

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

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January 20, 2017

The Honorable Mary Ellen Barbera,
Chief Judge

The Honorable Clayton Greene, Jr.

The Honorable Sally D. Adkins

The Honorable Robert N. McDonald,

The Honorable Shirley M. Watts

The Honorable Michele D. Hotten

The Honorable Joseph M. Getty,

Judges

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

Your Honors:

I am pleased to submit this Supplement to the One Hundred Ninety-Second Report of the Rules Committee. The sole purpose of this Supplement is to respond to concerns and suggestions expressed by members of the Court at the open hearing on the 192nd Report on January 5, 2017. Given the time constraints - the Court's next meeting on the Report is scheduled for February 7th and the next Rules Committee meeting is not until February 10th - the Committee has not had an opportunity to review the Supplement, but it is being sent to each member contemporaneously with this submission. Any comments received from members of the Committee will be sent promptly to the Court.

Included in the Supplement are (1) revisions to proposed Rule 4-216.1, (2) some cross-reference amendments to other Rules that were included in the 192nd Report, (3) copies of bail reform Rules recently adopted by the Supreme Courts of Arizona and Indiana that were mentioned at the January 5th hearing, (4) information received from the Public Defender subsequent to the Court hearing regarding pretrial services units operating in the counties and Baltimore City, and (5) the Form that is used by judicial officers at initial appearance proceedings to gather personal and financial information regarding the defendant. To avoid any confusion, the revisions to Rule 4-216.1 submitted



with this Supplement are keyed to the text of that Rule as submitted in the 192nd Report, rather than to any current Rule, and are shown through strikeouts and bolding.

(1) The addition of "appear" in subsection (a)(1) on page 6 is purely a matter of style.

(2) The definition of "Special Condition" added as subsection (a)(7) on page 7 and the use of that term in section (d) of the Rule also are matters of style and clarification. A question was raised at the January 5th hearing regarding the meaning of "permissible" conditions of release. It was at least implicit, as the Rule was proposed in the 192nd Report, that all releases, including those on personal recognizance, would be subject to two general conditions -- that the defendant appear in court when required and commit no criminal offense while on release. All other listed conditions were permissible ones, but not necessarily mandated. The amendments to section (d) in this Supplement, along with the new definition, are intended to make that distinction more clear.

(3) At the hearing, the Court debated whether to include a specific evidentiary standard with respect to a decision by a judicial officer to detain the defendant but appeared to make no final determination of the matter. The Court has the language that was at issue. The amendment in this Supplement to subsection (b)(1) on page 8 and the proposed new cross reference to Rule 5-101 (b) present another option - to make clear that such a decision must be based on evidence and not whim but also to note that the Title 5 Rules of Evidence (other than as to the competence of witnesses) do not apply to pretrial release proceedings. If the Court were to adopt the evidentiary standard language offered at the January 5th hearing, the amendment to subsection (b)(1) would not be necessary.

(4) The amendments to subsection (b)(2) on page 9 address questions raised at the January 5th hearing regarding whose decision was at issue and the meaning of the term "financial status."

(5) The rewriting of subsection (c)(1) and language added to the cross-reference on page 10 are partly a matter of style but also address the concern expressed at the January 5th hearing regarding the force of §§5-101 and 5-202 of the Criminal Procedure Article, which limit (i) the ability of any judicial officer to release persons charged with certain crimes and (ii) the ability of a commissioner to release persons charged with certain other crimes. The changes make clear that those statutes must be respected.

(6) Section (d), on pages 11-13, is revised in two respects. First, as noted above, it makes clear the distinction between required and special conditions. Second, it reorganizes the list of special conditions and adds some that were suggested by one or more members of the Court. The Committee note that follows subsection (d)(2)(K) on page 12 confirms the ability of the judicial officer, where there is a pretrial release unit that provides adequate supervisory services, to commit the defendant generally to the supervision of the unit, subject to more particular requirements imposed by the unit as part of the supervision. We were advised that, in counties having pretrial release services units that provide supervisory services, that is occasionally the practice. At the suggestion of one of the members of the Court, sections (d) and (e) have been "flipped" - non-financial conditions, formerly section (e), now precedes financial conditions as section (d), and financial conditions are moved to section (e).

(7) The revisions to new section (d) implement suggestions offered by a member of the Court and, along with the Committee note, address the question of how a judicial officer is to determine whether a defendant is capable of meeting a financial condition the judicial officer has in mind. The Committee note explains what we learned from inquiries of the Chief Judge of the District Court and the Executive Director of Commissioners in this regard. Included in this Supplement is the Initial Appearance Questionnaire used by the commissioners.

(8) The revisions to subsection (e)(2) on pages 14-15 and the Committee note are partly clarifying - responding to a question as to what was meant by a "qualified" surety - and also address some suggestions made by a member of the Court. They confirm a point that already was in the proposed Rule, that when the judicial officer determines that a bond with collateral security is warranted and that the defendant and a friend or family member are willing and capable of executing a bond and posting the required collateral, the judicial officer should prefer that solution, rather than forcing the defendant to obtain a bond from a compensated surety. In all instances, the judicial officer must be assured that the collateral offered is sufficient.

(9) New subsection (f)(1)(D) on page 17 was recommended by the Maryland Crime Victims Resource Center, and the addition to subsection (f)(1)(F) simply makes clear that the State's Attorney may have both relevant information and a recommendation to offer.

During the January 5th hearing, concerns were raised by some members of the Court regarding the lack of adequately funded pretrial release services units in every county. That issue was noted as well in the concluding paragraph of the 192nd Report.

The information that the Rules Committee had when developing proposed new Rule 4-216.1 was that there were pretrial release services units operating in Baltimore City and 12 counties but that 11 counties did not have the benefit of such a unit. Subsequent to the Court hearing, the Public Defender advised that, in fact, there is a pretrial release services unit currently operating in all but four counties and that, in discussions with representatives of the Attorney General and the Public Defender, the State Department of Public Safety and Correctional Services, through its Division of Parole and Probation, has agreed "to receive referrals from judicial officers to provide basic supervision to appropriate low-risk pretrial cases in the jurisdictions that currently lack any pretrial supervision services," namely Charles, Dorchester, Somerset, and Worcester Counties. Copies of the Public Defender's letter and accompanying chart are attached.

It remains the case that the level of supervisory services offered by these units varies, and will continue to vary, to some degree. The Public Defender's letter notes, with respect to Charles, Dorchester, Somerset, and Worcester Counties, that "a simple call-in requirement or a series of notifications from the agent prior to the court date would fall within the ability of the Department." The programs in other counties are broader in scope.

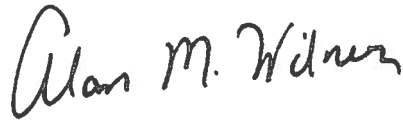
Ideally, the level of supervisory services should be more uniform throughout the State but, respectfully, we suggest that the Court view this issue in the following contexts:

FIRST: For good or ill, it is not uncommon, where the State has delegated to the counties a significant role in the administration or funding of important programs and services - public education, health, law enforcement, jails, maintenance, and funding of the Circuit Courts - for the level and funding of those programs and services to be uneven, sometimes markedly so. To the extent that pretrial release services units are county-based, they are just another example, and, to the extent this is a problem, it exists under the current Rules. Failure to adopt the proposed changes will do nothing to improve it.

SECOND: As noted at the January 5th hearing, merely reminding defendants of scheduled court proceedings has resulted in significant reductions in failures to appear in other States, so the commitment to do just that is an improvement over what exists now in the 4 counties and should give judicial officers in those counties a heightened level of confidence in releasing defendants.

THIRD: To the extent that there has been an extension of pretrial release services programs, which now appears to be on the cusp of operating Statewide, the spur for that likely has been the increasing groundswell of support for reform in the pretrial release system, triggered in part three years ago by *Richmond* and enhanced most recently by the Attorney General's advice letter and the development of the proposed Rules changes. There is a growing and long overdue momentum that the proposed Rules amendments can advance.

Respectfully submitted,

A handwritten signature in black ink that reads "Alan M. Wilner". The signature is written in a cursive, slightly slanted style.

Alan M. Wilner
Chair

AMW:cdc

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

ADD new Rule 4-216.1, as follows:

Rule 4-216.1. PRETRIAL RELEASE - STANDARDS GOVERNING

(a) Definitions

The following definitions apply in this Rule:

(1) Appearance; **Appear**

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

(2) Bond

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

(3) Collateral Security

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

(4) Compensated Surety

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

(5) Financial Condition

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

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

(6) Release on Personal Recognizance

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

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

(7) Special Condition

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

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

(8) Surety

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

(9) Surety Insurer

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

(10) Uncompensated Surety

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

(b) General Principles

(1) Liberal Construction

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

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

(2) Individualized Consideration

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

(3) Least Onerous Conditions

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

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

(4) Exceptions

Nothing in this Rule is intended to preclude a defendant from being held in custody based on an alleged violation of (i)

a condition of pretrial release, a release under Rule 4-349, or an order of probation or parole previously imposed in another case, or (ii) a condition of pretrial release previously imposed in the instant case.

(c) Release on Personal Recognizance or Unsecured Bond

(1) Generally

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

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

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

(2) Permissible Conditions

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

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

(1) Required Conditions

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

(2) Non-financial Special Conditions

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

~~(2)~~ **(A)** ~~no contact orders~~ **one or more of the conditions authorized under Code, Criminal Law Article, §9-304 reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of Code, Criminal Law Article, §§9-302, 9-303, or 9-305, including a general no-contact order;**

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Generally

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

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

Committee note: Information regarding the defendant's financial situation may come from several sources. The Initial Appearance Questionnaire Form used by District Court commissioners seeks information from the defendant regarding employment, occupation, amount and source of income, housing status, marital status, and number of dependents relying on the defendant's income. The criminal and juvenile record checks made by the commissioner also may reveal relevant information. Additional information

may be available to the judge at a bail review proceeding from a defense attorney, the State's Attorney, and a pretrial services unit.

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

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

(2) Imposition of Financial Condition

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

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

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

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

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

(3) Other Permissible Conditions

If the judicial officer finds that one or more non-financial conditions also may be required to reasonably ensure (A) the appearance of the defendant, and (B) the safety of each alleged victim, other persons, or the community, the judicial officer may impose on the defendant one or more non-financial conditions in accordance with section ~~(e)~~ **(d)** of this Rule.

(f) Consideration of Factors

(1) Recommendation of Pretrial Release Services Program

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

(2) Other Factors

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

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

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

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

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

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

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

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

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

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

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

(g) Disclosure

If the judicial officer requires collateral security, the judicial officer shall advise the defendant that, if the defendant or an uncompensated surety posts the required cash or other property, it will be refunded at the conclusion of the criminal proceedings if the defendant has not defaulted in the performance of the conditions of the bond.

Source: This Rule is new.

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

AMEND Rule 4-212 to revise internal references, as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR
WARRANT

. . .

(d) Warrant - Issuance; Inspection

(1) In the District Court

(A) By Judge

A judge may, and upon request of the State's Attorney shall, issue a warrant for the arrest of the defendant, other than a corporation, upon a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and that (i) the defendant has previously failed to respond to a summons that has been personally served or a citation, or (ii) there is a substantial likelihood that the defendant will not respond to a summons, or (iii) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court, or (iv) the defendant is in custody for another offense, or (v) there is probable cause to believe that the defendant poses a danger to another person or to the

community. A copy of the charging document shall be attached to the warrant.

(B) By Commissioner

On review of an application by an individual for a statement of charges, a commissioner may issue a warrant for the arrest of the defendant, other than a corporation, upon a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and that (i) the defendant has previously failed to respond to a summons that has been personally served or a citation, or (ii) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court, or (iii) the defendant is in custody for another offense, or (iv) there is probable cause to believe that the defendant poses a danger to another person or to the community. A copy of the charging document shall be attached to the warrant.

Cross reference: See Code, Courts Article, §2-607.

(2) In the Circuit Court

Upon the request of the State's Attorney, the court may order issuance of a warrant for the arrest of a defendant, other than a corporation, if an information has been filed against the defendant and the circuit court or the District Court has made a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document

or if an indictment has been filed against the defendant; and (A) the defendant has not been processed and released pursuant to Rule 4-216 or ~~4-216.1~~ 4-216.2, or (B) the court finds there is a substantial likelihood that the defendant will not respond to a summons. A copy of the charging document shall be attached to the warrant. Unless the court finds that there is a substantial likelihood that the defendant will not respond to a criminal summons, the court shall not order issuance of a warrant for a defendant who has been processed and released pursuant to Rule 4-216 or ~~4-216.1~~ 4-216.2 if the circuit court charging document is based on the same alleged acts or transactions. When the defendant has been processed and released pursuant to Rule 4-216 or ~~4-216.1~~ 4-216.2, the issuance of a warrant for violation of conditions of release is governed by Rule 4-217.

(3) Inspection of the Warrant and Charging Document

Unless otherwise ordered by the court, files and records of the court pertaining to a warrant issued pursuant to subsection (d)(1) or (d)(2) of this Rule and the charging document upon which the warrant was issued shall not be open to inspection until either (A) the warrant has been served and a return of service has been filed in compliance with section (g) of this Rule or (B) 90 days have elapsed since the warrant was issued. Thereafter, unless sealed pursuant to Rule 4-201 (d), the files and records shall be open to inspection.

Committee note: This subsection does not preclude the release of otherwise available statistical information concerning unserved arrest warrants nor does it prohibit a State's Attorney or peace officer from releasing information pertaining to an unserved arrest warrant and charging document.

Cross reference: See Rule 4-201 concerning charging documents. See Code, General Provisions Article, §4-316, which governs inspection of court records pertaining to an arrest warrant.

(e) Execution of Warrant - Defendant not in Custody

Unless the defendant is in custody, a warrant shall be executed by the arrest of the defendant. Unless the warrant and charging document are served at the time of the arrest, the officer shall inform the defendant of the nature of the offense charged and of the fact that a warrant has been issued. A copy of the warrant and charging document shall be served on the defendant promptly after the arrest. The defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest or, if the warrant so specifies, before a judicial officer of the circuit court without unnecessary delay and in no event later than the next session of court after the date of arrest. The court shall process the defendant pursuant to Rule 4-216 or ~~4-216.1~~ 4-216.2 and may make provision for the appearance or waiver of counsel pursuant to Rule 4-215.

Committee note: The amendments made in this section are not intended to supersede Code, Courts Article, §10-912.

Cross reference: See Code, Criminal Procedure Article, §4-109 concerning invalidation and destruction of unserved warrants, summonses, or other criminal process for misdemeanor offenses.

(f) Procedure - When Defendant in Custody

(1) Same Offense

When a defendant is arrested without a warrant, the defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest. When a charging document is filed in the District Court for the offense for which the defendant is already in custody a warrant or summons need not issue. A copy of the charging document shall be served on the defendant promptly after it is filed, and a return shall be made as for a warrant. When a charging document is filed in the circuit court for an offense for which the defendant is already in custody, a warrant issued pursuant to subsection (d)(2) of this Rule may be lodged as a detainer for the continued detention of the defendant under the jurisdiction of the court in which the charging document is filed. Unless otherwise ordered pursuant to Rule 4-216, ~~4-216.1, or 4-216.2~~ 4-216.2, or 4-216.3, the defendant remains subject to conditions of pretrial release imposed by the District Court.

(2) Other Offense

A warrant issued pursuant to section (d) of this Rule for the arrest of a defendant in custody for another offense may be lodged as a detainer for the continued detention of the defendant for the offense charged in the charging document. When the defendant is served with a copy of the charging

document and warrant, the defendant shall be taken before a judicial officer of the District Court, or of the circuit court if the warrant so specifies, without unnecessary delay. In the District Court the defendant's appearance shall be no later than 24 hours after service of the warrant, and in the circuit court it shall be no later than the next session of court after the date of service of the warrant.

. . .

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

AMEND Rule 4-213 to revise internal references, as follows:

Rule 4-213. INITIAL APPEARANCE OF DEFENDANT

(a) In District Court Following Arrest

When a defendant appears before a judicial officer of the District Court pursuant to an arrest, the judicial officer shall proceed as follows:

(1) Appointment, Appearance, or Waiver of Attorney for Initial Appearance

If the defendant appears without an attorney, the judicial officer shall first follow the procedure set forth in Rule 4-213.1 to assure that the defendant either is represented by an attorney or has knowingly and voluntarily waived the right to an attorney.

(2) Advice of Charges

The judicial officer shall inform the defendant of each offense with which the defendant is charged and of the allowable penalties, including any mandatory or enhanced penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is

then available. If one is not then available, the defendant shall be furnished with a copy as soon as possible.

(3) Advice of Right to Counsel

The judicial officer shall require the defendant to read the notice to defendant required to be printed on charging documents in accordance with Rule 4-202 (a), or shall read the notice to a defendant who is unable for any reason to do so. A copy of the notice shall be furnished to a defendant who has not received a copy of the charging document. The judicial officer shall 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.

Cross reference: See Rule 4-213.1 with respect to the right to an attorney at an initial appearance before a judicial officer and Rule ~~4-216.1~~ 4-216.2 (b) with respect to the right to an attorney at a hearing to review a pretrial release decision of a commissioner.

(4) Advice of Preliminary Hearing

When a defendant has been charged with a felony that is not within the jurisdiction of the District Court and has not been indicted, the judicial officer shall advise the defendant of the right to have a preliminary hearing by a request made then or within ten days thereafter and that failure to make a timely request will result in the waiver of a preliminary hearing. If the defendant then requests a preliminary hearing,

the judicial officer may either set its date and time or notify the defendant that the clerk will do so.

(5) Pretrial Release

The judicial officer shall comply with the applicable provisions of Rules 4-216, 4-216.1, and ~~4-216.1~~ 4-216.2 governing pretrial release.

(6) Certification by Judicial Officer

The judicial officer shall certify compliance with this section in writing.

(7) Transfer of Papers by Clerk

As soon as practicable after the initial appearance by the defendant, the judicial officer shall file all papers with the clerk of the District Court or shall direct that they be forwarded to the clerk of the circuit court if the charging document is filed there.

Cross reference: Code, Courts Article, §10-912. See Rule 4-231 (d) concerning the appearance of a defendant by video conferencing.

(b) In District Court

(1) Following Summons or Citation

When a defendant appears before the District Court pursuant to a summons or citation, the court shall proceed in accordance with Rule 4-301.

(2) Preliminary Inquiry

When a defendant has (A) been charged by a citation or served with a summons and charging document for an offense that

carries a penalty of incarceration and (B) has not previously been advised by a judicial officer of the defendant's rights, the defendant may be brought before a judicial officer for a preliminary inquiry advisement if no attorney has entered an appearance on behalf of the defendant. The judicial officer shall inform the defendant of each offense with which the defendant is charged and advise the defendant of the right to counsel and the matters set forth in subsection (a) (2), (3), and (4) of this Rule. The judicial officer shall certify in writing the judicial officer's compliance with this subsection.

(c) In Circuit Court Following Arrest or Summons

The initial appearance of the defendant in circuit court occurs when the defendant (1) is brought before the court by reason of execution of a warrant pursuant to Rule 4-212 (e) or (f) (2), or (2) appears in person or by written notice of counsel in response to a summons. In either case, if the defendant appears without counsel the court shall proceed in accordance with Rule 4-215. If the appearance is by reason of execution of a warrant, the court shall (1) inform the defendant of each offense with which the defendant is charged, (2) ensure that the defendant has a copy of the charging document, and (3) determine eligibility for pretrial release pursuant to Rules 4-216 and 4-216.1.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213.1 to revise internal references, as follows:

Rule 4-213.1. APPOINTMENT, APPEARANCE, OR WAIVER OF ATTORNEY AT INITIAL APPEARANCE

. . .

(d) Proceeding Before Commissioner

(1) Determination of Indigence

(A) If the defendant claims indigence and desires a court-appointed attorney for the proceeding, the defendant shall complete a request and affidavit substantially in the form used by the Public Defender and, from those documents and in accordance with the criteria set forth in Code, Criminal Procedure Article, §16-210 (b) and (c), the commissioner shall determine whether the defendant qualifies for an appointed attorney.

(B) If the commissioner determines that the defendant is indigent, the commissioner shall provide a reasonable opportunity for the defendant and a court-appointed attorney to consult in confidence.

(C) If the commissioner determines that the defendant is not indigent, the commissioner shall advise the defendant of the right to a privately retained attorney and provide a reasonable opportunity for the defendant to obtain the services of, and consult in confidence with, a private attorney.

(2) Inability of Attorney to Appear Promptly

The commissioner shall further advise the defendant that, unless the attorney, whether court appointed or privately retained, is able to participate, either in person or by electronic means or telecommunication, within a reasonable period of time, the initial appearance may need to be continued, in which event, subject to subsection (d)(3) of this Rule, the defendant will be temporarily committed until the earliest opportunity that the defendant can be presented to the next available judicial officer with an attorney present.

(3) If Initial Appearance Continued

If pursuant to subsection (d)(2) of this Rule, the initial appearance needs to be continued, the commissioner, before recessing the proceeding, shall proceed in accordance with this subsection.

(A) Arrest Without Warrant - Determination of Probable Cause

If the defendant was arrested without a warrant, the commissioner shall determine whether there was probable cause for the charges and the arrest pursuant to Rule 4-216 (a). If

the commissioner finds no probable cause for the charges or for the arrest, the commissioner shall release the defendant on personal recognizance, with no other conditions of release. If the defendant is released pursuant to subsection (d)(3)(A) of this Rule, the Commissioner shall not make the determination otherwise required by subsection (d)(3)(B) of this Rule, but shall provide the advice required by subsection (d)(3)(C) of this Rule.

(B) Preliminary Determination Regarding Release on Personal Recognizance

Regardless of whether the defendant was arrested with or without a warrant, the commissioner shall make a preliminary determination regarding the commissioner's authority to release the defendant on personal recognizance and the appropriateness of such a release pursuant to Rules 4-216 and 4-216.1. If the commissioner's preliminary determination is that release on personal recognizance with no other conditions of release is authorized and appropriate, the commissioner shall release the defendant on that basis.

(C) Required Compliance Before Release of Defendant

Before releasing the defendant pursuant to subsection (d)(3)(A) or (B) of this Rule, the commissioner shall comply with the applicable provisions of Rules 4-213 and 4-216 ~~(h)~~ (g).

(D) Preliminary Determination Not to Release

Upon a preliminary determination by the commissioner not to release the defendant on personal recognizance, the commissioner shall comply with the applicable provisions of Rule 4-216 ~~(g)~~ (f) and ~~(h)~~ (g) and recess the proceeding. The commissioner's preliminary determination is without prejudice to the right of the defendant to seek release on personal recognizance when the proceeding resumes with the attorney present. If the proceeding resumes before the commissioner who made the preliminary determination not to release the defendant on personal recognizance, the commissioner, upon request of the defendant, shall recuse, and the proceeding shall be before another judicial officer.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-214 to revise internal references, as follows:

Rule 4-214. DEFENSE COUNSEL

(a) Appearance

Counsel retained or appointed to represent a defendant shall enter an appearance within five days after accepting employment, after appointment, or after the filing of the charging document in court, whichever occurs later. An appearance may be entered by filing a pleading or motion or by filing a written notice of appearance. An appearance entered in the District Court will automatically be entered in the circuit court when a case is transferred to the circuit court because of a demand for jury trial. In any other circumstance, counsel who intends to continue representation in the circuit court after appearing in the District Court must re-enter an appearance in the circuit court.

Cross reference: See Rules 4-213.1 and ~~4-216.1~~ 4-216.2 (b) with respect to the automatic termination of the appearance of the Public Defender or court-appointed attorney upon the conclusion of an initial appearance before a judicial officer and upon the conclusion of a hearing to review a pretrial release decision of a commissioner if no general appearance under this Rule is entered.

. . .

(d) Striking Appearance

A motion to withdraw the appearance of counsel shall be made in writing or in the presence of the defendant in open court. If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion. If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving counsel. If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted only by order of court. The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215.

Cross reference: Code, Courts Article, §6-407 (Automatic Termination of Appearance of Attorney). See Rules 4-213.1 and ~~4-216.1~~ 4-216.2 (b) providing for a limited appearance by the Public Defender or court-appointed attorney in initial appearance proceedings before a judicial officer and hearings to review a pretrial release decision by a commissioner if no general appearance under this Rule is entered.

Source: This Rule is in part derived from former Rule 725 and M.D.R. 725 and in part from the 2009 version of Fed. R. Crim. P. 44.

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

AMEND Rule 4-215 to revise a cross reference, as follows:

Rule 4-215. WAIVER OF COUNSEL

. . .

Cross reference: See Rule 4-213.1 with respect to waiver of an attorney at an initial appearance before a judge and Rule ~~4-216.1~~ 4-216.2 (b) with respect to waiver of an attorney at a hearing to review a pretrial release decision of a commissioner.

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.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - PRETRIAL PROCEDURES

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

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

(a) Arrest without Warrant

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

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

(b) Communications with Judicial Officer

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

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

(c) Defendants Eligible for Release by Commissioner or Judge

In accordance with this Rule, Rule 4-216.1, and Code, Criminal Procedure Article, §§5-101 and 5-201 and except as otherwise provided in section (d) of this Rule or by Code, Criminal Procedure Article, §§5-201 and 5-202, a defendant is entitled to be ~~released~~ considered for release before verdict ~~on personal recognizance or on bail, in either case with or without conditions imposed, unless the judicial officer determines that no condition of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of~~

~~the alleged victim, another person, and the community by a~~
judicial officer.

(d) Defendants Eligible for Release Only by a Judge

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

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

(e) Duties of Judicial Officer

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

~~(1) Consideration of Factors~~

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

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

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

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

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

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

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

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

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

~~(I) any other factor bearing on the risk of a wilful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and~~

~~any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.~~

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

~~Upon determining to release a defendant to whom section 6 of this Rule applies or to refuse to release a defendant to whom section (b) of this Rule applies, the judicial officer shall state the reasons in writing or on the record.~~

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

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

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

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

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

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

~~The judicial officer shall advise the defendant in writing or on the record of the conditions of release imposed~~

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

~~(f) Conditions of Release~~

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

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

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

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

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

~~(A) without collateral security;~~

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

~~(C) with collateral security of the kind specified in Rule 4-217 (e) (1) (A) equal in value to a percentage greater than 10% but less than the full penalty amount;~~

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

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

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

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

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

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

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

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

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

If an initial appearance before a commissioner cannot proceed or be completed as scheduled, the commissioner may enter

a temporary commitment order, but in that event the defendant shall be presented at the earliest opportunity to the next available judicial officer for an initial appearance. If the judicial officer is a judge, there shall be no review of the judge's order pursuant to Rule ~~4-216.1~~ 4-216.2.

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

~~(h)~~ (g) Record

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

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

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

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

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

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

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

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

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

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

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

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

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - PRETRIAL PROCEDURES

AMEND Rule 4-216.1 to renumber it and to add a reference to the standards and requirements set forth in proposed new Rule 4-216.1, as follows:

Rule ~~4-216.1~~ 4-216.2. REVIEW OF COMMISSIONER'S PRETRIAL RELEASE ORDER

. . .

(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 (e) and (f) 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.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - PRETRIAL PROCEDURES

AMEND Rule 4-216.2 to renumber it and to add a reference to the standards and requirements set forth in proposed new Rule 4-216.1, as follows:

Rule ~~4-216.2~~ 4-216.3 FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE

. . .

(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. A judge may alter conditions set by a commissioner or another judge.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 to revise internal references, 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, or 4-216.2~~ 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.

. . .

(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 statted, 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 ~~4-216.2~~ 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 statted. 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, or 4-216.2~~ 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 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-349 to revise internal references, as follows:

Rule 4-349. RELEASE AFTER CONVICTION

. . .

(b) Factors Relevant to Conditions of Release

In determining whether a defendant should be released under this Rule, the court may consider the factors set forth in Rule ~~4-216~~ 4-216.1 (f) and, in addition, whether any appellate review sought appears to be frivolous or taken for delay. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(c) Conditions of Release

The court may impose different or greater conditions for release under this Rule than had been imposed upon the defendant before trial pursuant to Rule 4-216, ~~Rule 4-216.1, 4-216.2~~ 4-216.2, or 4-216.3. When the defendant is released pending sentencing, the condition of any bond required by the court shall be that the defendant appear for further proceedings as directed and surrender to serve any sentence imposed. When the defendant is released pending any appellate review, the

condition of any bond required by the court shall be that the defendant prosecute the appellate review according to law and, upon termination of the appeal, surrender to serve any sentence required to be served or appear for further proceedings as directed. The bond shall continue until discharged by order of the court or until surrender of the defendant, whichever is earlier.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 5 - EVIDENCE
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 5-101 to revise internal references, as follows:

Rule 5-101. SCOPE

(a) Generally

Except as otherwise provided by statute or rule, the rules in this Title apply to all actions and proceedings in the courts of this State.

(b) Rules Inapplicable

The rules in this Title other than those relating to the competency of witnesses do not apply to the following proceedings:

- (1) Proceedings before grand juries;
- (2) Proceedings for extradition or rendition;
- (3) Direct contempt proceedings in which the court may act summarily;
- (4) Small claim actions under Rule 3-701 and appeals under Rule 7-112 (d) (2);
- (5) Issuance of a summons or warrant under Rule 4-212;
- (6) Pretrial release under Rule 4-216, 4-216.1, or 4-216.2, or 4-216.3 or release after conviction under Rule 4-349;
- (7) Preliminary hearings under Rule 4-221;

(8) Post-sentencing procedures under Rule 4-340;

(9) Sentencing under Rule 4-342;

(10) Issuance of a search warrant under Rule 4-601;

(11) Detention and shelter care hearings under Rule 11-112;

and

(12) Any other proceeding in which, prior to the adoption of the rules in this Title, the court was traditionally not bound by the common-law rules of evidence.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-303 to revise internal references, as follows:

Rule 15-303. PROCEDURE ON PETITION

. . .

(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, or 4-216.2~~ 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.

Cross reference: Rule 4-213 (c).

(2) After Conviction

(A) Except as otherwise provided in subsection (2)(B) of this section, if a petition by or on behalf of an individual confined as a result of a conviction pending sentencing or exhaustion of appellate review 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 writ and order that the petition be treated as a motion for release or for amendment of an order of release pursuant to Rule 4-349. Upon entry of the order, the judge shall transmit the petition, a certified copy of the order, and any other pertinent papers to the trial judge who presided at the proceeding as a result of which the individual was confined. Upon receiving of the transmittal, the trial judge shall proceed in accordance with Rule 4-349.

(B) If a petition directed to a circuit court judge is filed by or on behalf of an individual confined as a result of a conviction in the District Court that has been appealed to a circuit court, the circuit court judge shall act on the petition and may not transmit or refer the petition to a District Court judge.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

BAIL BOND FORMS

AMEND Form 4-217.2 to delete the phrase "the greater of \$25.00 or", as follows:

Form 4-217.2. BAIL BOND FORMS

(Caption)

BAIL BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That I/we, the undersigned, jointly and severally acknowledge that I/we, our personal representatives, successors, and assigns are held and firmly bound unto the State of Maryland in the penalty sum of Dollars (\$.....):

without collateral security;

with cash or other collateral security equal in value to ~~the greater of \$25.00 or~~% of the penalty sum;

with cash or other collateral security equal in value to the full penalty amount;

with the obligation of the corporation which is an insurer or other surety in the full penalty amount.

To secure payment the defendant surety individual has:

[] deposited [] in cash or [] by certified check the amount of \$.....

[] pledged the following intangible personal property:
.....

[] encumbered the real estate described in the Declaration of Trust filed herewith, or in a Deed of Trust dated the day of,, from the undersigned
(month) (year)
surety to, to the use of the State of Maryland.

THE CONDITION OF THIS BOND IS 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.

IF, however, the defendant fails to perform the foregoing condition, this bond shall be forfeited forthwith for payment of the above penalty sum in accordance with law.

IT IS AGREED AND UNDERSTOOD that this bond shall continue in full force and effect until discharged pursuant to Rule 4-217.

AND the undersigned surety covenants that the only compensation chargeable in connection with the execution of this bond consisted of a [] fee, [] premium, [] service charge for the loan of money, or other (describe)

.....

in the amount of \$.....

[] Fee or premium paid by
(address)

AND the undersigned surety covenants that no collateral was or will be deposited, pledged, or encumbered directly or indirectly in favor of the surety in connection with the execution of this bond except:

IN WITNESS WHEREOF, these presents have been executed under seal this day of,
(month) (year)

..... (SEAL)
Defendant Address of Defendant

..... (SEAL)
Personal Surety/Individual Address of Surety

..... (SEAL)
Surety-Insurer Address of Surety-Insurer

By: (SEAL)
Bail Bondsman Power of Attorney No.

SIGNED, sealed, and acknowledged before me:

.....
Commissioner/Clerk/Judge of the
..... Court for
.....County/City

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-16-0041
RULES 6, 7, AND 41, RULES)
OF CRIMINAL PROCEDURE)
)
) FILED 12/14/2016
)
)
_____)

ORDER

**AMENDING RULES 3, 6, AND 7, AND ABROGATING FORMS 6 AND 7, RULE 41,
RULES OF CRIMINAL PROCEDURE, AND SUBSTITUTING NEW FORMS 6 AND 7 IN
THEIR PLACE**

A petition having been filed proposing to amend Rules 6, 7, and 41, Forms 6 and 7, Rules of Criminal Procedure, and comments and a reply having been received, upon consideration,

IT IS ORDERED that Rules 3, 6, and 7, Arizona Rules of Criminal Procedure, be amended in accordance with the attachment hereto, effective April 3, 2017.

IT IS FURTHER ORDERED that Rule 41, Forms, Arizona Rules of Criminal Procedure, be amended by abrogating existing Forms 6 and 7, and substituting new Forms 6 and 7 in their place, in accordance with the attachment hereto, effective April 3, 2017.

DATED this 14th day of December, 2016.

/s/ _____
SCOTT BALES
Chief Justice

ATTACHMENT*

Rule 3.2. Content of warrant or summons

a. Warrant. The warrant shall be signed by the issuing magistrate and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall state the offense with which the defendant is charged and whether the offense is one to which victims' rights provisions apply. It shall command that the defendant be arrested and brought before the issuing magistrate or, if the issuing magistrate is absent or unable to act, the nearest or most accessible magistrate in the same county. If the defendant is bailable as a matter of right, it shall may state the amount of a an secured appearance bond.

b. and c. [no changes]

Rule 6.1. Rights to counsel; waiver of rights to counsel

a. [no changes]

b. *Right to Appointed Counsel.* An indigent defendant shall be is entitled to have an attorney appointed; ~~to represent him or her in~~

(1) For the limited purpose of determining release conditions, if detained pretrial after misdemeanor criminal charges are filed;

(2) [i]n any criminal proceeding which that may result in loss of liberty; and

(3) In any other criminal proceeding in which the court concludes that the interests of justice so require.

c. through e. [no changes]

Rule 7.1. Definitions and applicability of rule

a. *Own recognizance.* "Own recognizance" means release ~~without any condition of an undertaking relating to, or deposit of, security~~ of a person without imposing any bond as a condition of release.

* Additions to text are shown by underscoring; deletions by ~~strikeouts~~.

b. Unsecured Appearance bond. An "unsecured appearance bond" is an undertaking, on a form approved by the Supreme Court, to pay to the clerk of the court a specified sum of money upon failure of a person released to comply with ~~its~~ the conditions of the bond.

c. Cash bond. A "cash bond" is a secured appearance bond consisting of actual cash deposited by the person released or someone on behalf of that person other than a professional bondsman.

d. Deposit bond. A "deposit bond" is a partially-secured appearance bond in which the person, or someone on behalf of that person other than a professional bondsman, deposits a percentage of the full bond amount in cash.

ee. Secured Appearance bond. A "secured appearance bond" is an appearance bond secured by deposit with the clerk of security equal to the full amount thereof.

ef. Security. "Security" is cash, a surety's undertaking, or any property of value, deposited with the clerk to secure an appearance bond. The value of such property shall be determined by the clerk, or at the clerk's or a party's request, by the court.

eg. Surety. A "surety" is one, other than the person released, who executes an appearance bond and binds ~~himself or herself~~ the surety to pay its amount if the person released fails to comply with its conditions. A surety shall file with an appearance bond an affidavit that he or she is not an attorney or person authorized to take bail, and that ~~he or she~~ the surety owns property in this state (or is resident of this state owning property) worth the amount of the appearance bond, exclusive of property exempt from execution and above and over all liabilities, including the amount of all outstanding appearance bonds entered into by ~~him or her~~ the surety, specifying such property, the exemptions and liabilities thereon, and the number and amount of such appearance bonds.

fh. Professional Bondsman. Any person who is surety simultaneously on more than four appearance bonds is a "professional bondsman." No person may be a professional bondsman unless the person annually certifies in writing under oath to the clerk of the Superior Court that ~~he or she~~ the person

- (1) Is a resident of this state;
- (2) Has sufficient financial net worth to satisfy reasonable obligations as a surety;
- (3) Agrees to assume an affirmative duty to the court to remain in regular contact with any defendant released pursuant to an appearance bond on which the person is a surety;

- (4) Has not been convicted of a felony, except as otherwise provided by A.R.S. § 20-340.03;
- (5) Has no judgments arising out of surety undertakings outstanding against ~~him or her~~ the person;
- (6) Has not, within a period of two years, violated any provisions of these rules or any court order.

Capacity to act as a professional bondsman may be revoked or withheld by the clerk, or by the court, for violation of any provision of this rule.

gj. *Applicability.* This rule shall not apply to minor traffic offenses.

COMMENT [AMENDED 2007]

Rule 7.1 contains the definitions of the terms used in the rule and the requirements for "sureties" and "professional bondsmen" currently specified in the rules of criminal procedure.

Rule 7.1(a). See Form 6 for an order of release.

Rule 7.1(b). The rule substitutes for "bail bond" and "bail" the term "unsecured appearance bond" which emphasizes the role of unsecured bonds. See Ariz. Rev. Stat. Ann. § 13-1577(E) (Supp.1972) [now § 13-3967] (noting propriety of conditions other than money bail). See Form 7.

Rule 7.1(ce). "Secured appearance bond" is used instead of "bail". See Form 7 for a secured appearance bond.

Rule 7.1(df). "Security" is defined broadly enough to encompass anything of value.

Rule 7.1(eg). This definition includes the requirements of the 1956 Ariz. Rules of Criminal Procedure, as amended, Rules 46, 47, 48(A) and 49. Wherever standards are unclear under present rules, this definition chooses their most onerous interpretation. See Form 7 and Attachment A thereto for the form of the surety's undertaking and affidavit.

Rule 7.1(fh). The definition of "professional bondsman" is more limited than the 1956 Ariz. Rules of Criminal Procedure, as amended, Rules 50 and 51. The clerk is required to review a professional bondsman's qualifications annually.

Rule 7.2. Right to release

a. Before Conviction; Persons Charged With an Offense Bailable as a Matter of Right. All persons charged with a crime but not yet convicted are presumed to be innocent. Except as otherwise provided in these rules, Any person charged with an offense bailable as a matter of right shall must be released pending or during trial on the person's own recognizance with only the conditions of release required by Rule 7.3(a), unless the court determines, in its discretion, that such a release will not reasonably assure

the person's appearance as required or protect other persons or the community from risk posed by the person. If such a determination is made, the court may impose the least onerous condition or conditions contained in rule 7.3(b) ~~which will reasonably assure the person's appearance~~ that are reasonable and necessary to protect other persons or the community from risk posed by the person or to secure the appearance of the person in court.

b. through d. [no changes]

COMMENT TO 2014 AMENDMENT TO RULE 7.2(B)

Rule 7(b) was amended in 2014 to comply with *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014), *cert. denied*, 135 S.Ct. 2046 (2015), which held unconstitutional A.R.S. Const. Art. 2, § 22(A)(4) and A.R.S. § 13-3961(A)(5) mandating that bail be denied to undocumented immigrants charged with a serious crime.

COMMENT

Rule 7.2(a). This section establishes a presumption for release on recognizance in most cases. Offenses "bailable as a matter of right" are defined in Ariz. Const. Art. 2, § 22 and Ariz. Rev. Stat. Ann. § 13-1571 (1956) [now § 13-3961] as all cases except "capital offenses when the proof is evident or the presumption great" and felonies committed while on bail (using the same "proof is evident or the presumption great" standard).

The presumption of an "own recognizance release" follows closely the ABA, Standards Relating to Pretrial Release, § 5.1 (Approved Draft, 1968), and the Federal Bail Reform Act, 18 U.S.C.A. § 3146 (1966). ~~This section of the rule differs only in emphasis from Ariz. Rev. Stat. Ann. § 13-1577(B).~~

Rule 7.2(b). See Rule 17, Rules of the Supreme Court, 17 Ariz. Rev. Stat. Ann.

COMMITTEE COMMENT TO 1993 AMENDMENT

The 1993 amendment renumbered as Rule 7.2(b)(1) former Rule 7.2(b), which provides for the custody of a person convicted of an offense for which that person in all probability will suffer a sentence of incarceration, and made it applicable only in superior court. It added Rule 7.2(b)(2), applicable in limited jurisdiction courts, which represents a significant diversion from the parallel provision of Rule 7.2(b)(1). Rule 7.2(b)(2) provides that the person *shall* remain released on bail or own recognizance if these were conditions that existed prior to the person's conviction. A bond may still be required under Rule 6. Superior Court Rules of Appellate Procedure, in order to stay the execution of the remaining portion of the person's sentence.

Rule 7.3. Conditions of release

a. Mandatory Conditions. [no changes]

~~**b. Additional Conditions.** An order of release may include the first one or more of the following conditions reasonably necessary to secure a person's appearance:~~

~~(1) Execution of an unsecured appearance bond in an amount specified by the court;~~

~~(2) Placing the person in the custody of a designated person or organization agreeing to supervise him or her;~~

~~(3) Restrictions on the person's travel, associations, or place of abode during the period of release;~~

~~(4) Any other condition not included in (5) or (6) which the court deems reasonably necessary;~~

~~(5) Execution of a secured appearance bond; or~~

~~(6) Return to custody after specified hours.~~

b. *Discretionary Conditions in General.* The court may impose as a condition of release one or more of the following conditions, if the court finds the condition is reasonable and necessary to protect other persons or the community from risk posed by the person or secure the person's appearance. In making this determination, the court must consider the results of a risk assessment approved by the supreme court or a lethality assessment provided by law enforcement, if provided.

(1) Non-monetary conditions:

(i) Place the person in the custody of a designated person or organization agreeing to provide supervision;

(ii) Restrict the person's travel, associations, or residence;

(iii) Prohibit the person from possessing any dangerous weapon or engaging in certain described activities or consuming intoxicating liquors or any controlled substance not validly prescribed;

(iv) Prohibit the person from contacting the victim;

(v) Require the person to report regularly to and remain under the supervision of an officer of the court;

(vi) Return the person to custody after specified hours; or

(vii) Any other non-monetary condition that has a reasonable relationship to assuring the safety of other persons or the community from risk posed by the person or securing the person's appearance.

(2) Monetary conditions. In deciding whether to impose a monetary condition of release and what amount to impose, the court must make an individualized determination of the person's risk of non-appearance, risk to the community, and financial circumstances rather than rely on a schedule of charge-based bond amounts. The court must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the person is unable to pay the bond. If the court determines a

monetary condition is necessary, the court must impose the least onerous of the types of bonds listed below in the lowest amount necessary to protect other persons or the community from risk posed by the person or to secure the person's appearance. Monetary conditions include:

- (i) Unsecured appearance bond;
- (ii) Deposit bond;
- (iii) Other type of secured appearance bond; or
- (iv) Cash bond

COMMENT [AMENDED 2007]

Rule 7.3(a). This section replaces the 1956 Ariz. Rules of Criminal Procedure, as amended, Rules 48 and 68 (forms of undertaking), specifying the matters which must be included in every order of release.

The rule adds the requirement of good behavior from Ariz. Rev. Stat. Ann. § 13-1578(B) [now § 13-3968]. Also, following Ill. Ann. Stat. Ch. 38, § 110-10(a)(3) and (b)(3) (Smith-Hurd 1970), the prohibition against out-of-state travel without leave of the court is mandated for every case. The diligent prosecution of an appeal is also taken from the Illinois statute. (See the provision in Rule 7.2(b) for mandatory revocation upon violation of this requirement.) The surety's undertaking to surrender the person in the event of a supervening felony charge is deleted. See generally Form 6.

~~**Rule 7.3(b).** This section sets forth the additional conditions which a court may impose under the standard of Rules 7.2(a) or (b), and the order of priority in their imposition—e.g., the court may not properly impose (b)(6) unless it finds (b)(5) inadequate. See Form 6, which lists these conditions in the same order.~~

~~Subsection (1) calls for an unsecured appearance bond as defined in Rule 7.1. This condition is closely related to Release on Own Recognizance and is used interchangeably with it in the Federal Bail Reform Act, 18 U.S.C.A. § 3146 (1966).~~

~~Subsection (2) is taken from the statute. If a person willfully fails to produce a defendant released in his custody, the court may hold him in contempt. Subsection (3) and (4) are taken verbatim from § 13-1577(E)(2) and (6) [now § 13-3967]. Subsection (4) would also encompass the additional possibilities mentioned in the statute: prohibition against possessing weapons, engaging in certain activities or indulging in drugs or intoxicating liquors [§ 13-1577(E)(4)] and requiring the defendant to report to and remain under the supervision of an officer of the court [§ 13-1577(E)(5)].~~

~~Subsection (5), a fully secured bond, is included within the language of § 13-1577(E)(3), and is listed as the second least desirable condition. Part time incarceration, authorized by § 13-1577(E)(6), is the harshest permissible condition.~~

Rule 7.4. Procedure

a. through d. [no changes]

e. *Appointment of Counsel.* The court must appoint counsel in any case in which the defendant is eligible for appointment of counsel under Rule 6.1(b).

Rule 7.6. Transfer and disposition of bond

a. through c. [no changes]

d. Exoneration

(1) At any time before violation that the court finds that there is no further need for an-appearance bond, ~~it shall~~ the court must exonerate the appearance bond and order the return of any security deposited.

(2) When a deposit bond or cash bond is exonerated, the court must order the return of the entire amount deposited unless forfeited pursuant to rule 7.6(c)(2).

(23) If the surety, in compliance with the requirements of A.R.S. § 13-3974, surrenders the defendant to the sheriff of the county in which the prosecution is pending, or delivers an affidavit to the sheriff stating that the defendant is incarcerated in this or another jurisdiction, and the sheriff reports the surrender or status to the court, the court may exonerate the bond.

(34) In all other instances, the decision whether or not to exonerate a bond shall be within the sound discretion of the court.

e. [no changes]

COURT

County, Arizona

STATE OF ARIZONA Plaintiff -vs-										RELEASE ORDER			
Defendant (FIRST, MI, LAST)					Booking Number			Date of Birth					
LINE #	COMPLAINT NO.	VIOLATION CODE	NF	ORR	PSR	3P	BOND	BA	UB	DB	SB	CB	NB
1							\$						
2							\$						
3							\$						
4							\$						
5							\$						

(NF=Charge not filed; ORR=Own recognizance release; PSR=Pretrial supervision release; 3P=Third party custody; Bond=Amount of bond; BA=Bond applies; UB=Unsecured bond; DB=Deposit bond; SB=Secured bond; CB=Cash bond; NB=Non-bailable)

If you are released from jail, you must follow all release conditions and appear at court as indicated below:

MANDATORY AND STANDARD CONDITIONS OF YOUR RELEASE:

- 1. Appear at _____ court on: _____ at _____ a.m. / p.m., Courtroom: _____
(Court name and address) (Date) (Time)
for _____ and attend all future court hearings.
- 2. Violate no federal, state or local criminal laws.
- 3. Not leave the state of Arizona without written permission from the court.
[] Defendant may leave the state of Arizona provided defendant returns for court dates.
- 4. Diligently pursue any appeal if released from custody after judgment and sentence have been imposed.
- [] 5. Maintain contact with your attorney.
- [] 6. Provide a current address and phone number to the court and to your attorney and immediately notify both of any changes.
- [] 7. Not threaten or initiate any type of contact with the alleged victim(s).
- [] 8. Not drive a motor vehicle without a valid driver's license in your possession.
- [] 9. Not threaten or initiate any type of contact with any person as specified here: _____.
- [] 10. Not possess weapons as specified here: _____.
- [] 11. Not consume any alcoholic beverages.
- [] 12. Not go to scene of the alleged crime.
- [] 13. Not go to locations as specified here: _____.
- [] 14. Comply with 3rd party custody release conditions as specified here: _____.
- [] 15. Contact probation or parole officer. (See 3rd party obligations in this document.)
- [] 16. Electronic monitoring, if available, (mandatory if charged with a felony offense under Chapters 14 or 35.1 of Title 13)
- [] 17. Other: _____.

ADDITIONAL CONDITIONS FOR YOUR PRETRIAL SUPERVISION RELEASE (PSR):

- [] 18. Comply with the assigned pretrial supervision program as specified here: _____.
- [] 19. Provide a current address and phone number to Pretrial Services immediately and notify of any changes.

FINANCIAL CONDITIONS OF RELEASE: If you cannot post an appearance bond of \$ _____ you will remain in custody until your next court hearing on _____.

IF YOU VIOLATE THIS ORDER: You have the right to be present at your trial and at all other proceedings in your case. IF YOU FAIL TO APPEAR THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST AND/OR HOLD THE TRIAL OR PROCEEDING IN YOUR ABSENCE. IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.

If you violate any condition of a bond, the court may order the bond and any related security deposit forfeited to the State of Arizona. In addition, the court may issue a warrant for your arrest upon learning of any violation of the conditions of release. After a hearing, if the court finds that you have not complied with the release conditions, the court may modify the conditions or revoke the release altogether.

If you are released on a felony charge, and the court finds the proof evident or the presumption great that you committed a felony during the period of release, the court must revoke your release. You may also be subject to an additional criminal charge, and upon conviction you could be punished by imprisonment in addition to the punishment which would otherwise be impossible for the crime committed during the period of release. Upon finding that you violated conditions of release, the court may also find you in contempt of court and sentence you to a term of imprisonment, a fine, or both.

ACKNOWLEDGEMENT: I fully understand and will comply with all release conditions indicated above and further understand the consequences should I violate any part of this order.

Current Address where you live

Apt. No.

Address where you receive mail if different from current address

() _____

Phone No.

() _____

Phone No.

X _____

Defendant Signature

Date

X _____

Judicial Officer

Date

THIRD PARTY OBLIGATIONS

YOU MUST comply with the following obligations if the defendant has been placed in your custody while the case is pending in court.

- A. Supervise the defendant in accordance with all of the release conditions.
- B. Make every effort to assure that the defendant is present for all scheduled court hearings.
- C. Make every effort to assure that the defendant will contact Indigent Defense Services to determine indigency status.
- D. Notify the court immediately in the event the defendant violates any conditions of release or disappears.

As Third Party Custodian appointed by the Court, I understand and accept these obligations.

_____	_____	() _____
Third Party Custodian	Date	Phone No.

Address		

City, State Zip		

WARNING

IF YOU WILLFULLY VIOLATE ANY OF THESE OBLIGATIONS, THE COURT MAY HOLD YOU IN CONTEMPT AND IMPOSE A JAIL SENTENCE, FINE, OR BOTH, AND YOU MAY LOSE YOUR RIGHT TO APPEAL.

COURT _____

County, Arizona

STATE OF ARIZONA Plaintiff

-vs-

**APPEARANCE
BOND**

Defendant (FIRST, MI, LAST) _____

Booking Number _____

Date of Birth _____

WARNING TO DEFENDANT AND DEFENDANT'S SURETY (if any)

If defendant fails to appear at _____ at _____ a.m./p.m. on _____, 20_____ and at any other hearing, or fails to follow any other court-ordered condition of release during the pendency of the case, THIS BOND MAY BE FORFEITED and the proceedings begun without defendant. If convicted, defendant will be required to appear for sentencing. If defendant fails to appear at sentencing, defendant may lose the right to a direct appeal.

Amount of appearance bond ordered: \$ _____

TYPE OF APPEARANCE BOND ORDERED:

UNSECURED APPEARANCE BOND: Defendant and defendant's surety, _____ (if none, so state) hereby promise to pay the State of Arizona the amount of the bond ordered if defendant fails to comply with any condition of release.

DEPOSIT BOND: Defendant hereby deposits with the Clerk of the Court _____% of the total amount of the bond, with the remainder of \$ _____ as an unsecured appearance bond. Defendant and defendant's surety, _____ (if none, so state) hereby promise to pay the State of Arizona the full amount of the bond ordered if defendant fails to comply with any condition of release. The deposited amount of the bond will be returned to the defendant, if defendant complies with all conditions of release.

SECURED APPEARANCE BOND: Defendant hereby deposits with the Clerk of the Court cash or property having a value equal to or greater than the full amount of the bond.

Depositor or Professional Bondsman: _____

Email address: _____

Address: _____

Phone number: _____

Avowal of non-professional surety (if applicable): _____, surety for the defendant, hereby swears (or affirms) that the surety is not an attorney or person authorized to take bail, and that the surety owns property in this state (or is a resident of this state owning property) worth the amount of this bond, exclusive of property exempt from execution and above and over all liabilities, as detailed in Attachment A.

CASH BOND: Defendant hereby deposits cash equal to the full amount of the bond with the Clerk of the Court. The cash deposited will be returned to defendant, if defendant complies with all conditions of release.

ACKNOWLEDGEMENTS

Date

Defendant

State of Arizona)
)
County of _____)

ss.

Subscribed and sworn to before me on

My Commission Expires _____

Notary Public

Approved:

Date

Surety or Authorized Agent

_____ COURT [Precinct _____] _____ County, Arizona

FORM 7 ATTACHMENT A

**SPECIFICATION BY SURETY OF PROPERTY
CERTIFIED IN APPEARANCE BOND**

_____, surety on the attached appearance bond certifies that the surety owns the following properties, subject to the stated exemptions and liabilities, and to the stated outstanding appearance bonds entered into by the defendant.

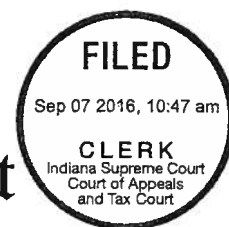
<u>I. Properties, less Exemptions and Liabilities.</u>	<u>Value or Amount</u>	
Items of Property		
(1) _____	_____	
Less _____	_____	
Net _____		
(2) _____	_____	
Less _____	_____	
Net _____		
(3) _____	_____	
Less _____	_____	
Net _____		
(4) _____	_____	
Less _____	_____	
Net _____		
Total	_____	\$ _____

<u>II. Other Outstanding Liabilities or Exemptions.</u>		
(1) _____	_____	
(2) _____	_____	
(3) _____	_____	
(4) _____	_____	
Total		\$ _____

<u>III. Other Outstanding Appearance Bonds.</u>		
(1) _____	_____	
(2) _____	_____	
(3) _____	_____	
(4) _____	_____	
Total		\$ _____

<u>IV. Total Property in Excess of Liabilities, Exemptions, and Outstanding Appearance Bonds (I less II and III).</u>		\$ _____
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In the
Indiana Supreme Court



Cause No. 94S00-1602-MS-86

Order Adopting Criminal Rule 26

On December 20, 2013, the Indiana Supreme Court created a committee "to study evidence-based pre-trial release assessments and to make recommendations to the Court, including proposed new or amended rules and procedures to facilitate the implementation of such recommendations." The resulting committee consisted of five trial judges, two legislators, four probation officers, a county prosecutor, the Chair of the Indiana State Bar Association Criminal Justice Section, and representatives of the Indiana Prosecuting Attorneys Council and the Indiana Public Defender Council. Based on its evaluation of the resulting impact on public safety, reduced recidivism, reduced taxpayer costs, enhanced reliability and fairness of criminal justice results, the Committee recommended this Court adopt a new rule to urge Indiana trial courts to use evidence-based risk assessments to inform pretrial release decisions.

The primary purpose of monetary bail and other conditions of release from pretrial detention are to maximize the likelihood of an accused person's presence at trial while striving for both public safety and protection of the presumption of innocence. The prompt release of arrestees who do not pose a risk to public safety is associated with reduced recidivism and eliminates unnecessary expenses resulting from the overutilization of local jail resources. The improvement of Indiana's pretrial release practices will (a) encourage and empower trial judges to release arrestees earlier; (b) reduce pretrial detention expenses for local jails and enable many arrestees to return to their jobs and provide support for their families; (c) eliminate the unfair and often protracted incarceration of poor people who don't have the resources to purchase a bail bond or pay a bail deposit; (d) enhance the reliability of guilty pleas; and (e) realize the benefits of reduced recidivism and enhanced public safety that flow from the use of evidence-based risk assessment tools for pretrial release decisions.

Informed by the work and recommendations of the Supreme Court Committee to Study Evidence Based Pretrial Release and the counties volunteering to serve as pilot projects in this effort, this Court hereby adopts the following Rule of Criminal Procedure.

Rule 26. Pretrial Release

(A) If an arrestee does not present a substantial risk of flight or danger to themselves or others, the court should release the arrestee without money bail or surety subject to such restrictions and conditions as determined by the court except when:

(1) The arrestee is charged with murder or treason.

(2) The arrestee is on pre-trial release not related to the incident that is the basis for the present arrest.

(3) The arrestee is on probation, parole or other community supervision.

(B) In determining whether an arrestee presents a substantial risk of flight or danger to self or other persons or to the public, the court should utilize the results of an evidence-based risk assessment approved by the Indiana Office of Court Services, and such other information as the court finds relevant. The court is not required to administer an assessment prior to releasing an arrestee if administering the assessment will delay the arrestee's release

(C) If the court determines that an arrestee is to be held subject to money bail, the court is authorized to determine the amount of such bail and whether such bail may be satisfied by surety bond and/or cash deposit. The court may set and accept a partial cash payment of the bail upon such conditions as the court may establish including the arrestee's agreement that all court costs, fees, and expenses associated with the proceeding shall be paid from said partial payment. If the court authorizes the acceptance of a cash partial payment to satisfy bail, the court shall first secure the arrestee's agreement that, in the event of failure to appear as scheduled, the arrestee shall forfeit the deposit and must also pay such additional amounts as to satisfy the full amount of bail plus associated court costs, fees, and expenses.

(D) Statements by Arrestee

(1) Prohibited Uses: Evidence of an arrestee's statements and evidence derived from those statements made for use in preparing an authorized evidence-based risk assessment tool is not admissible against the arrestee, in any civil or criminal proceeding.

(2) Exceptions: The court may admit such statements:

(a) in a pretrial proceeding involving the arrestee; or

(b) in any proceeding in which another statement made in preparing an authorized evidence-based risk assessment tool has been introduced, if in fairness the statements ought to be considered together.


(3) No statements made for these purposes may be used in any other court except in a pretrial proceeding.

This rule in its entirety is effective immediately in the pretrial pilot courts and courts using an approved evidence based risk assessment under Section B.

Sections C. and D. are effective immediately in all courts.

Sections A. and B. will be effective in all courts January 1, 2018.

Done at Indianapolis, Indiana, on 9/7/2016 .



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

STATE OF MARYLAND



LAWRENCE J. HOGAN, JR.
GOVERNOR

BOYD K. RUTHERFORD
LT. GOVERNOR

**OFFICE OF THE PUBLIC DEFENDER
ADMINISTRATION
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PAUL B. DeWOLFE
PUBLIC DEFENDER

January 20, 2017

Honorable Alan M. Wilner, Chair
The Court of Appeals of Maryland
Standing Committee on Rules of Practice
and Procedure
2011-C Commerce Park Drive
Annapolis, MD 21401

Dear Judge Wilner:

Attached please find a chart which shows the availability of pretrial services in each jurisdiction in our state and which shows the number of district court cases by jurisdiction. The only jurisdictions that lack pretrial services altogether are Charles, Dorchester, Somerset and Worcester counties. As you can tell from the chart, the cases in these jurisdictions represent a small fraction of the cases statewide.

We believe that offering judicial officers the option to refer defendants for supervision in all jurisdictions is an important step toward reforming pretrial justice in Maryland. Accordingly, representatives of the Office of the Public Defender and the Office of the Attorney General met with representatives of the Department of Public Safety and Correctional Services who indicated that the Department of Parole and Probation would be willing to receive referrals from judicial officers to provide basic supervision to appropriate low risk pretrial cases in the jurisdictions that currently lack any pretrial supervision services. A simple call-in requirement or a series of notifications from the agent prior to the court date would fall within the ability of the Department and we believe would be useful to the judicial officers who will determine which defendants are appropriate for pretrial supervision.

We hope that this information will be useful.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul B. DeWolfe".

Paul B. DeWolfe
Public Defender

Pretrial Supervision in Maryland - 1/13/2017

Jurisdiction	Pretrial Supervision?	Number of criminal cases filed District Court in FY 2015 ¹	Number of criminal cases filed in District Court in FY 2015 as percentage of statewide total (147,155 cases)
Allegany	Yes (P&P)	2,914	1.98%
Anne Arundel	Yes (jail)	13,414	9.12%
Baltimore City	Yes (DPDS)	31,939	21.70%
Baltimore County	Yes (jail)	15,458	10.50%
Calvert	Yes	2,764	1.88%
Caroline	Yes (P&P)	1,097	0.75%
Carroll	Yes (sheriff)	2,673	1.82%
Cecil	Yes (P&P)	3,534	2.40%
Charles	No	4,935	3.35%
Dorchester	No	1,341	0.91%
Frederick	Yes (sheriff or P&P)	3,680	2.50%
Garrett	Yes (P&P)	801	0.54%
Harford	Yes (jail)	4,516	3.07%
Howard	Yes (P&P)	3,660	2.49%
Kent	Yes (P&P)	524	0.36%
Montgomery	Yes (jail)	15,039	10.22%
Prince George's	Yes (jail)	21,181	14.39%
Queen Anne's	Yes (P&P)	986	0.67%
Saint Mary's	Yes (jail)	2,621	1.78%
Somerset	No	809	0.55%
Talbot	Yes (P&P)	1,035	0.70%
Washington	Yes (P&P)	4,158	2.83%
Wicomico	Yes (jail)	4,001	2.72%
Worcester	No	4,075	2.77%

Percentage of cases filed in jurisdictions with pretrial supervision: 92.4%

Percentage of cases filed in jurisdictions without pretrial supervision: 7.6%

¹ According to the Maryland Judiciary, *Annual Statistical Abstract FY 2015*, Tbl. DC-2.



DISTRICT COURT OF MARYLAND FOR

City/County

Located at

Court Address

Case No.

STATE OF MARYLAND

VS.

Defendant

D.O.B.

Tracking #

INITIAL APPEARANCE QUESTIONNAIRE
DEFENDANT RESPONSES

Name:
Case Number:
Current Address:
How long Current Address:
Previous Address 1:
Previous Address 2:
Maryland Resident: Y/N
Living With:
Driver's License #:
Employer:
Address:
Occupation:
of Dependents rely on income:
Licensed By:
Last Employer:
Greatest Recurring Expense:
Amount:
Prior Convictions:
Pending Cases:

RECORD CHECK

CP 5-202 Restricted Release: Y/N

DISTRICT COURT

Traffic: Y/N/U
Criminal: Y/N/U
Warrant: Y/N/U
Civil: Y/N/U

CJIS

WRAP/RAPS: Y/N/U
OBII: Y/N/U

METERS/NCIC/III/NLETS

III QH: Y/N/U
NLETS IQ: Y/N/U
Drivers License Queries DQ: Y/N/U
MVA MDQ: Y/N/U
Wanted Persons QW: Y/N/U
QR: Y/N/U
FQ: Y/N/U
KQ: Y/N/U
QWI: Y/N/U

CIRCUIT COURT

Statewide: Y/N/U
Individual: Y/N/U

MVA

Conviction Synopsis: Y/N/U
Prob./Admin Per Se Hist: Y/N/U

List

JPORTAL

Case Search: Y/N/U
MD DV/PO: Y/N/U

DV OFFICE

DV/PO: Y/N/U

DJS ASSIST

Juvenile: Y/N/U

MOSOR

Registered/Lifetime Sex Off Y/N/U

COMMENTS:

Date

Commissioner's Signature

I.D. No.