

Through the auspices of the Conference of Circuit Judges and the Administrative Office of the Courts, a survey was made of the current practice among the courts, with an eye to whether the courts could comply with a shorter time period. The results of that survey are summarized in the Chart attached to this Supplemental Report. Also attached is a letter from Judge Michel Pierson, administrative judge of the Circuit Court for Baltimore City, offering an explanation of the difficulty that Court would have in complying with a more stringent requirement. The Court's attention is called as well to the response from Baltimore County.

The District Administrative Judge in Baltimore City has advised that VOP hearings are set within 15 days after arrest, and that the Court could schedule a pretrial release hearing within five days, but not necessarily before the issuing judge. All defendants are presented promptly to a Commissioner for an initial appearance, but, if the issuing judge has set release conditions, the Commissioner may not countermand those conditions.

The Rules Committee stands ready, of course, to draft any amendments to the proposal now before the Court. Some of the administrative judges may wish to address the Court regarding this issue, so it may be advisable for the Court to conduct a further hearing on the matter.

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cmp

cc: Suzanne Johnson, Acting Clerk

Individual County Information

County:	VOP Warrant Bail Review Process As of 10/24/18
Allegany County	We do VOP bail hearings the day after arrest or Monday if it's a Fri, Sat or Sun arrest. None of the proposed rule changes should be a problem for us.
Anne Arundel County	VOP warrants get set for bail review before the issuing judge. Each judge schedules their own reviews and there is no set requirement. They typically are set promptly within a few days, and they have a backup system to cover bail reviews when a judge is in vacation it extended leave.
Baltimore City	VOP bail reviews are scheduled back before the issuing judge. Bail review hearings are set by each chambers, based upon the judge's availability and schedule.
Baltimore County	Each judge reviews their own warrants and practices vary. Each judge is also assigned two days a week to add on miscellaneous criminal matters such as VOPs and bail reviews to reduce the number of courtrooms that require sheriffs for transport and in court staffing, given overall security staffing requirements. We could meet a 5 day requirement. A three day or next day obligation be difficult to meet and will have a significant impact on many existing practices. Our bench is strongly opposed to having a duty judge review VOP warrants for cases they didn't handle. Additionally, Public Defender staffing for bail reviews in multiple courtrooms for next day reviews is extremely problematic.
Calvert County	We are like Allegheny County. We hear the cases the next day unless the warrant is served over the weekend or a holiday, then it is heard on Monday or the first business day after the holiday. The rule change would not present a problem.
Caroline County	While most are handled either same day or at the next court session, there are occasions where prisoner transport or other obstacles cause brief delay. A three day window would be viable.
Carroll County	In Carroll County, a person in custody by 8am on a day Court is open receives a same day bail review at 130pm or, if Court is closed, at 130 pm on the next day Court is open. If the person comes into custody after 8am on a day Court is open, the bail review takes place at 130am the next day Court is open. All bail reviews are handled by the regular criminal judge for that week and are not held for a specific VOP judge. Our practice therefore already complies with most stringent proposal.
Charles County	We hear the bail reviews the next business day, at 2:00 p.m.

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Cecil County	VOP bails are reviewed at the next court session.
Dorchester	VOP warrants are reviewed same day or next business day.
Frederick County	VOP warrants are reviewed at the next court session by the "duty" judge, regardless of who issued the warrant.
Garrett	Next day.
Harford County	VOP detainees are presented for a bail review within 1 day of arrest, unless the arrest occurs after business hours or during the weekend. However, even in those cases when my JA is informed by the Detention Center the morning after an arrest, they are added to that day's bail review docket. Our video bail reviews are held at 2:30 pm M-F. Our OPD goes to the DC each day between 11 am and 1 pm to do interviews. But if unable to complete them, we provide time via the TV alone in the courtroom to do so. If a private lawyer represents a detainee, my JA contacts them re date of the br hearing. I'm on the Rules Committee so my vote was for 3 days. Although Harford is a medium to large jurisdiction, we hear only 3-8 br's in any given day. But my sense from the testimony at the meeting was 3 days would cover the vast majority of cases; 5 days seemed to fall into the category of "more time is better", but no substantiation for it. At the br hearing, the lawyer and the detainee is advised of the VOP hearing date in writing by the judge; the date is set by the judge who issued the warrant and is provided to the bail review judge.
Howard County	In Howard County the judge will usually set a bond, or have the commissioner set the bond, or issue a no bond warrant. Once the warrant is served and if the Defendant remains incarcerated and requests a bond review, the bond review is set the next court day before any judge who is handling the criminal docket.
Kent County	Individuals arrested on a VOP warrant are almost always scheduled for an initial appearance and bail review the following morning (or Monday if picked up after noon on a Friday). Sometimes, it is the same day. Rarely, it is longer - if a judge is not available.
Montgomery County	A VOP defendant in the Circuit Court is promptly brought before the duty judge at 1:30 p.m. if arrested and processed before 10:30 a.m. If not, he/she appears on the next business day. A violation hearing is scheduled at that first appearance, convenient

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	to the particular judge's calendar. The assignment office is instructed to schedule the VOP within 15 days of arrest if at all possible.
Prince George's County	VOP detainees are set in for a Bond Hearing at 12:00 on the next business day following their arrest. So, the proposed rule would be consistent with our current procedure.
Queen Anne's County	Business day after arrest at 1:15 p.m.
Somerset County	To the extent that we can, when people are arrested on VOP warrants, we bring them in for a bond review the next session of Court. So, the most anyone would wait would be after close of business on Friday to Monday morning.
St. Mary's County	Bail hearings are at 2:00 pm, all bond hearings, including VOP's, are set the day after arrest or if processed by 1:00 pm the same day They are on Monday if there is a Fri, Sat or Sun arrest. None of the proposed rule changes should be a problem for us.
Talbot County	The vast majority of bail reviews occur within one to two business days of the time that the defendant is apprehended, so a three day requirement is feasible. Defendants will get bail reviews if they request them before 8:30 am. If not, it may go to the next day. The purpose of this practice is to allow for the public defenders to have a sufficient opportunity to prepare for the bail reviews.
Washington County	The 5 circuit judges in Washington County usually set a bond, or deny bond, when the warrant is issued. Thereafter if a bond review request comes because a defendant remains incarcerated, it is forwarded to the individual judge to decide on a course of action.
Wicomico County	In Wicomico, on a no bond warrant, a bond review is held the next business day after we are notified by the detention center that the defendant is in custody. Our detention center is very good about notifying us the day the defendant is taken into custody. If a bond amount is set on the warrant then a bond review is done in the District Court either the same day or the next business day after the District Court is notified by the detention center that the defendant is in custody.
Worcester County	VOP bails are heard at the next court session

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for
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November 13, 2018

Judge Alan Wilner, Chair
Standing Committee on Rules
of Practice and Procedure
2011-D Commerce Park Road
Annapolis, Maryland 21401

Re: Amendments to Rule 4-347

Dear Judge Wilner:

On behalf of the Circuit Court for Baltimore City, I am responding to your request for information relevant to the consideration of proposed amendments to Rule 4-347 relating to release of individuals arrested on warrants for violation of probation. In fashioning this response, we undertook an extensive review of the court's practices and procedures, and assembled information from a variety of sources. Our efforts included meetings with the Director of the Pretrial Release Services Program and the Commissioner of the Division of Pretrial Detention and Services. Changes in our procedures were discussed at a bench meeting of the judges of our court. We also obtained data from the Division of Parole and Probation relating to violation of probation charges.

Background Information

The Circuit Court for Baltimore City has thirty-five judges. Each of those judges retains responsibility for probationers who have been placed on probation by that judge (or that judge's predecessor). Therefore, a request for a warrant or summons based on a reported violation of probation is directed to the judge who placed the defendant on probation. When a judge issues a warrant for violation of probation, that judge sets conditions of release. In making that determination, that judge has available to her/him information concerning the sentence that she/he imposed and the reasons therefor, including the underlying offense and offender characteristics, as well as the defendant's prior history of compliance with probation conditions, in addition to information concerning the nature of the alleged violation. As such, when the probationer is arrested, a judicial determination of appropriate release conditions has already occurred.

There is a large volume of probation violation charges in this court. A data sample obtained from the Division of Parole and Probation shows that almost a quarter of the warrants issued for violation of probation by circuit courts statewide are issued in Baltimore City. Furthermore, a

significant majority of these charges involve arrests for new criminal charges or other serious violations. The same data set reveals that of warrants whose basis was identified, almost 60% of warrants issued were for new offenses and only 25% were for technical violations.

There is also a large volume of individuals arrested upon VOP warrants from our court on a daily basis. We receive a daily report each morning that lists individuals who have been committed to the custody of Central Booking. The list includes individuals who were committed on the previous day, and sometimes individuals who were committed a day or two earlier. The number of individuals arrested on VOP warrants averages from 20 to 45 per week, for a daily average of 5 -8 arrests. There are not infrequently as many as 13 VOP arrests on a single day.

The Division of Parole and Probation has recently adopted a practice of furnishing a supervision summary with each request for warrant or summons, which specifies whether the alleged violation is a technical violation or a non-technical violation and also states the presumptive cap for the violation if it is a technical violation. As a result, the court file will reveal whether an alleged violation is a technical violation, permitting the court to recognize whether the charge is a technical violation when the defendant is arrested.

Comments

Due to the volume of probation violation charges in this court, mandating a release hearing within a truncated time frame for all individuals arrested on violation warrants poses a significant administrative burden. Notably, such a requirement would require hearings for individuals who are charged with committing a new offense, many of whom are being detained pending adjudication of the new charges.

The judges of this court share the view that individuals arrested on violation of probation charges should not be detained unnecessarily. The prospect of unnecessary detention appears more pronounced in the context of technical violations.

A rule that required an immediate release hearing only for individuals charged with technical violations would impose a lesser administrative burden, since such charges make up a smaller percentage of the violations. Furthermore, such a rule would address cases where the prospect of unnecessary detention is more pronounced.

The current practice in our court is that generally the decision whether to hold a release hearing after an individual's arrest is committed to the discretion of the judge who issued the warrant. (Judges are informed immediately when an individual is arrested on an FTA warrant, and within one week when an individual is arrested on a low bail warrant.) We believe it is relevant to consider the fact that warrants are issued by judges who have reviewed the individual circumstances based on familiarity with the offender and the conditions of probation. Because our VOP warrants have preset release conditions determined by the most knowledgeable judicial official – the probation judge - the review contemplated by proposed rule amendment is much more akin to a bail reconsideration than a pretrial release hearing at an initial appearance, which is relevant to the need for a hearing within a short timeframe.

If the rule requires that a hearing be conducted immediately upon arrest, it will be difficult to schedule hearings so as to permit them to be held by the issuing judge, which, for the reasons stated, is preferable to delegating the hearing to a "duty judge." We have explored measures that would permit the issuing judge some opportunity to conduct the hearing or, at least, to furnish relevant information to a "duty judge" and the parties. It would be very difficult to do so within a deadline of less than five business days, given the number of judges and the daily volume of arrests, if, indeed, it can be consistently accomplished within that time frame. My conversations with other administrative judges leads me to believe that the ability of other courts to conduct hearings in a short time frame is facilitated by a lower volume of arrests.

Conclusion

I appreciate the opportunity to supply this information. If additional detail or comment is appropriate, we are ready to supply it.

Very truly yours,

W. Michel Pierson

WMP:jb

cc: Sandra F. Haines, Esq., Reporter