

The Court held an open hearing on the One Hundred Seventy-Third Report on February 16, 2012. By that time, at least two bills were pending in the General Assembly that would have amended the Public Defender law to overturn a major part of the first aspect of the Court's holding by stating that representation by the Public Defender was not required at an initial appearance before a District Court commissioner.¹ It was unclear at the time of the Court's hearing what the fate of those bills, or any other that might be introduced, would be, and thus it was equally unclear whether any revisions to the proposed Rules changes might become necessary. The Court decided to take no immediate action on the proposed Rules. The Rules Committee advised that it would monitor relevant legislative initiatives and report further to the Court. In furtherance of that commitment, the Rules Committee now submits this Supplement to the One Hundred Seventy-Third Report.

Ultimately, two identical bills were passed - Senate Bill 422 and House Bill 261. The House Bill was enacted as an emergency bill and will take effect when signed by the Governor. The last signing currently scheduled is on May 22, 2012. Copies of that bill are attached to this Supplemental Report.² The bill contains a number of provisions, the most relevant of which with respect to what is currently pending before the Court, are (1) amendments to Section 16-204(b)(2) of the Criminal Procedure Article providing that representation by the Public Defender "is not required to be provided to an indigent individual at an initial appearance before a District Court commissioner," but that, commencing June 1, 2012, representation "shall be provided to an indigent individual" at a "bail hearing before a District Court or Circuit Court judge," and (2) a new section 5-215 added to the Criminal Procedure Article requiring that a defendant who is denied pretrial release by a District Court commissioner or who, for any reason, remains in custody after a commissioner has determined conditions of release under Rule 4-216 be presented to a District Court judge "immediately if the court is in session, or if the court is not in session, at the next session of the court."³

¹ A judicial officer includes a judge and a District Court commissioner. See Rule 4-102(f). Thus, an initial appearance could be before either a judge or a commissioner. The vast majority of initial appearances - over 176,000 in 2011 - are before commissioners, and that was the focus of the legislation.

² Senate Bill 422 also passed but did not have the requisite three-fifths vote in the House of Delegates to be enacted as an emergency bill.

³ House Bill 261 contains a number of other provisions that may impact the workload of the commissioners and could result in other changes to the current procedure for determining pre-trial release, but are of marginal relevance currently. Section 1 declares the intent of the General Assembly to monitor the issues relating to representation of indigent defendants and

In order to conform with the enacted legislation, and subject to any additional changes that may be required by further proceedings in the *DeWolfe* case or in subsequent litigation, the Rules Committee recommends that the Court adopt new Rule 4-216.1 and the amendments to Rules 4-212, 4-213 (a) and (d), 4-214, 4-215, 4-216, 4-217, 4-231 (d), 4-263 (h), 4-349, 5-101 (a), and 15-303, transmitted with this Supplemental Report. As with the proposals in the One Hundred Seventy-Third Report, the substantive changes are contained in the amendments to Rule 4-216 and **in** proposed new Rule 4-216.1. The proposed changes to the other Rules are conforming ones.

Three major additions are proposed to Rule 4-216:

FIRST: Added to section (a) is language clarifying the kind of findings the judicial officer must make in determining whether there is probable cause for a warrantless arrest. That proposal was considered by the Court at its February 16, 2012 hearing and is in the form tentatively approved by the Court at that time.

SECOND: A new section (b) is proposed to deal with the problem noted by the Court in *DeWolfe* of unrecorded *ex parte* communications between State's Attorneys and judicial officers. The language has been changed from the proposal in the One Hundred Seventy-Third Report to clarify what is intended. In addition to the kind of *ex parte* communications permitted by Rule 2.9(a)(1) and (2) of the Maryland Code of Judicial Conduct and the Maryland Code of Conduct for Judicial Appointees, communications regarding any matter required to be considered by the judicial officer under Rule 4-216 are permissible if (1) made in writing, shown or communicated by the judicial officer to each party who participates in the proceeding, and made part of the record, or (2) made openly at the proceeding before the judicial officer. Each participating party must be given an opportunity to respond to the communication.

determine whether modification of its provisions is required during the 2015 session "or earlier if an appellate court issues a decision related to the relevant issues in *DeWolfe v. Richmond*." Section 2 puts some conditions on a District Court commissioner's issuance of an arrest warrant on an application for a statement of charges and requires law enforcement officers to issue a citation rather than make an arrest for a variety of minor offenses. Section 3, in addition to the noted amendments to §16-204 of the Criminal Procedure Article, adds a new §10-922 to the Courts Article making any statement made during the course of an initial appearance before a District Court commissioner inadmissible against the defendant in a criminal or juvenile proceeding. Section 4 creates a Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender and requires the Task Force to submit an interim report by November 1, 2012 and a final report a year later. Section 5 requires law enforcement agencies to keep certain statistics regarding the issuance of citations.

THIRD: A new section (e) is added to provide for representation by the Public Defender when the initial appearance is before a *judge*. That is consistent with the new statutory provision. The language is essentially the same as was included in the proposed amendment to Rule 4-216 included in the One Hundred Seventy-Third Report.

With two exceptions, proposed new Rule 4-216.1 is essentially the same as was included in the One Hundred Seventy-Third Report. The two exceptions are as follows:

FIRST: Subsection (a)(1) of the proposed Rule is taken from the language currently in Rule 4-216 (f). The current Rule requires that a defendant who is denied pretrial release by a commissioner or who remains in custody *for 24 hours* after a commissioner has determined conditions of release must be presented immediately to a District Court judge if court is then in session or, if not, at the next session of the court.

As noted, HB 261 adds a new §5-215 to the Criminal Procedure Article. That section tracks the language of current Rule 4-216 (f) *except for the 24-hour waiting period*. It requires that a defendant who is denied pretrial release by a commissioner or who remains in custody after a commissioner has determined conditions of release be presented immediately to a District Court judge if the court is in session. That would seemingly require immediate presentation (or at the next court session) of *any* defendant who remains in custody after the commissioner has determined conditions of release, not just those who remain in custody for 24 hours thereafter. Accordingly, the Rules Committee proposes deleting the 24-hour provision from the Rule, so that it conforms with the statute and, from what the Committee was advised, the actual practice.

SECOND: Subsection (a)(2) provides for representation of indigents by the Public Defender, as required both by *DeWolfe* and HB 261. It largely tracks the provision included in the One Hundred Seventy-Third Report, except that it eliminates the language dealing with limited provisional representation and remote appearances. The Public Defender has advised the Rules Committee that his office will be able to qualify defendants for full representation at the bail review proceeding, so the provision for limited representation is unnecessary, and as both the State's Attorney and the Public Defender should be personally available at the review proceeding, a special provision for remote appearance is also unnecessary.

Since the submission of the One Hundred Seventy-Third Report, the Rules Committee has identified four other Rules that should contain a cross-reference to Rule 4-216.1. Appropriate amendments to Rules 4-212, 4-217, 5-101, and 15-303 are proposed

with this Supplemental Report. Additionally, the proposed amendments to Rules 4-202 and 4-214 that were contained in the One Hundred Seventy-Third Report are no longer necessary and are hereby withdrawn.

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 a judicial officer; to add section (b) regarding communications with a judicial officer; to add section (e) pertaining to a defendant's right to counsel at an initial appearance before a judge and a defendant's waiver of that right; to delete sections (f), (g), (h), (i), and (j); 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 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) (4).

(b) Communications with Judicial Officer

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, 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, 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 3.5 (a) of the Maryland Lawyers' Rules of Professional Conduct.

~~(b)~~ (c) 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)~~ (d) 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)~~ (d) 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.

(e) Initial Appearance Before a Judge

(1) Applicability

This section applies to an initial appearance before a judge. It does not apply to an initial appearance before a District Court commissioner.

(2) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has waived the right to counsel for purposes of an initial appearance before a judge in accordance with this section, the Public Defender shall provide representation to an eligible defendant at the initial appearance.

(3) Waiver of Counsel for Initial Appearance

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

(i) the defendant has a right to counsel at this proceeding;

(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.

(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 initial appearance, the court shall announce on the record that finding and proceed pursuant to this Rule.

(C) Any waiver found under this section applies only to the initial appearance.

(4) Waiver of Counsel for Future Proceedings

For proceedings after the initial appearance, waiver of counsel is governed by Rule 4-215.

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

~~(d)~~ (f) 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) 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)~~ (g) 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.

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

~~_____~~
~~.....~~

~~(g) Continuance of Previous Conditions~~

~~_____~~
~~.....~~

~~(h) Amendment of Pretrial Release Order~~

~~_____~~
~~.....~~

~~(i) Supervision of Detention Pending Trial~~

~~_____~~
~~.....~~

~~(j) Violation of Condition of Release~~

~~_____~~
~~.....~~

~~(k)~~ (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.

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.

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

(2) Counsel for Defendant

(A) Duty of Public Defender

Unless 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 representation to an eligible defendant at the review hearing.

(B) Waiver

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

(a) the defendant has a right to counsel at the review hearing;

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

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

(ii) 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.

(iii) Any waiver found under this Rule applies only to the review hearing.

(C) Waiver of Counsel for Future Proceedings

For proceedings after the review hearing, waiver of counsel is governed by Rule 4-215.

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

(3) Determination by Court

The District Court shall review the commissioner's pretrial release determination and take appropriate action in accordance with Rule 4-216 (f) and (g). ~~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)~~ (4) 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.

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

AMEND Rule 4-212 to add references to Rule 4-216.1, as follows:

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

. . .

(d) Warrant - Issuance; Inspection

(1) In the District Court

. . .

(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, 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 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, 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

. . .

(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 and may make provision for the appearance or waiver of counsel pursuant to Rule 4-215.

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

(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 or 4-216.1, the defendant remains subject to conditions of pretrial release imposed by the District Court.

(2) Other Offense

. . .

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) and to add a reference to the applicable provisions of Rules 4-216 and 4-216.1, 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 Rule 4-216 (e) with respect to counsel at an initial appearance before a judge and Rule 4-216.1 (a) with respect to counsel 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 the applicable provisions of Rules 4-216 and 4-216.1 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.

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

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

Rule 4-215. WAIVER OF COUNSEL

(a) First Appearance in Court Without Counsel

. . .

(b) Express Waiver of Counsel

. . .

(c) Waiver by Inaction - District Court

. . .

(d) Waiver by Inaction - Circuit Court

. . .

(e) Discharge of Counsel - Waiver

. . .

Cross reference: See Rule 4-216 (e) with respect to waiver of counsel at an initial appearance before a judge and Rule 4-216.1 (a) with respect to waiver of counsel 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.

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

AMEND Rule 4-217 to delete a reference to Rule 4-216 and to add references to Rule 4-216.1, as follows:

Rule 4-217. BAIL BONDS

(a) Applicability of Rule

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

. . .

(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 statted, 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~~ 4-216.1 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 statted. 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 or 4-216.1.

(2) Refund of Collateral Security - Release of Lien

. . .

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 Rule 4-216 (e) and Rule 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 Rule 4-216 (e) and Rule 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.

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.

. . .

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, to add a reference to Rule 4-216.1, and to make a stylistic change, 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)~~ (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 ~~before trial~~ or Rule 4-216.1.

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.

MARYLAND RULES OF PROCEDURE
TITLE 5 - EVIDENCE
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 5-101 to add a reference to Rule 4-216.1, 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 or 4-216.1 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 in non-capital cases 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.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-303 to add a reference to Rule 4-216.1, as follows:

Rule 15-303. PROCEDURE ON PETITION

(a) Generally

. . .

(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 or 4-216.1 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

. . .