

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted a Supplement to its Two Hundred and Ninth Report to the Court of Appeals, providing the text of proposed amendments to Rule 16-914, as described in Category Six, which was inadvertently omitted from the original Report.

The Committee's Supplement to the Two Hundred and Ninth Report and the proposed Rule changes are set forth below.

Interested persons are asked to consider the Committee's Supplement and proposed Rule changes and to forward on or before January 24, 2022 any written comments they may wish to make to rules@mdcourts.gov or:

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Suzanne Johnson
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Court of Appeals of Maryland

**THE COURT OF APPEALS OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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January 13, 2022

The Honorable Joseph M. Getty,
Chief Judge

The Honorable Robert N. McDonald

The Honorable Shirley M. Watts

The Honorable Michele D. Hotten

The Honorable Brynja M. Booth

The Honorable Jonathan Biran

The Honorable Steven B. Gould,
Judges

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

Your Honors:

The Rules Committee submits this Supplement to its Two Hundred and Ninth Report. Proposed amendments to Rule 16-914 were described in Category Six of the Report; however, the text of the amendments was inadvertently omitted. We apologize for any inconvenience this may have caused the Court.

Respectfully Submitted,

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Alan M. Wilner, Chair

AMW:sdm

cc: Suzanne C. Johnson, Clerk

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 900 - ACCESS TO JUDICIAL RECORDS
DIVISION 2 - LIMITATIONS ON ACCESS

AMEND Rule 16-914 by adding new subsection (f) (9) pertaining to the confidentiality of certain criminal case records involving juveniles and by adding a Committee note after the new subsection, as follows:

RULE 16-914. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

...

(f) The following case records in criminal actions or proceedings:

(1) A case record that has been ordered expunged pursuant to Rule 4-508.

(2) The following case records pertaining to search warrants:

(A) The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601, except as authorized by a judge under that Rule.

(3) The following case records pertaining to an arrest warrant:

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d) (3) are satisfied.

(B) Except as otherwise provided in Code, General Provisions Article, § 4-316, a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

(4) Unless entered into evidence at a hearing or trial or otherwise ordered by the court, a case record pertaining to (i) a pen register or trace device applied for or ordered pursuant to Rule 4-601.1, (ii) an emergency order applied for or entered pursuant to Rule 4-602, (iii) the interception of wire or oral communications applied for or ordered pursuant to Rule 4-611, or (v) an order for electronic device location information applied for or entered pursuant to Rule 4-612.

(5) A case record maintained under Code, Courts Article, § 9-106, of the refusal of an individual to testify in a criminal

action against the individual's spouse.

(6) Subject to Rules 16-902 (c) and 4-341, a presentence investigation report prepared pursuant to Code, Correctional Services Article, § 6-112.

(7) Except as otherwise provided by law, a case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, § 15-108, (C) the State Prosecutor pursuant to Code, Criminal Procedure Article, § 14-110, or (D) the Attorney General when acting pursuant to Article V, § 3 of the Maryland Constitution or other law or a federal law enforcement agency.

Cross reference: See Code, Criminal Procedure Article, §§ 1-203.1, 9-101, 14-110, and 15-108, and Rules 4-612 and 4-643 dealing, respectively, with electronic device location, extradition warrants, States' Attorney, State Prosecutor, and grand jury subpoenas, and Code, Courts Article, §§ 10-406, 10-408, 10-4B-02, and 10-4B-03 dealing with wiretap and pen register orders. See also Code, Criminal Procedure Article, §§ 11-110.1 and 11-114 dealing with HIV test results.

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of judicial records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

(8) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3 (Criminal Records--Shielding).

Cross reference: See Code, Criminal Law Article, § 5-601.1 governing confidentiality of judicial records pertaining to a citation issued for a violation of Code, Criminal Law Article, § 5-601 involving the use or possession of less than 10 grams of

marijuana.

(9) The following case records pertaining to a child excluded from the jurisdiction of the Juvenile Court under Code, Courts Article, § 3-8A-03(d)(1), (4), or (5):

(A) A case record pertaining to a case where a motion to transfer jurisdiction to the Juvenile Court pursuant to Code, Criminal Procedure Article, § 4-202 is pending or the time for filing such motion has not expired.

(B) A case record pertaining to a case transferred to the Juvenile Court.

Committee note: Nothing in this Rule precludes a clerk from divulging a case number to an attorney for the purpose of entering an appearance in the case or petitioning the court for access to the court file to determine whether to enter an appearance in the case.

...

REPORTER'S NOTE

Chapter 12, 2021 Laws of Maryland (SB 314 of the 2020 Regular Session) establishes that the confidentiality provisions of Code, Courts Article, § 3-8A-27 concerning a child's records apply under certain circumstances when a child excluded from the jurisdiction of the juvenile court under Code, Courts Article, § 3-8A-03(d)(1), (4), or (5) is charged as an adult.

Rule 16-914 (f) provides that a custodian shall deny inspection of certain case records in criminal proceedings. Proposed new subsection (f)(9) addresses case records pertaining to a child excluded from the jurisdiction of the Juvenile Court under Code, Courts Article, § 3-8A-03(d)(1), (4), or (5). Subsection (f)(9)(A) notes that case records are confidential if pertaining to a case where a motion to transfer jurisdiction to

the Juvenile Court is pending or the time to file such motion has not yet expired. Subsection (f)(2)(B) adds that case records pertaining to a case transferred to the Juvenile Court are also confidential.

A Committee note after new subsection (f)(9) notes that a clerk is not precluded from divulging a case number to an attorney for the purpose of entering an appearance in the case or petitioning the court for access to determine whether to enter an appearance in the case.