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THE NEW MARYLAND RULES OF CRIMINAL PROCEDURE: TIME TABLE FOR LAWYERS

This article presents in table form those provisions of the new Maryland Rules of Criminal Procedure which require compliance within a certain period of time. In footnotes, the author points out the penalty for or consequences of failure to comply with particular time limits and compares the new rules with the former rules.

On January 31, 1977, the Court of Appeals of Maryland established new rules of criminal procedure by complete revisions of Chapter 700 in both the Maryland Rules and the Maryland District Rules,¹ to take effect on July 1, 1977. A primary change throughout the new rules, and one that will have a major impact on legal representation in criminal cases, is the incorporation of specific time limits for various procedures. Under the former rules, time limits were either not attached to the procedures or were often expressed in terms of "within a reasonable time" or similar phrases.

The time table is organized as follows. In the left-hand column are alphabetized general topics and sub-topics referencing by word or phrase the criminal procedures governed by the new rules. On the right is a textual statement of the relevant rule directly followed by a citation in the form of "Md. Rule" for the circuit courts and the Criminal Court of Baltimore, and "*M.D.R.*" for the district courts.² District court rules and their supporting citations are italicized. A district court rule that is identical to a stated Maryland rule is indicated by an *M.D.R.* citation following the Md. Rule citation. If a district court rule is substantially similar to a stated Maryland rule, any difference is indicated by bracketed italics within the text of the Maryland rule. If no corresponding rule exists for either a stated Maryland Rule or a stated district court rule, this is indicated by a single citation to the textual statement. For the convenience of the reader and when practical, the author has paraphrased the rules; however, when substantive accuracy requires, the rule is quoted without the use of quotation marks.

Footnotes are organized as follows. If a rule specifies the consequences associated with the failure to comply with a time limit, this is stated initially in the footnote, followed immediately by a

1. The Court rescinded all the rules in Chapters 700 formerly adopted by the Court.

The rules "shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Failure to set forth . . . any provision of common law or statute, not inconsistent with the rules . . . is not an implied repeal thereof." Md. Rule 701; *M.D.R.* 701.

2. The new rules were published in 4 Md. Reg. 235-75 (1977). All citations throughout the article, however, are to the specific rules rather than to the *Maryland Register* publication.

notation of any differences between the stated provision of the new rule and a former rule or by a statement that the former rules did not contain a similar provision.³ Failure to mention additions or changes indicates that the new rule is substantially similar to a former rule. Finally, in each footnote, if appropriate, there is explanatory information or a discussion of potential problems under the new rule. The Maryland district rules are not italicized in the footnotes.

The incorporation of material in the footnotes is not intended to minimize its importance, but rather to preserve the character and conciseness of the time table.

ACQUITTAL

MOTION FOR
JUDGMENT OF

A defendant may move for a judgment of acquittal at the close of the evidence offered by the State. If the motion is not then granted, the defendant may offer evidence, but by doing so, he withdraws his motion.⁴ Md. Rule 756 a; *M.D.R. 756 a*.

In a jury trial, the motion may be made at the close of all the evidence, whether or not such a motion was made at the close of the evidence offered by the State.⁵ Md. Rule 756 a.

ADMISSION

MOTION ASSERTING See MOTIONS, BEFORE TRIAL, Filing
UNLAWFULLY
OBTAINED

APPEAL

ADVICE OF
RIGHT TO

Immediately after imposing sentence, the court shall cause a defendant to be advised [*shall advise*] of the right to file an appeal and the time within which he must exercise this right.⁶ Md. Rule 772 g; *M.D.R. 772 g*.

EXTENSION OF
TIME FOR

An application for a review of sentence does not extend the time for taking an appeal. Md. Rule 773 g.

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3. The former rules are cited in the following manner: Md. Rule ___ (1977); M.D.R. ___ (1977). The citations to the new rules contain no date.
 4. The elimination of former Md. Rule 755 a (1977) (which replaced a motion for a directed verdict and an instruction that the evidence is insufficient in law to sustain a conviction with the current motion for judgment of acquittal) is not intended to revive the eliminated motions but rather to recognize that those motions have completely lost their viability and that further mention of them is pointless. Committee Note, Md. Rule 756.
 5. The Reporter's comments on a draft of new Md. Rule 756 stated that "the words 'in a jury trial' were added to eliminate the possibility of two sets of arguments in court trials, reflecting that in a court trial a motion at the end of the entire case is unnecessary to obtain appellate review of the sufficiency of the evidence."
 6. The former Md. Rules did not contain a similar provision. Formerly, the Md. Dist. Rule did not require the court to advise the defendant of the time within which he must exercise his right to appeal. M.D.R. 742 (1977).

APPEAL (Cont'd)**ORDER OF
TRANSCRIPT**

A defendant must order, in writing, a transcript of all testimony in the case from the court stenographer within 10 days after filing a request for appeal.⁷ Md. Rule 772 g.

**STAY OF
EXECUTION OF
SENTENCE**

See SENTENCE, STAY OF EXECUTION

APPEARANCE**BY DEFENDANT****after Arrest**

When a defendant is arrested upon a warrant, unless the court otherwise directs, he shall be taken before a judicial officer of the district court for an initial appearance pursuant to M.D.R. 723.⁸ The court may direct, however, that the defendant shall be brought before the court immediately after the arrest if it is then in session, or if it is not, at the session of the court that immediately follows. The court shall then process the defendant for pretrial release pursuant to Md. Rule 721 and make provision for the appearance or waiver of counsel pursuant to Md. Rule 723.⁹ Md. Rule 720 d.

*A defendant detained pursuant to an arrest shall be taken before a judicial officer without unnecessary delay and in no event later than the earlier of 24 hours after the arrest or the first session of court after his arrest upon a warrant or, when an arrest has been made without a warrant, the first session of court after the charging document is filed.*¹⁰ M.D.R. 723 a.

Bail bond

When a bail bond is posted, it is conditioned upon the defendant's personal appearance, whenever and wherever required, in any court [*in the district court*] in which the charges may be pending, or in which a charging document may be filed

7. Formerly, Chapter 700 of the Md. Rules did not contain a similar provision. However, the same result was achieved by Md. Rule 1026 a (2) (1977) which was made applicable to criminal appeals by Md. Rule 772 (1977).

8. M.D.R. 723 a provides that a defendant detained pursuant to an arrest be taken before a judicial officer without unnecessary delay and in no event later than the earlier of 24 hours after the arrest or the first session of court after his arrest upon a warrant, or if he was arrested without a warrant, the first session of the court after the charging document is filed.

9. Formerly, the Md. Rules did not provide for a specific time by which a defendant who has been arrested must initially be taken before a judicial officer or the court.

The Reporter's comments on a draft of new Md. Rule 723 stated that:

The concept of a circuit court warrant which directs that a defendant be brought before a District Court judicial officer is new. The procedure was adopted to take maximum advantage of the well-established District Court system for pretrial release determinations with the availability and expertise of the commissioners and the review by a judge whenever the defendant remains incarcerated after the determination by the commissioner.

10. Formerly, the Md. Dist. Rule provided that a defendant arrested without a warrant "shall be taken before a conveniently available judicial officer without unnecessary delay and in no event later than the earlier of . . . twenty-four hours after arrest or . . . the first session of court after the charging of the defendant. Such charging shall take place promptly after arrest." M.D.R. 709 (1977).

APPEARANCE (Cont'd)

based on the same acts or transactions or to which the cause may be transferred, removed, or, if from the district court, appealed.¹¹ Md. Rule 722 f; *M.D.R. 722 f*.

If a surety procures the discharge of a bail bond by voluntarily surrendering a defendant, unless released on a new bond, the defendant shall be taken forthwith before a judge of the court in which the charges are pending.¹² Md. Rule 722 h; *M.D.R. 722 h*.

Citation

*A citation shall contain the command to a defendant to appear in court when required.*¹³ *M.D.R. 711 b(1)*.

Initial
Appearance

See APPEARANCE, BY DEFENDANT, after Arrest

Juvenile,
waiver of
jurisdiction by
juvenile court

See JUVENILE

Notice to
appear

When a defendant remains in custody after having been processed for pretrial release pursuant to M.D.R. 721 or Md. Rule 721, the clerk shall immediately issue a writ to the appropriate officer having custody of the defendant directing him to produce the defendant before the court at the designated time and place to provide for the appearance or waiver of counsel pursuant to Md. Rule 723 and serve the defendant with a copy of the writ together with a notice to him that unless counsel enters an appearance for the defendant in writing on or before the time specified in the writ, he must appear in court at the time specified to make provision for the appearance or waiver of counsel.¹⁴ Md. Rule 720 h.

Review of
pretrial release
order

See PRETRIAL RELEASE

Summons

When a summons is issued, a defendant must appear at the time and place specified in the summons, unless his counsel enters an

11. If a defendant fails to appear as required, the court shall forthwith forfeit the bail bond and order the issuance of a bench warrant for his arrest. Md. Rule 722 i (1); *M.D.R. 722 i (1)*.

The former rules did not contain a similar provision for the appearance of a defendant pursuant to a bail bond. Formerly, the Md. Dist. Rules did provide conditions of release to reasonably assure the appearance of the defendant when required and provided the same penalty for failure to appear. *M.D.R. 777 c (1), f (1977)*. See also BAIL BOND.

12. The former rules did not contain a similar provision. See also BAIL BOND.
13. Upon a defendant's failure to appear pursuant to a citation, a warrant for his arrest will issue. *M.D.R. 711 b (1)*. No similar penalty was set forth in the former Md. Dist. Rules.

The Reporter's comments on a draft of new M.D.R. 711 stated that:
[T]he practice has been that the citation contain a trial date which is designated by the officer. The requirement that it command the defendant to appear in court when required would permit the notification of trial date by some other means, such as by letter.

14. If a defendant fails to appear pursuant to a notice to appear, personally or by counsel, the court may direct the clerk to issue a warrant for his arrest. Md. Rule 723 a.

The former Md. Rules did not contain a similar provision for the appearance of a defendant pursuant to a notice to appear.

APPEARANCE (Cont'd)

appearance for him in writing at or before that time.¹⁵ Md. Rule 720 a, 723 a.

*A summons issued by a judicial officer shall command the defendant to appear before the court.*¹⁶ M.D.R. 720 c.

Warrant for defendant in custody for different offense

When a warrant is issued for the arrest of a defendant who is in custody for an offense other than that charged in the charging document, unless the court otherwise directs, the defendant shall be taken before a judicial officer of the district court for an initial appearance pursuant to M.D.R. 723. If the court directs that the defendant be brought before the court, it shall promptly process him for pretrial release pursuant to Md. Rule 721 and shall make provision for the appearance or waiver of counsel pursuant to Md. Rule 723.¹⁷ Md. Rule 720 f (2). See APPEARANCE, BY DEFENDANT, after Arrest.

BY DEFENSE COUNSEL

Entry of

Counsel retained or appointed to represent a defendant shall enter his appearance in writing within 5 days after accepting employment or appointment, or within 5 days of the filing of the charging document in court, whichever occurs later.¹⁸ Md. Rule 725 a; M.D.R. 725 a.

When a defendant appears at the time and place specified in the summons or other writ issued pursuant to Md. Rule 720 and is not represented by counsel, defense counsel must enter an appearance for the defendant within 15 days of the defendant's appearance.¹⁹ Md. Rule 723 b (4). See also COUNSEL

15. If a defendant fails to appear pursuant to a summons, personally or by counsel, the court may direct the clerk to issue a warrant for his arrest or to reissue the summons for personal service on the defendant. Md. Rule 723 a.

The former Md. Rules did not contain a similar provision for a defendant's appearance pursuant to a summons.

The Reporter's comments on a draft of new Md. Rule 720 stated:

[T]he principal purpose for the summons to the defendant is to obtain the appearance of counsel at an early stage of the proceedings in the circuit court, not for an arraignment as was required by former Rule 719. Most jurisdictions have eliminated the formal arraignment procedures, and only require the personal appearance of the defendant before trial if the defendant is not represented by counsel. This rule . . . adopts this practice by eliminating the necessity for personal appearance if the defense attorney enters his appearance in writing on or before the scheduled date for the defendant's appearance.

16. The new Md. Dist. Rules do not expressly state that the defendant shall appear at the time and place specified in the summons although the former rule stated that "a summons shall command a defendant to appear in court at a stated time and place." M.D.R. 706 e (1977).

17. The former Md. Rules did not contain a similar provision.

18. The former rules did not contain a similar provision.

The Reporter's comments on a draft of new Md. Rule 725 and M.D.R. 725 stated that "no attempt has been made to define exactly when the lawyer has accepted employment or appointment, since a great variety of circumstances could enter into this determination."

19. If counsel does not enter an appearance within 15 days, a plea of not guilty will be entered and a defendant's case will be scheduled for trial. If the defendant appears at trial without counsel, the court could determine that he has waived his right to counsel by neglecting or refusing to retain counsel or to make timely

APPEARANCE (Cont'd)

Entry of, Continuanance *If the court continues the case to another date following an inquiry as to whether or not a defendant desires to waive or has waived his right to counsel, counsel must enter an appearance by the next scheduled trial or hearing date.*²⁰ *M.D.R. 726 d.*

Striking *If a defendant is represented by other counsel or if other counsel enters an appearance on the defendant's behalf and if no objection is made within 10 days after a motion to withdraw 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.*²¹ *Md. Rule 725 c (2), (3); M.D.R. 725 c (2), (3).*

Striking, notice to defendant *If a motion to withdraw appearance is in writing, moving counsel shall send the defendant a written notice of his intention to withdraw at least 10 days prior to filing the motion.*²² *Md. Rule 725 c (1); M.D.R. 725 c (1).*

Striking, objection to motion to withdraw *A defendant must object to a motion to withdraw appearance within 10 days after the motion is filed.*²³ *Md. Rule 725 c (2); M.D.R. 725 c (2).*

application to the Public Defender for counsel, and in that event, the case would proceed with defendant unrepresented by counsel. *Md. Rule 723 b (7).*

The new Md. Dist. Rules provide that if a defendant has not hired his own lawyer or contacted the Public Defender by the time he appears at a preliminary hearing or at trial, the judge may decide that the defendant has waived his right to a lawyer and proceed with the hearing or compel the defendant to go to trial without the assistance of a lawyer. *M.D.R. 711 a (7), 726 a, c.*

The former rules did not contain a similar provision for the entry of appearance by counsel. See also COUNSEL.

20. *If counsel does not enter an appearance by the next scheduled trial or hearing date, the case will proceed to trial with the defendant unrepresented by counsel. M.D.R. 726 d. See also COUNSEL.*

The former Md. Dist. Rules did not contain a similar provision for the entry of appearance by counsel pursuant to a continuance.

21. *The court may refuse leave to withdraw appearance if it would unduly delay the trial case, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. Md. Rule 725 c (3); M.D.R. 725 c (3).*

Under the Md. Rule, if leave is granted and a defendant is not represented by counsel, a summons or other writ shall be issued and served on the defendant for his appearance before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723. *Md. Rule 725 c (3).*

Formerly, the rules provided that with one exception (the automatic termination of appearance by counsel for the purpose of service upon him of any process, notice or pleading, upon the entry of final judgment from which no appeal is taken when the time for appeal has expired) the appearance of an attorney for the defendant may be withdrawn only with the leave of court after such notice to the defendant and to the State's Attorney as the court may prescribe and upon such conditions as justice may require. *Md. Rule 751 (1977); M.D.R. 751 (1977).*

22. *Formerly, the rules required only "such notice to the accused and to the State's Attorney as the court may prescribe and upon such conditions as justice may require." Md. Rule 751 a (1977); M.D.R. 751 (1977).*

23. *If a defendant is represented by other counsel, or if other counsel enters an appearance on the defendant's behalf and if no objection is made within 10 days after the motion is filed, the clerk shall strike the appearance of moving counsel. Md. Rule 725 c (2); M.D.R. 725 c (2).*

The former rules did not contain a similar provision for objecting to a motion to withdraw an appearance by defense counsel.

APPEARANCE (Cont'd)**BY WITNESS**

- Arrest** Upon the arrest of a material witness, he shall be taken promptly before a judicial officer of the district court before he is committed to jail.²⁴ Md. Rule 743 a; *M.D.R. 743 a.*
- Attachment** If a body attachment is issued because a witness failed to obey a summons,²⁵ the attachment may direct that the witness be brought before the court at a designated time and place to post bond to assure his attendance. If the witness is unable to post bond, he shall be taken into custody and brought before the court forthwith.²⁶ Md. Rule 742 e; *M.D.R. 742 d.*
- If a body attachment is issued pursuant to Md. Rule 743 c [*M.D.R. 743 c*] upon application filed by a party because it may be impractical to secure the attendance of a material witness by summons, the sheriff shall execute the body attachment by taking the witness into custody and taking him forthwith before a judicial officer of the district court to post bond.²⁷ Md. Rule 743 d; *M.D.R. 743 d.*
- Bond** A condition of a bond posted upon the arrest or attachment of a material witness pursuant to Md. Rule 743 [*M.D.R. 743*], shall be that the witness personally appear to give evidence, whenever and wherever required, in any court in which charges may be pending against a named defendant in a particular criminal action or in which a charging document may be filed based on the same acts or transactions, or to which the cause may be transferred or removed.²⁸ Md. Rule 743 e; *M.D.R. 743 e.*
- Deposition** Upon the entry of an order to take testimony by deposition or pursuant to stipulation by the parties, the witness shall appear at the time, date and place designated in the summons issued for him. Md. Rule 740.
- Summons** A witness to whom a summons is issued is required to appear at the date and hour specified in the witness summons.²⁹ Md. Rule 742 c; *M.D.R. 742 b.*

BAIL BOND³⁰ See also PRETRIAL RELEASE

APPEARANCE See also APPEARANCE, BY DEFENDANT

BENCH WARRANT If a defendant fails to appear as required pursuant to the posting of a bail bond, the court shall order the issuance of a

24. The former rules did not contain a similar provision.

25. A witness served with a summons who fails, without sufficient excuse, to obey the summons is liable to a body attachment and may be fined for contempt. Md. Rule 742 e; *M.D.R. 742 d.* The former rules provided only for the penalty of contempt. Md. Rule 731 c (1977); *M.D.R. 731 b* (1977).

26. The former rules did not contain a similar provision.

27. If the witness is unable to post the bond set, he shall be committed to jail until bond is posted. Md. Rule 743 d; *M.D.R. 743 d.*

The former rules did not contain provision for the appearance by a witness pursuant to a body attachment.

28. The former rules did not contain a similar provision.

29. See note 25 *supra* for the consequences to a witness of an unexcused failure to appear pursuant to a summons.

30. The rules governing bail bonds are new. Md. Rule 722 applies to all bail bonds taken pursuant to pretrial release, Md. Rule 743, and to the extent applicable, to

BAIL BOND (Cont'd)

- bench warrant for his arrest.³¹ Md. Rule 722 i (1); *M.D.R. 722 i (1)*.
- Notification The clerk shall promptly notify any surety on a defendant's bond and the State's Attorney of the issuance of a bench warrant.³² Md. Rule 722 i (1); *M.D.R. 722 i (1)*.
- COLLATERAL SECURITY**
- Addition or change Upon a motion of the State or on its own motion, the court may require additional or different collateral security upon a finding that the collateral security originally deposited, pledged, or incumbered is insufficient to insure collection of the penalty sum of the bond in the event a forfeiture is not satisfied.³³ Md. Rule 722 e (3); *M.D.R. 722 e (3)*.
- Refund Upon the discharge of a bail bond and the 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 which was taken.³⁴ Md. Rule 722 j (2); *M.D.R. 722 j (2)*.
- DISCHARGE**
- The bail bond shall be discharged when all charges to which the bail bond applies have been disposed of by a nolle prosequi, stet, dismissal, acquittal, or probation before judgment or imposition of sentence; when the defendant has been sentenced in the district court and no timely appeal has been taken or sentenced in the circuit court or Criminal Court of Baltimore exercising original jurisdiction, or on appeal or transfer from the district court; when the court has revoked the bail bond, or the defendant has been convicted and denied bail pending sentencing, or when the defendant has been surrendered by the surety.³⁵ Md. Rule 722 j (1); *M.D.R. 722 j (1)*.
- Voluntary surrender of defendant by surety A surety into whose custody a defendant has been released may procure the discharge of the bail bond by the voluntary surrender of the defendant at any time before forfeiture of the bond.³⁶ Md. Rule 722 h; *M.D.R. 722 h*.
- Voluntary surrender, return of fee, premium or compensation Upon the petition of the surety or any person who paid the fee, premium or compensation and after notice and an opportunity to be heard, the court may order the portion thereof to be returned to the surety that the court determines should be allowed for his expenses in locating and surrendering the defendant, and direct that the balance be refunded to the person who paid it.³⁷ Md. Rule 722 h; *M.D.R. 722 h*.

bonds taken upon the arrest or attachment of a material witness pursuant to Md. Rule 743, and to appeal bonds taken pursuant to Md. Rule 778. Md. Rule 722 b. Md. Dist. Rule 722 applies to all bail bonds taken pursuant to pretrial release, M.D.R. 721, and to the extent applicable, to bonds taken upon the arrest or attachment of a material witness pursuant to M.D.R. 743. M.D.R. 722 b.

31. The former Md. Rules did not contain a similar provision.

32. The former rules did not contain a similar provision.

33. The former rules did not contain a similar provision.

34. The former rules did not contain a similar provision.

35. The former rules did not contain a similar provision.

36. The former rules did not contain a similar provision.

37. The former rules did not contain a similar provision.

BAIL BOND (Cont'd)

FORFEITURE	If a defendant fails to appear as required pursuant to the posting of a bail bond, the court shall forthwith forfeit the bail bond. ³⁸ Md. Rule 722 i (1); <i>M.D.R. 722 i (1)</i> .
Bench warrant	See BAIL BOND, BENCH WARRANT
Entry as judgment	If a bail bond forfeiture has not been stricken or satisfied within 90 days after a defendant's failure to appear, the clerk shall forthwith cause the order of forfeiture to be entered as a judgment and to be recorded and indexed among the civil judgment records, and prepare, attest and deliver or forward to the State Court Administrator, to any Bail Bond Commissioner, to the State's Attorney and to the surety, if any, a true copy of the docket entries in the case. ³⁹ Md. Rule 722 i (4) (a), (b); <i>M.D.R. 722 i (4) (a), (b)</i> .
Notification	The clerk shall promptly notify any surety on a defendant's bail bond, and the State's Attorney, of a forfeiture on the bond. ⁴⁰ Md. Rule 722 i (1); <i>M.D.R. 722 i (1)</i> .
Satisfaction by surety	A surety shall satisfy any forfeiture on a bail bond within 90 days from the date a defendant fails to appear. ⁴¹ Md. Rule 722 i (3); <i>M.D.R. 722 i (3)</i> .
Striking out	The court shall strike out a forfeiture on a bail bond in whole or in part when a defendant or surety can show a reasonable ground for the defendant's failure to appear. ⁴² Md. Rule 722 i (2); <i>M.D.R. 722 i (2)</i> .
INTERIM BAIL	<i>Pending an initial appearance by a defendant before a judicial officer pursuant to M.D.R. 723, the defendant may be released upon executing a bond in an amount and subject to conditions specified by a schedule which may be adopted by the Chief Judge of the District Court for certain offenses.</i> ⁴³ <i>M.D.R. 721 b.</i>

38. The former Md. Rules did not contain a similar provision.

39. The former rules did not contain a similar provision.

40. The former rules did not contain a similar provision.

41. If a bail bond forfeiture has not been stricken or satisfied within 90 days after a defendant's failure to appear, the clerk shall forthwith cause the order of forfeiture to be entered as a judgment and to be recorded and indexed among the civil judgment records and prepare, attest and deliver or forward to the State Court Administrator, to any Bail Bond Commissioner, to the State's Attorney, and to the surety, if any, a true copy of the docket entries in the cause. Md. Rule 722 i (4); *M.D.R. 722 i (4)*.

The former rules did not contain a similar provision for satisfaction by a surety.

42. See note 41 *supra* for consequences of failure to strike within 90 days.

The former rules did not contain a similar provision.

43. The principal purpose of the former Md. Dist. Rule dealing with interim bail was to provide bail to a defendant prior to the appointment of a full complement of commissioners. 2 G. LIEBMANN, *MARYLAND PRACTICE: DISTRICT COURT LAW AND PRACTICE* 155 (1976). A special report by the Criminal Rules Subcommittee on the drafting of M.D.R. 721 recommended that the provision dealing with interim bail be retained because there are still occasions when district court commissioners are not on duty.

BENCH WARRANTS See BAIL BOND

BILL OF PARTICULARS

- AMENDMENT** A bill of particulars may be amended, on motion, at any time, subject to such conditions as justice may require. Md. Rule 730 d.
- DEMAND** Within 20 days after the earlier of the appearance of counsel or the first appearance of a defendant before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723, the defendant may file a demand for a bill of particulars.⁴⁴ Md. Rule 730 a.
- RESPONSE TO DEMAND** Within 10 days after service of a demand, the State shall file a bill of particulars or it shall state the reason for its refusal to comply with the demand.⁴⁵ Md. Rule 730 b.
- EXCEPTIONS TO RESPONSE** Exceptions to the sufficiency of a bill of particulars or to any refusal or failure to comply with a demand for a bill of particulars shall be filed by a defendant within 10 days after service of a response to the demand or within 10 days after the time within which a response should have been made.⁴⁶ Md. Rule 730 c.

CHARGES

ADVICE OF

Initial appearance *At the initial appearance of a defendant, the judicial officer shall inform the defendant of each offense with which he is charged. M.D.R. 723 b(1).*

44. The former Md. Rule provided that a motion for a bill of particulars "shall be made by a defendant before or within a reasonable time after arraignment" and that a court order be obtained. Md. Rule 715 a (1977).

A comment submitted to the Rules Committee on the drafting of new Md. Rule 730 offered the following criticism:

"Since attorneys must file within [twenty] days of appearance and since they will not receive, in most instances, full discovery within that period of time, most attorneys will file the Bill of Particulars . . . in order to cover the possibility that such a motion may be later necessary. This will create unnecessary paper work and litigation. The 'reasonable time' standard in [former] Rule 715 . . . appears to be far more realistic . . . [f]orcing a defendant to file for a Bill of Particulars within [twenty] days of his first appearance where he is not represented by counsel would appear to be unduly harsh." Inter-office Memorandum, State's Attorney's Office for Prince George's County, Md. (January 30, 1976).

45. Exceptions to the sufficiency of a bill of particulars or to any refusal or failure to comply with a demand for a bill of particulars may be filed by a defendant. Md. Rule 730 c.

The former Md. Rule did not set out a specific time limit for a response to a demand for a bill of particulars. Rather, it provided that "[o]n motion of the defendant, the court may order the filing of a bill of particulars within such time as the court may fix." Md. Rule 715 a (1977). When the offense charged was false pretenses the former rule provided that ". . . the State's attorney shall, upon demand of the defendant, file a bill of particulars within a reasonable time." Md. Rule 715 b (1977).

The former Md. Rule did not require the State to give its reasons for refusing to comply with the demand. Md. Rule 715 (1977).

46. The former Md. Rules did not contain a similar provision.

CHARGES (Cont'd)

Preliminary hearing	<i>Before proceeding with a preliminary hearing, the court shall read or state to the defendant the substance of each offense. M.D.R. 727 g.</i>
Trial	<i>At the commencement of a trial, the court shall inform the defendant of each offense with which he is charged. M.D.R. 751 b.</i>

CHARGING DOCUMENTS⁴⁷

AMENDMENT

Form	Upon a motion of either party or upon its own motion, the court may permit a charging document to be amended as to matters of form at any time before verdict. ⁴⁸ Md. Rule 713 a; <i>M.D.R. 713 a.</i>
Substance	The court may permit a charging document to be amended as to matters of substance [<i>to change the character of the offense charged</i>] only with the consent of the parties. ⁴⁹ Md. Rule 713 a; <i>M.D.R. 713 a.</i> See also PRELIMINARY HEARING, PROBABLE CAUSE DETERMINATION and WAIVER.
Extension of time, adjournment or continuance	The court shall grant a defendant an extension of time, adjournment or continuance if reasonably required by an amendment of a charging document. ⁵⁰ Md. Rule 713 b; <i>M.D.R. 713 b.</i>

CITATION

*An offense may be tried on a citation whenever authorized by statute, and a petty offense may be tried on a citation whenever a peace officer has determined that a defendant is likely to respond to a citation.*⁵¹ *M.D.R. 710 b.*

47. Many of the provisions dealing with the definition, issuance, service and return of charging documents are new.

Formerly, the Md. Rules provided for the institution of charges by indictment or information. Md. Rule 703, 708, 709 b (1977). The major change in the former Md. Dist. Rules is that an arrest warrant and a summons may no longer be used as charging documents.

The Rules Committee had great conceptual difficulty with summonses and warrants in the District Court because in [past] practice these documents [were] at times used as charging documents. The problem was solved by separating charging documents from warrants and summonses . . . and requiring a copy of the charging document to be attached to the warrant or summons as the case may be.

3 Md. Reg. 9 (1977).

48. The former rules provided that only the State's Attorney or the court could make a motion for the amendment of a charging document. Md. Rule 714 a (1977); *M.D.R. 714 (1977)*. The former Md. Rule dealt only with the amendment of an indictment or an information. Md. Rule 714 (1977).

49. The former Md. Rule provided that an indictment may be amended as to matters of substance only with the consent of the *defendant*. Md. Rule 714 a (1977). The former Md. Dist. Rule provided that an amendment of a charging document "shall *not* change the character of the offense charged." *M.D.R. 714 (1977)* (emphasis added).

New *M.D.R. 713 a* should save considerable time and paper work when a plea agreement has been made.

50. The former Md. Dist. Rules did not contain a similar provision.

51. The former Md. Dist. Rules allowed prosecution on a citation whenever authorized by statute but did not provide that a petty offense may also be tried on a citation in the discretion of the peace officer. *M.D.R. 706 c (4) (1977)*.

The language of the new Md. Dist. Rule implies discretion on the part of the peace officer in the determination that a defendant is likely to respond to a citation but it does not provide guidelines for that determination.

CHARGING DOCUMENTS (Cont'd)

Appearance	See APPEARANCE, BY DEFENDANT
Filing and Service	<i>When a citation is issued, a copy shall be served on a defendant by the person issuing it and the original shall be filed in court as soon as possible after it is issued.</i> ⁵² M.D.R. 720 i.
Signature	<i>A citation shall be signed by a peace officer or other person authorized by law before it is issued.</i> ⁵³ M.D.R. 711 b (2).
Signature, objection to lack	<i>An objection that a citation was not signed must be made before a plea to the merits.</i> ⁵⁴ M.D.R. 711 b(2).
DEFECT	
Motion asserting	See MOTIONS BEFORE TRIAL, FILING
OF THE DISTRICT COURT	An offense may be tried on a district court charging document if the offense is within the jurisdiction of the district court and a defendant prays a jury trial or appeals from a judgment of the district court. Md. Rule 710 d.
FILING	<i>A charging document shall be filed promptly after arrest if not already filed.</i> ⁵⁵ M.D.R. 723 a. See also CHARGING DOCUMENT, CITATION and JUVENILE, Waiver of jurisdiction; PRELIMINARY HEARING, PROBABLE CAUSE DETERMINATION and WAIVER.
INDICTMENT	
Signature, objection to lack of	An objection that an indictment was not signed by the State's Attorney must be made before a plea to the merits. ⁵⁶ Md. Rule 711 c.
INFORMATION	An offense may be tried on an information if the offense is 1) a misdemeanor; 2) a felony within the jurisdiction of the district court; ⁵⁷ or 3) any other felony and lesser included offense, if a defendant petitions or consents in writing to be charged by information or the defendant has been charged with a felony at a preliminary hearing pursuant to M.D.R. 727 which has resulted in a finding of probable cause or a defendant has been charged with a felony as to which he has waived a preliminary hearing. Md. Rule 710 c.

52. The former Md. Dist. Rules did not contain a similar provision.

53. The former Md. Dist. Rules did not contain a similar provision.

54. After a plea to the merits, any objection that the citation was not signed is waived. M.D.R. 711 b (2). The former Md. Dist. Rules did not provide for such a waiver.

55. The former Md. Dist. Rules did not contain a similar provision.

56. After a plea to the merits, any objection that the indictment was not signed is waived. Md. Rule 711 c.

Former Md. Rule 703 (1977) provided that an offense could be tried on an indictment if a defendant was charged with a felony. The new Md. Rule provides that "an offense may be tried on an indictment." Md. Rule 710 b.

57. Formerly, the Md. Rules did not contain a provision allowing an offense to be tried on an information if the offense was a felony within the jurisdiction of the district court. Md. Rule 708 (1977).

CHARGING DOCUMENTS (Cont'd)

	<i>An offense may be tried upon an information at the discretion of the State's Attorney.</i> ⁵⁸ <i>M.D.R. 710 c.</i>
Signature, objection to lack of	An objection that an information was not signed by the State's Attorney must be made before a plea to the merits. Md. Rule 711 c; <i>M.D.R. 711 b(2).</i> ⁵⁹
JUVENILE, WAIVER OF JURISDICTION BY JUVENILE COURT	
Filing of charging document	See JUVENILE, WAIVER OF JURISDICTION, Charging document
NOLLE PROSEQUI	The State's Attorney in his discretion may terminate a prosecution on a charging document and dismiss the charging document by entering a nolle prosequi on the record in open court. ⁶⁰ Md. Rule 782 a; <i>M.D.R. 782 a.</i>
PROBABLE CAUSE DETERMINATION AFTER PRELIMINARY HEARING, ACTION REQUIRED BY STATE'S ATTORNEY	See PRELIMINARY HEARING, PROBABLE CAUSE DETERMINATION
SEALING	If the court directs that a charging document be kept secret until a defendant has been arrested or served, the clerk is to seal the charging document until arrest or service. ⁶¹ Md. Rule 710 e; <i>M.D.R. 710 e.</i>
SERVICE	
Appearance without counsel	When a defendant appears at the time specified in a summons or other writ issued pursuant to Md. Rule 720 and is not represented by counsel, the court shall make certain that the defendant has received or receives a copy of the charging document. Md. Rule 723 b(1).
upon or after Arrest	A warrant issued for the arrest of a defendant and a charging document shall be served on the defendant as promptly as possible after its issuance. Md. Rule 720 e. ⁶² If the officer making the arrest of the defendant does not have the warrant in his possession at the time of the arrest, a copy of the warrant and the charging document shall be served on the defendant as soon as possible after the arrest. Md. Rule 720 e; <i>M.D.R. 720 f.</i>

58. Formerly, the Md. Dist. Rules recognized a criminal information as a charging document but did not provide that the issuance of an information was at the discretion of the State's Attorney. M.D.R. 702 a (1977).

For a discussion of the deletion of former Md. Rule 710, see note 226 *infra*.

59. After a plea to the merits, any objection that the information was not signed is waived. Md. Rule 711 c; M.D.R. 711 b (2).

60. The former Md. Dist. Rule permitted the State's Attorney to enter a nolle prosequi by a written statement as well as in open court. M.D.R. 711 (1977).

61. The former rules did not contain a similar provision.

62. The former Md. Rules did not contain a similar provision.

Note that under the new rules a copy of the charging document must be attached to a summons as well as to a warrant. Md. Rule 720 a, e; M.D.R. 720 c, e.

CHARGING DOCUMENTS (Cont'd)

Citation	See CHARGING DOCUMENT, CITATION, Filing and Service
Defendant in custody when charging document filed	<i>If a defendant is in custody at the time a charging document is filed, it shall be served on him as soon as possible after it is filed.</i> ⁶³ M.D.R. 720 h.
Initial appearance	<i>At the initial appearance of a defendant, the judicial officer shall provide him with a copy of the charging document, if he has not already been so provided.</i> M.D.R. 723 b(1).
Preliminary hearing	<i>Before proceeding with a preliminary hearing, the court shall make certain that a defendant has received or receives a copy of the charging document.</i> M.D.R. 727 g.
Trial	<i>At the commencement of trial, the court shall make certain that the defendant has been provided a copy of the charging document.</i> M.D.R. 751.
SIGNATURE, OBJECTION TO LACK OF STATEMENT OF CHARGES	See CHARGING DOCUMENTS, CITATION, INDICTMENT, INFORMATION, and STATEMENT OF THE CHARGES
after Arrest	<i>When a defendant is arrested without a warrant, the officer who has custody of the defendant shall forthwith cause a statement of charges to be filed.</i> ⁶⁴ M.D.R. 720 a.
before Arrest	<i>Upon a written application made before the arrest of a defendant, a judicial officer may file a statement of charges against the defendant.</i> ⁶⁵ M.D.R. 720 b.
Signature, objection to lack of	<i>An objection that a statement of charges was not signed by a peace officer or by the judicial officer who filed it must be made before a plea to the merits.</i> ⁶⁶ M.D.R. 711 b(2).
WAIVER OF PRELIMINARY HEARING, ACTION REQUIRED BY STATE'S ATTORNEY	See PRELIMINARY HEARING, WAIVER
CLERICAL MISTAKE IN THE RECORD	A clerical mistake in the record and error in the record arising from oversight or omission may be corrected by the court at any time and after any notice ordered by the court. If an appeal has been taken the mistake or error may be so corrected until the record has been filed in the appropriate appellate court and thereafter, while the appeal is pending, may be corrected

63. The former Md. Dist. Rules did not contain a similar provision.

64. The former Md. Dist. Rule provided that the officer "shall promptly prepare, or supervise the preparation of a statement of charges against the defendant." M.D.R. 706 c (3) (1977).

65. The former Md. Dist. Rules did not contain a similar provision.

66. After a plea to the merits, any objection that the statement of charges was not signed is waived. M.D.R. 711 b (2).

CLERICAL MISTAKE IN THE RECORD (Cont'd)

pursuant to Md. Rule 827 or Md. Rule 1027.⁶⁷ Md. Rule 784; *M.D.R. 784.*

COMMITMENT RECORD

DELIVERY When a defendant is convicted of an offense and sentenced to imprisonment, the clerk shall deliver a commitment record to the officer into whose custody the defendant has been placed.⁶⁸ Md. Rule 777 a; *M.D.R. 777 a.*

CONFESSIONS, ADMISSIONS,
STATEMENTS

MOTION ASSERTING UNLAWFULLY OBTAINED See MOTIONS, BEFORE TRIAL, Filing

COUNSEL

ADVICE OF
RIGHT TO

Any Stage of proceeding

*When a defendant appears in court at any stage of a criminal proceeding, including a preliminary hearing, and is not represented by counsel, the court shall make certain that the defendant has received a copy of the charging document containing the advice of his right to counsel and that he had understood that advice.*⁶⁹ *M.D.R. 726 b(1).*

Appearance pursuant to summons or other writ

When a defendant appears at the time and place specified in a summons or other writ issued pursuant to Md. Rule 720 and is not represented by counsel, the court shall advise him that he has a right to be represented by counsel at every stage of the proceedings, that if he finds he is financially unable to retain the service of private counsel, he should apply to the Public Defender as soon as possible for a determination of his eligibility to have counsel provided for him by the Public Defender and advise the defendant that if the Public Defender declines to provide representation, the defendant should immediately notify the clerk of the court so that the court can determine whether it should appoint counsel pursuant to Article 27A, section 6(f) of the Maryland Code.⁷⁰ Md. Rule 723 b(2), (5), (6); see also COUNSEL, EXTENT OF DUTY OF APPOINTED COUNSEL and RETENTION OF.

67. Formerly, the Md. Dist. Rules did not contain a similar provision.

68. An error in the commitment record or other failure to comply with Md. Rule 777 or M.D.R. 777 does not invalidate imprisonment after conviction. Md. Rule 777 b; M.D.R. 777 b.

Formerly, the Md. Dist. Rules did not contain a similar provision for delivery of a commitment record.

69. See M.D.R. 711 for advice of counsel contained in charging documents.

Formerly, the Md. Dist. Rules provided that "[i]f at any stage of the proceeding, including a preliminary hearing, the defendant appears in court without counsel, the court shall advise him of his right to counsel at all stages of the proceeding including, where applicable, his right to obtain counsel under the provisions of Code, Article 27, (Public Defender)." M.D.R. 719 a (1977).

70. Formerly, the Md. Rule provided that "[i]f at any stage of the proceeding, the accused appears in court without counsel, the court shall advise him of his right to counsel." Md. Rule 719 b (1) (1977).

COUNSEL (Cont'd)

Initial
appearance

At the initial appearance of a defendant, the judicial officer shall require the defendant to read the advice of right to counsel printed on the charging document or shall read that advice to him if he is illiterate or for any other reason unable to read that advice himself. M.D.R. 723 b(2).

Waiver inquiry

When a defendant appears at the time and place specified in a summons or other writ issued pursuant to Md. Rule 720 and indicates a desire or inclination to waive counsel, the court may not accept the waiver until it determines that the defendant fully comprehends that if he is found to be financially unable to retain private counsel, the Public Defender or the court would, if the defendant wishes, provide counsel to represent him. Md. Rule 723 c(4).

In making an inquiry into whether or not a defendant desires to waive counsel, or has waived counsel, the court shall make certain that the defendant has received a copy of the charging document containing the advice as to his right to counsel and that he understood that advice. M.D.R. 726 b(1).

After an inquiry into whether or not a defendant desires to waive counsel or has waived counsel, if the court determines that the defendant had not been properly advised of his right to counsel or had not understood that advice, the court shall advise the defendant that if he is found to be financially unable to retain private counsel, the Public Defender or the court could, if the defendant wishes, provide counsel to represent him.⁷¹ M.D.R. 726 d(4).

APPEARANCE

See APPEARANCE, BY DEFENSE COUNSEL

CONTINUANCE TO
OBTAIN COUNSEL

After a waiver inquiry, if the court is satisfied that a defendant had not been properly advised of his right to counsel, or that the defendant had not fully understood his right to counsel, or finds that there was other meritorious reason for the defendant's appearance without counsel, the court shall continue the case to another date and shall advise the defendant that if counsel does not enter an appearance by the next scheduled trial or hearing date, the case will proceed to trial with the defendant unrepresented by counsel.⁷² M.D.R. 726 d.

EXTENT OF DUTY
OF APPOINTED
COUNSEL

When counsel is appointed by the Public Defender or by court, his representation extends to all stages in the proceedings, including, but not limited to custody, interrogations, preliminary hearing, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal, or until counsel is relieved by the Public Defender or by order of the court in which the cause is pending. The representation does not extend to the filing of subsequent discretionary proceedings including petition for writ of certiorari, petition to expunge records and petition for post conviction relief.⁷³ Md. Rule 725 b; M.D.R. 725 b.

71. Formerly, the Md. Dist. Rules did not contain a similar provision.

72. Formerly, the Md. Dist. Rules did not contain a similar provision.

73. Formerly, the rules specifically listed arraignment as a stage in the proceeding to which appointed counsel's duty of representation extended and did not list pretrial motions and hearings, motions for modification or review of sentence or

COUNSEL (Cont'd)

- PUBLIC DEFENDER** See COUNSEL, RETENTION OF
- Advice of** See COUNSEL, ADVICE OF
- Extent of duty** See COUNSEL, EXTENT OF DUTY OF APPOINTED COUNSEL
- Notification of ineligibility** When a defendant appears at the time and place specified in a summons or other writ issued pursuant to Md. Rule 720 and is not represented by counsel, the court shall advise the defendant that if the Public Defender declines to provide representation, the defendant should immediately notify the clerk of the court so that the court can determine whether it should appoint counsel pursuant to Article 27A, section 6(f) of the Maryland Code.⁷⁴ Md. Rule 723 b(6).
- Retention of** See COUNSEL, RETENTION OF
- RETENTION OF** When a defendant appears at the time and place specified in the summons or other writ issued pursuant to Md. Rule 720 and is not represented by counsel, he must retain the services of counsel and have counsel enter an appearance for him within 15 days. If the defendant finds he is financially unable to retain the service of private counsel, he should apply to the Public Defender as soon as possible for a determination of his eligibility to have counsel provided for him by the Public Defender. If the Public Defender declines to provide representation, the defendant should immediately notify the clerk of the court so that the court could determine whether it should appoint counsel pursuant to Maryland Code, Article 27A, section 6(f).⁷⁵ Md. Rule 723 b(4), (6). See also APPEARANCE, BY DEFENSE COUNSEL.

A charging document shall inform a defendant that if he intends to have a lawyer or to seek the assistance of the Public Defender, he must do so immediately and cannot wait until the day of the trial.⁷⁶ M.D.R. 711 a. See also APPEARANCE, BY DEFENSE COUNSEL, and COUNSEL, CONTINUANCE TO OBTAIN COUNSEL.

new trial. The rules did not specify the stages to which the representation failed to extend. Md. Rule 719 d (1977); M.D.R. 719 e (1977).

74. Formerly, the Md. Rules did not contain a similar provision.

75. If counsel does not enter an appearance within 15 days, a plea of not guilty will be entered and a defendant's case will be scheduled for trial. If the defendant appears at trial without counsel, the court may determine that he has waived his right to counsel by neglecting or refusing to retain counsel or to make timely application to the Public Defender for counsel, and in that event, the case would proceed with the defendant unrepresented by counsel. Md. Rule 723 b (7).

The former Md. Rules did not contain a similar provision.

76. If a defendant has not retained a lawyer or contacted the Public Defender by the time he appears at a preliminary hearing or trial, the judge may decide that the defendant has waived his right to a lawyer and proceed with the hearing or compel the defendant to go to trial without the assistance of a lawyer. See M.D.R. 711 a (7); 726 a, c.

Formerly, the Md. Dist. Rules provided that a charging document must inform a defendant that if he wants a lawyer he should promptly try to employ

COUNSEL (Cont'd)

WAIVER

Inquiry

When a defendant appears at the time and place specified in a summons or other writ issued pursuant to Md. Rule 720 and indicates a desire or inclination to waive counsel, the court may not accept the waiver until it makes a waiver inquiry. Md. Rule 723 c.

If a defendant appears in court without counsel at any proceeding after this appearance at the time and place specified in a summons or other writ issued pursuant to Md. Rule 720, the court may not proceed before determining whether the defendant at that time desires to waive counsel, or has waived counsel. Md. Rule 723 d(2).

When a defendant appears in court at any stage of a criminal proceeding, including a preliminary hearing, and is not represented by counsel, the court shall not proceed before determining whether the defendant at that time desires to waive counsel or has waived counsel. M.D.R. 726 a.

CUSTODY
REPORT

See SUPERVISION OF DETENTION PENDING TRIAL

DEFECTS

IN CHARGING
DOCUMENT

See MOTIONS, BEFORE TRIAL, Filing

IN THE INSTITUTION
OF THE
PROSECUTION

See MOTIONS, BEFORE TRIAL, Filing

DEPOSITIONS

Upon motion
of party

Upon the motion of a party, the court may order that the testimony of a prospective witness be taken by deposition, if it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony may be material, and that it is necessary to take his deposition in order to prevent a failure of justice.⁷⁷ Md. Rule 740 a.

Upon motion of
witness

Upon the motion of a witness who is in custody for failure to post bond upon his arrest or attachment pursuant to Md. Rule 743, the court may order that the testimony of the witness be taken by deposition.⁷⁸ Md. Rule 740 b.

one of his own choice or, if he is financially unable to employ one, he should contact the office of the Public Defender. M.D.R. 706 e (6) (1977).

Formerly, the Md. Dist. Rules provided that a defendant's failure to request counsel shall not of itself be construed to constitute a waiver of counsel. M.D.R. 719 d (1) (1977).

77. Formerly, the Md. Rule also provided that notice be given to the parties. Md. Rule 727 a (1) (1977).

78. After the deposition has been subscribed, the court may release the witness. Md. Rule 740 b.

Formerly, the Md. Rule provided that "[i]f a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken . . ." Md. Rule 727 a (2) (1977).

DEPOSITIONS (Cont'd)

Upon stipulation of parties	The parties may agree, without an order of the court, to take the deposition of a witness subject to the right of the person to be examined to move for a protective order. ⁷⁹ Md. Rule 740 j.
CO-DEFENDANTS	When persons are jointly tried the court, for good cause shown, may refuse to permit the use at trial of a deposition taken at the instance of one accused over the objection of any other accused. Md. Rule 740 i.
OBJECTION TO ADMISSIBILITY	Subject to Md. Rule 412 (Deposition — Error and Irregularity) an objection to receiving in evidence any deposition or part thereof may be made at the hearing or trial. Md. Rule 720 h(4).
PRESENCE OF DEFENDANT	A defendant shall be present at the taking of a deposition of a witness unless he waives his right to be present. ⁸⁰ Md. Rule 740 f.
PROTECTIVE ORDER	Upon the motion of a party or of the witness to be examined, the court may, for good cause shown, pass an order which justice requires to protect the party or witness from hardship, oppression or undue expense. ⁸¹ Md. Rule 740 g.
SUMMONS FOR WITNESS	Upon the entry of an order to take testimony by deposition or pursuant to a stipulation by the parties to take the deposition of a witness, the clerk shall issue a summons for the witness. ⁸² Md. Rule 740 d.
USE	At a hearing or trial a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence ⁸³ if it appears: a) that the witness is dead, or b) that the witness is unable to be present to testify because of physical or mental illness or infirmity, ⁸⁴ or c) that the witness is present but refuses to testify and the court is unable to compel his testimony, ⁸⁵ or d) that the witness is absent from the hearing or trial and that the party offering his deposition has been unable to procure his attendance by summons or other reasonable means unless the absence was procured by the party offering his deposition. Md. Rule 740 h(1). At the hearing or trial a deposition may be used, so far as otherwise admissible under the rules of evidence, by any party for the purpose of impeaching the testimony of the deponent as

79. The former Md. Rule did not contain a similar provision.

80. Formerly, the Md. Rule provided that "[t]he accused shall have the right to be present at the taking of a deposition taken at the instance of the prosecution." The former rule was silent as to a waiver by a defendant of his right to be present. Md. Rule 775 (1977).

81. The former Md. Rules did not contain a similar provision.

82. The former Md. Rules did not contain a similar provision.

83. The former Md. Rule did not use the phrase "substantive evidence." Md. Rule 727 e (1977).

84. Formerly, the Md. Rule did not provide for the use of a deposition at the trial or hearing if it appears that the witness is unable to testify because of mental illness. Md. Rule 727 e (1977).

85. Formerly, the Md. Rule did not provide for the use of a deposition at the trial or hearing if it appears that the witness is present but refuses to testify and the court is unable to compel his testimony. Md. Rule 727 e (1977).

DEPOSITIONS (Cont'd)

a witness. Md. Rule 740 h(2). See also DEPOSITION, CO-DEFENDANTS.

DISCLOSURE See DISCOVERY AND INSPECTION**DISCOVERY AND INSPECTION**

CONTINUING DUTY TO DISCLOSE If subsequent to compliance with a request for discovery pursuant to Md. Rule 741 or with any order compelling discovery, a party discovers additional matter previously requested and required to be furnished, he shall promptly furnish the matter to the other party or his counsel. If the additional matter is discovered during trial, in addition to furnishing the matter promptly to the other party or his counsel, he shall notify the court that the matter is being furnished to the other party.⁸⁶ Md. Rule 741 f.

BY DEFENDANT

Experts' reports, statements and conclusions

Within 10 days after receipt of a defendant's request, the State shall disclose all reports, statements and conclusions made in connection with a particular case by each expert consulted by the State.⁸⁷ Md. Rule 741 b(4)(e)(1). See also DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE.

Material or information regarding acquisition of defendant's statements

Without the necessity of a request by a defendant, within 25 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723, the State's Attorney shall furnish any relevant material or information regarding the acquisition of statements made by the defendant.⁸⁸ Md. Rule 741 a(2), b, e (1). See also DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE.

Material or information regarding guilt or punishment

Without the necessity of a request by a defendant, within 25 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723, the State's Attorney shall furnish any material or information within his possession or control which tends to negate the guilt of the defendant or would tend to reduce his punishment.⁸⁹ Md. Rule 741 a(1), e(1). See also DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE.

86. The former Md. Rules did not contain a similar provision.

87. If discovery is not furnished as requested, a motion to compel discovery may be filed within 10 days after receipt of the discovery or after discovery should have been received, whichever is earlier. Md. Rule 741 e (2).

The former Md. Rules did not contain a similar provision for discovery by a defendant of experts' reports, statements and conclusions.

88. The Md. Rules are not clear as to the availability of a motion to compel discovery when a request for discovery is unnecessary.

The former Md. Rules did not contain a similar provision.

89. The Md. Rules are not clear as to the availability of a motion to compel discovery when a request for discovery is unnecessary.

The former Md. Rules did not contain a similar provision.

DISCOVERY AND INSPECTION (Cont'd)

Material or information regarding pretrial identification	Without the necessity of a request by a defendant, within 25 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723, the State's Attorney shall furnish any relevant material or information regarding pretrial identification of the defendant by a witness for the State. ⁹⁰ Md. Rule 741 a(2)(c), e(1). See also DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE.
Material or information regarding searches, seizures, wire taps and eavesdropping	Without the necessity of a request by a defendant, within 25 days after the earlier of the appearance of counsel or the first appearance of a defendant before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723, the State's Attorney shall furnish any relevant material or information regarding specific searches and seizures, wire taps and eavesdropping. ⁹¹ Md. Rule 741a(2)(a), e(1). See also DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE.
Material or information regarding sentencing	Sufficiently before the imposition of sentence to afford a defendant a reasonable opportunity to investigate the information, the State's Attorney shall disclose any information which the State expects to present for consideration in sentencing and any information known to the State and not known by the defendant which would tend to be favorable to the defendant in considering a sentence. ⁹² Md. Rule 772 b (1), (2); <i>M.D.R. 772 b (1), (2)</i> .
Property of defendant	Within 10 days after receipt of a defendant's request, the State shall produce and allow inspection of any item obtained from or belonging to the defendant, whether or not the State intends to use the item at the hearing or trial. ⁹³ Md. Rule 741 b (6), e (1). See also DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE.
Statements by Co-defendant	Within 10 days after receipt of a defendant's request, the State shall disclose statements made by a co-defendant to a State agent which the State intends to use at a hearing or trial, unless

90. The Md. Rules are not clear as to the availability of a motion to compel discovery when a request for discovery is unnecessary.

The former Md. Rules did not contain a similar provision.

91. The Md. Rules are not clear as to the availability of a motion to compel discovery when a request for discovery is unnecessary.

The former Md. Rules did not contain a similar provision.

92. The former rules did not contain a similar provision.

93. If discovery is not furnished as requested, a motion to compel discovery may be filed within 10 days after receipt of the discovery or after the discovery should have been received, whichever is earlier. Md. Rule 741 e (2).

Formerly, the Md. Rule provided that the court, at any time after indictment, may order that such property be disclosed by the State "upon motion of a defendant and upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable." The order specified the time for disclosure. Md. Rule 728 a (1), b (1977).

DISCOVERY AND INSPECTION (Cont'd)

	a severance has been ordered by the court. ⁹⁴ Md. Rule 741 b (3), e (1). See also DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE.
Statements by defendant	Within 10 days after receipt of a defendant's request, the State shall disclose statements made by the defendant to a State agent which the State intends to use at a hearing or trial. ⁹⁵ Md. Rule 741 b (2), e (1). See also DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE and BY DEFENDANT, Material or information regarding acquisition of defendant's statements.
Tangible objects	Within 10 days after receipt of a defendant's request, the State shall disclose books, papers, documents, recordings, photographs or tangible objects which the State intends to use at the hearing or trial. ⁹⁶ Md. Rule 741 b (5), e (1). See also DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE, and BY DEFENDANT, Property of Defendant.
Witnesses	Within 10 days after the receipt of a defendant's request, the State shall disclose the names and addresses of each person then known whom the State intends to call as a witness at the hearing or trial to prove its case in chief or to rebut alibi testimony. ⁹⁷ Md. Rule 741 b (1), e (1). See also DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE.

94. If discovery is not furnished as requested, a motion to compel discovery may be filed within 10 days after receipt of the discovery or after the discovery should have been received, whichever is earlier. Md. Rule 741 e (2).

The former Md. Rules did not contain a similar provision.

95. If discovery is not furnished as requested, a motion to compel discovery may be filed within 10 days after receipt of the discovery or after the discovery should have been received, whichever is earlier. Md. Rule 741 e (2).

Formerly, the Md. Rule provided that the court, at any time after indictment, may order that a defendant's statements be disclosed by the State's Attorney "upon a motion of a defendant and upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable." The order specified the time for disclosure. The former Md. Rule did not require that the statements be those which the State intends to use at a hearing or trial. Md. Rule 728 a (2), b (1977).

96. If discovery is not furnished as requested, a motion to compel discovery may be filed within 10 days after receipt of the discovery or after the discovery should have been received, whichever is earlier. Md. Rule 741 e (2).

Formerly, the Md. Rule provided that the court, at any time after indictment, may order that such objects be disclosed by the State's Attorney "upon a motion of a defendant and upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable." The order specified the time for disclosure. The former Md. Rule did not require that the objects be those which the State intends to use at the hearing or trial. Md. Rule 728 a (1), b (1977).

97. If discovery is not furnished as requested, a motion to compel discovery may be filed within 10 days after receipt of the discovery or after the discovery should have been received, whichever is earlier. Md. Rule 741 e (2).

Formerly, the Md. Rule provided that the court, at any time after indictment, may order that the witnesses whom the State intended to call to prove its case in chief be disclosed by the State's Attorney "upon motion of a defendant and upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable." The order specified the time for disclosure. The former Md. Rule did not require disclosure of witnesses the State intends to call at the hearing or trial to rebut alibi testimony. Md. Rule 728 a (3), b (1977).

DISCOVERY AND INSPECTION (Cont'd)

MOTION TO COMPEL If discovery is not furnished as requested, a motion to compel discovery may be filed within 10 days after receipt of the discovery or after discovery should have been received, whichever is earlier.⁹⁸ Md. Rule 741 e (2).

Answer An answer to a motion to compel discovery may be filed within 5 days after receipt of a motion.⁹⁹ Md. Rule 741 e (2).

PROTECTIVE ORDER The court may grant a protective order upon a motion and for good cause shown or if at any time during the proceedings it is brought to the court's attention that a party has failed to comply with Md. Rule 741 or an order issued pursuant to that rule. All material or information to which a party is entitled must be disclosed in time to permit beneficial use thereof.¹⁰⁰ Md. Rule 741 g.

REQUEST A defendant and the State shall make a request for discovery within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723.¹⁰¹ Md. Rule 741 e (1).

BY THE STATE

Experts' reports Within 10 days after receipt of the State's request, a defendant shall disclose reports and conclusions made in connection with a particular case by each expert which he intends to use at the hearing or trial.¹⁰² Md. Rule 741 d (2), e (1). See also **DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE.**

Person of defendant Within 10 days after the receipt of the State's request, a defendant shall make the disclosures as to his person specified in Md. Rule 741 d (1).¹⁰³ Md. Rule 741 d (1), e (1). See also

98. The former Md. Rules did not contain a similar provision.

99. The former Md. Rules did not contain a similar provision.

100. Formerly, the Md. Rule provided that an order of the court of disclosure by the State's Attorney "may prescribe such terms and conditions as are just." Md. Rule 728 b (1977).

101. If discovery is not furnished as requested, a motion to compel discovery may be filed. Md. Rule 741 e (2). The former Md. Rules did not contain a similar provision for a motion to compel discovery.

102. If discovery is not furnished as requested, a motion to compel discovery may be filed within 10 days after receipt of the discovery or after the discovery should have been received, whichever is earlier. Md. Rule 741 e (2).

Formerly, the Md. Rules did not provide for discovery by the State.

103. If discovery is not furnished as requested, a motion to compel discovery may be filed within 10 days after receipt of the discovery or after the discovery should have been received, whichever is earlier. Md. Rule 741 e (2).

Formerly, the Md. Rules did not provide for discovery by the State.

The new Md. Rule provides that the defendant shall:

- a) Appear in a lineup for identification;
- b) Speak for identification;
- c) Be fingerprinted;
- d) Pose for photographs not involving reenactment of a scene;
- e) Try on articles of clothing;
- f) Permit the taking of specimens of material under his fingernails;
- g) Permit the taking from his body of samples of blood, hair and other material involving no unreasonable intrusion upon his person;
- h) Provide specimens of his handwriting;
- i) Submit to reasonable physical or mental examination.

Md. Rule 741 d (1).

DISCOVERY AND INSPECTION (Cont'd)

DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE.

Witnesses, alibi Within 10 days after the receipt of the State's request designating the time, place and date of the alleged occurrence, a defendant shall furnish the name and address of each witness, other than the defendant, whom the defendant intends to call as a witness to show that he was not present at the time, place and date designated by the State.¹⁰⁴ Md. Rule 741 d (3), e (1). See also DISCOVERY AND INSPECTION, CONTINUING DUTY TO DISCLOSE.

ELECTION OF COURT OR JURY TRIAL¹⁰⁵

ADVISE OF *At the commencement of a trial, the court shall inform a*
RIGHT TO *defendant, when applicable, of his right to a trial by jury.*
 M.D.R. 751.

CHANGE After an election has been filed, the court may not permit a defendant to change his election except upon a motion made prior to trial and for good cause shown.¹⁰⁶ Md. Rule 735 a.

DISTRICT COURT, If a defendant has a right to a jury trial and his cause has been
CAUSES FROM transferred from the district court because he demanded a jury trial, he shall be tried by a jury and may not elect a court trial except with leave of the court for good cause shown.¹⁰⁷ Md. Rule 735 e.

INQUIRY AFTER If a defendant files an election to be tried by the court, the trial
ELECTION OF of the case on the merits before the court may not proceed until
COURT TRIAL the court determines, after an inquiry of the defendant on the record, that he has made his election with full knowledge of his right to a jury trial and that he has knowingly and voluntarily waived the right.¹⁰⁸ Md. Rule 735 d.

TIME FOR An election by a defendant to be tried by a jury or by the court shall be made within the time for filing a plea pursuant to Md. Rule 731, that is, within 15 days after the earlier of the

104. If discovery is not furnished as requested, a motion to compel discovery may be filed within 10 days after receipt of the discovery or after the discovery should have been received, whichever is earlier. Md. Rule 741 e (2).

The former Md. Rules did not provide for discovery by the State.

105. The Reporter's comments on a draft of new Md. Rule 735 stated that "[former] Rule 741 has been entirely re-written, in accordance with developing case law regarding the right to a jury trial and in an effort to eliminate unnecessary court appearances and to identify as early as possible those cases which are to involve court trials."

106. "In determining whether to allow a change in election, the court shall give due regard to the extent if any, to which trial would be delayed by the change." Md. Rule 735 a.

107. The former Md. Rules did not contain a similar provision.

The Reporter's comments on a draft of new Md. Rule 735 stated that "Section e is intended to encourage defendants in the District Court to demand jury trials only when that is the preferred method of trial rather than as a delaying tactic."

108. If the court determines otherwise, it shall give defendant another election. Md. Rule 735 d.

The former Md. Rules did not contain a similar provision.

ELECTION OF COURT OR JURY TRIAL (Cont'd)

appearance of counsel or the first appearance of the defendant before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723. If a motion, demand for particulars or other paper is filed requiring a ruling by the court or compliance by a party before entering a plea, the time for filing a plea shall be extended, without special order, to 15 days after the ruling by the court or the compliance by a party.¹⁰⁹ Md. Rule 735 a.

**EVIDENCE,
REVIEW BY
JURY**

See **JURY, ITEMS TAKEN TO JURY ROOM**

**EXTENSION OR
SHORTENING
OF TIME
LIMITATIONS**

For good cause shown the court may at any time by order shorten or extend the time allowed for pleading, for filing or for serving any pleading, notice or other paper.¹¹⁰ Md. Rule 783; *M.D.R. 783*.

**IMMUNITY
COMPELLING
TESTIMONY**

In any proceeding under Chapter 700 or before a grand jury, if a witness lawfully refuses to answer or to provide other information on the basis of his privilege against self-incrimination, the court, when authorized by law, shall compel him to answer or otherwise provide information if the State's Attorney so requests in writing or on the record in open court and the court informs the witness of the scope of the immunity he will receive as provided by the appropriate statute.¹¹¹ Md. Rule 785 a; *M.D.R. 785 a*.

109. If the election is not filed within the time provided, the court, on its own motion or upon the motion of the State's Attorney, may require a defendant, together with his counsel, if any, to appear before the court for the purpose of making the election in open court. If the defendant fails or refuses to make an election after being advised by the court on the record that his failure or refusal will constitute a waiver of his right to a trial by jury, and if the court determines that the defendant knowingly and voluntarily is waiving his right with full knowledge of it, the defendant may then be tried by the court. Md. Rule 735 c.

If a defendant elects to be tried by the court, the State may not elect a jury trial. After an election has been filed, the court shall not permit the defendant to change his election except upon motion made prior to trial and for good cause shown. Md. Rule 735 a.

Formerly, the Md. Rule provided that "[s]uch election shall be made by the accused . . . when first called upon to plead after he is represented by counsel of record or has waived counsel." Md. Rule 741 (1977).

110. The former rules did not contain a similar provision.

111. The former rules did not contain a similar provision.

The Reporter's comments on a draft of new Md. Rule 785 stated:

This rule contains a procedure to be followed when the State wishes to compel a witness to testify under a statutory grant of immunity. The rule does not confer authority on the court to grant immunity or compel testimony. That authority is only granted by legislative action in laws adopted for this State.

The rule does not define or authorize the scope of immunity which may be granted for the testimony, since the scope of the immunity is also established by law.

The principal purpose for the procedural requirement is to insure that a record is made of the request to compel testimony and the order compelling the testimony so that the scope of the immunity of the witness could later be determined from a review of the records.

INDICTMENT See CHARGING DOCUMENTS

INFORMATION See CHARGING DOCUMENTS

INSTRUCTIONS See JURY

JOINT OR SEPARATE TRIALS

MOTION FOR See MOTIONS, BEFORE TRIAL, Filing

**PREJUDICIAL
JOINER** If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court, upon its own motion or the motion of any party, may order separate trials of counts, charging documents or defendants, or grant any other relief as justice requires.¹¹² Md. Rule 745 c; *M.D.R. 745 c*.

JUDGE

DISABILITY If by reason of termination of office, death, sickness or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge who is a member of the court or assigned thereto, upon certifying that he has familiarized himself with the record of the trial, may proceed with and finish the trial. Md. Rule 750 a.

If by reason of termination of office, death, sickness or other disability, the judge before whom a defendant has been tried or by whom a plea of guilty or nolo contendere has been accepted is unable to perform the functions of the court after verdict or after acceptance of the plea, any other judge who is a member of the court or assigned thereto may sentence the defendant and perform those functions.¹¹³ Md. Rule 750 b; *M.D.R. 750*.

**JUDGMENT
OF
ACQUITTAL** See ACQUITTAL

JURY

ALTERNATE JUROR

Discharge An alternate juror who does not replace a juror shall be discharged when the jury retires to consider its verdict. Md. Rule 751 b.

¹¹². The former Md. Dist. Rule did not contain a similar provision.

¹¹³. Formerly, the Md. Rule provided:

If by reason of termination of office, absence, death, sickness, or other disability, the judge before whom an accused has been tried is unable to sentence the accused convicted before him, or is unable to perform the acts and duties to be performed by the court after verdict or findings of guilt, his successor in office or any other judge presiding in or assigned to the court may sentence the accused and perform such acts and duties; but if such other judge is not satisfied that he can properly sentence the accused or perform such acts and duties, he may in his discretion grant a new trial.

Md. Rule 749 (1977); former M.D.R. 749 (1977) was substantially the same as the former Md. Rule.

Note that the new Md. Rule and Md. Dist. Rule include guilty pleas and pleas of nolo contendere, have deleted the words "successor in office" and the provision that the succeeding judge may in his discretion grant a new trial, and requires the succeeding judge to be familiar with the case.

JURY (Cont'd)

- Replacement by Any juror, who prior to the time the jury retires to consider its verdict, becomes unable or disqualified to perform his duties shall be replaced by an alternate juror in the order in which called. Md. Rule 751 b.
- Swearing Jurors and alternate jurors shall be sworn at the same time. Md. Rule 751 c.

CHALLENGES

- Alternating Upon the request of any party, peremptory challenges shall be alternated.¹¹⁴ Md. Rule 753 b (2).
- For Cause, to the Array A party's challenge to the array shall be made and determined before any individual juror from that array is examined, but the court for good cause shown may permit it to be made after the jury is sworn but before any evidence is received.¹¹⁵ Md. Rule 754 a.
- For Cause, to an Individual Juror A party's challenge to an individual juror shall be made and determined before the jury is sworn, but the court for good cause shown, may permit it to be made after the jury is sworn but before any evidence is received. Md. Rule 754 b.
- Notice by court Prior to the exercise of peremptory challenges, the court shall inform the parties of the order in which jurors' names will be called from the jury list.¹¹⁶ Md. Rule 753 b (1).
- Remaining Peremptory Challenges After the required number of jurors has been called, a party may exercise any remaining peremptory challenges to which he is entitled at any time before the jury is sworn. Md. Rule 753 b (4).
- ELECTION OF See ELECTION OF COURT OR JURY TRIAL
- EVIDENCE, REVIEW OF See JURY, ITEMS TAKEN TO JURY ROOM
- INSTRUCTIONS The court may give its instructions at any time after the close of the evidence. If, however, the court's charge is not delivered until after the argument of counsel to the jury, the court shall, in advance of such argument, advise counsel of its proposed action on the request for instructions and the substance of the instructions which it proposes to give.¹¹⁷ Md. Rule 757 d.
- Appeal An objection is not reviewable as of right unless it is made in compliance with Md. Rule 757 f. An appellate court, either upon its own motion or upon the suggestion of a party, may take cognizance of and correct any plain error in the instructions, material to the rights of a defendant even though the error was not objected to pursuant to Md. Rule 757 f. Md. Rule 757 h.

114. If no request is made for alternating challenges, each party shall exercise their challenges simultaneously by striking names from a copy of the jury list. Md. Rule 753 b (3).

Formerly, the Md. Rule provided for alternating challenges only upon a request of the defendant. Md. Rule 746 b (1977).

115. Formerly, the Md. Rule did not provide for a challenge to the array after the jury was sworn. Md. Rule 744 b (1977).

116. The former rules did not contain a similar provision.

117. The court's instructions may be given in written form only with the consent of the parties. Md. Rule 757 b.

JURY (Cont'd)

- Objection to** An objection to any instructions, to any omission therefrom, or to the failure to give an instruction shall be made on the record before the jury retires to consider its verdict. Upon request of any party, the court shall receive objections out of the hearing of the jury.¹¹⁸ Md. Rule 757 f.
- Request by counsel for** At the close of the evidence, and upon service of copies on all other parties, any party may file written requests that the court instruct the jury as set forth in the requests. Md. Rule 757 a.
- Taken to jury room** Upon retiring for deliberation, the jury, with the approval of the court, may take into the jury room those instructions or parts of the instructions which have been reduced to writing. Md. Rule 757 e.
- ITEMS TAKEN TO JURY ROOM** Upon retiring for deliberation, the jury may, with the approval of the court, take into the jury room all exhibits which have been admitted into evidence and charging documents which reflect only the charges upon which the jury is to deliberate, subject only to the safeguards imposed by the courts for preservation of the exhibits and the safety of the jurors. Md. Rule 758 a.
- When the jurors retire for deliberations, they may keep with them notes which they have taken regarding the evidence. Md. Rule 758 b.
- Whenever the jury requests to review any testimony or other evidence, the court, after notice to the parties, may submit to them the testimony or evidence requested together with other related evidence.¹¹⁹ Md. Rule 758 c. See also JURY INSTRUCTIONS.
- NUMBER, BY STIPULATION** At any time before the verdict, the parties may stipulate in writing or on the record in open court that the jury may consist of any number less than twelve.¹²⁰ Md. Rule 751 a.
- POLL** Upon the request of a party or upon the court's own motion, the jury shall be polled after it has returned a verdict and before the jury is discharged. Md. Rule 759 e.

JUVENILE**WAIVER OF JURISDICTION BY JUVENILE COURT**

- Charging document, filing of** *Within 10 days after the entry of an order waiving jurisdiction by the juvenile court, a charging document shall be filed in the court or in the circuit court charging the defendant with the offense described in the juvenile petition.*¹²¹ M.D.R. 728 d.

118. An objection is not reviewable as of right unless it is made in compliance with Md. Rule 757 f. *But see* Md. Rule 757 h providing that an appellate court, either on its own motion or upon the suggestion of a party, may take cognizance of and correct any plain error in the instructions, material to the rights of the defendant even though the error was not objected to pursuant to Md. Rule 757 f.

119. New Md. Rule 758 c merely broadens the scope of items permitted to be taken into the jury room. *See* Md. Rule 757 (1977).

120. Formerly, the Md. Rule required the approval of the court to enable the parties to stipulate to less than 12 jurors and required that the stipulation be made in writing. Md. Rule 743 (1977).

121. If a charging document is not filed as required by this section, the defendant shall be released without prejudice from all conditions of pretrial release. M.D.R. 728 d.

JUVENILE (Cont'd)

- Pretrial release, hearing *A defendant who is detained following waiver of jurisdiction by a juvenile court shall be taken before a judicial officer for a pretrial release hearing pursuant to M.D.R. 721 without unnecessary delay and in no event later than the earlier of 24 hours after the waiver order is entered or the first session of court after the waiver order is entered. M.D.R. 728 a.*
- Pretrial release, probable cause determination *The judicial officer may not impose conditions of pretrial release which require a significant restraint on the liberty of the defendant until the judicial officer determines that there is probable cause to believe that the defendant committed the offense described in the juvenile petition. If the judicial officer does not find probable cause, the defendant shall be released on his own recognizance under terms which do not significantly restrain his liberty. M.D.R. 728 b.*
- Pretrial release, review by court *If pretrial release is denied by a commissioner, or if for any reason a defendant remains in custody for 24 hours after a commissioner has determined conditions of release pursuant to M.D.R. 728, the defendant shall be brought immediately before a court if the court is then in session, or if not, at the next session of the court that follows the denial of pretrial release or the expiration of the 24 hours.¹²² M.D.R. 728 c.*

MOTIONS

BEFORE TRIAL

- Disposition *A motion filed before trial pursuant to Md. Rule 736, except a motion to dismiss for failure to obtain a speedy trial, shall be determined before trial unless the court otherwise directs in motions involving an unlawfully obtained admission, statement or confession. Md. Rule 736 e.*
- A motion made before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial, other motions may be determined at any appropriate time.¹²³ M.D.R. 736 b.*
- Filing of mandatory motions *Mandatory motions include those asserting (1) a defect in the institution of the prosecution, (2) a defect in the charging document,¹²⁴ other than its failure to show jurisdiction in the*
122. Formerly, the rule required that if the court was not in session, "the defendant shall be brought before a court at the session of the court that immediately follows, *respectively*, the denial of pretrial release or the expiration of 24 hours." M.D.R. 780 c (1977) (emphasis added).
123. If a motion is determined before trial, the court may grant the relief it deems appropriate including the dismissal of the charging document with or without prejudice. M.D.R. 736 c.
 Formerly, the rule merely provided that a motion before trial raising defenses or objections shall be determined at the trial of the general issue. M.D.R. 725 b (1977).
124. If the court grants a motion based on a defect in the institution of the prosecution, or in the charging document, it may order that defendant be held in custody or that the conditions of pretrial release continue for a specified time pending the filing of a new charging document. Md. Rule 736 f (1). These defects include, but are not limited to, allegations of improper selection and organization of the grand jury, disqualification of an individual grand juror, unauthorized presence of persons in the grand jury room, former conviction, acquittal, statute

MOTIONS (Cont'd)

court or to charge an offense, which defenses can be noticed by the court at any time, (3) an unlawful search, seizure, interception of wire or oral communication,¹²⁵ or pretrial identification, (4) an unlawfully obtained admission, statement or confession,¹²⁶ (5) a motion for joint or separate trial of defendants or offenses. These mandatory motions shall be filed within 30 days after the earlier of the appearance of counsel or the appearance of the defendant before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723, except when discovery is furnished on an issue which is the subject of the motion, the motion may be filed within 5 days after the discovery is furnished.¹²⁷ Md. Rule 736 a, b.

Filing of
other motions

Any other defense, objection or request other than that required to be raised by mandatory motion pursuant to Md. Rule 736 a, b and capable of determination before trial without trial of the general issue shall be raised by motion filed at any time before trial.¹²⁸ Md. Rule 736 c.

OTHER

Motions other than a motion filed before trial to suppress or exclude evidence by reason of any objection or defense may be determined at any appropriate time. M.D.R. 736 b.

NEW TRIAL

MOTION

Generally

Upon a motion of a defendant filed within 3 days after verdict, the court, in the interest of justice, may order a new trial. Md. Rule 770 a; *M.D.R. 770 a.*

of limitations, immunity and failure of the charging document to state an offense. Committee Note, Md. Rule 736.

125. See note 126 *infra*. New Md. Rule 781 provides that an application for, and the issuance of an *ex parte* order, or any extension or renewal thereof, for authorization or approval of interception of wire or oral communications shall be in strict accordance with all applicable federal and state statutes. Md. Rule 781.
126. If the court grants a motion to suppress evidence, the evidence shall be excluded and shall not be offered by the State at trial except in accordance with law for impeachment purposes. If the motion is denied, the ruling is binding at the trial unless the court, in the exercise of discretion, grants a hearing *de novo* on a renewal of the motion. A pretrial ruling denying the motion to suppress shall be reviewable on a motion for a new trial or on appeal of a conviction. Md. Rule 736 f (2).
127. Any matter not raised in accordance with this rule is waived, unless the court, for good cause shown, orders otherwise. Md. Rule 736 a. See also Md. Rule 723 b (7) and Md. Rule 731 b (3), which indicate that an entry of a plea by the defendant or by the court when the defendant fails to plead, waives technical defects in the charging document and waives objections to venue. Committee Note, Md. Rule 731.

Formerly, the Md. Rule provided that a pretrial petition or motion to suppress, exclude or return property alleged to have been obtained by an unlawful search or seizure was not required and failure to file a petition or motion did not constitute a waiver of the defendant's right to object at the trial to the introduction of the evidence. However, when a motion of this nature had been filed after the defendant had been indicted or was awaiting indictment, the motion had to be filed at least 5 days before the trial date and the motion had to be determined by the court prior to the commencement of the trial. In other cases, the court had the discretion to determine the motion as a preliminary matter or during the trial. Md. Rule 729 c, d (1), (2) (1977).

128. See note 123 *supra*.

NEW TRIAL (Cont'd)

Newly discovered evidence Upon a motion filed within 90 days after the imposition of sentence or within 90 days after receipt by the court of a mandate issued by the court of appeals or the court of special appeals, whichever is later, a court may grant a new trial or other appropriate relief on the ground of newly discovered evidence, which, by due diligence, could not have been discovered in time to move for a new trial pursuant to Md. Rule 770 a. Md. Rule 770 b.

Upon a motion filed within 90 days after the imposition of sentence, if no appeal has been perfected, a court may grant a new trial or other appropriate relief on the ground of newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial pursuant to M.D.R. 770 a.¹²⁹ M.D.R. 770 b.

Unjust or improper verdict For a period of 90 days after the imposition of a sentence, or thereafter pursuant to a motion filed within that period, the court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial. After the expiration of that period the court has revisory power and control over the judgment only in the case of fraud, mistake or irregularity.¹³⁰ Md. Rule 770 c; *M.D.R. 770 c.*

NOLLE PROSEQUI

DISPOSITION The State's Attorney in his discretion may terminate a prosecution on a charging document and dismiss the charging document by entering a nolle prosequi on the record in open court.¹³¹ Md. Rule 782 a; *M.D.R. 782 a.* See also PRELIMINARY HEARING, PROBABLE CAUSE DETERMINATION and WAIVER.

NOTICE TO DEFENDANT In the event a defendant is not present in court when the nolle prosequi is entered, the clerk shall send notice of the entry to the defendant, if his whereabouts are known, and to his counsel of record.¹³² Md. Rule 782 a; *M.D.R. 782 a.*

NOTICE TO APPEAR See also CHARGING DOCUMENTS

APPEARANCE See APPEARANCE, BY DEFENDANT

SERVICE When a defendant remains in custody after having been processed for pretrial release pursuant to M.D.R. 721 or Md. Rule 721, the clerk shall immediately issue a writ to the appropriate officer having custody of the defendant directing him to produce

129. Formerly, the motion for a new trial based upon discovery of new evidence had to be filed within 30 days after the imposition of sentence. M.D.R. 764 b (3) (1977).

130. Formerly, the rule did not limit the revisory power of the court to setting aside an unjust or improper verdict and granting a new trial. The revisory power of the court was not limited and included modification or reduction of sentence. Md. Rule 764 b (1) (1977). Also, under the former Md. Dist. Rule, the general revisory power of the court, absent fraud, mistake or irregularity, extended for a period of 30 days after imposition of sentence. M.D.R. 764 b (1) (1977).

131. Formerly, the Md. Dist. Rule provided that "[a] nolle prosequi of a charge may be entered by the State's Attorney . . . by written statement or in open court." M.D.R. 711 (1977) (emphasis added).

132. The former rules did not contain a similar provision.

NOTICE TO APPEAR (Cont'd)

the defendant before the court at the designated time and place for proceedings to provide for the appearance or waiver of counsel pursuant to Md. Rule 723 and serve the defendant with a copy of the writ together with a notice that unless counsel enters an appearance for the defendant on or before the time specified in the writ, he must appear in court at the time specified.¹³³ Md. Rule 720 h.

PLEA

ENTRY OF
INITIAL PLEA

A defendant's initial plea shall be made within 15 days after the earlier of the appearance of counsel or the first appearance of a defendant before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723. If a motion, demand for particulars, or other paper is filed requiring a ruling by the court or compliance by a party before entering a plea, the time for pleading shall be extended, without special order, to 15 days after the ruling by the court or the compliance by a party.¹³⁴ Md. Rule 731 b(2).

At the commencement of a trial, the court shall make certain that a defendant has been provided a copy of the charging document, inform him of each offense with which he is charged, inform him when applicable of his right to a trial by jury and thereafter call upon the defendant to plead to each charge. M.D.R. 751.

GUILTY

See ENTRY OF INITIAL PLEA. The court may not accept a plea of guilty without first questioning a defendant on the record.¹³⁵ Md. Rule 731 c; *M.D.R. 731 c.*

INSANITY

See ENTRY OF INITIAL PLEA. A defense of insanity shall be interposed at the time the initial plea is made, unless good cause is shown.¹³⁶ Md. Rule 731 b(2).

NOLO CONTENDERE

See ENTRY OF INITIAL PLEA. A defendant may enter a plea of nolo contendere only by leave of the court.¹³⁷ The court may not

133. The former Md. Rules did not contain a similar provision.

134. If a defendant does not plead within the time provided the clerk shall enter a plea of not guilty. Md. Rule 731 b (3).

The entry of a plea waives technical defects in the charging document and objections to venue. Committee Note, Md. Rule 731.

Formerly, the Md. Rules did not contain a provision setting forth specific time limits for entry of pleas.

135. Upon a motion of a defendant made within 3 days after the imposition of sentence the court may set aside the judgment and permit the defendant to withdraw his plea of guilty if he establishes that the court did not first question him pursuant to Md. Rule 731 c. Md. Rule 731 f (2).

If the court refuses to accept a plea of guilty, it shall enter a plea of not guilty. Md. Rule 731 c.

Formerly, the rules did not contain a similar provision for questioning by the court.

136. The former Md. Rules did not contain a similar provision.

137. Upon a motion of a defendant made within 3 days after the imposition of sentence the court may set aside the judgment and permit the defendant to withdraw his plea of nolo contendere if he establishes that the court did not first question him pursuant to Md. Rule 731 d (1).

If the court refuses to accept a plea of nolo contendere, it shall call upon the defendant to tender another plea. Md. Rule 731 d (1).

The plea, if accepted by the court, has the effect of submitting the defendant to punishment by the court. Following the entry of the plea, the court shall

PLEA (Cont'd)

accept a plea of *nolo contendere* without first questioning the defendant on the record.¹³⁸ Md. Rule 731 d(1); *M.D.R. 731 d(1)*.

NOT GUILTY

See ENTRY OF INITIAL PLEA. If a defendant does not plead within the time provided by Md. Rule 731, the clerk shall enter a plea of not guilty.¹³⁹ Md. Rule 731 b(3).

If a defendant refuses to plead, the clerk shall enter a plea of not guilty. M.D.R. 731 b(2).

If the court refuses to accept a plea of guilty, it shall enter a plea of not guilty. Md. Rule 731 c; *M.D.R. 731 c*. When justice requires, the court may permit the defendant to withdraw a plea of guilty or *nolo contendere* and enter a plea of not guilty at any time before sentencing.¹⁴⁰ Md. Rule 731 f(1); *M.D.R. 731 e(1)*.

TO OTHER OFFENSES

Request

Upon the acceptance of a plea of guilty or *nolo contendere* or after a verdict of guilty, but before sentencing, a defendant may request permission to plead guilty or *nolo contendere* to any other pending charges within the jurisdiction of the court, including charges pending in another county.¹⁴¹ Md. Rule 732 a; *M.D.R. 732 a*.

WITHDRAWAL

When justice requires, the court may permit a defendant to withdraw a plea of guilty or *nolo contendere* and enter a plea of not guilty at any time before sentencing.¹⁴² Md. Rule 731 f(1); *M.D.R. 731 e(1)*.

Upon the motion of a defendant made within 3 days after the imposition of sentence the court may set aside the judgment and permit the defendant to withdraw his plea of guilty or *nolo contendere* if the defendant establishes that the provisions of Md. Rule 731 c [*M.D.R. 731 c*] (Plea of Guilty) or Md. Rule 731 d [*M.D.R. 731 d*] (Plea of *Nolo Contendere*) were not complied with or that there was a violation of a plea agreement entered into

proceed to determine and impose a sentence as on a plea of guilty, but without finding a verdict of guilty. Md. Rule 731 d (2).

138. Formerly, the rules did not contain a similar provision.

139. Formerly, the Md. Rule provided that "[i]f an accused refuses to plead . . . the court shall enter a plea of not guilty." Md. Rule 721 (1977). See also note 134 *supra*.

140. Formerly, the rules provided that the court may strike out a plea of guilty at any time and enter a plea of not guilty, if it deems such action necessary in the interest of justice. The rules did not provide for withdrawal of a plea of *nolo contendere*. Md. Rule 722 (1977); *M.D.R. 722* (1977).

141. The new Md. Rule provides that the filing of the request constitutes a waiver of venue as to an offense committed in another county and waiver of indictment by a grand jury. Md. Rule 732 a. The new Md. Dist. Rule provides that the filing of the request is a waiver of venue as to an offense committed in another county. *M.D.R. 732 a*. The new rules allow such pleas only with the consent of the State's Attorney in the other county. Md. Rule 732; *M.D.R. 732*.

The former rules did not contain a similar provision.

The Reporter's comments on a draft of new Md. Rule 732 and *M.D.R. 732* stated that "[t]his procedure can be of benefit to the defendant and to the state to terminate criminal proceedings without the necessity of individual actions in different circuit courts."

142. See note 140 *supra*.

PLEA (Cont'd)

pursuant to Md. Rule 733 [*M.D.R. 733*].¹⁴³ Md. Rule 731 f(2); *M.D.R. 731 e(2)*.

PLEA AGREEMENTS¹⁴⁴ACCEPTANCE OR
REJECTION

If a plea agreement has been reached for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition or other judicial action, the judge may accept or reject the agreement when advised of the terms of the agreement when a defendant tenders the plea or may defer the decision until after the pre-sentence proceedings and investigation he deems necessary.¹⁴⁵ Md. Rule 733 b(1); *M.D.R. 733 b(1)*.

DISPOSITION MORE
FAVORABLE TO
DEFENDANT

If the judge accepts a plea agreement pursuant to Md. Rule 733 b(1) [*M.D.R. 733 b(1)*], he shall accept a defendant's plea in open court and embody in his judgment the agreed sentence, disposition or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement.¹⁴⁶ Md. Rule 733 b(3); *M.D.R. 733 b(3)*.

PRESENTATION TO
THE COURT

If a plea agreement has been reached for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition or other judicial action, the defense counsel and the State's Attorney shall advise the judge of the terms of the agreement when the defendant tenders the plea.¹⁴⁷ Md. Rule 733 b(1); *M.D.R. 733 b(1)*.

SEALING OF
RECORD

If the parties stipulate to the court that the disclosure of a plea agreement or any term thereof would cause a substantial risk to any person of physical harm, intimidation, bribery, economic reprisal or unnecessary annoyance or embarrassment, the court may order that the record be sealed subject to terms it deems appropriate.¹⁴⁸ Md. Rule 733 c; *M.D.R. 733 c*.

143. See note 140 *supra*.

144. The former rules did not recognize plea agreements.

145. If a judge rejects the plea agreement, he shall inform the parties of this fact and shall advise the defendant that the court is not bound by the plea agreement, that the defendant may withdraw his plea, and that if he persists in his plea of guilty or nolo contendere the sentence or other disposition of the case may be less favorable to him than the plea agreement. If the defendant persists in his plea, the court may accept the plea of guilty only pursuant to Md. Rule 731 c or *M.D.R. 731 c* and a plea of nolo contendere only pursuant to Md. Rule 731 d or *M.D.R. 731 d*. Md. Rule 733 b (4); *M.D.R. 733 b (4)*.

The recommendations or agreements of the State's Attorney in a proposed plea agreement relating to a particular sentence, disposition or other judicial action are not binding on the court unless the judge to whom the agreement is presented accepts it. Md. Rule 733 b (2); *M.D.R. 733 b (2)*.

The trial judge should not participate in the plea discussions. There can be, however, limited advance consultation with the trial judge concerning the probable disposition upon acceptance of a plea.

Committee Note, Md. Rule 733; Committee Note, *M.D.R. 733*.

The former rules did not contain a similar provision.

146. The former rules did not contain a similar provision.

147. The former rules did not contain a similar provision.

148. The former rules did not contain a similar provision.

PLEA AGREEMENTS (Cont'd)

- WITHDRAWAL OF PLEA If the judge rejects a plea agreement, the defendant may withdraw his plea.¹⁴⁹ Md. Rule 733 b(4); *M.D.R. 733 b(4)*. See also PLEAS, WITHDRAWAL.
- Objection to judge If a defendant withdraws his plea and enters a plea of not guilty, then upon the objection of the defendant or the State made at that time, the judge to whom the agreement was presented may not preside at a subsequent court trial of the defendant on any charges involved in the rejected plea agreement.¹⁵⁰ Md. Rule 733 b(5); *M.D.R. 733 b(5)*.

PRELIMINARY HEARING

- ADVICE OF RIGHT TO At the initial appearance of a defendant when the defendant has been charged with a felony which is not within the jurisdiction of the court and has not been indicted, the judicial officer shall advise the defendant that he has a right to request a preliminary hearing if the request is made then or within 10 days thereafter.¹⁵¹ *M.D.R. 723 b(5), 727 b*.
- AVAILABILITY When a defendant has been charged with a felony which is not within the jurisdiction of the court and if a request is duly made by a defendant within 10 days after his initial appearance pursuant to *M.D.R. 723* or by the State within 10 days after the defendant waives a preliminary hearing, a preliminary hearing shall be held.¹⁵² *M.D.R. 727 a*.
- NON-AVAILABILITY A preliminary hearing may not be held if before it is held: 1) An indictment is filed in the circuit court;¹⁵³ 2) The State's Attorney amends the pending charging document or files a new charging

149. If a defendant withdraws his plea and enters a plea of not guilty, then upon the objection of the defendant or the State made at that time, the judge to whom the agreement was presented may not preside at a subsequent court trial of the defendant on any charges involved in the rejected plea agreement. Md. Rule 733 b (5); *M.D.R. 733 b (5)*.

150. The former rules did not contain a similar provision. The Reporter's comments on a draft of new Md. Rule 733 and *M.D.R. 733* stated:

Several State's Attorneys and judges have suggested that this required withdrawal could lead to "judge shopping." The risk of misuse of this procedure would appear to be minimal, since the court would not be placed in a position of considering a plea agreement of this nature unless the State's Attorney had first agreed to submit the specific plea agreement involving the sentence, disposition or other judicial action to the court. If the State does not enter into the agreement, then it cannot be presented to the court.

151. Formerly, the Md. Dist. Rule provided that the defendant be so advised only when he has not been indicted. *M.D.R. 709 f, 741 a (1) (1977)*.

152. Formerly, the Md. Dist. Rule provided that if the State's Attorney elects to charge the accused by criminal information, the right of the defendant to the preliminary hearing shall be absolute, if requested. *M.D.R. 741 a (2) (1977)*. A preliminary hearing was not a matter of right in any other case, but could be afforded in any case in the court's discretion, upon motion of the State's Attorney or the defendant. *M.D.R. 741 a (3) (1977)*.

153. Formerly, the Md. Dist. Rule provided that if the State's Attorney elected to charge the accused by grand jury indictment, the preliminary hearing may be afforded at the court's discretion. *M.D.R. 741 a (3) (1977)*.

PRELIMINARY HEARING (Cont'd)

*document charging an offense within the jurisdiction of the court; or 3) The State's Attorney enters a nolle prosequi or marks the charging documents stet on the docket.*¹⁵⁴ M.D.R. 727 f.

PROBABLE CAUSE
DETERMINATION

Action required
by State's
Attorney

*Within 30 days after a finding by the court of probable cause after a preliminary hearing¹⁵⁵ or within 30 days after a defendant waives a preliminary hearing, the State's Attorney shall: 1) File a charging document in the circuit court and immediately notify the clerk of the district court of the date on which the charging document was filed; 2) Amend the pending charging document or file a new charging document charging the defendant with an offense within the jurisdiction of the court; 3) Enter a nolle prosequi or mark the charging document stet on the docket. For good cause shown, the court may extend the time within which the State's Attorney shall take such action.*¹⁵⁶ M.D.R. 727 i.

Notice of

*Within 3 days after the finding of probable cause by the court, the clerk shall forward to the State's Attorney a written notice thereof or a copy of the docket entries showing the finding.*¹⁵⁷ M.D.R. 727 h.

REQUEST

*A defendant may request a preliminary hearing at the initial appearance or within 10 days after his initial appearance.*¹⁵⁸ M.D.R. 727 b.

*Within 10 days after a defendant waives a preliminary hearing, the State may request a preliminary hearing.*¹⁵⁹ M.D.R. 727 d.

SCHEDULING

If the offense is a felony which is not within the jurisdiction of the court and a defendant at the time of his initial appearance requests a preliminary hearing, the judicial officer shall set the date and time for the preliminary hearing, or notify the

154. Formerly, the Md. Dist. Rules did not contain a similar provision.

155. If the court finds that there is no probable cause to believe that a defendant committed an offense, it shall dismiss the charging document and release the defendant. The dismissal is without prejudice. M.D.R. 727 h.

156. If the State's Attorney fails to act as required by M.D.R. 727 i, the court shall enter an order of dismissal for lack of prosecution. The dismissal is without prejudice. M.D.R. 727 j.

Formerly, the Md. Dist. Rules provided that after a finding of probable cause the court:

may grant the State's Attorney, upon his request, leave to file an appropriate charging document in the District Court, within such time as it shall prescribe, against the defendant charging him with any additional offense or offenses within the jurisdiction of the District Court arising out of the same circumstances, in which case the trial of all pending charges shall be stayed until the time limited for the filing of the charging document has expired.

M.D.R. 741 (1977).

157. The former Md. Dist. Rules did not contain a similar provision.

158. His failure to make a timely request is a waiver of a preliminary hearing. M.D.R. 723 b (5), 727 b.

159. The former Md. Dist. Rules did not provide a specific time for a request by the State.

PRELIMINARY HEARING (Cont'd)

*defendant that he will be so advised by the clerk.*¹⁶⁰ M.D.R. 723 b (6).

*Upon the timely request of a party for a preliminary hearing, the commissioner or clerk shall schedule a preliminary hearing date within 30 days after the request and shall notify all parties of the date. For good cause shown, the court may reschedule the date of a preliminary hearing.*¹⁶¹ M.D.R. 727 e.

WAIVER

Action required
by State's
Attorney

*Within 30 days after a finding by the court of probable cause after a preliminary hearing or within 30 days after a defendant waives a preliminary hearing, the State's Attorney shall: 1) File a charging document in the circuit court and immediately notify the clerk of the district court of the date on which the charging document was filed; 2) Amend the pending charging document or file a new charging document charging defendant with an offense within the jurisdiction of the court; 3) Enter a nolle prosequi or mark the charging document stet on the docket. For good cause shown, the court may extend the time within which the State's Attorney shall take such action.*¹⁶² M.D.R. 727 i.

Notice of

*Within 3 days after a defendant waives a preliminary hearing either expressly or by not making a timely request, the clerk shall forward to the State's Attorney a written notice of the waiver or a copy of the docket entries showing the waiver.*¹⁶³ M.D.R. 727 c.

PRESENCE OF
DEFENDANT

REQUIRED¹⁶⁴

See also DEPOSITION, PRESENCE OF DEFENDANT

*A defendant shall be present at every stage of the trial, including the impaneling of the jury and the return of the verdict, and at the imposition of sentence except as provided by the Md. Rules.*¹⁶⁵ Md. Rule 724 a.

A defendant shall be present at every stage of the trial, including the return of the verdict, and at the imposition of

160. Formerly, the Md. Dist. Rule stated that at the initial appearance "[t]he judicial officer shall assign the date and time for, or in appropriate instances shall proceed with, the . . . preliminary hearing." M.D.R. 709 e (1977).

161. The former Md. Dist. Rules did not contain a similar provision.

162. If the State's Attorney fails to act as required by M.D.R. 727 i, the court shall enter an order of dismissal without prejudice for lack of prosecution. M.D.R. 727 j.

Formerly, the Md. Dist. Rules did not contain a similar provision.

163. The former Md. Dist. Rules did not contain a similar provision.

164. Except when specifically covered by Md. Rule 724, the matter of presence of the defendant during any stage of the proceedings is left to case law and the rule is not intended to exhaust all situations. Committee Note, Md. Rule 724; Committee Note, M.D.R. 724.

165. Former Md. Rule 775 (Presence of Accused) also stated that the accused shall be present at the arraignment and that he had a right to be present at a deposition taken at the instance of the prosecution. Md. Rule 775 (1977). See also DEPOSITION, PRESENCE OF DEFENDANT.

PRESENCE OF DEFENDANT (Cont'd)

*sentence, except as provided by the Md. Dist. Rules.*¹⁶⁶ *M.D.R. 724 a.*

- NOT REQUIRED** A defendant need not be present: 1) At a conference or argument on a question of law; 2) When a nolle prosequi or stet is entered; 3) At a reduction of sentence; 4) At any stage of the proceeding if the defendant is a corporation.¹⁶⁷ *Md. Rule 724 b; M.D.R. 724 b.*
- WAIVER OF RIGHT TO BE PRESENT** A defendant initially at trial waives his right to be present when he voluntarily absents himself after the trial has commenced or engages in conduct to justify his being excluded from the courtroom. *Md. Rule 724 c; M.D.R. 724 c.*

PRESENTENCE INVESTIGATION REPORT

- DELIVERY** A copy of a presentence investigation report, including any recommendation to the court based thereon, shall be mailed or otherwise delivered to a defendant or his counsel and to the State's Attorney in sufficient time prior to sentencing to afford a reasonable opportunity for the parties to investigate the information in the report.¹⁶⁸ *Md. Rule 771 b; M.D.R. 771 b.*
- ORDER** Before imposing sentence or granting probation, the court may order a presentence investigation and report. *Md. Rule 771 a; M.D.R. 771 a.*

PRETRIAL RELEASE

- AMENDMENT OF ORDER** After a charging document has been filed, the court, upon the motion of any party or upon its own motion, may amend an order of pretrial release to impose additional or different conditions. The court shall give notice and an opportunity for hearing on the motion. *Md. Rule 721 f; M.D.R. 721 g.*

AVAILABILITY

- Maximum penalty: life imprisonment or death** A defendant charged with an offense for which the maximum penalty is death or life imprisonment may be released pending trial in the discretion of the court.¹⁶⁹ *Md. Rule 721 a; M.D.R. 721 a.*

166. Former M.D.R. 775 provided that except at a reduction of sentence, "... defendant shall be present at the initial appearance, at every stage of the trial or preliminary hearing and at the imposition of sentence." M.D.R. 775 (1977).

167. Former Md. Rule 775 stated: "A corporation may appear by counsel for all purposes. The defendant's presence is not required at a reduction of sentence . . . , fixing of the date of execution in a capital case, or at a proceeding in an appellate court." Md. Rule 775 (1977). *See also note 166 supra.*

168. Former Md. Rule 761 (Sentence — Presentence Investigation) did not contain this provision. It merely stated that "[t]he report, except the recommendation, shall be subject to inspection by counsel unless the court otherwise directs." Md. Rule 761 d (1977).

Former M.D.R. 761 d provided only that the report shall be subject to inspection by counsel unless the court directs otherwise. M.D.R. 761 d (1977).

169. A defendant ineligible for pretrial release under Maryland Code Article 27, Section 616½ (c) does not come within the purview of Md. Rule 721 or M.D.R. 721 (Pretrial Release).

Formerly, the Md. Rule provided that a defendant charged with any offense punishable by death may be released pending trial in the discretion of the court.

PRETRIAL RELEASE (Cont'd)

Maximum penalty: Before conviction or pending a new trial, a defendant charged neither life imprisonment nor death with an offense for which the maximum penalty is neither death nor life imprisonment is entitled to be released pending trial, subject to the provisions of Md. Rule 721 [*M.D.R. 721*] regarding pretrial release.¹⁷⁰ Md. Rule 721 a; *M.D.R. 721 a*.

DETERMINATION *At the initial appearance of a defendant and subject to a probable cause determination, the judicial officer promptly shall determine the defendant's eligibility for pretrial release. M.D.R. 723 b(3).*

INTERIM BAIL See BAIL BOND, INTERIM BAIL

JUVENILE, WAIVER OF JURISDICTION

Hearing See JUVENILE, WAIVER OF JURISDICTION BY JUVENILE COURT, Pretrial release, hearing

Review by court See JUVENILE, WAIVER OF JURISDICTION BY JUVENILE COURT, Pretrial release, review by court

PROBABLE CAUSE

DETERMINATION *At the initial appearance of a defendant, when he has been arrested without a warrant, the judicial officer may not impose conditions of pretrial release which impose a significant restraint on the defendant's liberty until the judicial officer determines that there is probable cause to believe that the defendant committed an offense.*¹⁷¹ *M.D.R. 723 b(4)*. See also PRELIMINARY HEARING, PROBABLE CAUSE DETERMINATION.

PROBATION

ADVICE BY COURT When placing a defendant on probation, the court shall advise him of the conditions and duration of probation and the possible consequences of a violation of any condition thereof. The court shall file and serve on the defendant a written order stating the conditions and duration.¹⁷² Md. Rule 775 a; *M.D.R. 775 a*.

HEARING ON VIOLATION OF CONDITION On the motion of the State's Attorney or on its order, the court may hold a hearing to determine whether any condition of probation has been violated. The hearing is to be held whenever practicable by the sentencing judge. Md. Rule 775 c; *M.D.R. 775 c*.

Md. Rule 777 (1977). The former Md. Dist. Rule provided that a defendant may be admitted to bail in the discretion of the court in capital cases. *M.D.R. 777 (1977)*.
 170. A defendant ineligible for pretrial release under Maryland Code Article 27, Section 616½ (c) does not come within the purview of Md. Rule 721 or *M.D.R. 721 (Pretrial Release)*.

The former rules did not expressly provide for a defendant's release pending a new trial and included defendants who were charged with offenses punishable by life imprisonment. Md. Rule 777 (1977); *M.D.R. 777 (1977)*.

171. If the judicial officer does not find probable cause, the defendant shall be released on his own recognizance under terms which do not significantly restrain his liberty. *M.D.R. 723 b (4)*.

172. The former rules did not contain provisions formalizing probation procedures.

PROBATION (Cont'd)

Service of motion or order The order or motion for a hearing on a violation of a condition of probation shall be served on a defendant sufficiently before the hearing to permit him a reasonable opportunity to rebut the charges. Md. Rule 775 c; *M.D.R. 775 c.*

MODIFICATION OF ORDER OF PROBATION During the period of probation, on its own motion or the motion of a defendant or any person charged with supervising the defendant while he is on probation and after giving the defendant an opportunity to be heard, the court may modify, clarify, or terminate any condition of probation, change the duration thereof, or impose additional conditions. Md. Rule 775 b; *M.D.R. 775 b.*

RELEASE AFTER CONVICTION

After conviction, pending sentence or appeal or upon filing a petition for writ of certiorari to an appellate court [*after conviction, pending sentence or appeal*] a defendant may be released subject to conditions for further appearance in the discretion of the trial court. Md. Rule 776 a; *M.D.R. 776 a.*

REMOVAL

See also TRANSFER, CRIMINAL PROCEEDINGS

CAPITAL CASES

In capital cases, when a defendant files a suggestion under oath that he cannot have a fair and impartial trial in the court in which the case is pending, the court shall order that the case be transmitted for trial to another court having jurisdiction.¹⁷³ Md. Rule 744 a.

NON-CAPITAL CASES

In non-capital cases, when a defendant files a suggestion under oath that he cannot have a fair and impartial trial in the court in which the case is pending, the court shall order that the case be transmitted for trial to another court having jurisdiction only if it is satisfied that the suggestion is true or that there is a reasonable ground for it.¹⁷⁴ Md. Rule 744 b.

SEARCHES AND SEIZURES

MOTION ASSERTING UNLAWFUL SEARCH AND SEIZURE See MOTIONS, BEFORE TRIAL, Filing

SEARCH WARRANT

Application, affidavit and other papers, filing of The application, affidavit and other papers upon which a search warrant is based may not be filed with the clerk until the search warrant is returned executed pursuant to Md. Rule 780 e [*M.D.R. 780 e*]. Md. Rule 780 b; *M.D.R. 780 b.*

Destruction In the event the search warrant is not executed, the judge to whom it is returned may destroy it and accompanying papers or make any other disposition thereof he deems proper. Md. Rule 780 g; *M.D.R. 780 g.*

173. The former and new Md. Rule imposed an additional requirement in that the party making the suggestion satisfy the court that such suggestion was true, or that there was a reasonable ground for the same. Md. Rule 738 b (1977).

174. *Id.*

SEARCHES AND SEIZURES (Cont'd)

- Inspection of warrant, inventory and related papers Upon a motion filed by a person from whom or from whose premises property is taken under a search warrant or by a person having an interest in the property or by a person aggrieved by a search or seizure, the court in the county in which the search warrant is filed shall order that the warrant, inventory and other related papers filed be made available to the person or his attorney for inspection and copying.¹⁷⁵ Md. Rule 780 h; *M.D.R. 780 h.*
- Notice of motion for inspection of warrant, inventory and related papers Upon the filing of a motion for inspection of a search warrant, inventory and other related papers the court may order that notice of the motion be given to the State's Attorney. Md. Rule 780 h; *M.D.R. 780 h.*
- Return of executed warrant An executed search warrant shall be returned to the issuing judge, or in his absence, to another judge of the same circuit [*district*] in which the search warrant was issued, as promptly as possible and in any event within 5 days after the date the search warrant is executed or within any earlier time set forth in the search warrant for its return. Md. Rule 780 e; *M.D.R. 780 e.*
- Return of unexecuted warrant A search warrant unexecuted within 15 days after its issuance shall be returned promptly to the issuing judge.¹⁷⁶ Md. Rule 780 e; *M.D.R. 780 e.*
- Sealed warrant, opening of The search warrant and all papers connected with the issuance, execution or return of the search warrant filed by the judge to whom the warrant is returned shall be sealed and shall be opened for inspection only upon the order of the court. Md. Rule 780 f; *M.D.R. 780 f.*

SENTENCE

ADVICE BY COURT

- Information, statement by defendant in mitigation Before imposing sentence, the court shall inform a defendant that he has a right, personally and through counsel, to make a statement and to present information in mitigation of punishment, and the court shall afford an opportunity to exercise this right. Md. Rule 772 c; *M.D.R. 772 c.*
- Review of sentence Immediately after imposing sentence, the court shall cause a defendant to be advised of the right to file for review of the sentence and the time within which he must exercise that right. Md. Rule 772 g.

175. Formerly, the Md. Rule provided that the order be made by "the criminal court of the county in which the search warrant is filed." Md. Rule 707 e (1977).

Formerly, the Md. Dist. Rule provided that the order be made by "the court sitting in the county seat of the county in which the search warrant is filed." M.D.R. 707 e (1977).

176. In the event the search warrant is not executed, the judge to whom it is returned may destroy it and accompanying papers or make other disposition thereof he deems proper. Md. Rule 780 g; M.D.R. 780 g.

Formerly, the rules did not provide for the return of an unexecuted warrant. See Md. Rule 707 (1977).

SENTENCE (Cont'd)

CREDIT	Time spent in custody shall be credited against a sentence. Md. Rule 772 e; <i>M.D.R. 772 e.</i>
IMPOSITION	The sentence shall be imposed without unreasonable delay. Md. Rule 772 a; <i>M.D.R. 772 a.</i>
PROBATION	See PROBATION
REVIEW	
Advice of right to	See SENTENCE, ADVICE BY COURT, Review of Sentence
Application for review of sentence	An application for review of a sentence shall be filed in the sentencing court within 30 days after the imposition of sentence or at a later time permitted by the Review of Criminal Sentences Act, Article 27, §§ 645JA-645JG of the Maryland Code. ¹⁷⁷ Md. Rule 773 a. See also APPEAL, EXTENSION OF TIME FOR.
Application for review, notification of	Upon the filing of an application for review of sentence, the clerk shall notify the defendant's counsel, the State's Attorney and the Circuit Administrative Judge. Md. Rule 773 a.
Application for review if sentence is vacated or modified	If before the Review Panel renders its decision, the sentence under review is vacated or modified, the Review Panel shall give the defendant a reasonable opportunity, but not less than 10 days, to file a new application for review of the sentence as modified if the sentence as modified is subject to review under the Review of Criminal Sentences Act. ¹⁷⁸ Md. Rule 773 h(1).
Application for review, withdrawal of	A defendant may withdraw his application for review of sentence at any time before the receipt of notice of a hearing on the application, and thereafter only with the permission of the Review Panel. An application may not be withdrawn after the decision of the Review Panel is rendered. ¹⁷⁹ Md. Rule 773 c.
Panel, appointment of	Upon notification by the clerk of the filing of an application, the Circuit Administrative Judge shall, without delay, appoint a Review Panel. ¹⁸⁰ Md. Rule 773 d.
Panel, decision of	The Review Panel shall render a decision within 30 days after the application is filed. Md. Rule 773 f.

177. Formerly, the Md. Rule made no provision with respect to extending the time for making an application beyond 30 days after the imposition of sentence. See Md. Rule 762 b (2) (1977).

178. The Review Panel shall dismiss the original application if the defendant fails to file a new application or if the sentence as modified is not subject to review under the Review of Criminal Sentences Act, Article 27, § 645 JA of the Maryland Code, or if the original sentence was vacated. Md. Rule 773 h (2).

179. The filing of a withdrawal is final and shall terminate all rights of a defendant to have the sentence reviewed under the Review of Criminal Sentences Act. Md. Rule 773 c.

The former Md. Rule was substantially similar except that it failed to provide that an application for review may not be withdrawn after the Review Panel rendered a decision. See Md. Rule 762 b (5) (1977).

180. The new rule merely combines subsections under the former rule. See Md. Rule 762 c (1), (2) (1977).

SENTENCE (Cont'd)

Panel, notice of hearing If a hearing is held, the Review Panel shall serve the defendant, his counsel and the State's Attorney with reasonable notice designating the time and place of the hearing. Md. Rule 773 e.

REVISORY POWER OF COURT

Generally The court has revisory power and control over the sentence for a period of 90 days after the imposition of a sentence or within 90 days after receipt by the court of a mandate issued by the court of appeals or the court of special appeals upon affirmance of the judgment or dismissal of appeal, or thereafter, pursuant to a motion filed within that period. After the expiration of that period, the court has revisory power and control over the sentence only in case of fraud, mistake or irregularity. Md. Rule 774 b.

*The court has revisory power and control over the sentence for a period of 90 days after the imposition of a sentence or thereafter, pursuant to a motion filed within that period. After the expiration of that period, the court shall have revisory power and control over the sentence only in case of fraud, mistake or irregularity.*¹⁸¹ M.D.R. 774 b.

Desertion and non-support cases In a case involving desertion and non-support of wife, children or destitute parents, at any time before expiration of the sentence, the court may reduce, change, modify or suspend the sentence or place a defendant on probation under the terms and conditions the court imposes.¹⁸² Md. Rule 774 d; M.D.R. 774 d.

Illegal sentence The court may correct an illegal sentence at any time. Md. Rule 774 a; M.D.R. 774 a.

Newly discovered evidence See NEW TRIAL

Open hearing A modification or reduction or striking of sentence shall be made on the record in open court after notice to the defendant and the State's Attorney. Md. Rule 774 c; M.D.R. 774 c.

STAY OF EXECUTION An appeal or the filing of a petition for a writ of certiorari to any appellate court, including the Supreme Court of the United States, stays a sentence of death, or a sentence of imprisonment if a defendant is released after conviction pursuant to Md. Rule 776. Any other sentence or order or condition of probation may be stayed upon terms the court deems proper.¹⁸³ Md. Rule 778 a.

181. Formerly, the Md. Dist. Rule limited the court's revisory power and control over the judgment or other judicial act forming part of the proceedings to a period of 30 days after imposition of sentence, or thereafter pursuant to a motion filed within that period. M.D.R. 764 b (1) (1977).

182. The former Md. Rule was substantially similar to the new rule. See Md. Rule 764 b (3) (1977). However, the former Md. Dist. Rule did not contain a similar provision. M.D.R. 764 (1977).

183. The former Md. Rule merely provided that when the sentence is to pay a fine, execution thereof may be stayed pending appeal to the appropriate appellate court. Md. Rule 781 (1977).

SENTENCE (Cont'd)

An appeal or review by any appellate court, including the Supreme Court of the United States, stays a sentence of imprisonment if a defendant is released after conviction pursuant to M.D.R. 776. Any other sentence or order or condition of probation may be stayed upon terms the court deems proper. M.D.R. 778 a.

STATEMENTS BY DEFENDANT STET See MOTIONS, BEFORE TRIAL, Filing; SENTENCE, ADVICE BY COURT, Information, statement by defendant in mitigation

DISPOSITION Upon a motion of the State's Attorney, the court may indefinitely postpone trial upon a charging document by marking the case "stet" on the docket.¹⁸⁴ Md. Rule 782 c; *M.D.R. 782 c*. See also PRELIMINARY HEARING, PROBABLE CAUSE DETERMINATION and WAIVER.

NOTICE In the event a defendant is not present when a case is steted, the clerk shall send him notice of a stet if his whereabouts are known, and to his counsel of record.¹⁸⁵ Md. Rule 782 c; *M.D.R. 782 c*.

PRESENCE OF DEFENDANT A defendant need not be present when a case is steted.¹⁸⁶ Md. Rule 782 c; *M.D.R. 782 c*.

RECALL OR REVOCATION OF OUTSTANDING WARRANT OR DETAINER When a case is steted, the clerk shall take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of a defendant because of the charging document, unless the court orders that any warrant or detainer shall remain outstanding.¹⁸⁷ Md. Rule 782 d; *M.D.R. 782 d*.

RESCHEDULE FOR TRIAL A steted case may be rescheduled for trial at the request of either party within 1 year and thereafter only by order of court for good cause shown.¹⁸⁸ Md. Rule 782 c; *M.D.R. 782 c*. See also SUMMONS, ISSUANCE.

STATEMENT OF CHARGES See CHARGING DOCUMENTS

STATEMENT OF FACTS *When a defendant is arrested without a warrant the officer who has custody of the defendant shall forthwith, or as soon thereafter as is practicable, file a certified statement of facts showing probable cause that the defendant committed the offense charged.*¹⁸⁹ *M.D.R. 720 a*.

184. A case may not be steted over the objection of a defendant. Md. Rule 782 c; *M.D.R. 782 c*.

Formerly, the rules provided that "[a] case may be placed upon the stet docket only by order of court." Md. Rule 718 (1977); *M.D.R. 718 (1977)*.

The Reporter's comments on a draft of new Md. Rule 782 and *M.D.R. 782* stated that "[t]he stet [has been] used to remove the case from the active trial schedule when the defendant cannot be located for trial, and for a conditional termination of prosecution as part of a plea bargain. Both these uses would be permitted under the [new] rule[s]."

185. The former rules did not contain a similar provision.

186. The former rules did not contain a similar provision.

187. The former rules did not contain a similar provision.

188. The former rules did not contain a similar provision.

189. The former Md. Dist. Rules did not contain a similar provision.

SUBSEQUENT OFFENDERS

DETERMINATION	Before sentencing and after giving the defendant an opportunity to be heard, the court shall determine whether the defendant is a subsequent offender as specified in the notice of the State's Attorney. ¹⁹⁰ Md. Rule 734 e; <i>M.D.R. 734 e</i> .
NOTICE OF ADDITIONAL PENALTIES	Prior to the acceptance of a plea of guilty or nolo contendere or at least 15 days prior to trial, whichever is earlier, the State's Attorney shall serve a notice on the defendant or his counsel that the State will seek increased punishment as authorized by law. ¹⁹¹ If a mandatory sentence is prescribed by law because of a specified previous conviction, the State's Attorney, at least 15 days prior to sentencing, shall serve upon the defendant or his counsel a notice of the alleged prior conviction which would

190. Formerly, the Md. Rule provided:

If the defendant so elects, upon arraignment the issue of whether or not he is a second or subsequent offender shall not be determined until after he is convicted of the current offense and if he elected a jury trial shall not be disclosed to the jury during the trial for the current offense, but shall be determined pursuant to section f of this Rule. If, however, a defendant testifies he may be cross-examined as to previous offenses.

Md. Rule 713 d (1977).

The former rule further provided that "[i]n the absence of an election by the defendant both the current offense and the issue of whether or not the defendant is a second or subsequent offender shall be tried concurrently." Md. Rule 713 e (1977). Also, the former rule provided:

"[i]f a defendant elects to have the issue of whether or not he is a second or subsequent offender tried separately pursuant to section d of this Rule, this issue shall be submitted to the jury, if the current offense was tried by a jury, or to the court, if the current offense was tried by the court or to the court, if the defendant waives a jury trial on this issue. Both the State and the defendant may submit evidence and be fully heard on this issue."

Md. Rule 713 f (1977).

The former Md. Dist. Rules did not contain a similar provision for subsequent offenders.

"Sentencing a defendant as a subsequent offender is here conceived to be in the sentencing power of the court and not a matter for a jury. The burden of establishing the prior offense rests with the State." Committee Note, Md. Rule 734; Committee Note, M.D.R. 734. The Reporter's comments on a draft of new Md. Rule 734 and M.D.R. 734 stated:

The Subcommittee felt that the rule adequately and appropriately took into account the constitutional requirement of notice to the defendant as required by the Declaration of Rights and that there was no constitutional requirement of a jury trial on the issue of the prior conviction. This decision is based upon the belief of the committee that the subsequent offender provisions are a matter of sentencing rather than a matter of fact to be tried before a jury and that the existence of the prior convictions are a matter for the Court to determine as it must so determine in any other sentencing situation in which the Court wishes to consider a prior conviction for purposes of imposing the sentence. These other situations are those which are described in *Moore v. State*, 17 Md. App. 237.

191. If such notice is not served, a defendant shall not be sentenced as a subsequent offender under discretionary penalties. Md. Rule 734 d.

Formerly, the Md. Rule provided that there be an addendum attached to an indictment "which shall warn the defendant that the State has evidence that the defendant has formerly been convicted of the same offense [and] . . . that it intends to prosecute the accused for the current offense as a second or subsequent offender. . . ." Md. Rule 713 b (1977).

SUBSEQUENT OFFENDERS (Cont'd)

require imposition of the mandatory sentence.¹⁹² Md. Rule 734 b, c.

Prior to the acceptance of a plea of guilty or nolo contendere or at least 5 days prior to trial, whichever is earlier, the State's Attorney shall serve notice on the defendant or his counsel that the State will seek increased punishment as authorized by law.¹⁹³ If a mandatory sentence is prescribed by law because of a specified previous conviction, the State's Attorney, at least 5 days prior to sentencing, shall serve upon the defendant or his counsel a notice of the alleged prior conviction which would require imposition of the mandatory sentence.¹⁹⁴ M.D.R. 734 b, c.

Filing of
Notice

After the acceptance of a plea of guilty or nolo contendere or after conviction, a copy of the notice of additional penalties shall be filed with the clerk and presented to the court.¹⁹⁵ Md. Rule 734 d; M.D.R. 734 d.

SUMMONS

APPEARANCE

See APPEARANCE, BY DEFENDANT

ISSUANCE

Except when a warrant has been issued, when a charging document [*except a citation*] is filed with the court or when a stettered case is rescheduled, the clerk [*a judicial officer*] shall issue a summons to the defendant.¹⁹⁶ Md. Rule 720 a; M.D.R. 720 c.

If a defendant has been released after a pretrial release determination pursuant to Md. Rule 721 or M.D.R. 721, the clerk shall issue and mail a summons to the defendant. Md. Rule 720 h.

A summons need not issue upon the filing of a charging document if a defendant is in custody at the time the charging document is filed. M.D.R. 720 h. See also NOTICE TO APPEAR!

REISSUANCE

If a defendant fails to appear personally or by counsel, at the time and place specified in the summons, the court may direct

192. Formerly, the Md. Rule did not distinguish between notice of additional discretionary penalties and mandatory penalties. See Md. Rule 713 (1977).

A comment submitted to the Rules Committee on the drafting of new Md. Rule 734 offered the following criticism:

[T]o place on the State a burden to inform the defendant of such a previous conviction before fifteen days prior to sentencing is to place an undue burden on the State since the Probation Department prepares a pre-sentence investigation which includes a complete records check . . . it would be necessary for the State's Attorney's Office to investigate the criminal records of defendants awaiting sentence in order to insure that this fifteen-day requirement is complied with.

State's Attorney's Office, Inter-office Memorandum, Upper Marlborough, Md. (January 30, 1976).

193. If such notice is not served, a defendant shall not be sentenced as a subsequent offender under discretionary penalties. M.D.R. 734 b.

194. The former Md. Dist. Rules did not contain a similar provision.

195. The former rules did not contain a similar provision.

196. The former Md. Rule provided that when an indictment or information was filed a warrant for the arrest of the defendant would be issued by the clerk unless the defendant was a corporation or if the court so directed, or if the State's Attorney so requested. Md. Rule 706 a (1977); M.D.R. 706 c (5) (1977).

SUMMONS (Cont'd)

the clerk to reissue the summons for personal service on the defendant.¹⁹⁷ Md. Rule 723 a.

RETURN OF SERVICE

*The officer who served a defendant with the summons and the charging document shall make a prompt return of service to the court.*¹⁹⁸ M.D.R. 720 g.

WITNESS

See WITNESS SUMMONS

SUPERVISION OF DETENTION PENDING TRIAL

The court shall obtain weekly from the sheriff, warden or other custodial officer a report listing each defendant within its jurisdiction who has been held in custody in excess of 7 days pending preliminary hearing, trial, sentencing or appeal.¹⁹⁹ Md. Rule 721 g; M.D.R. 721 h.

TRANSFER

CRIMINAL PROCEEDINGS

The transfer of criminal proceedings is governed by M.D.R. 542 which provides that a motion made in support of transfer may be filed at any time before the trial. M.D.R. 744.

TRANSFER OF PAPERS

AFTER INITIAL APPEARANCE

After a defendant, with respect to whom a charging document has been filed, is processed pursuant to M.D.R. 723, the clerk of the district court shall forward all pretrial papers to the clerk of the court in which the charging document is filed.²⁰⁰ Md. Rule 720 g.

*As soon as practical after an initial appearance by a defendant, the judicial officer shall file all papers with the clerk of the court or shall direct that they be forwarded to the circuit court if the charging document is filed there.*²⁰¹ M.D.R. 723 d.

PLEAS TO OTHER OFFENSES

Upon the receipt of a defendant's request to plead to other offenses and upon the approval of the State's Attorney of the forwarding county, the clerk of the forwarding court or of the forwarding district court [circuit court] in which the charges are pending shall forward to the clerk of the sentencing court the case file containing the charging document and other original papers together with a certified copy of the docket entries.²⁰² Md. Rule 732 c; M.D.R. 732 c. If the sentencing court does not accept the plea of guilty or nolo contendere to the transferred charges, or if the defendant is permitted to withdraw his plea, the clerk of the sentencing court shall transfer the case file back to the clerk of the forwarding court or of the forwarding district court

197. The former Md. Rules did not contain a similar provision. Both the former and new Md. Dist. Rule require that a warrant be issued when a defendant fails to appear pursuant to a summons. M.D.R. 706 c (2) (a) (2) (1977); M.D.R. 720 e (1977).

198. While the former Md. Rules contained a similar provision, Md. Rule 706 c (1977), the new Md. Rules do not provide for a return of service. See also note 196 *supra*.

199. The former Md. Rules did not contain a similar provision.

This rule was adopted in an effort to eliminate unnecessary detention. Md. Rule 721 g; M.D.R. 721 h.

200. The former Md. Rules did not contain a similar provision.

201. The former Md. Dist. Rules did not contain a similar provision.

202. The former rules did not contain a similar provision.

TRANSFER OF PAPERS (Cont'd)

[*circuit court*].²⁰³ Md. Rule 732 d; *M.D.R. 732 d*. After a final judgment is entered by the sentencing court, the clerk shall return a certified copy of the docket entries in that court to the clerk of the forwarding court or the forwarding district court [*circuit court*].²⁰⁴ Md. Rule 732 e; *M.D.R. 732 e*.

PRELIMINARY HEARING

Probable cause determination or waiver of preliminary hearing *When notified that the State's Attorney has filed a charging document pursuant to M.D.R. 727 (Preliminary Hearing), section i (Action Required by State's Attorney), the clerk shall immediately forward all papers to the clerk of the circuit court in which the charging document is filed.*²⁰⁵ *M.D.R. 727 k*.

REMOVAL

Upon the filing of an order for removal, the clerk shall transmit the case file and a certified copy of the docket entries to the clerk of the court to which the case is removed. After final disposition of the case the clerk of the court to which the case was removed shall return a certified copy of the docket entries to the clerk of the court in which the case was originally instituted.²⁰⁶ Md. Rule 744 c.

TRIAL DATE

CHANGE OF

Upon a motion of a party made in writing or in open court and for extraordinary cause shown, the County Administrative Judge or a judge designated by him may grant a change of trial date.²⁰⁷ Md. Rule 746 b.

*Upon a motion of a party and for good cause shown, the court may grant a change of trial date.*²⁰⁸ *M.D.R. 746*.

SETTING OF

Within 30 days after the earlier of the appearance of counsel or the first appearance of a defendant before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723, a trial date shall be set which shall be not later than 120 days after the appearance or waiver of counsel or after the appearance of the defendant before the court to provide for the appearance or waiver of counsel pursuant to Md. Rule 723.²⁰⁹ Md. Rule 746 a.

203. The former rules did not contain a similar provision.

204. The former rules did not contain a similar provision.

205. The former Md. Dist. Rule did not contain a similar provision.

206. Formerly, the Md. Rule provided that "[a]ll papers and exhibits in the removed case shall be retained in the court in which the defendant was tried." Md. Rule 738 d (1977).

207. Formerly, the Md. Rule provided that "[t]he date of trial and postponements shall be governed by Code, article 27, §591." Md. Rule 740 (1977). Article 27, section 591 provided that the date established for the trial of the matter shall not be postponed except for extraordinary cause shown by the moving party and only with the permission of the administrative judge of the court where the matter is pending. MD. ANN. CODE, art. 27, §591 (a) (1957).

208. The former Md. Dist. Rules did not contain a similar provision.

209. Formerly, the Md. Rule stated that "[t]he date of trial and postponements shall be governed by Code, article 27, §591." Md. Rule 740 (1977). Article 27, section 591 provided that within two weeks after the arraignment of a person accused of a criminal offense, or within two weeks after the filing of an appearance of counsel or the appointment of counsel for an accused in any criminal matter, whichever

TRIAL DATE (Cont'd)

*At the initial appearance of a defendant, if the offense is within the jurisdiction of the court, the judicial officer shall set the date and time for trial, or notify the defendant that he will be so advised by the clerk.*²¹⁰ M.D.R. 723 b (6).

VERDICT**POLL OF JURY**

See JURY, POLL

RETURN**Two or more counts**

When there are two or more counts, the jury at any time may return a verdict with respect to a count as to which it has agreed, and any court as to which the jury cannot agree may be tried again.²¹¹ Md. Rule 759 d.

Two or more defendants

When there are two or more defendants, the jury at any time may return a verdict with respect to a defendant as to whom it has agreed, and any defendant as to whom the jury cannot agree may be tried again. Md. Rule 759 c.

SEALING

With the consent of all the parties, the court may authorize the rendition of a sealed verdict during a temporary adjournment of court. Md. Rule 759 b (1).

SETTING ASIDE

See NEW TRIAL

WARRANT²¹²**APPEARANCE**

See APPEARANCE, BY DEFENDANT

AS A DETAINER

When a charging document is filed for an offense for which a defendant is already in custody and a warrant issues pursuant to Md. Rule 720 c, the warrant 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. When a warrant issues pursuant to Md. Rule 720 c for the arrest of a defendant in custody for an offense other than that charged in the charging document, the warrant may be lodged as a detainer for the continued detention of the defendant for the offense charged in the charging document.²¹³ Md. Rule 720 f (1), (2). See also WARRANT, ISSUANCE.

EXECUTION FOR DEFENDANT NOT IN CUSTODY

A warrant issued for a defendant not in custody shall be executed by the arrest of the defendant. Md. Rule 720 d; *M.D.R. 720 f*.

shall occur first, the trial date shall be set, which date shall be not later than six months from the date of the arraignment of the person accused or the appearance of counsel, whichever occurs first." MD. ANN. CODE, art. 27, §591 (a) (1957).

210. Formerly, the Md. Dist. Rule stated that at the initial appearance "the judicial officer shall assign the date and time for, or in appropriate circumstances, shall proceed with, the trial . . ." M.D.R. 709 e (1977).

211. The former Md. Rules did not contain a similar provision. Md. Rule 758 (1977).

212. An arrest warrant may no longer be used as a charging document. See note 47 *supra*.

213. The former Md. Rules did not contain a similar provision.

Note that new Md. Dist. Rule 720 h provides that if a defendant is in custody at the time the charging document is filed, a warrant need not issue. M.D.R. 720 h.

WARRANT (Cont'd)

ISSUANCE

Upon the request of the State's Attorney, a warrant shall issue for the arrest of a defendant, other than a corporation, if an indictment has been filed against the defendant or if an information has been filed against the defendant and the court or the district court has made a finding that there is probable cause to believe that the defendant committed the offense charged therein, and 1) he has not been processed and released pursuant to M.D.R. 721 (Pretrial Release); or 2) the court finds that there is a substantial likelihood that the defendant will not respond to a summons.²¹⁴ Md. Rule 720 c.

If a defendant fails to appear personally or by counsel at the time and place specified in a summons or other writ issued pursuant to Md. Rule 720, the court may direct the clerk to issue a warrant for his arrest.²¹⁵ Md. Rule 723 a.

*Except when a summons is issued pursuant to M.D.R. 720 c, a judicial officer shall issue a warrant for the arrest of a defendant if he finds that there is probable cause to believe that the defendant committed the offense charged in the charging document and if it appears to the judicial officer that 1) the defendant has previously failed to respond to a summons or a citation, 2) there is a substantial likelihood that the defendant will not respond to a summons, or, 3) the whereabouts of the defendant is unknown and the issuance of a warrant is necessary to subject him to the jurisdiction of the court.*²¹⁶ M.D.R. 720 e.

*If a defendant is in custody at the time the charging document is filed, a warrant need not issue.*²¹⁷ M.D.R. 720 h.

214. Formerly, the Md. Rule merely provided that "[w]hen an indictment or information has been filed, a warrant for the arrest of each defendant named therein shall be issued by the clerk. If the defendant is a corporation, or if the court so directs, or if the State's Attorney so requests, a summons shall be issued for the defendant instead of a warrant." Md. Rule 706 a (1977).

215. The former Md. Rules did not contain a similar provision.

216. Formerly, the Md. Dist. Rule provided that except where a summons is issued, "a warrant shall be issued . . . if it appears to the issuing officer upon application . . . that there is probable cause to believe that a crime has been committed and that the defendant committed it." M.D.R. 706 c (1) (1977). Formerly, the Md. Dist. Rule provided that unless the issuing officer finds after due inquiry that:

(i) the defendant has previously failed to respond to a summons for an offense other than a non-moving traffic offense; or (ii) there is a substantial likelihood that the defendant will not respond to a summons; or (iii) the whereabouts of the defendant is unknown and the issuance of an arrest warrant is necessary to subject him to the jurisdiction of the court, a summons rather than an arrest warrant shall be issued in any case in which the defendant is charged only with a petty offense and in any other case in which the State's Attorney so requests.

M.D.R. 706 c (2) (a) (2) (1977). Former M.D.R. 706 c (2) (c) (1977) provided that if an individual defendant fails to appear in response to a summons, an arrest warrant shall issue.

Former M.D.R. 706 c (5) (1977) provided that "[w]hen a criminal information has been filed by the State's Attorney, a warrant . . . shall be issued by the court. If the defendant is a corporation, or if the court so elects, or if the State's Attorney so requests, a summons shall be issued instead of a warrant."

217. The former Md. Dist. Rules did not contain a similar provision.

WARRANT (Cont'd)

RETURN *The officer who served a defendant with a warrant and the charging document shall make a prompt return of service to the court.*²¹⁸ M.D.R. 720 g.

SERVICE In every case in which a warrant has been issued pursuant to Md. Rule 720 c, the warrant and the charging document shall be served on the defendant as promptly as possible after its issuance.²¹⁹ Md. Rule 720 e. If the officer making the arrest of the defendant does not have the warrant in his possession at the time of the arrest, a copy of the warrant and the charging document shall be served on the defendant as soon as possible after the arrest.²²⁰ Md. Rule 720 e; M.D.R. 720 f.

*If a defendant is in custody at the time the charging document is filed, a warrant need not issue. The charging document shall be served on the defendant as soon as possible after it is filed.*²²¹ M.D.R. 720 h.

WITNESS

ARREST

Appearance See APPEARANCE, BY WITNESS, Arrest

Bond A bond posted with respect to the arrest or attachment of a material witness pursuant to Md. Rule 743 or M.D.R. 743 shall continue until discharged by the court having jurisdiction of the cause. Md. Rule 743 e; M.D.R. 743 e.

Commitment to jail If a witness is unable to post bond set by the judicial officer, he shall be committed to jail until the bond is posted or the expiration of 7 days, unless prior thereto, the court, after a hearing, orders his further detention pursuant to an application filed for continued detention. Md. Rule 743 a, b; M.D.R. 743 a, b.

Continued detention, application for An application for the continued detention of a witness must be filed within 7 days of the arrest of a witness pursuant to Md. Rule 743 a or M.D.R. 743 a. Md. Rule 743 b; M.D.R. 743 b.

Continued detention, hearing on application Within 7 days of the arrest of a witness pursuant to Md. Rule 743 b or M.D.R. 743 b, or within 3 days after the witness is taken into custody pursuant to a body attachment, the court shall hold a hearing with respect to an application for continued detention.²²² Md. Rule 743 g; M.D.R. 743 g.

218. Formerly, the Md. Dist. Rule provided that return be made to the issuing officer as the warrant directs. M.D.R. 706 f (2) (1977).

Note that the new Md. Rules do not provide for prompt return of service of warrant.

219. Formerly, the Md. Rule did not require that the warrant and charging document be served on the defendant as promptly as possible after its issuance. See Md. Rule 706 b (1977).

Note that the new Md. Dist. Rules do not require that the warrant and charging document be served "as promptly as possible" after its issuance.

220. Formerly, the rules did not provide for service of a charging document with the warrant. See Md. Rule 706 b (1977); M.D.R. 706 f (1)-(a) (1977).

221. The former Md. Dist. Rules did not contain a similar provision.

222. Formerly, the Md. Rule directed that the court set the matter for a hearing within 3 days from the date the application was filed. It also provided that if the witness

WITNESS (Cont'd)

- ATTACHMENT**²²³ If a witness has not been arrested and detained and if the testimony of the witness is material in a criminal proceeding and it may become impractical to secure his attendance by a summons, the court, upon an application filed by a party for the attachment of a material witness pursuant to Md. Rule 743 [*M.D.R. 743*], may issue a body attachment for the witness and require him to post a bond. Md. Rule 743 c; *M.D.R. 743 c*.
- A witness served with a summons who fails, without sufficient excuse, to obey the summons shall be liable to a body attachment and may be fined for contempt. Md. Rule 742 c (sic — e); *M.D.R. 742 d*.
- Appearance** See **APPEARANCE, BY WITNESS**
- Bond** See **WITNESS, ARREST, Bond**
- Commitment to jail** If a witness is attached pursuant to Md. Rule 743 [*M.D.R. 743*] and is unable to post the bond set, he shall be committed to jail until the bond is posted. Md. Rule 743 d; *M.D.R. 743 d*.
- Execution** The sheriff shall execute a body attachment by taking the witness into custody and taking him forthwith before a judicial officer of the district court to post bond. Md. Rule 743 d; *M.D.R. 743 d*.
- Hearing on conditions of release** Within 7 days of the arrest of the witness, if an application for continued detention is filed or within 3 days after the witness is taken into custody pursuant to an attachment under Md. Rule 743 d [*M.D.R. 743 d*], the court shall hold a hearing with respect to any matter contained in the application or to the conditions of release imposed on the witness. Md. Rule 743 g; *M.D.R. 743 g*.
- EXCLUSION** The court, upon its own motion may, and upon the request of a party shall, order that a witness be excluded from the courtroom until called upon to testify.²²⁴ Md. Rule 755 a; *M.D.R. 755 a*.
- Motion** A motion for the exclusion of a witness may be made at any time before testimony begins or at a later time with leave of court. The witness may be excluded upon motion of a defendant's counsel before the defendant appears in court when necessary for proper protection of the defendant.²²⁵ Md. Rule 755 c; *M.D.R. 755 c*.

is continued in custody, the judge who conducted the hearing shall cause the case to be tried promptly thereafter. If the case was not tried within 60 days of the date of the hearing, the witness was to be released on his own recognizance unless his custody be continued by further order of the court. Md. Rule 732 d, g (1977). The new rules have deleted the above mentioned action after hearing. Md. Rule 743.

223. The provisions dealing with attachment of witness are new.

224. An expert witness, who is to render an opinion based on the testimony given at trial, shall be permitted to remain during that testimony. Md. Rule 755 a; *M.D.R. 755 a*.

225. The former rules did not provide a time frame for a motion for the exclusion of witness.

WITNESS SUMMONS²²⁶

APPEARANCE See APPEARANCE, WITNESS

FOR DEPOSITION See DEPOSITIONS

DELIVERY The clerk shall deliver a witness summons for hearing or trial to the sheriff [*a peace officer*] at least 3 days before trial, not including the day of trial and intervening Saturdays, Sundays or legal holidays. The court may shorten the time for good cause shown.²²⁷ Md. Rule 742 b (1); *M.D.R. 742 a (1)*.

ISSUANCE Upon motion of a party, the court may order the issuance of a summons commanding the witness to produce for inspection and copying at a specified time and place before trial tangible objects, not privileged, which may constitute or contain evidence relevant to the case. Md. Rule 742 a.

Upon the request of a party filed at least 9 days [*5 days*] before trial, not including the day of trial and intervening Saturdays, Sundays and legal holidays, the clerk shall issue a witness summons commanding a witness to appear to testify at a hearing or trial and if the request is for a summons duces tecum the request shall contain a designation of tangible objects, not privileged, which constitute or contain evidence relevant to the case, which are to be produced by the witness. For good cause shown, the court may shorten any time specified for filing the request.²²⁸ Md. Rule 742 b (1); *M.D.R. 742 a (1)*.

PROTECTIVE ORDER Upon a motion of a party or of a witness named in a witness summons made promptly and whenever practicable at or before the time specified in the summons for compliance, the court, for good cause shown, may make an order which justice requires to

226. Note that former Md. Rule 710 (Summons for Witness in Aid of Information) has been deleted.

This [former] Rule grew out of the repeal of section 592, Article 27. That section dealt with a known defendant who, after languishing in jail, decided to ask for a speedy trial. After such a request had been made by a defendant, the statute allowed the prosecutor to subpoena a witness in order to prepare an information in lieu of an indictment, which had been waived by the defendant's request for a speedy trial. Upon repeal of the statute Rule 709 was adopted by the Court of Appeals to allow a defendant to request an immediate trial and waive indictment, and Rule 710 was adopted to allow the prosecution to get information upon which to prepare an information.

The Committee fear[ed] that the Rule [could] be subverted by the prosecution to pursue investigations wherein there are no known defendants and individual rights could be ignored without there being any means of protection or defense.

3 Md. Reg. 9 (1977).

227. *But see* law of May 26, 1977, chp. 708, 1977 Md. Laws; 2877-78, which reinstate that provision but which contain certain safeguards for the witness.

228. A witness served with a summons who fails, without sufficient excuse, to obey the summons shall be liable to a body attachment and may be fined for contempt. Md. Rule 742 e; *M.D.R. 742 d*.

Formerly, the rules provided only the penalty of contempt. Md. Rule 731 c (1977); *M.D.R. 731 b (1977)*.

The former rules did not contain a similar provision for issuance of a witness summons.

WITNESS SUMMONS (Cont'd)

protect the party or witness from hardship, oppression or undue expense.²²⁹ Md. Rule 742 d; *M.D.R. 742 c*.

REQUEST FOR

See WITNESS SUMMONS, ISSUANCE

SHORTENING OF TIME

For good cause shown, the court may shorten the time specified for a request, issuance and delivery of a summons.²³⁰ Md. Rule 742 b (1); *M.D.R. 742 a (1)*.

WRIT TO OFFICER HAVING CUSTODY

When a defendant remains in custody after having been processed for pretrial release pursuant to Md. Rule 721 or M.D.R. 721, the clerk shall immediately issue a writ to the appropriate officer having custody of the defendant directing him to produce the defendant before the court at the designated time and place to provide for the appearance or waiver of counsel pursuant to Md. Rule 723 and serve the defendant with a copy of the writ together with a notice to appear.²³¹ Md. Rule 720 h.

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²²⁹. The former rules did not contain a similar provision.

²³⁰. The former rules did not contain a similar provision.

²³¹. The former Md. Rules did not contain a similar provision.