningfully in the proceeding.

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

~~(2)~~ (5) 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. The court also may order that the child be

held in a secure juvenile facility.

~~(g)~~ (b) 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 ~~(h)~~ (c) of this Rule.

~~(h)~~ (c) 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. 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.

~~(i)~~ (d) 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.

~~(j)~~ (e) 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.

~~(k)~~ (f) 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 (f), (g), (h), (i), (j), and (k) of Rule 4-216.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-202 (a) to require the notice in a charging document to include a notification regarding representation of eligible defendants by the Office of the Public Defender for purposes of the initial appearance and subsequent review hearing, as follows:

Rule 4-202. CHARGING DOCUMENT - CONTENT

(a) General Requirements

A charging document shall contain the name of the defendant or any name or description by which the defendant can be identified with reasonable certainty, except that the defendant need not be named or described in a citation for a parking violation. It shall contain a concise and definite statement of the essential facts of the offense with which the defendant is charged and, with reasonable particularity, the time and place the offense occurred. An allegation made in one count may be incorporated by reference in another count. The statute or other authority for each count shall be cited at the end of the count, but error in or omission of the citation of authority is not grounds for dismissal of the charging document or for reversal of a conviction.

A charging document also shall contain a notice to the

defendant in the following form:

TO THE PERSON CHARGED:

1. This paper charges you with committing a crime.
2. If you have been arrested, you have the right to have a judicial officer decide whether you should be released from jail until your trial.
3. You have the right to have a lawyer.
4. A lawyer can be helpful to you by:
 - (A) explaining the charges in this paper;
 - (B) telling you the possible penalties;
 - (C) helping you at trial;
 - (D) helping you protect your constitutional rights; and
 - (E) helping you to get a fair penalty if convicted.
5. Even if you plan to plead guilty, a lawyer can be helpful.
6. If you are eligible, the Public Defender will represent you at your initial appearance before a judicial officer and at any proceeding under Rule 4-216.1 to review an order of a District Court commissioner regarding pretrial release. If you want a lawyer for any further proceeding, including trial, but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender.
7. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.

8. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER.

If you do not have a lawyer before the trial date, you may have to go to trial without one.

(b) Signature on Charging Documents

A citation shall be signed by a person authorized by law to do so before it is issued. An indictment or information shall be signed by the State's Attorney of a county or by any other person authorized by law to do so. A statement of charges shall be signed by a peace officer or by a judicial officer. A plea to the merits waives any objection that the charging document is not signed.

(c) Specific Requirements

(1) Citation

A citation shall contain a command to the defendant to appear in District Court when notified, and shall contain the signed promise of the defendant to appear when required, except in a citation for a parking violation. Failure of the defendant to sign the promise does not invalidate the citation.

(2) Indictment

An indictment shall conclude with the words "against the peace, government, and dignity of the State."

Cross reference: See Section 13 of Article IV of the Constitution of Maryland and *State v. Dycer*, 85 Md. 246, 36 A. 763 (1897).

(d) Matters not Required

A charging document need not negate an exception, excuse, or proviso contained in a statute or other authority creating or

defining the offense charged. It is not necessary to use the word "feloniously" or "unlawfully" to charge a felony or misdemeanor in a charging document. In describing money in a charging document, it is sufficient to refer to the amount in current money, without specifying the particular notes, denominations, coins, or certificates circulating as money of which the amount is composed.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 711 a and Rule 711 a.

Section (b) is derived from former M.D.R. 711 b 2 and Rule 711 c.

Section (c) is derived from former M.D.R. 711 b 1 and Rule 711 b.

Section (d) is derived from former Rule 711 d and e and M.D.R. 711 c and d.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213 to add a cross reference following subsection (a) (2), 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) 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 mandatory 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.

(2) 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 Rules 4-216 (d) and 4-216.1 (a) with respect to counsel at an initial appearance before a judicial officer and at a hearing to review a pretrial release decision of a commissioner.

(3) 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.

(4) Pretrial Release

The judicial officer shall comply with Rule 4-216 governing pretrial release.

(5) Certification by Judicial Officer

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

(6) 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 Following Summons

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

(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. If the appearance is by reason of execution of a warrant, the court shall inform the defendant of each offense with which the defendant is charged, ensure that the defendant has a copy of the charging document, and determine eligibility for pretrial release pursuant to Rule 4-216.

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 4-216.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-214 to add cross references following sections (a) and (d), 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 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 4-216 (d) and 4-216.1 (a) with respect to the automatic termination of the appearance of the Public Defender 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.

(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 1.7 of the Maryland Lawyers' 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 4-216 (d) and

4-216.1 (a) providing for limited appearance by the Public Defender in initial appearance proceedings before a judicial officer and hearings to review a pretrial release decision by a commissioner.

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 4-216.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-215 to add a cross reference following section (e), 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.

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 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 Rules 4-216 (d) and 4-216.1 (a) with respect to waiver of counsel at an initial appearance before a judicial officer and 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 4-216.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-231 to add subsection (d)(1) referencing a defendant's right to counsel under Rules 4-216 (d) and 4-216.1 (a) and to make stylistic changes, as follows:

Rule 4-231. PRESENCE OF DEFENDANT

(a) When Presence Required

A defendant shall be present at all times when required by the court. A corporation may be present by counsel.

(b) Right to be Present - Exceptions

A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248.

Cross reference: Code, Criminal Procedure Article, §11-303.

(c) Waiver of Right to be Present

The right to be present under section (b) of this Rule is waived by a defendant:

(1) who is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain; or

(2) who engages in conduct that justifies exclusion from the

courtroom; or

(3) who, personally or through counsel, agrees to or acquiesces in being absent.

(d) Video Conferencing in District Court

In the District Court, if the Chief Judge of the District Court has approved the use of video conferencing in the county, a judicial officer may conduct an initial appearance under Rule 4-213 (a) or a review of the commissioner's pretrial release determination under Rule ~~4-216 (f)~~ 4-216.1 (a) with the defendant and the judicial officer at different locations, provided that:

(1) the defendant's right to counsel under Rules 4-216 (d) and 4-216.1 (a) is not infringed;

~~(1)~~ (2) the video conferencing procedure and technology are approved by the Chief Judge of the District Court for use in the county;

~~(2)~~ (3) immediately after the proceeding, all documents that are not a part of the District Court file and that would be a part of the file if the proceeding had been conducted face-to-face shall be electronically transmitted or hand-delivered to the District Court; and

~~(3)~~ (4) if the initial appearance under Rule 4-213 is conducted by video conferencing, the review under Rule ~~4-216 (f)~~ 4-216.1 (a) shall not be conducted by video conferencing.

Committee note: Except when specifically covered by this Rule, the matter of presence of the defendant during any stage of the proceedings is left to case law and the Rule is not intended to exhaust all situations. By the addition of section (d) to the Rule, the Committee intends no inference concerning the use of

video conferencing in other contexts.

Source: Sections (a), (b), and (c) of this Rule are derived from former Rule 724 and M.D.R. 724. Section (d) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 (h) to add a section reference to a reference to Rule 4-213, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(h) Time for Discovery

Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213 (c), and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-349 to conform an internal reference to the relettering of Rule 4-216, 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 ~~(d)~~ (e) 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 pursuant to Rule 4-216 before trial. 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 4-216.

Exhibit A

2010 Initial Appearance Information						
District	County/City	Station	SHIFT	Weekday IA	Weekend IA	Total IA
1	Baltimore City	N. Calvert	D	0	0	0
1	Baltimore City	N. Calvert	E	0	0	0
1	Baltimore City	N. Calvert	M	0	1	1
1	Baltimore City	N. Calvert	O	0	0	0
1	Baltimore City	Central Booking	D	13,922	5,220	19,142
1	Baltimore City	Central Booking	E	12,283	4,170	16,453
1	Baltimore City	Central Booking	M	13,471	4,688	18,159
1	Baltimore City	Central Booking	O	205	98	303
1	Baltimore City	Hargrove	D	0	0	0
1	Baltimore City	Hargrove	M	0	0	0
1	Baltimore City	Hargrove	O	0	0	0
1	Baltimore City	North Ave.	D	0	0	0
1	Baltimore City	North Ave.	E	0	0	0
1	Baltimore City	North Ave.	O	0	0	0
1	Baltimore City	Wabash	D	0	0	0
1	Baltimore City	Wabash	E	0	0	0
1	Baltimore City	Wabash	O	0	0	0
		CITY TOTALS		39,881	14,177	54,058
2	Dorchester	Cambridge	D	46	0	46
2	Dorchester	Cambridge	E	23	0	23
2	Dorchester	Cambridge	O	781	256	1,037
		COUNTY TOTALS		850	256	1,106
2	Somerset	Princess Anne	D	41	0	41
2	Somerset	Princess Anne	E	1	0	1
2	Somerset	Princess Anne	M	1	0	1
2	Somerset	Princess Anne	O	440	142	582
		COUNTY TOTALS		483	142	625
2	Wicomico	Salisbury	D	358	7	365
2	Wicomico	Salisbury	E	1,069	0	1,069
2	Wicomico	Salisbury	M	987	9	996
2	Wicomico	Salisbury	O	1,328	578	1,906
		COUNTY TOTALS		3,742	594	4,336
2	Worcester	Ocean City	D	598	644	1,242
2	Worcester	Ocean City	E	211	183	394
2	Worcester	Ocean City	M	591	263	854
2	Worcester	Ocean City	O	403	285	688
2	Worcester	Snow Hill	D	316	0	316
2	Worcester	Snow Hill	O	323	156	479
		COUNTY TOTALS		2,442	1,531	3,973

District	County/City	Station	Shift	Weekday IA	Weekend IA	Total IA
3	Caroline	Denton	D	303	0	303
3	Caroline	Denton	E	81	50	131
3	Caroline	Denton	O	297	157	454
		COUNTY TOTALS		681	207	888
3	Cecil	Elkton	D	912	176	1,088
3	Cecil	Elkton	E	812	251	1,063
3	Cecil	Elkton	M	560	183	743
3	Cecil	Elkton	O	42	10	52
		COUNTY TOTALS		2,326	620	2,946
3	Kent	Chestertown	D	170	0	170
3	Kent	Chestertown	O	225	90	315
		COUNTY TOTALS		395	90	485
3	Queen Anne's	Centreville	D	353	0	353
3	Queen Anne's	Centreville	E	214	58	272
3	Queen Anne's	Centreville	O	281	248	529
		COUNTY TOTALS		848	306	1,154
3	Talbot	Easton	D	277	1	278
3	Talbot	Easton	E	202	31	233
3	Talbot	Easton	O	233	178	411
		COUNTY TOTALS		712	210	922
4	Calvert	Prince Frederick	D	365	366	731
4	Calvert	Prince Frederick	E	574	167	741
4	Calvert	Prince Frederick	M	182	71	253
4	Calvert	Prince Frederick	O	275	35	310
		COUNTY TOTALS		1,396	639	2,035
4	Charles	La Plata	D	1,051	576	1,627
4	Charles	La Plata	E	1,067	258	1,325
4	Charles	La Plata	M	1,188	356	1,544
4	Charles	La Plata	O	156	32	188
		COUNTY TOTALS		3,462	1,222	4,684
4	St. Mary's	Leonardtown	D	851	335	1,186
4	St. Mary's	Leonardtown	E	742	228	970
4	St. Mary's	Leonardtown	M	110	37	147
4	St. Mary's	Leonardtown	O	324	133	457
		COUNTY TOTALS		2,027	733	2,760

District	County/City	Station	SHIFT	Weekday IA	Weekend IA	Total IA
5	Prince George's	Hyattsville	D	1,952	856	2,808
5	Prince George's	Hyattsville	E	2,495	812	3,307
5	Prince George's	Hyattsville	M	3,572	1,080	4,652
5	Prince George's	Hyattsville	O	87	22	109
5	Prince George's	Upper Marlboro CH	D	29	0	29
5	Prince George's	Upper Marlboro CH	E	4	0	4
5	Prince George's	Upper Marlboro CH	O	1	0	1
5	Prince George's	Regional Booking	D	2,939	943	3,882
5	Prince George's	Regional Booking	E	4,112	1,148	5,260
5	Prince George's	Regional Booking	M	5,123	1,340	6,463
5	Prince George's	Regional Booking	O	198	32	230
		COUNTY TOTALS		20,512	6,233	26,745
6	Montgomery	CPU	D	3,170	770	3,940
6	Montgomery	CPU	E	4,498	732	5,230
6	Montgomery	CPU	M	4,065	833	4,898
6	Montgomery	CPU	O	386	143	529
6	Montgomery	Rockville CH	D	41	0	41
6	Montgomery	Rockville CH	E	0	0	0
6	Montgomery	Rockville CH	M	0	0	0
6	Montgomery	Rockville CH	O	1	0	1
6	Montgomery	Silver Spring	D	20	0	20
6	Montgomery	Silver Spring	E	9	0	9
6	Montgomery	Silver Spring	M	0	0	0
6	Montgomery	Silver Spring	O	0	0	0
		COUNTY TOTALS		12,190	2,478	14,668
7	Anne Arundel	Annapolis	D	1,209	476	1,685
7	Anne Arundel	Annapolis	E	1,609	381	1,990
7	Anne Arundel	Annapolis	M	1,672	543	2,215
7	Anne Arundel	Annapolis	O	536	132	668
7	Anne Arundel	Glen Burnie	D	1,482	631	2,113
7	Anne Arundel	Glen Burnie	E	1,355	440	1,795
7	Anne Arundel	Glen Burnie	M	1,647	595	2,242
7	Anne Arundel	Glen Burnie	O	626	147	773
		COUNTY TOTALS		10,136	3,345	13,481

District	County/City	Station	SHIFT	Weekday/A	Weekend/A	Total/A
8	Baltimore County	Catonsville	D	1,258	403	1,661
8	Baltimore County	Catonsville	E	1,117	154	1,271
8	Baltimore County	Catonsville	M	987	149	1,136
8	Baltimore County	Catonsville	O	1,843	448	2,291
8	Baltimore County	Essex	D	1,275	501	1,776
8	Baltimore County	Essex	E	390	130	520
8	Baltimore County	Essex	M	677	127	804
8	Baltimore County	Essex	O	3,228	772	4,000
8	Baltimore County	Towson	D	901	208	1,109
8	Baltimore County	Towson	E	554	74	628
8	Baltimore County	Towson	M	381	149	530
8	Baltimore County	Towson	O	1,450	301	1,751
		COUNTY TOTALS		3,286	732	4,018
9	Harford	Bel Air	D	679	198	877
9	Harford	Bel Air	E	911	253	1,164
9	Harford	Bel Air	M	835	364	1,199
9	Harford	Bel Air	O	119	2	121
		COUNTY TOTALS		2,544	817	3,361
10	Carroll	Satellite Westminster	D	115	0	115
10	Carroll	Satellite Westminster	E	608	4	612
10	Carroll	Satellite Westminster	M	357	103	460
10	Carroll	Satellite Westminster	O	164	388	552
10	Carroll	Westminster CH	D	251	0	251
10	Carroll	Westminster CH	E	6	0	6
10	Carroll	Westminster CH	M	3	0	3
10	Carroll	Westminster CH	O	26	0	26
		COUNTY TOTALS		1,530	495	2,025
10	Howard	Ellicott City CH	D	2	0	2
10	Howard	Ellicott City CH	E	0	0	0
10	Howard	Ellicott City CH	O	1	0	1
10	Howard	Howard Central Book	D	635	326	961
10	Howard	Howard Central Book	E	1,053	370	1,423
10	Howard	Howard Central Book	M	1,247	502	1,749
10	Howard	Howard Central Book	O	81	23	104
		COUNTY TOTALS		3,019	1,221	4,240
11	Frederick	Frederick Patrick St.	D	0	0	0
11	Frederick	Frederick Patrick St.	E	0	0	0
11	Frederick	Frederick Patrick St.	O	0	0	0
11	Frederick	Frederick Det. Center	D	559	233	792
11	Frederick	Frederick Det. Center	E	1,040	233	1,273
11	Frederick	Frederick Det. Center	M	1,269	448	1,717
11	Frederick	Frederick Det. Center	O	29	16	45
		COUNTY TOTALS		2,897	930	3,827

District	County/City	Station	Shift	Weekday IA	Weekend IA	Total IA
11	Washington	Washington CH	D	206	34	240
11	Washington	Washington CH	E	252	34	286
11	Washington	Washington CH	M	190	74	264
11	Washington	Washington CH	O	3	1	4
11	Washington	Wash Co. Det. Center	D	436	97	533
11	Washington	Wash Co. Det. Center	E	593	93	686
11	Washington	Wash Co. Det. Center	M	413	144	557
11	Washington	Wash Co. Det. Center	O	5	2	7
		COUNTY TOTALS		2,098	479	2,577
12	Allegany	Cumberland CH	D	588	185	773
12	Allegany	Cumberland CH	E	347	0	347
12	Allegany	Cumberland CH	M	170	42	212
12	Allegany	Cumberland CH	O	604	205	809
		COUNTY TOTALS		1,709	432	2,141
12	Garrett	Oakland	D	186	2	188
12	Garrett	Oakland	O	318	124	442
		COUNTY TOTALS		504	126	630

2011 Initial Appearance Information

District	County/City	Station	SHIFT	Weekday IA	Weekend IA	Total IA
1	Baltimore City	N. Calvert	D	0	0	0
1	Baltimore City	N. Calvert	E	0	0	0
1	Baltimore City	N. Calvert	M	0	0	0
1	Baltimore City	N. Calvert	O	0	0	0
1	Baltimore City	Central Booking	D	13,221	5,016	18,237
1	Baltimore City	Central Booking	E	11,592	4,073	15,665
1	Baltimore City	Central Booking	M	13,760	4,820	18,580
1	Baltimore City	Central Booking	O	140	63	203
1	Baltimore City	Hargrove	D	0	0	0
1	Baltimore City	Hargrove	M	0	0	0
1	Baltimore City	Hargrove	O	0	0	0
1	Baltimore City	North Ave.	D	0	0	0
1	Baltimore City	North Ave.	E	0	0	0
1	Baltimore City	North Ave.	O	0	0	0
1	Baltimore City	Wabash	D	0	0	0
1	Baltimore City	Wabash	E	0	0	0
1	Baltimore City	Wabash	O	1	0	1
		CITY TOTALS		38,714	13,972	52,686
2	Dorchester	Cambridge	D	356	0	356
2	Dorchester	Cambridge	E	3	0	3
2	Dorchester	Cambridge	M	6	0	6
2	Dorchester	Cambridge	O	577	246	823
		COUNTY TOTALS		942	246	1,188
2	Somerset	Princess Anne	D	41	1	42
2	Somerset	Princess Anne	E	53	1	54
2	Somerset	Princess Anne	M	2	0	2
2	Somerset	Princess Anne	O	477	147	624
		COUNTY TOTALS		573	149	722
2	Wicomico	Salisbury	D	795	16	811
2	Wicomico	Salisbury	E	1,391	268	1,659
2	Wicomico	Salisbury	M	974	40	1,014
2	Wicomico	Salisbury	O	109	718	827
		COUNTY TOTALS		3,269	1,042	4,311
2	Worcester	Ocean City	D	753	602	1,355
2	Worcester	Ocean City	E	305	221	526
2	Worcester	Ocean City	M	618	315	933
2	Worcester	Ocean City	O	503	363	866
2	Worcester	Snow Hill	D	212	0	212
2	Worcester	Snow Hill	O	466	155	621
		COUNTY TOTALS		2,857	1,656	4,513

District	County/City	Station	SHIFT	Weekday IA	Weekend IA	Total IA
3	Caroline	Denton	D	347	1	348
3	Caroline	Denton	E	314	54	368
3	Caroline	Denton	O	112	176	288
		COUNTY TOTALS		773	231	1,004
3	Cecil	Elkton	D	1,113	244	1,357
3	Cecil	Elkton	E	1,004	270	1,274
3	Cecil	Elkton	M	650	290	940
3	Cecil	Elkton	O	60	20	80
		COUNTY TOTALS		2,827	824	3,651
3	Kent	Chestertown	D	205	0	205
3	Kent	Chestertown	O	216	112	328
		COUNTY TOTALS		421	112	533
3	Queen Anne's	Centreville	D	399	0	399
3	Queen Anne's	Centreville	E	361	83	444
3	Queen Anne's	Centreville	O	191	243	434
		COUNTY TOTALS		951	326	1,277
3	Talbot	Easton	D	332	3	335
3	Talbot	Easton	E	361	66	427
3	Talbot	Easton	O	130	206	336
		COUNTY TOTALS		823	275	1,098
4	Calvert	Prince Frederick	D	525	419	944
4	Calvert	Prince Frederick	E	651	184	835
4	Calvert	Prince Frederick	M	109	22	131
4	Calvert	Prince Frederick	O	207	45	252
		COUNTY TOTALS		1,492	670	2,162
4	Charles	La Plata	D	1,037	442	1,479
4	Charles	La Plata	E	1,195	204	1,399
4	Charles	La Plata	M	1,199	381	1,580
4	Charles	La Plata	O	35	21	56
		COUNTY TOTALS		3,466	1,048	4,514
4	St. Mary's	Leonardtown	D	758	351	1,109
4	St. Mary's	Leonardtown	E	696	218	914
4	St. Mary's	Leonardtown	M	91	36	127
4	St. Mary's	Leonardtown	O	218	101	319
		COUNTY TOTALS		1,763	706	2,469

District	County/City	Station	SHIFT	Weekday IA	Weekend IA	Total IA
5	Prince George's	Hyattsville	D	2,417	1,130	3,547
5	Prince George's	Hyattsville	E	2,980	897	3,877
5	Prince George's	Hyattsville	M	3,557	1,109	4,666
5	Prince George's	Hyattsville	O	28	18	46
5	Prince George's	Upper Marlboro CH	D	24	0	24
5	Prince George's	Upper Marlboro CH	E	0	0	0
5	Prince George's	Upper Marlboro CH	O	0	0	0
5	Prince George's	Regional Booking	D	3,779	1,274	5,053
5	Prince George's	Regional Booking	E	4,474	1,395	5,869
5	Prince George's	Regional Booking	M	5,534	1,598	7,132
5	Prince George's	Regional Booking	O	60	66	126
		COUNTY TOTALS		22,853	7,487	30,340
6	Montgomery	CPU	D	2,934	895	3,829
6	Montgomery	CPU	E	3,738	737	4,475
6	Montgomery	CPU	M	4,583	1,077	5,660
6	Montgomery	CPU	O	806	191	997
6	Montgomery	Rockville CH	D	15	0	15
6	Montgomery	Rockville CH	E	0	0	0
6	Montgomery	Rockville CH	M	0	0	0
6	Montgomery	Rockville CH	O	3	0	3
6	Montgomery	Silver Spring	D	21	0	21
6	Montgomery	Silver Spring	E	6	2	8
6	Montgomery	Silver Spring	M	0	0	0
6	Montgomery	Silver Spring	O	0	0	0
		COUNTY TOTALS		12,106	2,902	15,008
7	Anne Arundel	Annapolis	D	1,417	517	1,934
7	Anne Arundel	Annapolis	E	2,017	524	2,541
7	Anne Arundel	Annapolis	M	1,608	562	2,170
7	Anne Arundel	Annapolis	O	526	110	636
7	Anne Arundel	Glen Burnie	D	1,498	663	2,161
7	Anne Arundel	Glen Burnie	E	1,379	501	1,880
7	Anne Arundel	Glen Burnie	M	1,674	629	2,303
7	Anne Arundel	Glen Burnie	O	663	187	850
		COUNTY TOTALS		10,782	3,693	14,475

District	County/City	Station	SHIFT	Weekday IA	Weekend IA	Total IA
8	Baltimore County	Catonsville	D	1,305	419	1,724
8	Baltimore County	Catonsville	E	1,443	223	1,666
8	Baltimore County	Catonsville	M	885	89	974
8	Baltimore County	Catonsville	O	1,366	361	1,727
8	Baltimore County	Essex	D	1,324	452	1,776
8	Baltimore County	Essex	E	588	160	748
8	Baltimore County	Essex	M	223	35	258
8	Baltimore County	Essex	O	3,536	924	4,460
8	Baltimore County	Towson	D	1,097	273	1,370
8	Baltimore County	Towson	E	523	118	641
8	Baltimore County	Towson	M	539	146	685
8	Baltimore County	Towson	O	1,252	246	1,498
		COUNTY TOTALS		14,081	3,446	17,527
9	Harford	Bel Air	D	602	222	824
9	Harford	Bel Air	E	988	206	1,194
9	Harford	Bel Air	M	741	313	1,054
9	Harford	Bel Air	O	100	41	141
		COUNTY TOTALS		2,431	782	3,213
10	Carroll	Satellite Westminster	D	244	1	245
10	Carroll	Satellite Westminster	E	366	0	366
10	Carroll	Satellite Westminster	M	281	73	354
10	Carroll	Satellite Westminster	O	516	572	1,088
10	Carroll	Westminster CH	D	81	0	81
10	Carroll	Westminster CH	E	3	0	3
10	Carroll	Westminster CH	M	0	0	0
10	Carroll	Westminster CH	O	88	0	88
		COUNTY TOTALS		1,579	646	2,225
10	Howard	Ellicott City CH	D	1	0	1
10	Howard	Ellicott City CH	E	0	0	0
10	Howard	Ellicott City CH	O	0	0	0
10	Howard	Howard Central Book	D	744	369	1,113
10	Howard	Howard Central Book	E	1,069	371	1,440
10	Howard	Howard Central Book	M	883	386	1,269
10	Howard	Howard Central Book	O	128	37	165
		COUNTY TOTALS		2,825	1,163	3,988
11	Frederick	Frederick Patrick St.	D	0	0	0
11	Frederick	Frederick Patrick St.	E	0	0	0
11	Frederick	Frederick Patrick St.	O	0	0	0
11	Frederick	Frederick Det. Center	D	578	246	824
11	Frederick	Frederick Det. Center	E	1,007	218	1,225
11	Frederick	Frederick Det. Center	M	1,154	409	1,563
11	Frederick	Frederick Det. Center	O	85	22	107
		COUNTY TOTALS		2,824	895	3,719
11	Washington	Washington CH	D	21	0	21
11	Washington	Washington CH	E	2	0	2

District	County/City	Station	SHIFT	Weekday IA	Weekend IA	Total IA
11	Washington	Washington CH	M	0	0	0
11	Washington	Washington CH	O	0	0	0
11	Washington	Wash Co. Det. Center	D	667	192	859
11	Washington	Wash Co. Det. Center	E	947	164	1,111
11	Washington	Wash Co. Det. Center	M	738	262	1,000
11	Washington	Wash Co. Det. Center	O	16	7	23
		COUNTY TOTALS		2,391	625	3,016
12	Allegany	Cumberland CH	D	594	135	729
12	Allegany	Cumberland CH	E	316	2	318
12	Allegany	Cumberland CH	M	148	57	205
12	Allegany	Cumberland CH	O	515	267	782
		COUNTY TOTALS		1,573	461	2,034
12	Garrett	Oakland	D	288	27	315
12	Garrett	Oakland	E	14	0	14
12	Garrett	Oakland	M	0	0	0
12	Garrett	Oakland	O	324	197	521
		COUNTY TOTALS		626	224	850

176,523