

## *Md. Rule 4-216.1*

State and Federal Rules current through orders received through April 1, 2017.

*Maryland Court Rules > MARYLAND RULES > TITLE 4. CRIMINAL CAUSES > CHAPTER 200.  
PRETRIAL PROCEDURES*

### **Rule 4-216.1. Pretrial Release -- Standards Governing [Effective July 1, 2017]**

(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) 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.

- (6) 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.
- (7) Special Condition of Release with Financial Terms. "Special condition of release with financial terms" means the requirement of collateral security or the guarantee of the defendant's appearance by a compensated surety as a condition of the defendant's release. The term does not include (A) an unsecured bond by the defendant or (B) the cost associated with a service that is a condition of release and is affordable by the defendant or waived by the court.

**Committee note. --**

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

- (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.

## Md. Rule 4-216.1

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

## (b) General Principles.

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

- (B) This Rule shall be construed to permit the release of a defendant pending trial except upon a finding by the judicial officer that, if the defendant is released, there is a reasonable likelihood that the defendant (i) will not appear when required, or (ii) 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 references. -- Code, [Criminal Procedure Article, § 5-101](#). For the inapplicability of the Rules in Title 5 to pretrial release proceedings, see Rule 5-101 (b).

- (2) Individualized Consideration. A decision by a judicial officer whether or on what conditions to release a defendant shall be based on a consideration of specific facts and circumstances applicable to the particular defendant, including the ability of the defendant to meet a special condition of release with financial terms or comply with a special condition and the facts and circumstances constituting probable cause for the charges.
- (3) Least Onerous Conditions. If a judicial officer determines that a defendant should be released other than on personal recognizance or unsecured bond without special conditions, the judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release set forth in section (d) of this Rule that will reasonably ensure (A) the appearance of the defendant, and (B) the safety of each alleged victim, other persons, and the community and may impose a financial condition only in accordance with section (e) of this Rule.

**Committee note. --**

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

- (4) Exceptions. Nothing in this Rule is intended to preclude a defendant from being held in custody based on an alleged violation of (A) a condition of pretrial release, a release under Rule 4-349, or an order of probation or parole previously imposed in another case, or (B) a condition of pretrial release previously imposed in the instant case.

## (c) Release on Personal Recognizance or Unsecured Bond.

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

**Committee note. --**

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

Cross references. -- Code, [Criminal Procedure Article, § 5-101 \(c\)](#) precludes release on personal recognizance if the defendant is charged with certain crimes. Section 5-202 of that Article precludes release by a District Court commissioner if the defendant is charged with certain crimes under certain circumstances.

- (2) Permissible Conditions. Permissible conditions for purposes of this section include the required conditions set forth in subsection (d)(1) and the special conditions set forth or authorized in subsection (d)(2) of this Rule.

**(d) Special Conditions of Release.**

- (1) Required Conditions. There shall be included, as conditions of any release of the defendant, that (A) the defendant will not engage in any criminal conduct during the period of pretrial release, and (B) the defendant will appear in court when required to do so.
- (2) Special Conditions. Subject to section (b) of this Rule, special conditions of release imposed by a judicial officer under this Rule may include, to the extent appropriate and capable of implementation:
- (A) one or more of the conditions authorized under Code, *Criminal Law Article, § 9-304* reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of Code, *Criminal Law Article, §§ 9-302, 9-303, or 9-305*, including a general no-contact order;
  - (B) reasonable restrictions with respect to travel, association, and place of residence;
  - (C) a requirement that the defendant maintain employment or, if unemployed, actively seek employment;
  - (D) a requirement that the defendant maintain or commence an educational program;
  - (E) a reasonable curfew, taking into account the defendant's employment, educational, or other lawful commitments;
  - (F) a requirement that the defendant refrain from possessing a firearm, destructive device, or other dangerous weapon;
  - (G) a requirement that the defendant refrain from excessive use of alcohol or use or possession of a narcotic drug or other controlled dangerous substance, as defined in Code, *Criminal Law Article, § 5-101 (f)*, without a prescription from a licensed medical practitioner;
  - (H) a requirement that the defendant undergo available medical, psychological, or psychiatric treatment or counseling for drug or alcohol dependency;
  - (I) electronic monitoring;
  - (J) periodic reporting to designated supervisory persons;
  - (K) committing the defendant to the custody or supervision of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;

**Committee note. --**

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

- (L) execution of unsecured bonds by the defendant and an uncompensated surety who (i) has a verifiable and lawful personal relationship with the defendant, (ii) is acceptable to the judicial officer, and (iii) is willing to execute such a bond in an amount specified by the judicial officer;
- (M) execution of a bond in an amount specified by the judicial officer secured by the deposit of collateral security equal in value to not more than 10% of the penalty amount of the bond or by the obligation of a surety, including a surety insurer, acceptable to the judicial officer;
- (N) execution of a bond secured by the deposit of collateral security of a value in excess of 10% of the penalty amount of the bond or by the obligation of a surety, including a surety insurer, acceptable to the judicial officer; and

**Committee note. --**

A compensated surety qualified under Rule 4-217 is presumptively acceptable. Before finding an uncompensated surety to be acceptable, the judicial officer should inquire into the ability of the proposed surety to satisfy the condition of the bond if called upon to do so. Whenever possible, however, the judicial officer should give preference to an uncompensated surety having a verifiable and lawful personal relationship with the defendant and, if collateral security is required, should accept the posting of adequate

## Md. Rule 4-216.1

real or personal property of that surety or the defendant. This preference is based on the inference that the defendant may be more likely to appear when required if the liability and property of a friend or family member is at risk.

- (O) any other lawful condition that will help ensure the appearance of the defendant or the safety of each alleged victim, other persons, or the community.

(e) Release on Special Conditions.

- (1) Generally Generally. A judicial officer may not impose a special condition of release with financial terms in form or amount that results in the pretrial detention of the defendant solely because the defendant is financially incapable of meeting that condition. In making that determination, the judicial officer may consider all resources available to the defendant from any lawful source.

**Committee note. --**

Information regarding the defendant's financial situation may come from several sources. The Initial Appearance Questionnaire Form used by District Court commissioners seeks information from the defendant regarding employment, occupation, amount and source of income, housing status, marital status, and number of dependents relying on the defendant's income. The criminal and juvenile record checks made by the commissioner also may reveal relevant information. Additional information may be available to the judge at a bail review proceeding from a defense attorney, the State's Attorney, and a pretrial services unit.

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

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

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

(f) Consideration of Factors.

- (1) Recommendation of Pretrial Release Services Program. In determining whether a defendant should be released and the conditions of release, the judicial officer shall give consideration to the recommendation of any pretrial release services program that has made a risk assessment of the defendant in accordance with a validated 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;

## Md. Rule 4-216.1

- (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.

## History

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(Added February 16, 2017, effective July 1, 2017.)

### Source. --

This Rules is new.

Annotations

## Notes

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### Effects of Amendments. --

The 2017 amendment rewrote the section.

### Editor's Note. --

Former Rules 4-216.1 and 4-216.2 were redesignated as Rules 4-216.2 and 4-216.3, respectively, and a new Rules 4-216.1 was enacted by order February 16, 2017, effective July 1, 2017.

Michie's Annotated Code of Maryland

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