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RULE 4-216. PRETRIAL RELEASE--AUTHORITY OF JUDICIAL OFFICER; PROCEDURE[Currentness](#)

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

(d) Defendants Eligible for Release Only by a Judge. 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 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) 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 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 (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 (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.

(f) Conditions of Release. The conditions of release imposed by a judicial officer under this Rule may include:

- (1) committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;
- (2) placing the defendant under the supervision of a probation officer or other appropriate public official;
- (3) subjecting the defendant to reasonable restrictions with respect to travel, association, or residence during the period of release;
- (4) requiring the defendant to post a bail bond complying with Rule 4-217 in an amount and on conditions specified by the judicial officer, including any of the following:

- (A) without collateral security;
- (B) with collateral security of the kind specified in Rule 4-217(e)(1)(A) equal in value to the greater of \$25.00 or 10% of the full penalty amount, and if the judicial officer sets bail at \$2500 or less, the judicial officer shall advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount;
- (C) with collateral security of the kind specified in Rule 4-217(e)(1)(A) equal in value to a percentage greater than 10% but less than the full penalty amount;
- (D) with collateral security of the kind specified in Rule 4-217(e)(1) equal in value to the full penalty amount; or
- (E) with the obligation of a corporation that is an insurer or other surety in the full penalty amount;

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

- (A) ensure the appearance of the defendant as required,
- (B) protect the safety of the alleged victim, and
- (C) ensure that the defendant will not pose a danger to another person or to the community; and

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

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

(g) 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.

Committee note: Section (g) 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) 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 that the defendant's waiver was knowing and voluntary;
- (5) confirmation that the judicial officer complied with each applicable 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.

(i) 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.

Credits

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