Notice of In-Person Meeting

Standing Committee on Rules of Practice and Procedure
May 22, 2025 Open Meeting, 9:30 a.m.
Instructions for Members of the Public

The May 22, 2025, 9:30 a.m. open meeting of the Standing Committee on Rules of Practice and Procedure will be held in-person at the Maryland Judicial Center, Rooms 236-238, 187 Harry S. Truman Parkway, Annapolis, MD 21401. Members of the public may attend.

If you have a comment related to a posted agenda item, you may e-mail it to rules@mdcourts.gov at least 24 hours prior to the beginning of the meeting. Your comment will be distributed to the members of the Rules Committee prior to the meeting.

Agenda and Proposed Rules Changes

- The meeting agenda and proposed Rules changes are attached to this Notice. During the meeting, copies of any updated materials will be available.

The agenda for a meeting of the Rules Committee generally will be posted 7-10 days before the date of the meeting. At the discretion of the Chair, items may be deleted from or added to the agenda.

AGENDA FOR
RULES COMMITTEE MEETING

May 22, 2025 (Thursday)
9:30 a.m.
Maryland Judicial Center
Rooms 236-238
187 Harry S. Truman Parkway
Annapolis, MD 21401

Item 1. Reconsideration of proposed amendments to Rule 18-434 (Hearing on Charges) — Mr. Marcus

Item 2. Consideration of proposed new Title 16, Chapter 900, Division 5 (Other Requests): — Judge Nazarian

Re-numbering of Rule 16-934 (Case Record – Court Order Denying or Permitting Inspection not otherwise Authorized by Rule)
New Rule 16-942 (Protected Individuals – Request to Shield)

Conforming amendments to:
Rule 2-512 (Jury Selection)
Rule 15-901 (Action for Change of Name)
Rule 16-203 (Electronic Filing of Pleadings, Papers, and Real Property Instruments)
Rule 16-204 (Reporting of Criminal and Motor Vehicle Information)
Rule 16-904 (General Policy)
Rule 16-914 (Case Records – Required Denial of Inspection – Certain Categories)
Rule 16-915 (Case Records – Required Denial of Inspection – Specific Information)
Rule 20-203 (Review by Clerk; Striking of Submission; Deficiency Notice; Correction; Request for Court Order to Seal)
Rule 20-504 (Agreements with Vendors)

Item 3.	Reconsideration of proposed Rules changes remanded by the Style Subcommittee: Amendments to: Rule 20-106 (When Electronic Filing Required; Exceptions) Rule 20-205 (Service)	Judge Nazarian
Item 4.	Consideration of proposed amendments to Rule 4-215 (Waiver of Counsel)	Mr. Marcus
Item 5.	Consideration of proposed amendments to Rule 4-345 (Sentencing – Revisory Power of Court)	Mr. Marcus
Item 6.	Consideration of proposed housekeeping amendments to: Rule 4-508.1 (Expungement by Operation of Law) Rule 4-512 (Disposition of Expunged Records)	Mr. Marcus

Information Item: Update on Committee on Equal Justice Rules Review Subcommittee's Recommendation Regarding Rule 4-248

Information Item: Update on Committee on Equal Justice Rules Review Subcommittee's Recommendation Regarding Pretrial Release

AGENDA ITEM 1

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5 –FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

AMEND Rule 18-434 by adding new section (f) pertaining to the submission of exhibits to the Commission and by re-lettering subsequent sections, as follows:

Rule 18-434. HEARING ON CHARGES

(a) Bifurcation

If the judge has been charged with both sanctionable conduct and disability or impairment, the hearing shall be bifurcated and the hearing on charges of disability or impairment shall proceed first.

(b) Subpoenas

Upon application by Investigative Counsel or the judge, the Commission shall issue subpoenas to compel the attendance of witnesses and the production of documents or other tangible things at the hearing in accordance with Rule 18-409.1(b).

(c) Non-Response or Absence of Judge

The Commission may proceed with the hearing whether or not the judge has filed a response or appears at the hearing.

(d) Motion for Recusal

Except for good cause shown, a motion for recusal of a member of the Commission shall be filed at least 30 days before the hearing. The motion shall specify with particularity the reasons for recusal.

(e) Role of Investigative Counsel

At the hearing, Investigative Counsel shall present evidence in support of the charges. If Investigative Counsel and any assistants appointed pursuant to Rule 18-411(e)(3) are recused from a proceeding before the Commission, the Commission shall appoint an attorney to handle the proceeding.

(f) Exhibits

(1) Definitions

In section (f) of this Rule, the following definitions apply:

(A) Redact

"Redact" means to exclude information from a document accessible to the public.

(B) Restricted Information

"Restricted information" means information that, by Rule, other law, or order, is not subject to public inspection or is prohibited from being included in a Commission or court record.

(2) Pre-Filing of Documentary Exhibits

At least five [business] days before the first day of the scheduled hearing, unless otherwise directed by the **Chair of the** Commission, **all proposed** exhibits **other than rebuttal and impeachment exhibits** shall be indexed, pre-numbered, and pre-filed electronically with the Commission

through Executive Counsel **using the Commission's file management system approved by the State Court Administrator. ~~at least five days prior to the first date of the scheduled hearing.~~ The filing party promptly shall serve a copy of each pre-filed exhibit ~~and served~~** on the other **~~parties~~ party**. **To the extent practicable, any objection to the admissibility of an exhibit shall be filed and served no later than three [business] days after service of the proposed exhibit.**

(3) Proposed Exhibits Containing Restricted Information

Each proposed exhibit filed under **section (f) of** this Rule that contains restricted information, shall state prominently on the first page that it contains restricted information. In addition, if an exhibit contains restricted information, the filing party shall file both an unredacted version of the exhibit noting prominently in the title of the version that the version is "unredacted" and a redacted version of the exhibit excluding the restricted information. Exhibits containing restricted information are not **~~otherwise~~** disclosable to the public**,** except as determined by the Chair of the Commission or by order of the Supreme Court.

(4) Impeachment and Rebuttal Exhibits Containing Restricted Information

The redaction requirements of subsection (f)(3) of this Rule apply to impeachment and rebuttal exhibits offered at the hearing.

~~(4)~~(5) Failure to Comply

If a filing party files **proposed** exhibits that are not in compliance with this section, the **Chair of the** Commission shall reject the ~~**submission**~~ **proposed exhibits** without prejudice to refile compliant **proposed** exhibits promptly.

~~(f)~~(g) Evidence

Title 5 of the Maryland Rules shall generally apply.

Committee note: Rulings on evidence shall be made by the Chair, who may take into consideration any views expressed by other members of the Commission. Whether expert testimony may be allowed in a Commission hearing is governed by Rules 5-701 through 5-706, with the Commission exercising the authority of a court.

~~(g)~~(h) Recording

The proceeding shall be recorded verbatim, either by electronic means or stenographically, as directed by the Chair of the Commission. Except as provided in Rule 18-435 (e), the Commission is not required to have a transcript prepared. The judge, at the judge's expense, may have the record of the proceeding transcribed.

~~(h)~~(i) Proposed Findings

The Chair of the Commission may invite the judge and Investigative Counsel to submit proposed findings of fact and conclusions of law within the time period set by the Chair.

Source: This Rule is new.

REPORTER'S NOTE

Tabled by R.C. 3/21/25
For R.C. 5/22/2025

The Rules Committee considered the Attorneys and Judges Subcommittee's proposed addition of new section (f) of Rule 18-434 at its March 2025 meeting. The new section was intended to set forth the procedures to be followed when exhibits are submitted to the Commission prior to a hearing. The procedures were substantially similar to the provisions contained in Rule 20-201.1.

At the March 2025 meeting, the Rules Committee voted to table consideration of the proposed amendments to this Rule until the May 2025 meeting. Rules Committee staff was instructed to draft revisions to proposed new section (f) consistent with the concerns raised in the March 2025 meeting. Changes made to the draft as it appeared in the March 2025 meeting materials are shown in boldface type for ease of reference.

Subsection (f)(1) contains definitions for "redact" and "restricted information" that apply in section (f). The definitions are based on definitions in Rule 20-101.

Subsection (f)(2) requires that, unless otherwise directed by the Chair of the Commission, pre-numbered exhibits are to be filed with the Commission at least 5 days prior to a hearing. This is based on the provisions in subsection (c)(2)(B) of Rule 21-202. The Major Projects Committee is in the process of setting up a file management system for the Commission to use to receive pre-filed, proposed exhibits. To ensure that the provisions of this Rule remain current with the practice after the system is operational, the language "using the Commission's file management system approved by the State Court Administrator" is included in subsection (f)(2). In response to the Commission on Judicial Disabilities' comment letter dated May 9, 2025, "business" is included within brackets for the Committee's consideration where deadlines are referenced in this subsection.

Subsection (f)(3) covers the procedure to be followed in the event that any exhibits to be filed contain restricted information. This is based on the provisions in Rule 20-201.1.

Subsection (f)(4) establishes that the provisions in subsection (f)(3) pertaining to restricted information apply to rebuttal and impeachment exhibits.

Subsection (f)(5) requires the Chair of the Commission to reject an exhibit that does not comply with the provisions of section (f), without prejudice and with leave to re-file promptly.

AGENDA ITEM 2

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 5 – OTHER REQUESTS

TABLE OF CONTENTS

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

~~DIVISION 4 – RESOLUTION OF DISPUTES~~ DIVISION 5 – OTHER REQUESTS

AMEND Rule 16-934 by renumbering it as Rule 16-941, as follows:

Rule ~~16-934~~ 16-941. CASE RECORDS – COURT ORDER DENYING OR PERMITTING INSPECTION NOT OTHERWISE AUTHORIZED BY RULE

(a) Purpose; Scope

. . .

REPORTER'S NOTE

Proposed amendments to Rule 16-934 renumber it as Rule 16-941 and place it in new Division 5 of Title 16, Chapter 900. Rule 16-934 "is intended to authorize a court to permit inspection of a case record that is not otherwise subject to inspection, or to deny inspection of a case record that otherwise would be subject to inspection" if certain conditions are met. It is currently located in Division 4, Resolution of Disputes, with Rules governing the procedure for contesting determinations by custodians, including administrative review and declaratory relief. The General Court Administration Subcommittee determined that Rule 16-934 should be moved to a new Division for "Other Requests." There are no substantive changes proposed to new Rule 16-941.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 5 – OTHER REQUESTS

ADD new Rule 16-942, as follows:

Rule 16-942. PROTECTED INDIVIDUALS – REQUEST TO SHIELD

(a) Definitions

The following definitions apply in this Rule:

(1) Personal Information

"Personal information" means information described in Code, Courts Article, § 3-2301(d).

(2) Protected Individual

"Protected individual" means an individual described in Code, Courts Article, § 3-2301(e).

(b) Applicability

This Rule applies to a request by or on behalf of a protected individual to shield from public inspection personal information contained in a case record.

(c) Request

A request to shield pursuant to this Rule shall itself be shielded and shall:

(1) be in writing;

(2) provide sufficient information to permit the court to confirm that the requester or individual on whose behalf the request is made is a protected individual;

(3) state with particularity each record alleged to contain personal information and the location of the personal information within the record; and

(4) be filed with the clerk.

(d) Shielding of Record upon Request

Upon the filing of a request pursuant to this Rule, the clerk shall deny public inspection of the case record for a period not to exceed five business days, including the day the request is filed, in order to allow the court an opportunity to determine whether an order should issue. Immediately upon docketing, the request shall be delivered to a judge who is not the protected individual or related to the protected individual named in the request for consideration.

(e) Determination; Order

(1) The court shall consider a request filed under this Rule on an expedited basis.

(2) If the court determines that the case record contains personal information of a protected individual, the court shall:

(A) order the clerk to redact the personal information from a copy of each case record that is subject to public inspection and shield the unredacted version of the case record; and,

(B) in an open case, order the parties to redact specified personal information from all future filings in the proceeding and, if the personal information is necessary to be included in the filing, file an unredacted copy, which shall be shielded by the clerk.

Cross reference: See Rule 20-201.1 pertaining to restricted information in electronic court filings.

Source: This Rule is new. It is derived in part from former Rule 16-934 (2025).

REPORTER'S NOTE

Proposed new Rule 16-942 extends the protections of the Judge Andrew F. Wilkinson Judicial Security Act (the "Act"), signed into law on May 9, 2024, to publicly available court records. The Act established the Office of Information Privacy (the "OIP") in the Administrative Office of the Courts (the "AOC") and established the ability for current or retired state judges, federal judges, magistrates, and other judicial officers and their families to seek to have certain personal information removed from certain publications, websites, and government records. The Act also created a Judicial Address Confidentiality Program.

The Act applies to records held by a "governmental entity" (defined as Executive Branch agencies and local entities that are political subdivisions of the state) and real property records but does not apply to public case records. The AOC was informed that judges and other judicial officers, who, from time to time, may be private parties in a case, expressed concern about their personal information being available in Case Search or at courthouse kiosks. In response, the AOC requests that the Rules Committee consider the formulation of a Rule to permit individuals covered by the Act to request shielding from public-facing Judiciary systems.

New Rule 16-942 is derived in part from current Rule 16-934 and the Act.

Section (a) adopts the definitions of "personal information" and "protected individual" from the Act.

Section (b) states that the Rule applies to a request by or on behalf of a protected individual to shield certain information in a case record. Rule 16-903 contains definitions applicable in all of the Rules in Title 16, Chapter 900, and includes, as section (d), the definition of the term "case record," which is used throughout new Rule 16-942.

Section (c) is derived in part from Code, State Government Article, §3-2302. It requires the request to shield to be in writing, provide sufficient information for the court to confirm that the requester or the individual on whose behalf the request is made is a protected individual, state in detail the records and information that are the subject of the request, and be filed with the clerk. The General Court Administration Subcommittee was informed that specificity will assist courts with implementing the requests. The OIP creates standards for compliance and can assist courts with questions about application of the Act and, by extension, the new Rule.

Section (d) is derived from current Rule 16-934 (c). It provides for the temporary shielding of the subject record while the court considers the request. The temporary shielding may not exceed five business days. The request must be docketed and delivered immediately to a judge who is not the protected individual or related to the protected individual. This provision was added to Rule 16-942 to make it clear that a judge cannot rule on the judge's own request or a request pertaining to a family member of the judge.

Section (e) is derived in part from current Rule 16-934 (d). It requires expedited consideration of the request and instructions for compliance if the record is found to contain personal information. Subsection (e)(2)(B) provides for redaction of the personal information in future filings in an open case. It is derived in part from the procedure in Rule 20-201.1 (c).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-512 by updating a reference to Rule 16-934 in the cross reference following subsection (c)(3), as follows:

Rule 2-512. JURY SELECTION

. . .

(c) Jury List

. . .

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for identification and offered in evidence pursuant to Rule 2-516, a jury list is not part of the case record.

Cross reference: See Rule ~~16-934~~ 16-941 concerning petitions to permit or deny inspection of a case record.

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MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 900 —CHANGE OF NAME; JUDICIAL DECLARATION OF GENDER IDENTITY

AMEND Rule 15-901 by updating a reference to Rule 16-934 in the Committee note following subsection (c)(1)(G), as follows:

Rule 15-901. ACTION FOR CHANGE OF NAME

. . .

(c) Petition

(1) Contents

An action for change of name shall be commenced by filing a petition captioned "In the Matter of ..." [stating the name of the individual whose name is sought to be changed] "for change of name to ..." [stating the change of name desired]. The petition shall be under oath and shall contain the following information:

. . .

(G) if the individual whose name is sought to be changed is a minor, (i) a statement explaining why the petitioner believes that the name change is in the best interest of the minor; (ii) the name and address of each parent and any guardian or custodian of the minor; (iii) whether each of those persons consents to the name change; (iv) whether the petitioner has reason to believe

that any parent, guardian, or custodian is unfamiliar with the English language and, if so, the language the petitioner reasonably believes the individual can understand; (v) if the minor is at least ten years old, whether the minor consents to the name change; and (vi) if the minor is younger than ten years old, whether the minor objects to the name change; and

Committee note: If a petition filed on behalf of a minor contains confidential information pertaining to the minor, the petitioner may request that the court seal or otherwise limit inspection of a case record as provided in Rule ~~16-934~~ 16-941.

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MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-203 by updating a reference to Rule 16-934 in the cross reference following subsection (c)(6), as follows

Rule 16-203. ELECTRONIC FILING OF PLEADINGS, PAPERS, AND REAL PROPERTY INSTRUMENTS

. . .

(c) Criteria for Adoption of Plan

In developing a plan for the electronic filing of pleadings, the County Administrative Judge or the Chief Judge of the District Court, as applicable, shall be satisfied that the following criteria are met:

. . .

(6) the court can discard or replace the system during or at the conclusion of a trial period without undue financial or operational burden.

The State Court Administrator shall review the plan and make a recommendation to the Chief Justice of the Supreme Court with respect to it.

Cross reference: For the definition of "public record," see Code, General Provisions Article, § 4-101. See also Rules ~~16-901 – 16-934~~ 16-901 through 16-942 (Access to Judicial Records).

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MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-204 by updating a reference to Rule 16-934 in section (b), as follows:

Rule 16-204. REPORTING OF CRIMINAL AND MOTOR VEHICLE INFORMATION

. . .

(b) Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings

Criminal history record information contained in court records of public judicial proceedings is subject to inspection in accordance with Rules 16-901 through ~~16-934~~ 16-942.

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MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 16-904 by updating a reference to Rule 16-934 in the Committee note following section (c), as follows:

Rule 16-904. GENERAL POLICY

. . .

(c) Exhibit Pertaining to Motion or Marked for Identification

Unless a judicial proceeding is not open to the public or the court expressly orders otherwise and except for identifying information shielded pursuant to law, a case record that consists of an exhibit (1) submitted in support of or in opposition to a motion or (2) marked for identification by the clerk at a hearing or trial or offered in evidence, whether or not admitted, is subject to inspection, notwithstanding that the record otherwise would not have been subject to inspection under the Rules in this Chapter.

Cross reference: See Rules 2-516, 3-516, and 4-322 concerning exhibits.

Committee note: Section (c) is based on the general principle that the public has a right to know the evidence upon which a court acts in making decisions, except to the extent that a superior need to protect privacy, safety, or security recognized by law permits particular evidence, or the evidence in particular cases, to be shielded. See Rule ~~16-934~~ 16-941 authorizing a court to permit inspection of a case record that is not otherwise subject to inspection or to deny inspection of a case record that otherwise would be subject to inspection.

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MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-914 by updating a reference to Rule 16-934 in the Committee note following section (e) and in subsection (k)(2), as follows:

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

. . .

(e) Except for docket entries and orders entered under Rule 10-108, papers and submissions filed in guardianship actions or proceedings under Title 10, Chapter 200, 300, 400, or 700 of the Maryland Rules.

Committee note: Most filings in guardianship actions are likely to be permeated with financial, medical, or psychological information regarding the minor or disabled person that ordinarily would be sealed or shielded under other Rules. Rather than require custodians to pore through those documents to redact that kind of information, this Rule shields the documents themselves subject to Rule ~~16-934~~ 16-941, which permits the court, on a motion and for good cause, to permit inspection of case records that otherwise are not subject to inspection. There may be circumstances in which that should be allowed. Parties to the action have access to the case records unless the court orders otherwise. See Rule 10-105 (b). The guardian, as a party, has access to the case records and may need to share some of them with third persons in order to perform the duties of the guardian. This Rule is not intended to impede the guardian from doing so. Public access to the docket entries and to orders entered under Rule 10-108 will allow others to be informed of the guardianship and to seek additional access pursuant to Rule ~~16-934~~ 16-941.

. . .

(k) A case record that:

(1) a court has ordered sealed or not subject to inspection, except in conformance with the order; or

(2) in accordance with Rule ~~16-934 (b)~~ 16-941 (b) is the subject of a pending petition to preclude or limit inspection.

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MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-915 by updating references to Rule 16-934 in section (c), section (d), and the cross reference following section (i), as follows:

Rule 16-915. CASE RECORDS – REQUIRED DENIAL OF INSPECTION – SPECIFIC INFORMATION

. . .

(c) The address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, who has requested, or as to whom the State has requested, that such information be shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or petition filed under Rule ~~16-934~~ 16-941.

(d) The name of a minor victim or any other information that could reasonably be expected to identify a minor victim in a criminal action or a juvenile delinquency action where the juvenile court waives jurisdiction.

Cross reference: See Code, Criminal Procedure Article, § 11-301(b).

~~*(d)*~~*(e)* The address, telephone number, and e-mail address of a witness in a

criminal or juvenile delinquency action, who has requested, or as to whom the State has requested, that such information be shielded. Such a request may be made at any time, including a request or petition filed under Rule ~~16-934~~ 16-941.

~~(e)~~(f) Any part of the Social Security or federal tax identification number of an individual.

~~(f)~~(g) A trade secret, confidential commercial information, confidential financial information, or confidential geological or geophysical information.

~~(g)~~(h) Information about a person who has received a copy of a case record containing information prohibited by Rule 1-322.1.

~~(h)~~(i) The address, telephone number, and e-mail address of a payee contained in a Consent by the payee filed pursuant to Rule 15-1302 (c)(1)(F).

Cross reference: See Rule ~~16-934 (i)~~ 16-941 (i) concerning information shielded upon a request authorized by Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) and in criminal actions. For obligations of a filer of a submission containing restricted information, see Rules 16-916 and 20-201.1.

Source: This Rule is derived from former Rule 16-908 (2019).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-203 by updating a reference to Rule 16-934 in subsection (e)(3), as follows:

Rule 20-203. REVIEW BY CLERK; STRIKING OF SUBMISSION; DEFICIENCY NOTICE; CORRECTION; REQUEST FOR COURT ORDER TO SEAL

. . .

(e) Restricted Information

. . .

(3) Shielding on Motion of Party

A party aggrieved by the refusal of the clerk to shield a filing or part of a filing that contains restricted information may file a motion pursuant to Rule ~~16-934~~ 16-941.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 500 – MISCELLANEOUS RULES

AMEND Rule 20-504 by changing Rule 16-934 to Rule 16-942 in the cross reference following section (b), as follows:

Rule 20-504. AGREEMENTS WITH VENDORS

. . .

(b) Agreement With Administrative Office of the Courts

As a condition of having the access to MDEC necessary for a person to become a vendor, the person must enter into a written agreement with the Administrative Office of the Courts that, in addition to any other provisions, (1) requires the vendor to abide by all Maryland Rules and other applicable law that limit or preclude access to information contained in case records, whether or not that information is also stored in the vendor's database, (2) permits the vendor to share information contained in a case record only with a party or attorney of record in that case who is a customer of the vendor, (3) provides that any material violation of that agreement may result in the immediate cessation of remote electronic access to case records by the vendor, and (4) requires the vendor to include notice of the agreement with the Administrative Office of the Courts in all agreements between the vendor and its customers.

Cross reference: See Maryland Rules 20-109 and 16-901 through ~~16-934~~ 16-942.

Source: This Rule is new.

AGENDA ITEM 3

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-106 by deleting a portion of current subsection (a)(3)(A) and replacing it with a statement pertaining to filing by a self-represented litigant; by creating new subsection (a)(3)(B) containing a portion of current subsection (a)(3)(A) pertaining to paper filing by a self-represented litigant, with amendments; by adding new subsection (a)(3)(C) pertaining to electronic filing by a self-represented litigant; by adding a Committee note following subsection (a)(3)(C); by adding new subsection (a)(3)(D) pertaining to the administrative judge's authority to permit a self-represented litigant to change how the litigant files; by re-lettering current subsection (a)(3)(B) as (a)(3)(E); and by making stylistic changes, as follows:

RULE 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

(a) Filers – Generally

(1) Attorneys

Except as otherwise provided in section (b) of this Rule, an attorney who enters an appearance in an action shall file electronically the attorney's entry of appearance and all subsequent submissions in the action.

(2) Judges, Judicial Appointees, Clerks, and Judicial Personnel

Except as otherwise provided in section (b) of this Rule, judges, judicial appointees, clerks, and judicial personnel, shall file electronically all submissions in an action.

(3) Self-represented Litigants

(A) ~~Except as otherwise provided in section (b) of this Rule,~~ A self-represented litigant who is a registered user may elect to file electronically or in paper form.

(B) Subject to section (b) of this Rule, a self-represented litigant in an action who is a registered user and who files an initial pleading or paper electronically shall file electronically all subsequent submissions in the action in that court.

(C) A self-represented litigant who files an initial pleading or paper in paper form shall file in paper form all subsequent submissions in the action in that court and shall not be considered a registered user under this Title in that action.

Committee note: A self-represented litigant must choose a filing method and continue to file in the same manner throughout the action in that court. Nothing in this Rule is intended to preclude a self-represented litigant from selecting a different filing method in the action on appeal.

(D) For good cause shown, the administrative judge having direct administrative supervision over the court in which an action is pending may permit a self-represented litigant to change how the litigant files in the action.

~~(B)~~(E) A self-represented litigant in an action who is not a registered user may not file submissions electronically.

(4) Other Persons

Except as otherwise provided in the Rules in this Title, a registered user who is required or permitted to file a submission in an action shall file the submission electronically. A person who is not a registered user shall file a submission in paper form.

Committee note: Examples of persons included under subsection (a)(4) of this Rule are government agencies or other persons who are not parties to the action but are required or permitted by law or court order to file a record, report, or other submission with the court in the action and a person filing a motion to intervene in an action.

(b) Exceptions

(1) MDEC System Outage

Registered users, judges, judicial appointees, clerks, and judicial personnel are excused from the requirement of filing submissions electronically during an MDEC system outage in accordance with Rule 20-501.

(2) Other Unexpected Event

If an unexpected event other than an MDEC system outage prevents a registered user, judge, judicial appointee, clerk, or judicial personnel from filing submissions electronically, the registered user, judge, judicial appointee, clerk, or judicial personnel may file submissions in paper form until the ability to file electronically is restored. With each submission filed in paper form, a registered user shall submit to the clerk an affidavit describing the event that prevents the registered user from filing the submission electronically and when,

to the registered user's best knowledge, information, and belief, the ability to file electronically will be restored.

Committee note: This subsection is intended to apply to events such as an unexpected loss of power, a computer failure, or other unexpected event that prevents the filer from using the equipment necessary to effect an electronic filing.

(3) Other Good Cause

For other good cause shown, the administrative judge having direct administrative supervision over the court in which an action is pending may permit a registered user, on a temporary basis, to file submissions in paper form. Satisfactory proof that, due to circumstances beyond the registered user's control, the registered user is temporarily unable to file submissions electronically shall constitute good cause.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 20-106 had been approved by the Committee at its January 10, 2025 meeting. In the course of the Style Subcommittee's review of the approved amendments, the Subcommittee identified several issues that could not be resolved without substantive changes to the Rule. Accordingly, the Subcommittee remanded the Rule to the General Court Administration Subcommittee for further consideration.

The proposed amendments were recommended by the Major Projects Committee (the "MPC") to clarify requirements for self-represented litigants ("SRLs") who register to use MDEC. Rule 20-106 requires attorneys as well as judges, judicial appointees, and judicial personnel to file electronically, with limited exceptions for an MDEC outage or another unexpected event. SRLs are the only filers still permitted to file in paper form, but they have the option of registering for MDEC, becoming registered users, and filing electronically.

Rule 20-106 currently provides that an SRL who is a registered MDEC user must file all submissions in an action electronically. The MPC was alerted to a situation where an SRL who is a registered user wished to file a case in paper form. The Rule does not include a provision for a registered user to "unregister" or opt out of being a registered user. The MPC recommends permitting an SRL to file either electronically or in paper form in each action, but requiring the SRL to continue to use the chosen filing method thereafter in that action.

Proposed amendments to Rule 20-106 (a)(3) implement the MPC recommendation. Subsection (a)(3)(A) is amended to state that an SRL who is a registered user may file either electronically or in paper. New subsections (a)(3)(B) and (a)(3)(C) set forth the policy that an SRL who files an initial pleading or paper in electronic form or in paper form must continue to use that method throughout the action.

The Style Subcommittee questioned whether the phrase "in that action" was intended to include any judicial review or appeal in the case. "Action" is defined in Rule 1-202 (a) to mean "collectively all the steps by which a party seeks to enforce any right in a court or all the steps of a criminal prosecution." The General Court Administration Subcommittee was informed that applying the proposed approach to appeals (e.g., an SRL who files a complaint in paper form in the trial court must continue to file in paper form on appeal) would be complicated for the clerks of the appellate courts to enforce and does not serve the same policy function as prohibiting a litigant from changing filing methods mid-case. A clarification is added to subsection (a)(3)(B) and (a)(3)(C) that their strictures only apply "in that court," and a Committee note further explains the intent of the new provisions.

Additionally, language is added in subsection (a)(3)(C) to clarify that an SRL who is a registered user and who chooses to file in paper form "shall not be considered a registered user under this Title in that action." Rule 20-101 defines "registered user" as "an individual authorized to use the MDEC system by the State Court Administrator pursuant to Rule 20-104" and is used throughout Title 20. The proposed language in subsection (a)(3)(C) makes it clear that the procedures in Title 20 do not apply when an SRL who is a registered user is filing in paper.

New subsection (a)(3)(D) permits the administrative judge, for good cause shown, to allow the SRL to change how the SRL files in an action.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-205 by adding new subsection (c)(1) pertaining to MDEC service by the clerk on registered users entitled to service; by creating new subsection (c)(2) containing the current provisions of section (c), with stylistic amendments; by adding a new stem to section (d); by adding to subsection (d)(1) a requirement that the filer cause MDEC to electronically serve submissions not served by the clerk, by adding a cross reference to Rules pertaining to service requirements in the event of an MDEC system outage; and by making stylistic changes, as follows:

Rule 20-205. SERVICE

(a) Original Process

Service of original process shall be made in accordance with the applicable procedures established by the other Titles of the Maryland Rules.

(b) Subpoenas

Service of a subpoena shall be made in accordance with the applicable procedures established by the other Titles of the Maryland Rules.

(c) Court Orders and Communications

(1) Except as provided by subsection (c)(2) of this Rule, the clerk is responsible for causing the MDEC system to electronically serve writs, notices,

official communications, court orders, and other dispositions on each registered user entitled to service of the submission.

(2) The clerk is responsible for serving writs, notices, official communications, court orders, and other dispositions, in the manner set forth in Rule 1-321, on ~~persons~~ each person entitled to receive service of the submission who (A) ~~are~~ is not a registered ~~users~~ user, (B) ~~are~~ is a registered ~~users~~ user but ~~have~~ has not entered an appearance in the action, ~~and~~ or (C) ~~are persons~~ is a person otherwise entitled to receive service of copies of tangible items that are in paper form.

(d) Other Electronically Filed Submissions

For all electronically filed submissions other than those described in sections (a), (b), and (c) of this Rule:

(1) ~~On~~ Except as provided by subsection (d)(2) of this Rule, (A) the filer is responsible for causing the MDEC system to electronically serve each registered user entitled to receive service, and (B) on the effective date of filing, the MDEC system shall electronically serve ~~on~~ each registered ~~users~~ user entitled to receive service ~~all other submissions filed electronically~~.

Cross reference: For the effective date of filing, see Rule 20-202.

(2) The filer is responsible for serving, in the manner set forth in Rule 1-321, ~~persons~~ each person entitled to receive service of the submission who (A) ~~are~~ is not a registered ~~users~~ user, (B) ~~are~~ is a registered ~~users~~ user but ~~have~~ has not

entered an appearance in the action, or (C) ~~are persons~~ is a person otherwise entitled to receive service of copies of tangible items that are in paper form.

Committee note: Rule 1-203 (c), which adds three days to certain prescribed periods after service by mail, does not apply when service is made by the MDEC system.

Cross reference: See Rule 20-106 (b)(1) and Rule 20-501 concerning service requirements in the event of an MDEC system outage.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-205 had been approved by the Committee at its January 10, 2025 meeting. In the course of the Style Subcommittee's review of the approved amendments, the Subcommittee identified issues that could not be resolved without substantive changes to the Rule. Accordingly, the Subcommittee remanded the Rule to the General Court Administration Subcommittee for further consideration.

Proposed amendments to Rule 20-205 clarify electronic service requirements in MDEC to address an apparent gap in the MDEC Rules regarding service of electronic submissions.

New subsection (c)(1) clarifies that the clerk is responsible for causing the MDEC system to serve court orders and communications on registered users entitled to service. Subsection (c)(2) contains the current language from section (c), with stylistic amendments.

Section (d) is amended to add stem language, which states that it applies to electronically filed submissions other than those described in sections (a), (b), and (c). This applicability previously was stated at the end of subsection (d)(1).

Subsection (d)(1) is amended to state that the filer is responsible for causing MDEC to electronically serve submissions on registered users entitled to service. Current Rule 20-205 (d) sets forth that "the MDEC system shall electronically serve" these submissions. The Committee was informed that some users neglect to properly electronically serve submissions, and the Rules do not expressly require the filer to instruct MDEC to conduct electronic service. The current language can be a point of confusion, particularly with self-represented litigants using MDEC. The clarifying amendment to

subsection (d)(1) states that the filer is responsible for causing MDEC to electronically serve submissions.

A cross reference to the Rules applicable to service in the event of an MDEC system outage follows section (d).

Stylistic amendments to sections (c) and (d) change “persons” and “users” to the singular “person” and “user.”

AGENDA ITEM 4

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-215 by adding to the cross reference at the end of the Rule and by making stylistic changes, as follows:

Rule 4-215. WAIVER OF COUNSEL

(a) First Appearance in Court Without Counsel

At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:

(1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.

(2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.

(3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.

(4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.

(5) If trial is to be conducted on a subsequent date, 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.

(6) If the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel.

The clerk shall note compliance with this section in the file or on the docket.

(b) Express Waiver of Counsel

If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof of the defendant's express waiver of counsel. After there has been an express waiver, no postponement of a scheduled trial or hearing date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.

(c) Waiver by Inaction--District Court

In the District Court, if the defendant appears on the date set for trial without counsel and indicates a desire to have counsel, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time, comply with section (a) of this Rule, if the record does not show prior compliance, and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the trial only if (1) the defendant received a copy of the charging document containing the notice as to the right to counsel and (2) the defendant either (A) is charged with an offense that is not punishable by a fine exceeding five hundred dollars or by imprisonment, or (B) appeared before a judicial officer of the District Court pursuant to Rule 4-213 (a) or (b) or before the court pursuant to section (a) of this Rule and was given the required advice.

(d) Waiver by Inaction—Circuit Court

If a defendant appears in circuit court without counsel on the date set for hearing or trial, indicates a desire to have counsel, and the record shows compliance with section (a) of this Rule, either in a previous appearance in the

circuit court or in an appearance in the District Court in a case in which the defendant demanded a jury trial, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial.

(e) Discharge of Counsel—Waiver

If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If

the court permits the defendant to discharge counsel, it shall comply with subsections ~~(a)(1) (4)~~ (a)(1) through (a)(4) of this Rule if the docket or file does not reflect prior compliance.

Cross reference: See Rule 4-213.1 with respect to waiver of the right to an attorney at an initial appearance before a judge and Rule 4-216.2 (b) with respect to waiver of the right to an attorney at a hearing to review a pretrial release decision of a commissioner. See *Dykes v. State*, 444 Md. 642 (2015) and *State v. Westray*, 444 Md. 672 (2015) pertaining to discharge of appointed counsel. See Code, Criminal Procedure Article, §16-213 with respect to appointment of an attorney other than through the Office of the Public Defender.

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.

REPORTER'S NOTE

Proposed amendments to Rule 4-215 expand the cross reference at the end of the Rule to provide additional guidance to parties and the court when the discharge of counsel analysis in section (e) is triggered.

Both *Dykes v. State*, 444 Md. 642 (2015) and *State v. Westray*, 442 Md. 672 (2015) address procedures and considerations when an indigent defendant seeks to discharge appointed counsel. The Supreme Court – then the Court of Appeals – held in *Dykes* that a request to discharge appointed counsel for a reason deemed meritorious by the court is not the equivalent of a waiver of the right the appointed counsel. The Court also determined that if the Office of the Public Defender is unable or unwilling to provide new counsel, the trial court may appoint counsel for the defendant pursuant to its inherent authority. In *Westray*, the Court provided additional guidance on when an unmeritorious discharge of counsel can be treated as a waiver of counsel.

The Rules Committee, prompted by the opinions in *Dykes* and *Westray*, recommended a series of Rules changes to clarify the procedures for evaluating a request to discharge counsel. In *Dykes*, Justice Shirley M. Watts wrote a

concurring opinion suggesting that the Committee consider providing guidance to trial judges after they determine that a defendant has a meritorious reason for appearing without counsel – particularly in the circumstances present in *Dykes* where an indigent defendant discharges appointed counsel for a meritorious reason. The Committee proposed in its 191st Report the deletion of Rule 4-215 and the creation of new Rules 4-215 and 4-215.1 for the District Court and circuit courts, respectively. Those proposals were remanded on other grounds without discussion of the discharge issue. Rule 4-215 was amended in the 192nd Report, but the discharge issue raised by *Dykes* was not revisited at that time.

Recently, the Committee was informed that the issue raised in *Dykes* has persisted, most recently in a case where an indigent defendant had conflicts with his attorney appointed from the Office of the Public Defender and a subsequently appointed panel attorney. The OPD declined to be reappointed in the case, but the judge had not yet found that the discharge of appointed counsel was not meritorious.

The Criminal Rules Subcommittee discussed current issues faced by courts attempting to comply with Rule 4-215, agreeing with Judge Charles E. Moylan's characterization of the Rule – cited by Justice Watts – as a "minefield" (see *Dykes* at 671, citing *Garner v. State*, 183 Md.App. 122, 127 (2008), aff'd, 414 Md. 372, (2010)). The Subcommittee considered whether to expand section (e) to set forth a procedure after the court has determined whether the reason for discharging an attorney was meritorious.

The Subcommittee concluded that the "meritorious" analysis is a significant issue for trial judges and determined that it would be most helpful to expand the cross reference at the end of the Rule to include references to *Dykes*, *Westray*, and a statute addressing appointment of an attorney when the Public Defender is unable or declines to provide representation.

A stylistic change in section (e) is also proposed.

AGENDA ITEM 5

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-345 by deleting certain language in subsection (e)(1) and adding language regarding the court's revisory power to enter a disposition of probation before judgment, by expanding the current cross reference and Committee note after subsection (e)(1), by adding new subsection (e)(2) addressing the duration of the court's revisory power, by adding new subsection (e)(3) requiring the filing of a Request for Hearing and Determination, by renumbering current subsection (e)(2) as (e)(4), by moving section (f) and making current subsection (e)(3) new subsection (f)(1), by making new subsection (f)(2) with the language of current section (f), and by updating an internal reference in subsection (f)(2), as follows:

Rule 4-345. SENTENCING - REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

Cross reference: See *State v. Brown*, 464 Md. 237 (2019), concerning an evident mistake in the announcement of a sentence.

(d) Desertion and Non-Support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

(e) Modification Upon Motion

(1) Generally

Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence ~~except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not~~, including the ability to enter a disposition of probation before judgment, for the period of time stated in subsection (e)(2) of this Rule. The revisory power does not include the ability to increase the sentence.

Cross reference: See Rule 7-112 (b) regarding a de novo appeal from a judgment of the District Court. See Code, Criminal Procedure Article, § 6-220(f) for restrictions on a court's authority to enter probation before judgment.

Committee note: The revisory power to enter a disposition of probation before judgment applies in any action in which probation before judgment would have been a lawful disposition at the original sentencing. Except as provided in Code, Health-General Article, § 8-505, the court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health-General Article, § 8-507.

(2) Duration of Revisory Power

In ruling on a motion filed pursuant to subsection (e)(1) of this Rule, the court may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant, except that the court, for good cause shown, may extend the five-year period by an additional 60 days.

(3) Request for Hearing and Determination of Motion

Subsection (e)(3) of this Rule applies to motions filed on or after [effective date of amendment]. No later than six months before the expiration of five years from the date the sentence originally was imposed on the defendant, if the motion has not been ruled upon, the defendant shall file a "Request for Hearing and Determination" of the motion. Upon receipt of the request, the court shall review the request and the motion and shall either (a) deny the motion without a hearing or (b) proceed in accordance with section (f) of this Rule. Except for good cause shown, a failure to timely file a Request for Hearing and Determination of the motion may be deemed a withdrawal of the motion.

~~(2)~~(4) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, § 11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, § 11-503 that states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(f) Open Court Hearing

~~(3)~~(1) Inquiry by Court

Before considering a motion under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, § 11-403(e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

~~(f) Open Court Hearing~~

(2) Conduct of Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present at the hearing. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in subsection ~~(e)(2)~~(e)(4) of this Rule have been satisfied. If the court grants the motion, the court ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Cross reference: See Code, Criminal Law Article, § 5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to October 1, 2017, and for procedures relating thereto. See Code, Criminal Procedure Article, § 10-105.3 regarding an application for resentencing by a person incarcerated after a conviction of possession of cannabis under Code, Criminal Law Article, § 5-601.

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

REPORTER'S NOTE

Several amendments are proposed to Rule 4-345 to conform the provisions of the Rule to current practice and to address issues recently raised in an appellate decision.

Proposed amendments to subsection (e)(1) delete and add certain language. The provision that the court may not revise a sentence after five years from the date the sentence was imposed is deleted from subsection (e)(1) and moved to new subsection (e)(2). New language in subsection (e)(1) highlights that revisory power includes the court's ability to enter a disposition of probation before judgment ("PBJ"). Despite courts historically demonstrating their ability to enter PBJs when considering a motion to revise under Rule 4-345, the current language of the Rule does not clearly confer this

authority. Accordingly, this new language ensures that the current practice is permitted within the language of the Rule.

The cross reference after subsection (e)(1) is proposed to be updated. Additional language is added to clarify the current reference to Rule 7-112 (b). A new reference to Code, Criminal Procedure Article, § 6-220(f) is added, pointing to restrictions on probation before judgment.

The Committee note following subsection (e)(1) is also expanded. A new sentence is added noting that the revisory power to enter a disposition of probation before judgment applies in actions where probation before judgment would have been a lawful disposition at the original sentence. A reference to Code, Health-General Article, § 8-505 is also added to the current language of the Committee note. The current language does not account for the 2018 amendments to the Health-General Article of the Code limiting the eligibility of a defendant convicted of a crime of violence for evaluations and treatment pursuant to § 8-507. The proposed amendment acknowledges this exception to the court's ability to commit a defendant to treatment for drug or alcohol dependency.

New subsections (e)(2) and (e)(3) are proposed to address situations similar to that found in *State v. Thomas*, 488 Md. 456 (2024). In *Thomas*, the defendant filed a timely motion to modify his sentence and repeatedly requested a hearing before the deadline for ruling. However, the motion was neither denied nor granted during the five-year period. The Supreme Court of Maryland held that a trial court lacked jurisdiction to modify a sentence more than five years after entry of the sentence, even if a timely motion to modify was filed.

In addition to the majority opinion in *Thomas*, one concurring opinion, one concurring and dissenting opinion, and one dissenting opinion were filed. In the concurring and dissenting opinion, Justice Eaves noted that Rules changes may address concerns about the type of uncorrectable error demonstrated by *Thomas*:

> This pitfall requires correction either by the General Assembly or this Court in its rulemaking capacity based on recommendations from the Standing Committee on Rules of Practice and Procedure. Such a correction could be as simple as requiring that a defendant need only request a hearing within five years for the court to have jurisdiction. If the defendant complies, then the sentencing court retains jurisdiction until a definitive ruling is made. Any revision, of course, also could address finality concerns and instruct the sentencing judge to use reasonable efforts to schedule a hearing within five years from the date the defendant originally was sentenced, but otherwise make clear that an

inability to do so, for whatever reason, does not deprive the court of jurisdiction. *Id.* at 518.

Proposed new subsection (e)(2) of Rule 4-345 reiterates the five-year limitation currently included in subsection (e)(1). However, the new language provides that the period may be extended by 60 days for good cause shown. This 60-day extension intends to address situations, such as seen in *Thomas*, where logistic or administrative hurdles make holding a hearing and ruling on the motion within the five-year period impracticable.

New subsection (e)(3) requires a Request for Hearing and Determination of Motion to be filed no later than six months before the expiration of the five-year period, alerting the court of the approaching deadline to rule on the motion. A failure to file such a request may be treated as a withdrawal of the motion, except for good cause shown. To ensure that this amendment to the Rule does not impact the rights of defendants with pending motions to revise, the new language states that the subsection applies only to motions filed on or after the effective date of the Rule.

The remaining amendments to Rule 4-345 are stylistic. Current subsection (e)(2) is renumbered as subsection (e)(4). Upon review, it was determined that current subsection (e)(3) concerns an inquiry by the court at an open court hearing on a motion pursuant to Rule 4-345. Accordingly, the subsection is moved to section (f), becoming new subsection (f)(1). Current section (f) is relabeled as subsection (f)(2) and an appropriate tagline is added. Finally, an internal reference in new subsection (f)(2) is updated to reflect the structural changes to the Rule.

AGENDA ITEM 6

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 500 – EXPUNGEMENT OF RECORDS

AMEND Rule 4-508.1 by updating a cross reference after section (d), as follows:

Rule 4-508.1. EXPUNGEMENT BY OPERATION OF LAW

. . .

(d) Compliance by Custodians

Not later than ten days after the effective date of the expungement stated in the notice, each custodian shall expunge all records subject to the expungement.

Cross reference: See Code, Criminal Procedure Article, § ~~10-101(e)~~ 10-101(f) for methods of expungement.

Source: This Rule is new.

REPORTER'S NOTE

On April 22, 2025, the Governor signed Senate Bill 432, the Expungement Reform Act of 2025. The new law makes several changes to the statutes governing expungement, including adding a new definition to Code, Criminal Procedure Article, § 10-101, altering the lettering of prior sections. Accordingly, a housekeeping amendment is proposed to Rule 4-508.1 to update a reference to a certain section of Code, Criminal Procedure Article, § 10-101 in the cross reference after section (d).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 500 – EXPUNGEMENT OF RECORDS

AMEND Rule 4-512 by updating a cross reference after section (e), as follows:

Rule 4-512. DISPOSITION OF EXPUNGED RECORDS

. . .

(e) Storage in Denied Access Area on Premises--Prohibition on Transfer

All expunged records shall be filed and maintained by the clerk in numerical sequence by docket or case file number, together with the Index of Expunged Records, in one or more locked filing cabinets to be located on the premises of the clerk's office but in a separate secure area to which the public and other persons having no legitimate reason for being there are denied access. Expunged records shall not be transferred to any Hall of Records facility.

Cross reference: Code, Criminal Procedure Article, § ~~10-101(e)~~ 10-101(f).

. . .

REPORTER'S NOTE

On April 22, 2025, the Governor signed Senate Bill 432, the Expungement Reform Act of 2025. The new law makes several changes to the statutes governing expungement, including adding a new definition to Code,

Criminal Procedure Article, § 10-101, altering the lettering of prior sections. Accordingly, a housekeeping amendment is proposed to Rule 4-512 to update a reference to a certain section of Code, Criminal Procedure Article, § 10-101 in the cross reference after section (e).

INFORMATION ITEM 1

THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. YVETTE M. BRYANT, Chair
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair
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MEMORANDUM

TO : Members of the Rules Committee

FROM : Meredith Drummond, Esq., Assistant Reporter

DATE : May 12, 2025

SUBJECT : Information Item: Update on Committee on Equal Justice Rules Review Subcommittee's Recommendation Regarding Rule 4-248

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Equal Justice Committee Rules Review Subcommittee ("the EJC Report"). The EJC Subcommittee was tasked with identifying instances in the Rules which "reflect, perpetuate, or fail to correct systemic biases."

Recommendations made by the EJC Report were forwarded to various Rules Committee subcommittees for preliminary review, discussion, and possible action. The Criminal Rules Subcommittee has discussed several recommendations of the EJC Report over the course of several meetings.

Rule 4-248 concerning the entry of stetted charges was specifically reviewed in the EJC Report. The Rules Review Subcommittee heard anecdotal comments asserting that stets may be used as leverage and reopened disparately against Black defendants. The EJC Report acknowledged that the current Rule "offers at least two checks on the potential for misuse: the right of defendants to object to a stet and the requirement that courts approve a reopening after one year."

The EJC Report recommended that the Rules Committee consider conducting a study on the impact of Rule 4-248 to determine whether there is any data demonstrating a disparate impact. The EJC Report did not set forth any parameters for such a study, and the Criminal Rules Subcommittee determined that it is unlikely that the Rules Committee would have sufficient

resources to conduct a meaningful, statistically rigorous study of this scale. Accordingly, the Criminal Rules Subcommittee decided not to conduct further study at this time.

In addition to the recommendation that a study be considered, an appendix of the EJC Report includes *The Disparate Impact of the Maryland Rules on Black and Brown Individuals*, a Report completed by the Criminal Defense Clinic and the Youth, Education, and Justice Clinic of the University of Maryland Francis King Carey School of Law (hereinafter "the University of Maryland Report"). The University of Maryland Report addressed concerns about Rule 4-248 that are reiterated in the EJC Report and suggested amendments that limit the State's discretion to reopen cases and set an expiration date at which time the stetted charges are marked as *nolle prosequi*. The Subcommittee discussed the proposed amendments to Rule 4-248 that would require the State to *nolle pros* stetted charges after two years. A concern was raised about the logistics of the State keeping track of which cases require a *nolle pros* after the appropriate time. The Subcommittee tabled discussion of the amendments to gather additional information.

The Criminal Rules Subcommittee again considered the proposed amendments to Rule 4-248 at an April 2025 Subcommittee meeting. The Subcommittee noted that stetted cases can already be expunged after three years, and it is unclear whether potential benefits of earlier action after two years would outweigh the potential disadvantages of the change. Changing a stet to a *nolle pros* after two years, followed by its possible expungement after three years, adds an extra step to a process that yields a similar result. Concerns also were raised that entering a *nolle pros* earlier for these cases would limit the effectiveness of certain agreements, such as orders to stay away, that were made between parties when agreeing to place charges on the stet docket. After hearing other concerns about the logistical and administrative burdens associated with implementing the proposed amendments, the Subcommittee decided to take no further action at this time.

In summary, after consideration of the EJC Report's recommendation and the draft amendments contained in the University of Maryland Report, no amendments to Rule 4-248 are being pursued at this time.

The relevant excerpts from the EJC Report are attached for reference.

The Maryland Committee on Equal Justice

Rules Review Subcommittee

Report and Recommendations

June 2022

CATEGORY SIX: CRIMINAL PROCEDURE		
Rule	**Recommended Action(s)**	**Location**
RULE 2-243 PLEA AGREEMENTS	The Rules Committee may wish to consider modifying Rule 4-243 to include elements of Fed. R. Crim P. R 11, and to allow for the existence of a written plea agreement in addition to the on-the-record interrogation that must be a part of any guilty plea and to allow courts to acknowledge and incorporate into the record any written plea agreement between the state and the defense.	Section F
RULE 4-248 STET	The Rules Committee should consider conducting a study on the impact of Rule 4-248 to determine whether there is any data demonstrating a disparate impact on Black defendants.	Section C
RULE 4-262 DISCOVERY IN DISTRICT COURT	The Subcommittee does not suggest the imposition of any sort of required sanctions for discovery violations in the circuit court. However, with regard to Rule 4-262, the Rules Committee may wish to consider whether a District Court discovery deadline is practical, and if a postponement should be the (rebuttable) presumptive remedy for a failure to meet that deadline.	Section E1

Subcommittee Recommendation: The Subcommittee recognizes and acknowledges that while the prior Rule changes have reduced the incidence of cash bail, there has been an increase in the number of people held without bail. Worse still, the brunt of this problem falls disproportionately on the poorest defendants and defendants from historically disadvantaged communities. The Subcommittee thanks the justice partners who raised these issues at the public hearings and submitted letters and memoranda. The Subcommittee urges the General Assembly, the Rules Committee, and the Courts to continue to focus on this problem and not to treat the 2017 and 2018 Rules changes as final or definitive or having solved the problems. The Subcommittee recognizes that decisionmakers will need to continue to search to find ways to balance the safety and security of communities with the just demands for liberty for those who have not yet and may not ever be convicted. That said, changes to the State's policies on bail and pretrial detention cannot be addressed by Rules changes alone. These issues will require enhancement and consistency of services across all jurisdictions, including state and local funding and a supportive infrastructure that reaches across county lines.

C. Stet

Affected rules: Rule 4-248

A commenter proposed amending Rule 4-248 to "limit the State's discretion to reopen cases" and to set a two-year limit on reopening.[107] Survey respondents complained that stets were reopened when defendants were alleged to have reoffended and that this tactic is used disparately against Black defendants.

The stet, as such, is unique to Maryland, although a few other states have similar provisions allowing prosecutors to defer prosecution indefinitely without dismissing the charging document. Rule 4-248 states that a defendant may object to the entry of a stet and that a case marked stet on the docket may not be reopened after a year unless the court grants permission due to "good cause shown." In those two respects, the stet differs from an entry of *nolle prosequi*. *Nolle prosequi* is entirely within the discretion of the prosecutor, and a defendant whose charges are dismissed in that fashion has neither the right to object nor the right to insist that good cause be shown before the charges may be refiled.

As noted above, Black people are disproportionately more likely to have contact with the criminal justice system and are more likely to be arrested and charged than white people. In that regard, it would be expected that the practice of offering stets would disproportionately affect Black people as well. The current system offers at least two checks on the potential for misuse: the right of defendants to object to a stet and the requirement that courts approve a reopening after one year.

The stet is, or can be, a form of prosecutorial probation that does not entail any adjudication of guilt. The stet can be conditioned on the satisfaction of certain

[107] *See* University of Maryland Report – April 20, 2021. Appx. B: Responses from Justice Partners, page 47.

conditions, including but not limited to abstaining from future criminal contact or participating in different programs.

Subcommittee Recommendation: The Rules Committee should consider conducting a study on the impact of Rule 4-248 to determine whether there is any data demonstrating a disparate impact on Black defendants.

D. Jury Selection

Affected rules: Rules 2-512, 4-312, and 4-313

A number of stakeholders offered input regarding jury selection. Although the rules governing jury selection are similar in both civil and criminal trials, the entirety of the comments regarding jury selection were directed at selection in criminal proceedings.

Some aspects of jury selection are set by statute and others mandated by the federal Constitution. CJP § 8-201 reserves to each county's jury commissioner the discretion to determine the source lists for the jury pool. Section 8-102 authorizes the Court of Appeals to regulate the creation of jury plans through the rules process. The choices made by the jury commissioner in developing a jury plan will affect the makeup of the venire – a pool limited to those who drive and register to vote, for example, will be narrower in composition than a pool that also includes those who have applied for housing or nutrition assistance.

CJP § 8-103 establishes mandatory qualifications for jurors, some of which disproportionately affect people of color – the requirement that jurors be both fluent and literate in English, for example. Also, people of color are disproportionately likely to have been convicted of felonies, and therefore the statutory exclusion for people who have served a year or more in prison alters the racial makeup of jury pool. Having a fair and representative jury starts with having a fair and representative venire, and the makeup of the venire is largely influenced by statute.

Notwithstanding the statutory requirements, there are areas where Rules changes could make the venire more inclusive. The Rules Committee may wish to consider adopting Rules pursuant to CJP § 8-102 regarding jury plans that require jury commissioners to consider broader sources for jury pools, including, for example, people who have applied for social services or tax refunds. There could also be additional guidance on how frequently address lists are updated to better include those who move frequently or experience periodic housing instability.

Other changes may serve to broaden venire pools. Requiring employers to offer paid time off to jurors, as some states do, would eliminate a potential source of hardship that falls disproportionately on the working impoverished. The same could be said of increasing the per diem offered to jurors, to cover childcare or eldercare expenses incurred during jury duty. The former requires legislative action; the latter depends upon the budgets of the various circuit courts, which vary widely.

THE DISPARATE IMPACT OF THE MARYLAND RULES ON BLACK AND BROWN INDIVIDUALS

Report to the Rules Review Subcommittee of the Maryland Judiciary's Committee on Equal Justice

University of Maryland Francis King Carey School of Law Criminal Defense Clinic
Summer Akhtar, Rose Cowan, Meghan Howie, Kathryn Meader, Veronica Mina, Daniel Mooney, Avery Potts, Kelsey Robinson, and Maneka Sinha, Esq.

University of Maryland Francis King Carey School of Law Youth, Education, and Justice Clinic
Sarah Abutaleb, Alex Greenspan, Maya Jackson, and Michael Pinard, Esq.

April 20, 2021

Maryland saw a 200 percent increase in Black/white racial disparity in youth incarceration, the highest increase in the nation.[56] Our recommendations below aim to urge this Subcommittee to break this chain, and to end this cycle.

EXECUTIVE SUMMARY

Maryland Rules of Criminal Causes

We have identified ten rules in the Criminal Causes title of the Maryland Rules that perpetuate racial biases and, as a result, contribute to racial injustice and mass incarceration:[57]

The Rule	The Recommendations	The Why
Rule 4-216.1 Pretrial Release -- Standards Governing; Rule 4-217 Bail Bonds. Rule 4-216.1 creates standards governing pretrial release decisions and establishes a presumption of pretrial release of defendants on their own personal recognizance. Rule 4-217 governs the use of bail bonds in criminal proceedings.	1. The language of Rule 4-216.1 should be amended to make the imposition of money bail a *prima facie* case for habeas review. 2. The presumption of pretrial release and non-financial condition language from Rule 4-216.1 should be inserted directly into Rule 4-217. 3. A Rules Committee note should be added into Rule 4-217 that requires judges setting bail to consider racial disparities in the context of money bail.	Insertion of such language into Rules 4-216.1 and 4-217 will serve as affirmative safeguards preventing Black and Brown defendants from being disproportionately impacted by the use of money bail and from subsequently becoming vulnerable to the predatory practices of bail bond companies.
Rule 4-248 Stet. This Rule addresses the disposition of a case by stet.	1. Limit the State's discretion to reopen cases placed on the stet docket and set a two-year	Because Black and Brown people make up a majority of the criminal justice system,

[56] *See Fact Sheet*, *supra* note 54. Further, in 2015, Black children in Maryland were 7.93 times more likely than white children to be detained or committed. *Id.* (noting that while only 30 white youth were detained, 238 Black youth were detained).

[57] To be certain, these are not all of the Rules that perpetuate racial biases, but rather the most problematic ones.

	expiration date for stetted cases, at which time a nolle prosequi is entered automatically.	they are disproportionately affected by the State's use of stetted cases as leverage.
Rule 4-262 Discovery in District Court; Rule 4-263 Discovery in Circuit Court. These Rules govern discovery practice in District Court and Circuit Court.	1. Require the State to abide by stricter discovery deadlines that provide more time for the defendant and their lawyer to develop their defense and conduct appropriate investigation. 2. Require judges to impose sanctions on the State when it fails to abide by the required discovery deadlines.	Considering Black and Brown people make up a majority of the criminal justice system, they are disproportionately affected by the loose discovery rules in Maryland. They are unable to prepare comprehensive defenses, and the State is allowed to enter evidence against them that, frequently, they have insufficient, if any, time to review.
Rule 4-311 Trial by Jury. The provision of this Rule pertinent to this Report grants the trial court discretion to permit jurors to separate or sequester during trial and deliberations.	1. Mandate that trial judges admonish jurors each and every time they separate throughout the duration of the trial and deliberations.	When jurors are allowed to leave the courthouse together during trial without admonition, implicit bias may present itself. Allowing jurors to separate without being admonished may also result in the consumption of biased mainstream and social media. Both of these practices may most negatively impact Black and Brown defendants.
Rule 4-313 Peremptory Challenges. This Rule governs the allocation and exercise of peremptory challenges during voir dire.	1. Decrease the number of peremptory challenges available to prosecutors for all charged offenses.	This Rule allows disproportionate striking of Black and Brown jurors by the State.
Rule 4-326 Jury - Review of Evidence - Communication. This Rule provides that trial courts may provide jurors with notepads during trial and deliberations but requires that	1. Amend the language of Rule 4-326 so that juror notebooks are retained, rather than destroyed, after the completion of the trial.	This Rule, as currently written, has the potential to suppress evidence of jurors' racial biases.

judges of the connection between setting bail in monetary terms and the predatory practices of bail bonds companies. Mandating that judges consider the data on racial disparities in the cash bail system when choosing whether or not to set a cash bail will protect defendants from being detained solely because of their inability to pay and subsequently turning to bail bonds companies to secure release, a burden that disproportionately falls on Black and Brown communities.

Rule 4-248 Stet.

Rule 4-248 addresses the disposition of a case by stet. Only the State's Attorney may move the court to "indefinitely postpone trial of a charge by marking the charge 'stet.'"[71] A charge may not be stetted if the defendant objects.[72] Following a stet, either party has one year to request that the case be reopened and a trial be scheduled.[73] Thereafter, a trial may only be rescheduled by court order if either party shows good cause. A stet can be expunged via Rule 4-329.[74]

The use of the term "stet" is unique to Maryland, but the concept is known by other names in several other states.[75] In *State v. Jones*,[76] the Court of Special Appeals discussed the historical background of stet in Maryland.[77] The sources cited in the opinion regard it as a judgement which terminates a suit but distinguish it from a nolle prosequi on the ground that a

disadvantaged communities." STANDING COMM. ON RULES OF PRAC. & PROC., NOTICE OF PROPOSED RULES CHANGES 297 (2021).
[71] MD. R. CRIM. CAUSES 4-248.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] State v. Jones, 18 Md. App. 11, 34 (1973).
[76] 18 Md. App. 11 (1973).
[77] *Id.* at 33–34.

stet is "not . . . a final determination or acquittal" because the defendant "remains liable to be proceeded against under the same indictment."[78] When a defendant accepts a stet, he or she is giving up the right to a speedy trial.[79] Judges may also attach conditions to a stet such as community service, counseling, payment of restitution, or drug and alcohol abuse treatment.[80]

The Problems

A stetted case may be reopened, meaning it operates as an axe hanging over an individual's head. For example, in many jurisdictions, once a defendant is found guilty or receives a probation before judgment ("PBJ"), the State will stet the balance of the charges. Then, the State may reopen those charges if the defendant elects to appeal the conviction. Stetted charges, with or without conditions can hang over a defendant's head. Defendants may be less inclined to appeal if they have stetted charges that can be reopened, and defendants with multiple contacts with the criminal legal system may be more impacted by lingering stetted charges. Because either the State or the defendant may reopen a stetted case during the first year, the State could *strategically* reopen stetted charges during the first year if a defendant faces additional charges in that time. "The State may reopen the case without the need for the defendant to be recharged. A case may be reopened because of the defendant's arrest on additional charges or

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[78] *Id.*

[79] Fowler v. State, 18 Md. App. 37, 41 (1973) ("By his acquiescence in the entry of the indictments on the stet docket and by his failure thereafter to petition for their removal for the purpose of trial thereon, the appellant clearly and convincingly waived his right to a speedy trial or trial within the concept of his Sixth Amendment right under the federal constitution and his right under Article 21 of the Maryland Declaration of Rights.").

[80] *See, e.g.*, Ashkar v. Town of Riverdale Park, No. 2714, 2020 WL 4371289, at *2 (Md. Ct. Spec. App. 2020) *cert. granted*, 472 Md. 5 (2021) (describing community service as a condition of a stetted charge); *In re T.B.*, No. 1070, 2017 WL 1013210, at *1 (Md. Ct. Spec. App. 2017) (placing a charge on the stet docket on the condition that appellant obtain and complete sex offender therapy and treatment and have no unsupervised contact with children under 12 years of age). *See also* App. at 28, 127, 172.

his/her failure to live up to some agreed-to-condition within a reasonable time after the entry of the stet."[81] During that first year, the decision to reopen a case lies almost entirely with the State, increasing the chance that stetted charges are used as leverage against Black and Brown people.

Lawyers in Maryland have confirmed the common use of stets as leverage.[82] When asked whether the use of stets had a racially disparate impact, one responded simply and definitively "Yes, yes and yes."[83] Others described their extortionate use in a wide variety of settings including bond reviews, sentencing, bail review hearings, and plea negotiations.[84] One response also described stets only being used in the above situations against Black clients.[85] Others counted stets as one of the many tools of a criminal legal system that, as a whole, has a disparate racial impact.[86]

Recommendations

Limiting the State's discretion to reopen cases could go a long way. If reopening stetted cases were more difficult, the State could not use this threat as leverage as readily. Additionally, setting an expiration date for stets—perhaps two years—at which time they automatically become marked as nolle prosequi would, at least, act as a concrete end to the threat represented by stetted cases.

Rule 4-262 Discovery in District Court; Rule 4-263 Discovery in Circuit Court

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[81] OFF. OF THE STATE'S ATT'Y FOR BALT. CITY, *FAQ*, https://www.stattorney.org/resources/12-resources/faq (last visited Apr. 5, 2021).
[82] *See generally* App.
[83] *See* App. at 229.
[84] *Id.* at 6, 50, 72, 83, 105, 161, 172, 218, 306, 317.
[85] *Id.* at 83.
[86] *Id.* at 28, 50, 161, 295, 306.

INFORMATION ITEM 2

THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. YVETTE M. BRYANT, Chair
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair
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MEMORANDUM

TO : Members of the Rules Committee

FROM : Meredith Drummond, Esq., Assistant Reporter

DATE : May 12, 2025

SUBJECT : Information Item: Update on Committee on Equal Justice Rules Review Subcommittee's Recommendation Regarding Pretrial Release

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Equal Justice Committee Rules Review Subcommittee ("the EJC Report"). Recommendations made by the EJC Report were forwarded to various Rules Committee subcommittees for preliminary review, discussion, and possible action. The Criminal Rules Subcommittee has discussed multiple recommendations of the EJC Report over the course of several meetings.

At the July 25, 2023 Criminal Rules Subcommittee meeting, the Subcommittee considered the discussion of pretrial release in the EJC Report. The EJC Report highlighted the concerns and suggestions of numerous stakeholders. The ultimate recommendation in the EJC Report on this topic concluded:

> The [Rules Review] Subcommittee [of the EJC] urges the General Assembly, the Rules Committee, and the Courts to continue to focus on this problem and not to treat the 2017 and 2018 Rules changes as final or definitive or having solved the problems. The Subcommittee recognizes that decisionmakers will need to continue to search to find ways to balance the safety and security of communities with the just demands for liberty for those who have not yet and may not ever be convicted. That said, changes to the State's policies on bail and pretrial detention cannot be addressed by Rules changes alone. These issues will require enhancement and consistency of services across all jurisdictions,

including state and local funding and a supportive infrastructure that reaches across county lines.

Upon review of the EJC Report, including all attached appendices and materials submitted for consideration, staff prepared a memorandum for the July 2023 meeting of the Criminal Rules Subcommittee, breaking down the discussion into several questions for consideration. Also, the proposed Rules changes that had been submitted to the Rules Review Subcommittee by stakeholders were formatted and included in the meeting materials for the July 2023 meeting of the Criminal Rules Subcommittee.

At the July 2023 meeting, the Criminal Rules Subcommittee heard from several various stakeholders regarding concerns with the current system of pretrial release. When it became clear that the subject would require further research and discussion, the topic was tabled. Since that meeting, the Subcommittee has continued working through other topics from the EJC Report.

At an April 2025 meeting, the Criminal Rules Subcommittee reviewed the materials from the July 2023 Subcommittee meeting and again considered the pending questions from the EJC Report. The Subcommittee considered the changes to the system of pretrial release that were made in 2018. During the discussion, Subcommittee members noted that concerns about pretrial procedures range beyond the purview of only the Judiciary. Legislation would be needed for certain changes to the process to occur. Additionally, Rules changes would have no impact on the funding available for resources such as home detention or other pretrial programs.

After reviewing the issues raised by the EJC Report, the Subcommittee determined that Rules changes are not an effective mechanism to address the noted concerns at this time and decided to take no further action at this time concerning the EJC Report recommendation pertaining to pretrial release.

The memorandum and draft amendments prepared by staff for the July 2023 Subcommittee meeting are enclosed for reference.

THE COURT OF APPEALS OF MARYLAND

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. ALAN M. WILNER, Chair
Hon. DOUGLAS R.N. NAZARIAN, Vice Chair
SANDRA F. HAINES, Reporter
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MEMORANDUM

TO : Members of the Criminal Rules Subcommittee

FROM : Meredith Drummond, Esq., Assistant Reporter

DATE : July 18, 2023

SUBJECT : Committee on Equal Justice Rules Review Report – **Topic B (Pretrial Release)**

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee ("the EJC Report").

Pretrial release, encompassing multiple Rules in Chapter 200 of Title 4, was the subject of several commenters to the Rules Review Subcommittee. Overall, the EJC Report states concerns that recent reforms have failed to sufficiently reduce pretrial detention, especially for people of color.[1] For example, numbers provided in a submission from the Public Justice Center indicate that the State's pretrial population dropped by just 319 from 2016 to 2020.[2] After discussion of relevant law, including case law and statutes, the Rules Review Subcommittee "urges the General Assembly, the Rules Committee, and the Courts to continue to focus on this problem and not to treat the 2017 and 2018 Rules changes as final or definitive or having solved the problems."[3] The EJC Report further acknowledged that "changes to the State's policies on bail and pretrial detention cannot be addressed by Rules changes alone. These issues will require enhancement and consistency of services across all jurisdictions, including state and local

[1] See page 66 of the EJC Report. For further discussion of this topic, see pages 66-72 of the EJC Report.
[2] Page 900 of Appendix B of the EJC Report. For further statistics provided by the Public Justice Center, see pages 901 to 905 of Appendix B of the EJC Report.
[3] See page 72 of the EJC Report.

funding and a supportive infrastructure that reaches across county lines."[4]

Although specific draft amendments are not included within the text of the EJC Report, several possible areas of improvement for the Rules are discussed, and draft amendments provided by justice partners are included in appendices to the Report. The following specific recommendations are either contained within the EJC Report or gleaned from the materials provided by justice partners in Appendix B of the Report. The Subcommittee is asked to consider:

OVERALL CHANGES TO RULES GOVERNING PRETRIAL RELEASE

1) **Whether the imposition of cash bail should be replaced with other mechanisms?**

The EJC Report acknowledged suggestions that cash bail be eliminated from the Rules and replaced by other mechanisms to ensure a defendant's appearance in court, such as transportation and text reminders. As noted in the EJC Report, the topic of cash bail was discussed as recently as 2018:

> In proposing and adopting amendments to Rule 4-216.1, the Rules Committee and Court of Appeals decided ultimately to retain financial conditions among the tools available to judges considering pretrial release but specified that courts should use them only as a last resort and only after making a finding that the defendant has the ability to satisfy them. These decisions recognized the wide variation among jurisdictions in the levels of pretrial services available to monitor defendants and help assure their appearance in court. Some jurisdictions have robust pretrial services, but others have little or none, and eliminating the option for financial conditions would, it was decided, leave courts in those places without alternatives, at least until funding could be secured to expand them. In addition, courts, especially in some jurisdictions, also must consider witness intimidation or reoffending, and the uneven availability of pretrial services affects the courts' ability to respond to those concerns. And because a person awaiting trial may reside in a county other than the one in which they are awaiting

[4] *Id.*

trial, pretrial services and supervision must extend across Maryland's internal borders.[5]

Despite the changes to Rule 4-216.1, the OPD asserts that individuals are still incarcerated based on their financial status and an inability to afford bail.[6] Staff has obtained pretrial release rates at the Commissioner level[7] demonstrating that while the percentage of defendants assigned monetary bail began decreasing in 2017, the percentage of defendants held without bail has increased since that time:

Calendar Year	% Released (no probable cause, PR, UPB)	% assigned monetary bail	% HWOB
CY 2015	**51.7%**	40.5%	6.2%
CY 2016	**49.0%**	41.1%	7.9%
CY 2017	**55.3%**	25.4%	17.2%
CY 2018	**56.8%**	18.7%	22.3%
CY 2019	**57.7%**	15.6%	24.4%
CY 2020	**52.8%**	12.8%	31.9%
CY 2021	**51.9%**	11.5%	33.9%
CY 2022	**51.6%**	10.9%	34.9%
CY 2023 (Rolling)	51.3%	10.3%	35.7%

The EJC Report indicates that the primary response from justice partners to the recent bail reforms is that the underlying issues still persist, and further changes are needed. However, as noted in the EJC Report, pretrial services throughout the State are not consistent. Funding and

[5] Pages 68-69 of the EJC Report.
[6] See page 666 of Appendix B of EJC Report.
[7] Chart prepared by Heather Cobun, Esq., Assistant Reporter. The numbers contained in the chart reflect the initial appearance before a commissioner and do not include circuit court appearances or body attachments. Fugitives ordered held without bond are not included in the "held without bail" total. In addition, the "no bond" is statutory 25-30% of the time and discretionary 70-75% of the time.

infrastructure, outside the purview of the Rules Committee, may be necessary to implement effective reform.

What, if any, further action would the Subcommittee like to take at this time in regard to the request to eliminate cash bail from the Rules?

2) **Whether the imposition of cash bail should be a basis for habeas review?**

The Disparate Impact of the Maryland Rules on Black and Brown Individuals, a Report completed by the Criminal Defense Clinic and the Youth, Education, and Justice Clinic of the University of Maryland Francis Carey School of Law ("the U. of Md. Report")[8] and included in Appendix B of the EJC Report, includes recommendations regarding pretrial release. The U. of Md. Report suggests that the imposition of cash bail should serve as *prima facie* evidence for habeas review of the individual's confinement.[9] In regard to a petition for writ of habeas corpus for pretrial confinement, Rule 15-503 (b)(1) provides:

> 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, 4-216.1, 4-216.2, or 4-216.3 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.

The U. of Md. Report asserts that Black and Brown people are assessed higher bail and lack the ability to seek habeas relief on the setting of a cash bail amount that they are financially unable to satisfy. The U. of Md. Report suggests that making the use of money bail *prima facie* evidence for habeas review may help address this situation.

[8] See page 14 of Appendix B of the EJC Report.
[9] See pages 43-44 of Appendix B of the EJC Report.

Draft amendments to Rule 15-503 are attached for consideration by the Subcommittee.

3) **Whether all arrestees should be released immediately unless the State can prove guilt in a full evidentiary proceeding within a specified time?**

The EJC Report notes that one suggestion to address continued concerns about pretrial detention was to release immediately all arrestees back into the community unless the State can, within 24 hours of arrest, prove the guilt of the accused in a full evidentiary proceeding.[10] The EJC Report listed numerous practical and legal concerns with this approach. For example, arrests in Maryland are generally made under exigent circumstances. As a result, the State would not typically have all evidence within 24 hours after arrest.[11] In addition, citing to Code, Criminal Procedure Article, § 5-202, the EJC Report explains, "Maryland law creates a rebuttable presumption that certain categories of defendants (those charged with firearms offenses or crimes of violence after prior convictions for the same, for example) pose a threat to public safety and a risk of flight. A Rules-based requirement that shifts the onus on the State to establish these facts within 24 hours of arrest would contradict that statute."[12]

In regard to overhauling the determination of pretrial release, the OPD suggested a proposed new system to the Rules Review Subcommittee that includes robust adversarial hearings.[13] The goal of the proposal was to create "a more selective and individualized process in which each person's situation is carefully considered, there is a strict presumption in favor of release, and the State is held to its weighty burden of proving why a free person must be placed in jail or subjected to community supervision before being convicted of a crime."[14] The letter from the OPD noted that other states have implemented pretrial systems with some of the suggested safeguards, such as convening an adversarial hearing before detention.[15] Similarly, the Baltimore Action Legal Team ("BALT") suggested that probable

[10] See pages 67-68 of the EJC Report.
[11] See page 69 of the EJC Report.
[12] Page 69 of the EJC Report.
[13] The details of the suggested procedural protections are on pages 663-664 of Appendix B of the EJC Report.
[14] Page 664 of Appendix B of the EJC Report.
[15] See page 665 of Appendix B of the EJC Report.

cause be established by clear and convincing evidence using non-hearsay evidence before pretrial detention is permitted.[16]

What, if any, further action would the Subcommittee like to take at this time in regard to the request to immediately release an arrestee unless the State can prove guilt in a full evidentiary proceeding within a specified time?

4) **Whether all arrestees charged with nonviolent crimes should be released immediately after arrest?**

Another suggestion to reform the pretrial release system brought to the Rules Review Subcommittee was to release all arrestees who are charged with nonviolent crimes immediately after arrest. The OPD proposed that "[p]retrial detention should be available only for persons charged with serious violent felonies. For all other crimes, release should be mandatory. This would reduce the impact of implicit biases by limiting the extent to which persons who are not even accused of serious violent behavior are inappropriately identified as 'dangerous.'"[17]

Similarly, BALT further suggested that defendants should be granted unconditional release unless they pose a specific and imminent danger to the public.[18] The submission from the Public Justice Center alleged numerous detrimental consequences from unnecessary pretrial detention, including increasing the incentive for guilty pleas, causing adverse case outcomes, and impacting the families and communities of the detained individual.[19]

The EJC Report, however, notes that courts are required to consider the flight risk and public safety threat posed by a defendant and statutes presume certain defendants as flight risks or dangers to others.[20] Furthermore, Rule 4-216.1 already requires a presumption in favor of pretrial release or implementation of the least onerous conditions to ensure appearance of the defendant and public safety.

[16] See page 813 of Appendix B of the EJC Report.
[17] Page 661 of Appendix B of the EJC Report.
[18] See page 813 of Appendix B of the EJC Report.
[19] See pages 908-912 of Appendix B of the EJC Report.
[20] See page 67 of the EJC Report.

What, if any, further action would the Subcommittee like to take at this time in regard to the suggestion that all arrestees charged with nonviolent crimes should be immediately released?

5) **Whether Rules should account for additional data collection and transparency regarding initial pretrial determinations of District Court commissioners?**

In its letter to the Rules Review Subcommittee, the OPD proposed that "the judiciary should: (1) require commissioners to make a more detailed record of the reasons for their decisions; and (2) collect, analyze, and distribute data regarding commissioner hearings, including the rates of detention or release based on charging information and demographic data such as race and ethnicity."[21] BALT echoed the suggestions of the OPD.[22]

In response, the EJC Report highlights that, pursuant to statute, every commissioner decision is reviewed *de novo* by a District Court judge at the Court's next session, and commissioners cannot authorize pretrial release for certain categories of defendants.[23] Although acknowledging the benefit of additional data, the EJC Report states, "any new data collection requirements should balance the utility of that data against the resources required to collect, maintain, and disseminate it."[24]

What, if any, further action would the Subcommittee like to take at this time in regard to the suggestion about data collection from District Court commissioners?

6) **Whether a streamlined process is needed for review of detention decisions?**

Another proposal presented by the OPD to the Rules Review Subcommittee was to streamline the review of detention decisions. Suggestions included streamlining the process for pretrial habeas petitions and creating a mechanism for direct circuit court review of detention decisions.[25] The OPD also

[21] Page 669 of Appendix B of the EJC Report.
[22] See page 816 of Appendix B of the EJC Report.
[23] See pages 70-71 of the EJC Report.
[24] Page 71 of the EJC Report.
[25] For full discussion of this topic, see pages 669-671 of Appendix B of the EJC Report.

advocated for a more reliable path for appellate review in the Appellate Court, acknowledging that a statutory change may be needed.[26] BALT also highlighted that any individual subject to pretrial detention should receive de novo review of conditions of release by an appeal to a higher court.[27]

The EJC Report notes that provisions for review already exist and more bail review hearings would divert finite judicial resources from trials, potentially lengthening pretrial detention.[28]

What, if any, further action would the Subcommittee like to take at this time in regard to the request to streamline the review process for detention decisions?

PROPOSED AMENDMENTS TO RULE 4-216.1 (PRETRIAL RELEASE – STANDARDS GOVERNING)

1) **Whether a Committee note should be added to Rule 4-216.1 directing judges to consider racial disparities in the context of cash bail?**

The U. of Md. Report contains the suggestion that a new Committee note require judges "to consider the evidence and statistics of the racial disparities that result from the imposition of money bail."[29] Although the U. of Md. Report suggests the addition of a Committee note in Rule 4-217, it appears that placement of any such Committee note in Rule 4-216.1 would be more appropriate.

Draft amendments adding a Committee note after Rule 4-216.1 (b)(2) are attached for consideration by the Subcommittee.

However, a Committee note may prove superfluous because Rule 4-216.1 (b)(2) currently states, "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 ability of the defendant to meet a special condition of release with financial terms or comply with a special condition and the facts and circumstances constituting probable cause for

[26] See page 670 of Appendix B of the EJC Report.
[27] See page 814 of Appendix B of the EJC Report.
[28] See page 71 of the EJC Report.
[29] Page 44 of Appendix B of the EJC Report.

the charges." The EJC Report further notes that judicial education may address the issue of unconscious bias in bail decisions.[30] Accordingly, the Subcommittee may wish to consider whether the draft additional language would be beneficial.

2) **Whether the Rules should prohibit certain considerations in Rule 4-216.1 (b)(2)?**

The Public Justice Center submitted specific amendments to Rule 4-216.1 (b)(2) that "aim to inhibit judges from too quickly and too easily relying on preventive detention or ordering conditions of release that in effect prevent release."[31] In addition to requiring a particular record of the individualized consideration completed by a judicial officer, the Public Justice Center recommended prohibiting (a) assuming the truth of the charging document, (b) justifying detention based solely on the charge, (c) relying on prior charges that did not result in conviction as evidence of dangerousness,[32] (d) using detention to punish the defendant, and (e) using detention to avoid an adverse media reaction.[33]

Draft amendments to Rules 4-216 and 4-216.1 (b)(2) are attached for consideration by the Subcommittee.

3) **Whether the Rules should prohibit the use of other conduct not resulting in convictions when assessing a defendant's threat to public safety?**

Discussion in the EJC Report suggests that the Subcommittee consider prohibiting the use of other conduct that did not result in conviction when assessing a defendant's threat to public safety.[34] The OPD argued, "Mere arrests are no indication of even prior behavior, let alone future dangerousness."[35] Justice partners suggest that Rule 4-216.1 be amended to preclude judicial officers from considering pending charges or prior arrests and charges that did not result in conviction.[36] In addition, the OPD suggested going further by prohibiting

[30] See page 69 of the EJC Report.
[31] Page 912 of Appendix B of the EJC Report.
[32] Prohibiting consideration of other conduct not resulting in a conviction is discussed in more detail in the next section of this memorandum.
[33] See page 912 of Appendix B of the EJC Report.
[34] See page 67 of the EJC Report.
[35] Page 667 of Appendix B of the EJC Report.
[36] See *id.*; see also pages 815-816 of Appendix B of the EJC Report.

judges from relying on a record of prior convictions or adjudications to predict a likelihood of future dangerousness, except where the State can draw a specific link between the prior conviction and the likelihood of future dangerousness.[37]

Draft amendments to Rule 4-216.1 (f)(2)(C) are attached for consideration by the Subcommittee.

4) **Whether judges should be required to consider the adequacy of medical treatment in pretrial facilities?**

The OPD also recommended to the Rules Review Subcommittee that the Rules require judges to consider the needs of the defendant and the adequacy of medical treatment available in pretrial facilities when considering pretrial release.[38] The OPD highlighted the consequences of disruptions to the defendant's medical care, asserting that it has witnessed the preventable deaths of individuals in jail from major medical or mental health emergencies.[39]

The EJC Report acknowledges the rights of an incarcerated individual to medical care, but clarifies that "an inmate who poses a threat to public safety or a significant risk of flight that cannot be mitigated by less restrictive means must be detained pretrial as a matter of law. Improvements to medical care must either come from the executive branch or by way of litigation regarding that care, wherein corrections authorities are able to present their defenses to the inmate's claims in court."[40]

Draft amendments to Rule 4-216.1 (f)(2)(J) are attached for consideration by the Subcommittee.

5) **Whether the use of risk assessment tools should be eliminated in pretrial release determinations?**

The EJC Report includes the recommendation of the OPD and other justice partners that the use of risk assessment tools be

[37] See pages 666-667 of Appendix B of the EJC Report. BALT also support this approach. See pages 815 to 816 of Appendix B of the EJC Report ("Prior charges should not act as a proxy for future dangerousness.").
[38] See pages 69-70 of the EJC Report.
[39] See page 665 of Appendix B of the EJC Report.
[40] See page 70 of the EJC Report; see also pages 655 and 668 of Appendix B of the EJC Report.

eliminated.[41] The justice partners expressed concerns that risk assessment tools do not sufficiently account for implicit biases. The OPD explained, "Decisions regarding police deployment, arrests, charging, convictions, and sentences are all influenced by racial and economic biases, and yet risk assessment tools rely on these factors to generate predicted outcomes."[42] BALT also asserted that risk assessment tools are "heavily biased and deeply flawed," suggesting that they "cannot be relied upon to provide a credible or justifiable basis for decisions pertaining to pretrial detention."[43]

The EJC Report further states, however, that "[v]alidated risk assessment tools represent a potential source of information for a judge making pretrial release determinations, but the key is the word 'validated.'"[44] The EJC Report recommends that such tools be assessed on an ongoing basis, noting that Code, Criminal Procedure Article, § 5-103 only requires validation every five years. Another justice partner noted that "a uniform risk-assessment tool would be helpful in light of some judicial officers' tendency to regard too many defendants as high risk" and noted that the executive and legislative branches should approve and fund race-neutral, uniform risk-screening tools.[45]

Elimination of the use of risk assessment tools would require several amendments to Rule 4-216.1, including deletions in section (a) and a reworking of section (f). What, if any, further action would the Subcommittee like to take at this time in regard to the suggested elimination of risk assessment tools in pretrial release determinations?

6) **Whether the Rules should reduce a judicial officer's deference to pretrial agencies?**

The EJC Report also includes a request to reduce the judicial officer's deference to pretrial agencies when making pretrial release determinations.[46] Current subsections (f)(1) and (f)(2)(E) of Rule 4-216.1 require the judicial officer to consider the recommendation of an agency that conducted a pretrial release investigation. The OPD expressed concerns that

[41] *Id.*
[42] Page 668 of Appendix B of the EJC Report.
[43] Page 817 of Appendix B of the EJC Report.
[44] *Id.*
[45] Page 6 of Appendix B of the EJC Report.
[46] See pages 667-668 of Appendix B of the EJC Report.

"[t]here is no check on, or even review of, the implicit biases that impact a pretrial agent's decision or their office's framework for detention/release, and no due process is provided for the ultimate decision of whether a person is incarcerated or released."[47]

To address the noted concerns, the OPD suggested adding language to the Rules (a) stating that judges cannot defer the decision of pretrial release or detention to a pretrial agency, (b) stating that the pretrial agency cannot provide a bare recommendation to the court on the ultimate decision of detention or release, and (c) providing more details about the role of a pretrial agency in the bail reviews.[48]

Reducing deference to the recommendations of pretrial agencies would require a reworking of Rule 4-216.1 (f). What, if any, further action would the Subcommittee like to take at this time in regard to the suggestion that deference to pretrial agencies should be reduced?

7) Whether amendments should be made to Rule 4-216.1 (d)(2)(N) concerning bail funds?

A letter submitted to the Rules Review Subcommittee by the Pretrial Justice Institute ("PJI") suggested amendments to Rule 4-216.1 (d)(2)(N).[49] Specifically, PJI asserted, "Section (d)(2)(N) of Rule 4-216.1 could be interpreted as rendering a bail fund (community-based or otherwise) as ineligible to post a bond on behalf of an accused person because it is an uncompensated surety."[50] PJI suggested that it is unclear whether independent, locally organized and funded bail funds would have "verifiable and lawful personal relationship[s]" as discussed in the Committee note after subsection (d)(2)(N). PJI further asserted, "We believe that this requirement would likely inflict a disproportionate impact on people of color, but we would urge the court to collect and analyze data on this point to be sure."[51]

What, if any, further action would the Subcommittee like to take at this time in regard to considering amendments to Rule 4-216.1 (d)(2)(N) or collecting additional data on this issue?

[47] Page 667 of Appendix B of the EJC Report.
[48] See page 668 of Appendix B of the EJC Report.
[49] See pages 655-656 of Appendix B of the EJC Report.
[50] Page 655 of Appendix B of the EJC Report.
[51] Page 656 of Appendix B of the EJC Report.

PROPOSED AMENDMENTS TO RULE 4-216.3 (FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE)

8) Whether amendments should be made to Rule 4-216.3?

Section (d) of Rule 4-216.3 authorizes issuance of a bench warrant in response to a violation of a condition of release. PJI reported:

> [T]he research that exists shows that conditions of surveillance and supervision are disproportionately assigned to people of color… While very little data on violations of pretrial conditions exist, analogous data on who is subject to violations of probation show that Black people are disproportionately punished.[52]

Overall, PJI urged the collection and analysis of data on how courts are using Rule 4-216.3. The Public Justice Center also advocated for applying individualized consideration to determinations of alleged violations of pretrial release conditions, proposing specific amendments to Rule 4-216.3.[53]

Draft amendments to Rule 4-216.3 are attached for consideration by the Subcommittee.

What, if any, further action would the Subcommittee like to take at this time in regard to whether additional data is needed regarding implementation of Rule 4-216.3?

PROPOSED AMENDMENTS TO RULE 4-217 (BAIL BONDS)

9) Whether Rule 4-217 should be amended to repeat the presumption in favor of pretrial release?

The U. of Md. Report highlights Rule 4-217 governing the use of bail bonds and recommends that language be added to the Rule about the presumption of pretrial release on personal recognizance and the imposition of the least onerous, non-financial conditions.[54]

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[52] Pages 656 to 657 of Appendix B of the EJC Report.
[53] See pages 913 and 942 of Appendix B of the EJC Report.
[54] See page 44 of Appendix B of the EJC Report. For further discussion of this recommendation, see pages 42-45 of Appendix B of the EJC Report.

Draft amendments to Rule 4-217 are attached for consideration by the Subcommittee.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-361, as follows:

Rule 1-361. EXECUTION OF WARRRANTS AND BODY ATTACHMENTS

(a) Generally

A person arrested on a warrant or taken into custody on a body attachment shall be brought before the judicial officer designated in the specific instructions in the warrant or body attachment. Specific instructions shall not include any predetermination of the need for pretrial detention or conditions or continued release pending trial.

Cross reference: See Rules 4-102, 4-212, and 4-347 concerning warrants. See Rules 1-202, 2-510, 2-633, 3-510, 3-633, 4-266, and 4-267 concerning body attachments.

(b) Warrants Without Specific Instructions

If a warrant for arrest issued by a judge does not contain specific instructions designating the judicial officer before whom the arrested person is directed to appear:

(1) The person arrested shall be brought without unnecessary delay, and in no event later than 24 hours after the arrest, before a judicial officer of the District Court sitting in the county where the arrest was made, and

(2) The judicial officer shall determine the person's eligibility for release, establish any conditions of release, and direct how the person shall be brought before the judge who issued the warrant. Rule 4-216.1 shall apply to such determinations.

(c) Body Attachments Without Specific Instructions

If a body attachment does not specify what is to be done with the person taken into custody, the person shall be brought without unnecessary delay before the judge who issued the attachment. If the court is not in session when the person is taken into custody, the person shall be brought before the court at its next session. If the judge who issued the attachment is not then available, the person shall be brought before another judge of the court that issued the attachment. That judge shall determine the person's eligibility for release, establish any conditions of release, and direct how the person shall be brought before the judge who issued the attachment.

Committee note: Code, Courts Article, § 2-107(a)(3) requires that a warrant for arrest issued by a circuit court contain certain instructions to the sheriff or other law enforcement officer who will be executing the warrant. This Rule provides procedures for processing a person taken into custody on a warrant or body attachment that does not contain this information.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-216, 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, by Code, Criminal Procedure Article, §§ 5-201 and 5-202, or by other applicable law, a defendant is entitled to be considered for release before verdict 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, only by a judge.

(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.

(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 4-216.2.

Committee note: Section (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.

(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 and, if so, the particularized reasons based upon the individualized consideration required by Rule 4-216.1 (b);

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

(8) if the defendant was ordered released on conditions pursuant to Rule 4-216.1, the conditions of the release and the particularized reasons based upon the individualized consideration required by Rule 4-216.1 (b).

(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

AMEND 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) Pretrial Risk Scoring Instrument

"Pretrial risk scoring instrument" means a tool, a metric, an algorithm, or software that is used to assist in determining the eligibility of a defendant for pretrial release in a pretrial proceeding based on the defendant's flight risk and threat to community safety.

Cross reference: See Code, Criminal Procedure, § 5-103.

(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) Special Condition of Release with Financial Terms

"Special condition of release with financial terms" 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~~ but only to the extent that the cost is affordable by the defendant or waived by the court.

Committee note: Examples of a condition of release that is not a special condition of release with financial terms are participation in an ignition interlock program, use of an alcohol consumption monitoring system, and GPS monitoring, but only where there is a finding based on the individualized consideration required by section (b) of this Rule that the cost is affordable by the defendant or it is waived by the court.

(9) 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.

(10) 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.

(11) Uncompensated Surety

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

(b) General Principles

(1) Construction

(A) This Rule is designed to promote the release of defendants on their own recognizance or, when necessary, unsecured bond. Additional conditions should be imposed on release only if the need to ensure appearance at court proceedings, to protect the community, victims, witnesses, or any other person and to maintain the integrity of the judicial process is demonstrated in the record by the circumstances of the individual case. Preference should be given to additional conditions without financial terms.

(B) This Rule shall be construed to permit the release of a defendant pending trial except upon a particularized finding as required by subsection (b)(2) of this Rule by the judicial officer that, if the defendant is released, there is ~~a reasonable likelihood~~ (i) a preponderance of the evidence that

the defendant ~~(i)~~ will not appear when required, or (ii) clear and convincing evidence that the defendant 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: Code, Criminal Procedure Article, § 5-101. 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 ability of the defendant to meet a special condition of release with financial terms or comply with a special condition and the facts and circumstances constituting probable cause for the charges. Such individualized consideration shall be set forth with specificity in the record, and shall not be based solely upon the offense charged, nor on prior charges that were dismissed, nor imposed to punish the defendant or to placate public opinion.

Committee note: While considering specific facts and circumstances appliable to the defendant, the judicial officer should be mindful of any evidence of racial disparities that result from the imposition of money bail.

(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 (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 (e) of this Rule. The reasons for finding that each less onerous condition is insufficient shall be set forth in the record with specificity.

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 (A) a condition of pretrial release, a release under Rule 4-349, or an order of probation or parole previously imposed in another case, or (B) a condition of pretrial release previously imposed in the instant case, provided that subsections (b)(1) to (3) of this Rule shall apply to the determination of whether such pretrial custody is necessary in light of such violation.

Incorporating suggestions from the U. of Md. Report, PJI, the OPD, and BALT
Incorporating proposed amendments from the Public Justice Center
For Criminal Rules SC 07/25/2023

Committee note: Consistent with the purposes of this Rule and applicable law, pretrial detention for minor, technical, or financial violations of pretrial release conditions should be avoided.

(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, the judicial officer shall release a defendant on personal recognizance or unsecured bond, with or without special conditions. If the judicial officer makes such a finding, the judicial officer shall state the basis for it on the record with specificity, based upon the individualized consideration required by section (b) of this Rule.

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

Cross reference: Code, Criminal Procedure Article, § 5-101 (c) 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 the required conditions set forth in subsection (d)(1) and the special conditions set forth or authorized in subsection (d)(2) of this Rule.

(d) Special 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) Special Conditions

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

(A) 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;

(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;

(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;

(I) electronic monitoring;

(J) periodic reporting to designated supervisory persons;

(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;

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.

(L) 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;

(M) 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 surety, including a surety insurer, acceptable to the judicial officer;

(N) 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 surety, including a surety insurer, acceptable to the judicial officer; and

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.

(O) 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.

(e) Release on Special Conditions

(1) Generally

(A) A judicial officer may not impose ~~a special~~ any condition of release ~~with financial terms in form or amount~~ that results in the pretrial detention of the defendant solely because the defendant is 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.

(B) Special conditions of release with financial terms 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.

(C) Special conditions of release with financial terms may not be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge.

(2) Other Permissible Conditions

If the judicial officer finds that one or more special 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 special conditions in accordance with section (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 pretrial risk scoring instrument 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.

Cross reference: For validation requirements for pretrial risk scoring instruments, see Code, Criminal Procedure, § 5-103 (b).

(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, provided that consideration of this factor shall not be based solely upon the offense charged;

(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, medical needs, 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~~ the defendant's self; 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, provided that consideration shall not be given to prior arrests or charges that did not result in conviction, nor to punishment of the defendant, nor to placation of public opinion.

(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.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-216.2, as follows:

Rule 4-216.2. REVIEW OF COMMISSIONER'S PRETRIAL RELEASE ORDER

(a) Generally

A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody after a commissioner has determined conditions of release pursuant to 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.

(b) Attorney for Defendant

(1) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has waived the right to an attorney 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.

(2) Waiver

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

(i) the defendant has a right to an attorney at the review hearing;

(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.

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

(B) If, after the giving of this advice, the defendant indicates a desire to waive an attorney for purposes of the review hearing and the court finds that the waiver is knowing and voluntary, the court shall announce on the record that finding and proceed pursuant to this Rule.

(C) Any waiver found under this Rule is applicable only to the proceeding under this Rule.

(3) Waiver of Attorney for Future Proceedings. For proceedings after the review hearing, waiver of an attorney is governed by Rule 4-215.

(c) Determination by Court

The District Court shall review the commissioner's pretrial release determination and take appropriate action in accordance with the standards and requirements set forth in Rule 4-216.1. If the court determines that the defendant will continue to be held in custody after the review, the court shall set forth in writing or on the record the reasons for the continued detention, with specificity as required by Rule 4-216.1 (b).

(d) 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.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court.

(e) Title 5 Not Applicable

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

Source: This Rule is derived from former section (a) of Rule 4-216.1 (2012).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-216.3, as follows:

Rule 4-216.3. FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE

(a) 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 (b) of this Rule.

(b) 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, subject to the standards and requirements set forth in Rule 4-216.1. 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 with specificity as required by Rule 4-216.1 (b). A judge may alter conditions set by a commissioner or another judge.

(c) 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.

(d) 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. Such warrant may not include as specific instructions any predetermination of the need for pretrial detention or conditions of continued release pending trial. 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. Rule 4-216.1 shall apply to such determinations.

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.

(e) 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 (b), (c), (d), (e), and (f) of Rule 4-216.1 (2012).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-217, as follows:

Rule 4-217. BAIL BONDS

(a) Applicability of Rule

This Rule applies to all bail bonds taken pursuant to Rule 4-216, 4-216.1, 4-216.2, or 4-216.3, and to bonds taken pursuant to Rules 4-267, 4-348, and 4-349 to the extent consistent with those rules.

Cross reference: See Rule 4-216.1 (b) for the preference for release on personal recognizance and Rule 4-216.1 (e) for considerations of release with financial terms.

(b) Definitions

As used in this Rule, the following words have the following meanings:

(1) Bail Bond

"Bail bond" means a written obligation of a defendant, with or without a surety or collateral security, conditioned on the appearance of the defendant as required and providing for the payment of a penalty sum according to its terms.

(2) Bail Bondsman

"Bail bondsman" means an authorized agent of a surety insurer.

(3) Clerk

"Clerk" means the clerk of the court and any deputy or administrative clerk.

(4) Collateral Security

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

(5) Surety

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

(6) Surety Insurer

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

(c) Authorization to Take Bail Bond

Any clerk, District Court commissioner, or other person authorized by law may take a bail bond. The person who takes a bail bond shall deliver it to the court in which the charges are pending, together with all money or other collateral security

deposited or pledged and all documents pertaining to the bail bond.

Cross reference: Code, Criminal Procedure Article, §§ 5-204 and 5-205. See Code, Insurance Article, § 10-309, which requires a signed affidavit of surety by the defendant or the insurer that shall be provided to the court if payment of premiums charged for bail bonds is in installments.

(d) Qualification of Surety

(1) In General

The Chief Clerk of the District Court shall maintain a list containing: (A) the names of all surety insurers who are in default, and have been for a period of 60 days or more, in the payment of any bail bond forfeited in any court in the State; (B) the names of all bail bondsmen authorized to write bail bonds in this State; and (C) the limit for any one bond specified in the bail bondsman's general power of attorney on file with the Chief Clerk of the District Court. The clerk of each circuit court and the Chief Clerk of the District Court shall notify the Insurance Commissioner of the name of each surety insurer who has failed to resolve or satisfy bond forfeitures for a period of 60 days or more. The clerk of each circuit court also shall send a copy of the list to the Chief Clerk of the District Court.

Cross reference: For penalties imposed on surety insurers in default, see Code, Insurance Article, § 21-103(a).

(2) Surety Insurer

No bail bond shall be accepted if the surety on the bond is on the current list maintained by the Chief Clerk of the District Court of those in default. No bail bond executed by a surety insurer directly may be accepted unless accompanied by an affidavit reciting that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: For the obligation of the District Court Clerk or a circuit court clerk to notify the Insurance Commissioner concerning a surety insurer who fails to resolve or satisfy bond forfeitures, see Code, Insurance Article, § 21-103(b).

(3) Bail Bondsman

No bail bond executed by a bail bondsman may be accepted unless the bondsman's name appears on the most recent list maintained by the Chief Clerk of the District Court, the bail bond is within the limit specified in the bondsman's general power of attorney as shown on the list or in a special power of attorney filed with the bond, and the bail bond is accompanied by an affidavit reciting that the bail bondsman:

(A) is duly licensed in the jurisdiction in which the charges are pending, if that jurisdiction licenses bail bondsmen;

(B) is authorized to engage the surety insurer as surety on the bail bond pursuant to a valid general or special power of attorney; and

(C) holds a valid license as an insurance broker or agent in this State, and that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

(e) Collateral Security

(1) Authorized Collateral

A defendant or surety required to give collateral security may satisfy the requirement by:

(A) depositing with the person who takes the bond the required amount in cash or certified check, or pledging intangible property approved by the court; or

Cross reference: See Code, Criminal Procedure Article, §§ 5-203 and 5-205, permitting certain persons to post a cash bail or cash bond when an order specifies that the bail or bond may be posted only by the defendant.

(B) encumbering one or more parcels of real estate situated in the State of Maryland, owned by the defendant or surety in fee simple absolute, or as chattel real subject to ground rent. No bail bond to be secured by real estate may be taken unless (i) a Declaration of Trust of a specified parcel of real estate, in the form set forth at the end of this Title as Form 4-217.1, is executed before the person who takes the bond and is filed with the bond, or (ii) the bond is secured by a Deed of Trust to the State or its agent and the defendant or surety furnishes a verified list of all encumbrances on each

parcel of real estate subject to the Deed of Trust in the form required for listing encumbrances in a Declaration of Trust.

(2) Value

Collateral security shall be accepted only if the person who takes the bail bond is satisfied that it is worth the required amount.

(3) Additional or Different Collateral Security

Upon a finding that the collateral security originally deposited, pledged, or encumbered is insufficient to ensure collection of the penalty sum of the bond, the court, on motion by the State or on its own initiative and after notice and opportunity for hearing, may require additional or different collateral security.

(f) Condition of Bail Bond

The condition of any bail bond taken pursuant to this Rule shall be that the defendant personally appear as required in any court in which the charges are pending, or in which a charging document may be filed based on the same acts or transactions, or to which the action may be transferred, removed, or if from the District Court, appealed, and that the bail bond shall continue in effect until discharged pursuant to section (j) of this Rule.

(g) Form and Contents of Bond—Execution

Every pretrial bail bond taken shall be in the form of the bail bond set forth at the end of this Title as Form 4-217.2, and, except as provided in Code, Criminal Procedure Article, § 5-214, shall be executed and acknowledged by the defendant and any surety before the person who takes the bond.

(h) Voluntary Surrender of the Defendant by Surety

A surety on a bail bond who has custody of a defendant may procure the discharge of the bail bond at any time before forfeiture by:

(1) delivery of a copy of the bond and the amount of any premium or fee received for the bond to the court in which the charges are pending or to a commissioner in the county in which the charges are pending who shall thereupon issue an order committing the defendant to the custodian of the jail or detention center; and

(2) delivery of the defendant and the commitment order to the custodian of the jail or detention center, who shall thereupon issue a receipt for the defendant to the surety. Unless released on a new bond, the defendant shall be taken forthwith before a judge of the court in which the charges are pending.

On motion of the surety or any person who paid the premium or fee, and after notice and opportunity to be heard, the court may

by order award to the surety an allowance for expenses in locating and surrendering the defendant, and refund the balance to the person who paid it.

(i) Forfeiture of Bond

(1) On Defendant's Failure to Appear--Issuance of Warrant

If a defendant fails to appear as required, the court shall order forfeiture of the bail bond and issuance of a warrant for the defendant's arrest and may, after the defendant is presented to the court, set a new bond in the action. The clerk shall promptly notify any surety on the defendant's original bond, and the State's Attorney, of the forfeiture of that bond and the issuance of the warrant.

Cross reference: Code, Criminal Procedure Article, § 5-211.

(2) On Defendant's Posting a Bond After Issuance of Warrant

If a new bond is set under subsection (i)(1) of this Rule and the defendant posts the bond:

(A) a judicial officer shall mark the warrant satisfied; and

(B) the court shall reschedule the hearing or trial.

(3) Striking Out Forfeiture for Cause

If the defendant or surety can show reasonable grounds for the defendant's failure to appear, notwithstanding Rule 2-535, the court shall (A) strike out the forfeiture in whole or

in part, (B) set aside any judgment entered thereon pursuant to subsection (5)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (4) of this section.

Cross reference: Code, Criminal Procedure Article, § 5-208(b)(1) and (2) and Allegany Mut. Cas. Co. v. State, 234 Md. 278, 199 A.2d 201 (1964).

(4) Satisfaction of Forfeiture

Within 90 days from the date the defendant fails to appear, which time the court may extend to 180 days upon good cause shown, a surety shall satisfy any order of forfeiture, either by producing the defendant in court or by paying the penalty sum of the bond. If the defendant is produced within such time by the State, the court shall require the surety to pay the expenses of the State in producing the defendant and shall treat the order of forfeiture satisfied with respect to the remainder of the penalty sum.

(5) Enforcement of Forfeiture

If an order of forfeiture has not been stricken or satisfied within 90 days after the defendant's failure to appear, or within 180 days if the time has been extended, the clerk shall forthwith:

(A) enter the order of forfeiture as a judgment in favor of the governmental entity that is entitled by statute to receive the forfeiture and against the defendant and surety, if

any, for the amount of the penalty sum of the bail bond, with interest from the date of forfeiture and costs including any costs of recording, less any amount that may have been deposited as collateral security;

(B) cause the judgment to be recorded and indexed among the civil judgment records of the circuit court of the county; and

(C) prepare, attest, and deliver or forward to the State's Attorney, to the Chief Clerk of the District Court, and to the surety, if any, a true copy of the docket entries in the cause, showing the entry and recording of the judgment against the defendant and surety, if any.

(6) Subsequent Appearance of Defendant

When the defendant is produced in court after the period allowed under subsection (4) of this section, the surety may apply for the refund of any penalty sum paid in satisfaction of the forfeiture less any expenses permitted by law. The court shall strike out a forfeiture of bail or collateral and deduct only the actual expense incurred for the defendant's arrest, apprehension, or surrender provided that the surety paid the forfeiture of bail or collateral during the period allowed for the return of the defendant under subsection (4) of this section.

(7) Where Defendant Incarcerated Outside This State

(A) If, within the period allowed under subsection (4) of this section, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State and that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, the court shall strike out the forfeiture and shall return the bond or collateral security to the surety.

(B) If, after the expiration of the period allowed under subsection (4) of this section, but within 10 years from the date the bond or collateral was posted, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State, that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, and that the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with Code, Criminal Procedure Article, § 5-208(c), subject to subsection (C) of this section, the court shall strike out the forfeiture and refund the forfeited bail bond or collateral to the surety provided that the surety paid the forfeiture of bail or collateral within the time limits established under subsection (4) of this section.

(C) On motion of the surety, the court may refund a forfeited bail bond or collateral that was not paid within the time limits established under subsection (4) of this section if the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment for fraud, mistake, or irregularity.

(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 stetted, 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 4-216.3 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 stetted. 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, 4-216.1, 4-216.2, or 4-216.3.

(2) Refund of Collateral Security--Release of Lien

Upon the discharge of a bail bond and surrender of the receipt, the clerk shall return any collateral security to the person who deposited or pledged it and shall release any Declaration of Trust that was taken.

Source: This Rule is derived from former Rule 722 and M.D.R. 722.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 300 – HABEAS CORPUS

AMEND Rule 15-303, as follows:

Rule 15-303. PROCEDURE ON PETITION

(a) Generally

Upon receiving a petition for a writ of habeas corpus, the judge immediately shall refer it as provided in section (c) of this Rule or act on the petition as provided in section (d) or (e) of this Rule, except that if the petition seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge may proceed in accordance with section (b) of this Rule.

(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, 4-216.1, 4-216.2, or 4-216.3 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. 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 the appropriateness of cash bail that was set, the judge to whom the petition is directed may not deny the petition without a hearing.

Cross reference: Rule 4-213 (c).

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