

February 1, 2017

The Honorable Mary Ellen Barbera,
Chief Judge

The Honorable Clayton Greene, Jr.

The Honorable Sally D. Adkins

The Honorable Robert N. McDonald,

The Honorable Shirley M. Watts

The Honorable Michele D. Hotten

The Honorable Joseph M. Getty,
Judges

The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

On November 22, 2016, the Rules Committee submitted its 192nd Report, proposing the adoption of new Rule 4-216.1 and conforming amendments to several other Rules, all intended to give greater guidance to judicial officers in deciding whether, and under what conditions, arrested defendants should be released pending trial. On January 5, 2017, the Court held an open hearing on that Report.

After many presentations by interested persons and considerable discussion by Members of the Court, the Court deferred action on the proposed changes until February 7, 2017. In the course of its discussion, some Members of the Court expressed concerns about particular provisions and asked that those concerns be addressed. We did attempt to address them and, on January 20, 2017, submitted a Supplement to the 192nd Report proposing certain amendments to Rule 4-216.1 as submitted in the 192nd Report. Several Members of the Court, individually, then requested further amendments that could be considered by the Court at its February 7th meeting. This Supplement No. 2 is in response to those requests.

What will be before the Court on February 7th will be (1) the 192nd Report, as submitted on November 22, (2) the Supplement (Supplement No. 1) submitted on January 20, and (3) this

Supplement No. 2. Supplement No. 1 showed, through bolding and strikeouts, the amendments proposed to Rule 4-216.1 as presented in the 192nd Report and additional conforming amendments to other Rules. This Supplement shows the additional changes through bolded and italicized language and bolded strikeouts but, to avoid confusion, will be specifically identified in this narrative.

The first change is to Rule 4-216 (c), which deals with an arrested defendant's eligibility for release by a commissioner or a judge. As submitted in the 192nd Report, the section read, in relevant part, that a defendant was entitled to be considered for pretrial release "except as otherwise provided in section (d) of this Rule or by Code, Criminal Procedure Article, §§5-210 and 5-202." Those statutes limit or preclude the release of defendants charged with certain crimes. It has come to our attention that there is at least one other law that prohibits the pretrial release of defendants, namely the Interstate Compact for Adult Offender Supervision (42 U.S.C. 112; Code, Correctional Services Article, Title 6, Chapter 200) and Rules adopted pursuant to that Compact by the Interstate Commission for Adult Offender Supervision. To accommodate that and any other statutes or compacts that may exist or come into being, we propose to add to section (c) "or by other applicable law" and include a Committee note following that section calling attention to the existing Compact.

All other changes included in this Supplement are to Rule 4-216.1. The first of them is in subsection (b)(1) on page 16 of the Rule. As noted in Supplement No. 1, at the January 5th hearing, a suggestion was made to provide an evidentiary standard (clear and convincing evidence or preponderance of evidence) for a decision not to release a defendant because of a perceived danger of flight or harm to particular individuals or the community. The Court discussed the proposal but made no final decision regarding it. In Supplement No. 1, we offered, as an alternative, adding the words "based on evidence" to such a decision. A Member of the Court has requested that those words not be included, and, in this Supplement No. 2, they are stricken.

The second change is to subsection (b)(2) that appears on page 17 of the Rule. As submitted in Supplement No. 1, that subsection provided that a decision by a judicial officer whether and on what conditions to release a defendant must be based on a consideration of specific facts and circumstances applicable to the particular defendant, including "the ability of the defendant to comply with a financial condition." At the

request of a Member of the Court, we propose to broaden that to require consideration of the ability of the defendant "to meet a financial condition or comply with a non-financial condition." In subsection (b)(3), two erroneous cross-references are corrected.

Finally, in subsections (e)(2)(B) and (C) on page 23 of the Rule, at the suggestion of a Member of the Court, we have added the words "including a surety insurer."

As was the case with Supplement No. 1, the time constraints did not allow for this Supplement to be presented to the full Rules Committee, but a copy of it is being electronically sent to all members of the Committee and the Court will be apprised of any comments received from them.

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc

cc: Bessie M. Decker, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - PRETRIAL PROCEDURES

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

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

(a) Arrest without Warrant

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

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

(b) Communications with Judicial Officer

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

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

(c) Defendants Eligible for Release by Commissioner or Judge

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

~~release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community by a judicial officer.~~

Committee note: An individual arrested on a warrant issued pursuant to the Interstate Compact for Adult Offender Supervision is ineligible for release by a judge or commissioner. The individual is required to be detained in accordance with Rules promulgated by the Interstate Commission for Adult Offender Supervision (ICAOS). See 4 U.S.C. 112; Code, Correctional Services Article, Title 6, Chapter 200; and ICAOS Rules (available on the Internet).

(d) Defendants Eligible for Release Only by a Judge

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

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

Commissioner, but may be released only by a judge in accordance with that Act.

(e) Duties of Judicial Officer

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

~~(1) Consideration of Factors~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(f) Conditions of Release~~

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

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

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

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

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

~~(A) without collateral security;~~

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

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

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

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

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

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

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

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

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

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

If an initial appearance before a commissioner cannot proceed or be completed as scheduled, the commissioner may enter a temporary commitment order, but in that event the defendant shall be presented at the earliest opportunity to the next available judicial officer for an initial appearance. If the judicial officer is a judge, there shall be no review of the judge's order pursuant to Rule ~~4-216.1~~ 4-216.2.

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

~~(h)~~ (g) Record

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

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

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

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

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

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

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

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

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

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

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

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

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

ADD new Rule 4-216.1, as follows:

Rule 4-216.1. PRETRIAL RELEASE - STANDARDS GOVERNING

(a) Definitions

The following definitions apply in this Rule:

(1) Appearance; **Appear**

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

(2) Bond

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

(3) Collateral Security

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

(4) Compensated Surety

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

(5) Financial Condition

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

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

(6) Release on Personal Recognizance

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

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

(7) Special Condition

"Special condition" means a condition of release required by a judicial officer, other than the conditions that

the defendant appear in court when required to do so and commit no criminal offense while on release.

(8) Surety

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

(9) Surety Insurer

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

(10) Uncompensated Surety

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

(b) General Principles

(1) Liberal Construction

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

Cross reference: For the inapplicability of the Rules in Title 5 to pretrial release proceedings, see Rule 5-101 (b).

(2) Individualized Consideration

A decision **by a judicial officer** whether or on what conditions to release a defendant shall be based on a consideration of specific facts and circumstances applicable to the particular defendant, including the ~~financial status~~ **ability** of the defendant **to meet a financial condition or comply with a non-financial condition** and the facts and circumstances constituting probable cause for the charges.

(3) Least Onerous Conditions

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

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

(4) Exceptions

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

(c) Release on Personal Recognizance or Unsecured Bond

(1) Generally

Except as otherwise limited by Code, Criminal Procedure Article, §5-101 or §5-202, unless the judicial officer finds that no permissible non-financial condition attached to a release will reasonably ensure (A) the appearance of the defendant, and (B) the safety of each alleged victim, other persons, or the community, A the judicial officer shall release a defendant on personal recognizance or unsecured bond, with or without permissible special conditions, unless the judicial officer finds that no permissible non financial condition attached to such release will reasonably ensure (i) the appearance of the defendant, and (ii) the safety of each alleged victim, other persons, or the community. If the judicial officer makes such a finding, the judicial officer shall state the basis for it on the record.

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

Cross reference: See Code, Criminal Procedure Article, §5-101 (c), ~~precluding~~ **precludes release** on personal recognizance if the defendant is charged with certain crimes. **Section 5-202 of that Article precludes release by a District Court commissioner if the defendant is charged with certain crimes under certain circumstances.**

(2) Permissible Conditions

Permissible conditions for purposes of this section include ~~those embodied~~ **the required conditions set forth** in **subsection (d)(1)** ~~the definition of release on personal recognizance~~ and the non-financial **special** conditions set forth or authorized in **subsection (d)(2)** of this Rule.

~~(e)~~ (d) Non-financial Conditions of Release

(1) Required Conditions

There shall be included, as conditions of any release of the defendant, that (A) the defendant will not engage in any criminal conduct during the period of pretrial release, and (B) the defendant will appear in court when required to do so.

(2) Non-financial Special Conditions

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

~~(2)~~ (A) ~~no-contact orders~~ **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, including a general no-contact order;

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

(C) a requirement that the defendant maintain employment or, if unemployed, actively seek employment;

(D) a requirement that the defendant maintain or commence an educational program;

~~(6)~~ (E) a reasonable curfew, taking into account the defendant's employment, educational, or other lawful commitments;

(F) a requirement that the defendant refrain from possessing a firearm, destructive device, or other dangerous weapon;

(G) a requirement that the defendant refrain from excessive use of alcohol or use or possession of a narcotic drug or other controlled dangerous substance, as defined in Code, Criminal Law Article, §5-101 (f), without a prescription from a licensed medical practitioner;

(H) a requirement that the defendant undergo available medical, psychological, or psychiatric treatment or counseling for drug or alcohol dependency;

~~(1)~~ (I) electronic monitoring;

~~(3)~~ (J) periodic reporting to designated supervisory persons;

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

Committee note: The judicial officer may commit the defendant generally to supervision by a pretrial services unit operating in the county, subject to more detailed requirements of that unit appropriate to the supervision.

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

~~(d)~~ **(e)** Release on Financial Conditions

(1) Generally

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

(B) A judicial officer may not impose a financial condition in form or amount that ~~the judicial officer knows or has reason to believe the defendant is financially incapable of meeting and that will~~ results in the **pretrial detention of the defendant being detained solely because of that the defendant is financially incapability financially incapable of meeting that condition. In making that determination, the judicial officer may consider all resources available to the defendant from any lawful source.**

Committee note: Information regarding the defendant's financial situation may come from several sources. The Initial Appearance Questionnaire Form used by District Court commissioners seeks information from the defendant regarding employment, occupation, amount and source of income, housing status, marital status, and number of dependents relying on the defendant's income. The criminal and juvenile record checks made by the commissioner also may reveal relevant information. Additional information may be available to the judge at a bail review proceeding from a defense attorney, the State's Attorney, and a pretrial services unit.

(C) Financial conditions of release are appropriate only to ensure the appearance of the defendant and may not be imposed solely to prevent future criminal conduct during the pretrial period or to protect the safety of any person or the community; nor may they be imposed to punish the defendant or to placate public opinion.

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

(2) Imposition of Financial Condition

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

(A) execution of unsecured bonds by the defendant and an

uncompensated surety **who (i) has a verifiable and lawful personal relationship with the defendant, (ii) is acceptable to the judicial officer, and (iii) is willing to execute such a bond in an amount specified by the judicial officer;**

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

(C) execution of a bond secured by the deposit of collateral security of a value in excess of 10% of the penalty amount of the bond or by the obligation of a ~~qualified~~ surety, ***including a surety insurer, acceptable to the judicial officer.***

Committee note: A compensated surety qualified under Rule 4-217 is presumptively acceptable. Before finding an uncompensated surety to be acceptable, the judicial officer should inquire into the ability of the proposed surety to satisfy the condition of the bond if called upon to do so. Whenever possible, however, the judicial officer should give preference to an uncompensated surety having a verifiable and lawful personal relationship with the defendant and, if collateral security is required, should accept the posting of adequate real or personal property of that surety or the defendant. This preference is based on the inference that the defendant may be more likely to appear when required if the liability and property of a friend or family member is at risk.

(3) Other Permissible Conditions

If the judicial officer finds that one or more non-financial conditions also may be required to reasonably ensure (A) the appearance of the defendant, and (B) the safety of each

alleged victim, other persons, or the community, the judicial officer may impose on the defendant one or more non-financial conditions in accordance with section ~~(e)~~ **(d)** of this Rule.

(f) Consideration of Factors

(1) Recommendation of Pretrial Release Services Program

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

(2) Other Factors

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

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

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

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

(D) any request made under Code, Criminal Procedure Article, §5-201 (a) for reasonable protections for the safety of an alleged victim;

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

(F) any **information presented by the State's Attorney and any** recommendation of the State's Attorney;

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

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

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

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

(g) Disclosure

If the judicial officer requires collateral security, the judicial officer shall advise the defendant that, if the

defendant or an uncompensated surety posts the required cash or other property, it will be refunded at the conclusion of the criminal proceedings if the defendant has not defaulted in the performance of the conditions of the bond.

Source: This Rule is new.