COURT OF APPEALS STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee virtually held via Zoom for Government on March 12, 2021.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Julia Doyle Bernhardt, Esq.
Hon. Pamila J. Brown
Stan Derwin Brown, Esq.
Hon. Yvette M. Bryant
Sen. Robert G. Cassilly
Hon. John P. Davey
Mary Anne Day, Esq.
Del. Kathleen Dumais
Alvin I. Frederick, Esq.
Pamela Q. Harris, State Court Administrator
Irwin R. Kramer, Esq.
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Stephen S. McCloskey, Esq.
Hon. Douglas R. M. Nazarian
Hon. Paula A. Price
Scott D. Shellenberger, Esq.
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Heather Cobun, Esq., Assistant Reporter
Meredith A. Drummond, Esq., Assistant Reporter
Del. Erek Barron
Hon. Keith Baynes
Michael Baxter, Esq.
Susan Braniecki
Hon. Audrey J.S. Carrion
John P. Cox, Esq.
Stanford Fraser, Esq.
Mary Katherine Fowler, Esq.
Lara Gingerich
John Henderson, Esq.
Greg Hilton, Esq.
Gloria Lewis
Lisa Mannisi, Esq.
Hon. John P. Morrissey, Chief Judge, District Court of Maryland

Hon. Danielle Mosley
Doyle Niemann, Esq.
Kelly O'Connor, Esq.
Brian Saccenti, Esq.
Michael Schatzow, Esq.
Hon. Dennis Sweeney
Gillian Tonkin, Esq.
Rebecca Wells, Esq.
Jer Welter, Esq.
Carrie Williams, Esq.
Brian Zavin, Esq.

The Chair convened the meeting. The Chair discussed the results of the open meeting on the 206th Report. He explained that the proposed changes to Rule 14-305 were remanded for further consideration.

The Chair noted that a comment was received from the Office of the Attorney General regarding Agenda Item 1. See Appendix 1. The comment referenced the Chair's work in regard to Rule 4-345. The Chair stated that the effort to develop proposed changes to Rule 4-345 involved many people.

The Chair explained that the Chair of the appropriate Subcommittee will present each agenda item. The Committee will hear from individuals who have asked to speak. The item will then be open for discussion by Committee members. He added that copies of all written documents received as of 4:30 p.m. yesterday were distributed to Committee members and will be made available to any guests.

The Chair said that minutes from the Committee meetings of February 7, 2020, June 18, 2020, September 10, 2020, October 16,

2020, November 20, 2020, January 8, 2021 and February 12, 2021 were distributed to the Committee for review. Judge Brown moved to approve the subject minutes. The motion was seconded. There being no motion to further amend or reject the proposed minutes, the minutes were approved.

The Reporter said that the Rules Committee's Executive Aide is no longer working for the Committee. She announced that the position was posted for applications. The Reporter added that the meeting was being recorded and that speaking will be treated as consent to being recorded.

Agenda Item 1. Consideration of proposed amendments to Rule 4-345 (Sentencing – Revisory Power of Court)

Mr. Marcus, Chair of the Criminal Rules Subcommittee, presented two versions of proposed amendments to Rule 4-345 (Sentencing – Revisory Power of Court) for consideration.

SUBCOMMITTEE VERSION

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-345 by adding an exception to the five-year limitation on the court's revisory power set forth in section (e); by transferring the language of a Committee note following section (e) to new subsection (f)(1) and a cross reference following

subsection (f)(1); by adding new subsection (f)(2), permitting a circuit court, under certain circumstances to modify a sentence by reason of length of confinement; by adding new subsection (g)(1), providing for service of a motion or petition filed under the Rule, permitting the State's Attorney to file an answer within 30 days after service, and requiring the clerk to forward a copy of the petition by a *pro se* defendant to the local Office of the Public Defender; by adding new subsection (g)(2), permitting the court to request a certain report; by re-lettering current subsections (e)(2) and (e)(3) as subsections (g)(3) and (g)(4), respectively, and adding clarifying language to the subsections; by adding new subsection (h)(1) permitting the court to dismiss a petition filed under subsection (f)(2) without a hearing under certain circumstances; by transferring the provisions of section (f) to subsections (h)(2) and (h)(3), with certain modifications; by deleting the phrase "in open court" from subsection (h)(2); by adding to subsection (h)(2) considerations pertaining to a determination of whether relief under subsection (f)(2) should be granted; by deleting the word "ordinarily" from subsection (h)(3); and by making stylistic changes, as follows:

Rule 4-345. SENTENCING – REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

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

(c) Correction of Mistake in Announcement

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

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

(d) Desertion and Non-Support Cases

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

(e) Modification Upon Motion - Generally

~~(1) Generally~~

Upon a motion filed within 90 days after imposition of a sentence ~~(A)~~ (1) in the District Court, if an appeal has not been perfected or has been dismissed, and ~~(B)~~ (2) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not increase the sentence and, unless the court finds the special circumstances set forth in subsection (f)(1) or (f)(2) of the Rule, it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant. ~~and it may not increase the sentence.~~

Cross reference: Rule 7-112 (b).

~~Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health-General Article, § 8-507.~~

(f) Modification in Special Circumstances

(1) Commitment for Drug or Alcohol Dependency Treatment

The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program approved by the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied.

Cross reference: See Code, Health - General Article, § 8-507.

(2) Modification by Reason of Length of Confinement

(A) Subsection (f)(2) of this Rule applies to a defendant who was sentenced to an aggregate unsuspended term of imprisonment for 25 years or more and has served two-thirds of that sentence. For purposes of this subsection, (i) a life sentence shall be regarded as a sentence for 60 years and (ii) any sentence of more than 60 years shall be regarded as a sentence for 60 years. A defendant who meets the criteria of this paragraph is an eligible petitioner under subsection (f)(2).

(B) Upon a petition filed by an eligible petitioner and compliance with the requirements of sections (g) and (h) of this Rule, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes. Failure to have filed a timely motion under section (e) of this Rule, or a previous grant or denial of a motion under that section, shall not bar relief under this subsection.

(g) Procedure

(1) Service; Answer; Forwarding by Clerk

(A) A motion or petition filed under subsection (e)(2) or (f)(2) of this Rule shall be filed in the circuit court that entered the sentence sought to be modified and served on the State's Attorney for that county.

(B) The State's Attorney may file an answer within 30 days after service of the motion or petition.

(C) If a petitioner seeking relief under subsection (f)(2) of this Rule is self-represented, the clerk shall promptly forward a copy of the petition to the local Office of the Public Defender in the jurisdiction where the petition is filed.

(2) Request for Report

Prior to consideration of a petition filed under subsection (f)(2) of this Rule, the court may request a report from the Division of Correction, Division of Parole and Probation, or Patuxent Institution, as relevant, with respect to the petitioner's conduct while incarcerated.

~~(2)~~(3) Notice to Victims

Whether or not the State's Attorney files an answer, ~~The~~ the State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, § 11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, § 11-503 that states (A) that a motion or petition to modify, vacate, or reduce a sentence has been filed; (B) that the motion or petition has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

~~(3)~~(4) Inquiry by Court

Except as provided in subsection (h)(1), ~~Before~~ before considering a motion or petition under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court

shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, § 11-403 (e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

~~(f)~~ (h) ~~Open Court~~ Hearing

(1) The court may dismiss a petition filed under subsection (f)(2) without a hearing if the court finds in a written order filed in the record that the petitioner does not qualify as an eligible petitioner or if a motion or petition under this Rule was previously denied after a hearing.

(2) The court may modify, reduce, correct, or vacate a sentence only on the record ~~in open court~~, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. In determining whether to grant relief under subsection (f)(2) of this Rule, the court shall consider (A) the petitioner's adjustment to incarceration, (B) the petitioner's plans for housing, education, and employment if released, and (C) whether, if the petitioner is released, there is a reasonable likelihood that the petitioner will be a danger to a victim, another person, or the community.

(3) The defendant may waive the right to be present at the hearing. No hearing shall be held on a motion or petition to modify or reduce the sentence until the court determines that the notice requirements in subsection ~~(c)~~ (g)(2) of this Rule have been satisfied. If the court grants the motion or petition, the court ~~ordinarily~~ shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Cross reference: See Code, Criminal Law Article, § 5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to October 1, 2017, and for procedures relating thereto.

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

The Subcommittee version of Rule 4-345 was accompanied by the following Reporter's note.

Proposed amendments to Rule 4-345 would allow an incarcerated person serving a lengthy sentence to ask the trial court to exercise its revisory power once a significant portion of the sentence has been served. The trial court's revisory power over its sentences is separate and distinct from the executive branch's parole and pardon powers (*see State v. Schlick*, 465 Md. 566, n. 4 (2019)).

The Court of Appeals amended Rule 4-345 in 2004 to restrict the time to revise a sentence to five years from the date the sentence was originally imposed. The Criminal Rules Subcommittee was advised that research has shown that individuals who committed serious crimes and served significant portions of long sentences can be safely released, either due to maturation while incarcerated if he or she was a young offender or by "aging out" of criminality as an older inmate.

Proposed amendments apply section (e) to modification upon motion in general and maintain the current text of subsection (e)(1) with an exception for special circumstances under subsection (f)(1) and (f)(2). A Committee note following section (e) is deleted and moved into the text of new subsection (f)(1).

Proposed new subsection (f)(1) provides for commitment to an approved treatment program if a defendant is found to have a drug or alcohol dependency. The text of the subsection and a cross reference are taken from current section (e).

Proposed new subsection (f)(2)(A) permits an individual to petition for modification of an aggregate unsuspended sentence of 25 years or longer. The petitioner must have served two-thirds of the sentence. A life sentence and any sentence greater

than 60 years are regarded as 60-year sentences for the sole purpose of calculation under this subsection.

Proposed new subsection (f)(2)(B) authorizes the court to modify, reduce, or vacate the sentence or place the defendant on probation, and states that failure to file a timely petition does not bar relief.

Proposed new section (g) outlines the procedure for petitions filed pursuant to section (e) and subsection (f)(2). The petition is filed in the circuit court where the sentence was entered and served on the State's Attorney, who may file an answer. A self-represented petitioner's filing is forwarded to the local Office of the Public Defender. Subsection (g)(3) maintains the current Rule's provisions for notification to victims. The language is amended to clarify that the State's Attorney must notify each victim whether or not the State files an answer to the motion or petition.

Proposed amendments to subsection (g)(4) create an exception to the requirement to inquire about the presence of a victim or victim's representative if the court opts to dismiss a petition pursuant to new subsection (h)(1). Proposed new subsection (h)(1) allows the court to dismiss a petition filed under subsection (f)(2) by written order without a hearing if the court finds that the petitioner does not qualify for relief or a motion or petition was previously denied after a hearing. Proposed amendments to subsection (h)(2) contain factors the court must consider in determining whether to grant relief under subsection (f)(2).

ALTERNATE VERSION

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-345 by adding an exception to the five-year limitation on the court's revisory power set

forth in section (e); by transferring the language of a Committee note following section (e) to new subsection (f)(1) and a cross reference following subsection (f)(1); by adding a Committee note after subsection (f)(1); by adding new subsection (f)(2), permitting a circuit court, under certain circumstances to modify a sentence by reason of length of confinement or age; by adding new subsection (g)(1), providing for where a motion or petition shall be filed; by adding new subsection (g)(2) providing for service of a motion or petition filed under the Rule and permitting the State's Attorney to file an answer within 30 days after service; by re-lettering current subsections (e)(2) and (e)(3) as subsections (g)(3) and (g)(4), respectively; by adding new subsection (g)(5) requiring a petition by a *pro se* petitioner to be forwarded to the local Office of the Public Defender; by adding new subsection (g)(6), permitting the court to request certain reports from the Department of Public Safety and Correctional Services, and adding clarifying language to the subsections; by adding new subsection (h)(1) permitting the court to dismiss a petition filed under subsection (f)(2) without a hearing under certain circumstances; by transferring the provisions of section (f) to subsections (h)(2) and (h)(3), with certain modifications; by deleting the phrase "in open court" from subsection (h)(2); by deleting the word "ordinarily" from subsection (h)(3); by adding new subsection (h)(4) listing factors for the court to consider in determining whether to grant relief; and by making stylistic changes, as follows:

Rule 4-345. SENTENCING – REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

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

(c) Correction of Mistake in Announcement

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

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

(d) Desertion and Non-Support Cases

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

(e) Modification Upon Motion - Generally

~~(1) Generally~~

Upon a motion filed within 90 days after imposition of a sentence ~~(A)~~ (1) in the District Court, if an appeal has not been perfected or has been dismissed, and ~~(B)~~ (2) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not increase the sentence and, unless the court finds the special circumstances set forth in subsection (f)(1) or (f)(2) of the Rule, it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant. ~~and it may not increase the sentence.~~

Cross reference: Rule 7-112 (b).

~~Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification~~

~~that was denied. See Code, Health-General Article, § 8-507.~~

(f) Modification in Special Circumstances

(1) Commitment for Drug or Alcohol Dependency Treatment

The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied.

Cross reference: See Code, Health - General Article, § 8-507.

Committee note: In order to implement a commitment under subsection (f)(1), the court must suspend all of the sentence except the time served and place the defendant on supervised probation, a condition of which is the successful completion of the commitment.

(2) Modification by Reason of Length of Confinement **and Age**

(A) Subsection (f)(2) of this Rule applies to a defendant who was sentenced to an aggregate unsuspended term of imprisonment **of more than 15 years and (i) committed the last offense for which that sentence or any part of it was imposed before reaching the age of 25 and has served the greater of 15 years or sixty percent of that sentence, or (ii) has served at least 15 years of that sentence and has reached 65 years of age.** For purposes of this subsection **only**, a life sentence **or an aggregate unsuspended sentence of more than 50 years** shall be regarded as a sentence for **50** years. A defendant who meets the criteria of this paragraph is an eligible petitioner under subsection (f)(2).

(B) Upon a petition filed by an eligible petitioner and compliance with the requirements of sections (g) and (h) of this Rule, the court may modify, reduce, or vacate the sentence or place the

defendant on probation under the terms and conditions the court imposes. Failure to have filed a timely motion under section (e) of this Rule shall not bar relief under this subsection.

(g) Procedure

(1) Where Filed

A motion or petition filed under this Rule shall be filed in the circuit court that entered the sentence sought to be modified. **If an aggregate sentence consists of two or more sentences imposed by different courts and the petitioner seeks relief from the aggregate sentence, separate petitions must be filed with each court. A court has revisory power under this Rule only with respect to a sentence that it imposed.**

(2) Service; Answer

The petition shall be ~~and~~ served on the State's Attorney for ~~that~~ **the** county. The State's Attorney may file an answer within 30 days after service of the motion or petition.

(3) Notice to Victims

Whether or not the State's Attorney files an answer, ~~The~~ the State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, § 11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, § 11-503 that states (A) that a motion or petition to modify, vacate, or reduce a sentence has been filed; (B) that the motion or petition has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(4) Inquiry by Court

Except as provided in subsection (h)(1), ~~Before~~ before considering a motion or petition under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, § 11-403 (e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

(5) Notice to Public Defender

If a petitioner seeking relief under subsection (f)(2) of this Rule is self-represented, the clerk shall promptly forward a copy of the petition to the county or district Office of the Public Defender.

(6) Request for Report

Prior to consideration of a petition filed under subsection (f)(2) of this Rule, the court may request a report from the Department of Public Safety and Correctional Services Division of Correction with respect to the petitioner's conduct and adjustment while incarcerated.

~~(f)~~(h) ~~Open Court~~ Hearing

(1) The court may dismiss a petition filed under subsection (f)(2) without a hearing if the court finds in a written order filed in the record that the petitioner does not qualify as an eligible petitioner or if, during the preceding three years, a motion or petition under this Rule was denied after a hearing.

(2) The court may modify, reduce, correct, or vacate a sentence only on the record ~~in open court~~, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard.

(3) The defendant may waive the right to be present at the hearing. No hearing shall be held on a motion or petition to modify or reduce the sentence until the court determines that the notice requirements in subsection ~~(c)~~ (g)(2) of this Rule have been satisfied. If the court grants the motion or petition, the court ~~ordinarily~~ shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

(4) In determining whether to grant relief under subsection (f)(2) of this Rule, the court shall consider (A) whether the petitioner has substantially complied with the rules of the institution in which the petitioner was confined; (B) the petitioner's plans for housing, education, and employment if released; (C) whether, if the petitioner is released, there is a reasonable likelihood that the petitioner will be a danger to a victim, another person, or the community; (D) if the petitioner is to be released on probation, any conditions recommended by the Division of Parole and Probation, the State's Attorney, or a victim; and (E) any other factor the court deems relevant.

Cross reference: See Code, Criminal Law Article, § 5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to October 1, 2017, and for procedures relating thereto.

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

Mr. Marcus said that there are two versions of proposed amendments to Rule 4-345 before the Committee. He noted that the Chair prepared a comprehensive memorandum comparing the two proposals. See Appendix 2. Mr. Marcus explained that Rule 4-345 was before the Criminal Rules Subcommittee. After the Subcommittee approved proposed amendments, additional issues

were raised. As a result, an alternate version was developed. Mr. Marcus added that the Office of the Public Defender then submitted a letter with proposed modifications to the alternate version. See Appendix 3. Mr. Marcus thanked everyone who assisted the Subcommittee in developing these amendments.

Mr. Marcus addressed the basic history of Rule 4-345, including some misconceptions about the Rule. Rule 774 b was the predecessor to Rule 4-345, permitting revision by the court after the original sentence was announced.

Mr. Marcus summarized a defendant's post-trial rights, including the right to ask the court to reconsider a sentence. The current Rule requires that a defendant file a written motion to reconsider within 90 days of the disposition. Prior to a Rule change, there was no limit imposed on the length of time that the motion was held *sub curia*. In 2004, the Court of Appeals *sua sponte* imposed a limit of five years within which a trial court must act on a pending motion to reconsider a sentence. Mr. Marcus explained that there are some exceptions to the five-year limit, including allegations of fraud, mistake, or irregularity. Another notable exception relates to Code, Health – General Article, § 8-507, the method by which the court can order a defendant to participate in drug counseling or treatment. Mr. Marcus emphasized that the ability of the court to revise sentences is not new.

Mr. Marcus discussed how the proposed amendments to Rule 4-345 developed from several factors. He noted that judges have expressed concerns about the five-year limitation for ruling on a motion to reconsider when fashioning appropriate sentences. A pending motion to reconsider enabled the court to maintain control and supervision over a defendant because further review and consideration of the sentence at a later date was possible.

Mr. Marcus commented that, in the last ten to 15 years, science has evolved, and maturity, development, and neuro-psychological issues are better understood. The human brain does not develop at the pace previously thought, and emerging adults suffer from impulsivity. These factors create an environment where lengthy sentences are inappropriate. Mr. Marcus compared the situation to those with certain disabilities and mental challenges. There has been a move to look at lengthy sentences for those in these circumstances. The Supreme Court of the United States has issued two opinions in the last ten years identifying the inappropriate nature of life without the possibility of parole and other long sentences for youthful offenders.

Mr. Marcus stated that, in addition to addressing youthful offenders, the other proposed amendments concern older inmates who have spent significant time incarcerated. The question of continued incarceration of elder inmates needs to be closely

examined for both health and recidivism issues. Mr. Marcus explained that the proposed amendments began as a way to review the status of incarcerable populations at a later point in time.

Mr. Marcus added that the trial judge is central to the analysis. He explained that the proposed amendments do not mandate the release of an individual at a particular time, but instead concern access to justice. The proposed amendments provide an opportunity to reconsider sentences of inmates who have changed after spending a substantial amount of time in prison. He emphasized that the trial judge will need to analyze whether the defendant should still be incarcerated for the time originally imposed.

Mr. Marcus commented that the Subcommittee's version of the Rule would apply to incarcerated individuals with aggregate unsuspended sentences of 25 years or more who have served two-thirds of that sentence. The person would be incarcerated for at least 16.66 years before becoming eligible to file a motion. The Subcommittee determined that, for purposes of the Rule, any life sentence or sentence in excess of 60 years would be treated as a 60-year sentence. Someone serving a life sentence would need to serve 40 years before becoming eligible for relief pursuant to the Subcommittee's version.

Mr. Marcus explained that the alternate version of the Rule addresses the unique characteristics of emerging adults when a

crime is committed before the age of 25. A person committing a crime before the age of 25 would serve the greater of 15 years or 60% of the sentence before becoming eligible for relief. For the purpose of calculations, life sentences or sentences in excess of 50 years would be treated as 50-year sentences. Someone serving a life sentence would be eligible for relief after 30 years pursuant to the alternate version.

Mr. Marcus referenced charts prepared by Ms. Williams and her team at the Office of the Attorney General demonstrating the years to serve until eligibility and a defendant's age at eligibility for the Subcommittee version of Rule 4-345. See Appendix 4. The Office of the Attorney General prepared the same charts for the alternate version of Rule 4-345. See Appendix 5. He added that the Office of the Public Defender submitted its own proposal for amendments to Rule 4-345. Mr. Marcus praised the collaboration between the two offices, noting that the Office of the Attorney General created charts for the Office of the Public Defender's proposal as well. See Appendix 3.

Mr. Marcus explained that the Office of the Public Defender's proposal adopted the alternate version with two modifications. The Office of the Public Defender's version would permit an older inmate to file a petition after serving at least 15 years and reaching the age of 60. A life sentence or a

sentence greater than 40 years would be considered a sentence of 40 years.

Mr. Marcus noted that a dashboard from the Department of Public Safety and Correctional Services was requested to learn more about the inmate population. See Appendix 6. In 2019, almost half of the incarcerated population in Maryland was serving a sentence of 15 years to life. In 2019, there were about 2,200 inmates serving a life sentence in Maryland, representing 12% of incarcerated individuals.

Mr. Saccenti commented that he was very involved in the Office of the Public Defender's proposal. He first worked with people who have been incarcerated for 30 years or longer when working with groups affected by *Unger v. State*, 427 Md. 383 (2012). Mr. Saccenti said that he developed a sense of awe at the capacity of people to change and rehabilitate, even in the difficult circumstances of prison. He added that he aspires to be as thoughtful, compassionate, and giving as these people have become.

Mr. Saccenti explained that there is no straightforward way to ask the court for a later modification of sentence, even if the individual has demonstrated outstanding rehabilitation, and the judge would like to modify the sentence. Although State's Attorneys point to other mechanisms to review convictions and sentences, most options either occur soon after the conviction

and before the person has an opportunity to rehabilitate, or require legal error to give the court authority to act. If legal error cannot be found 30 years later, the person will not be able to be heard in front of the court. He acknowledged that some argue that the parole system should be permitted to do its job, but there have been issues with the system. Reform efforts are underway in the legislature. One issue with the parole system is that there is no right to counsel. Mr. Saccenti explained that, even for individuals facing parole hearings with counsel, there is a limited opportunity for counsel to participate in a meaningful way. This process contrasts with a court hearing, which involves attorneys and creates an open process to review all evidence to make an informed decision.

Mr. Saccenti urged the Committee to pass the alternate version of Rule 4-345, with two amendments proposed by the Office of the Public Defender. See Appendix 3. When the calculation is completed for young offenders using the alternate version of Rule 4-345, a person serving a life sentence or another lengthy aggregate sentence who committed a crime under the age of 25 will be eligible to petition the court for relief after 30 years. Mr. Saccenti noted that, pursuant to the alternate version, a 17-year-old serving a lengthy sentence would reach age 47 before he or she can first apply for this relief. He suggested reducing the wait time to around 25 years,

which is still a substantial period of time. Many individuals can turn their lives around within that time. Mr. Saccenti noted that the 25-year period can be established by redefining a life sentence in subsection (f)(2) as 40, instead of 50 or 60, years.

Mr. Saccenti explained that the second proposed amendment to the alternate version concerns the age at which older offenders become eligible to petition for relief. Mr. Saccenti suggested changing the age 65 to 60 years old. He noted that this change would be in line with how the legislature has addressed geriatric parole in Code, Criminal Law Article, § 14-101. Mr. Saccenti concluded that the alternate version, with or without modifications, would vastly improve the system, reduce the problem of mass incarceration in Maryland, and help address the appalling racial disparity in Maryland's prison system.

Ms. Williams thanked the Committee for letting her comment on this issue. She acknowledged that the alternate version was a collaborative effort. She explained that the Attorney General believes that the alternate version, targeting inmates who committed crimes under age 25 and inmates who have reached the age of 65 or older, is the correct way to address the issue of individuals serving extensive sentences. The formula in the alternate version is the right balance to strike. Research shows that inmates age out of the likelihood of recidivism

significantly at age 65. Ms. Williams noted that the Attorney General submitted a letter explaining his preference. See Appendix 1.

Mr. Niemann stated that he has worked on issues involving youthful offenders for the past year and a half as the Chief of the Conviction and Sentencing Integrity Unit. His comments are on behalf of the State's Attorney of Prince George's County. Mr. Niemann expressed strong support for the alternate proposal. He added that he is sympathetic to points raised by the Office of the Public Defender and is aware of the science concerning emerging adults, brain development, impulse control, and other factors identified by the U.S. Supreme Court and the Court of Appeals of Maryland. There is not a good mechanism to address these factors, and there is no straightforward method to get the issues back before the same court.

Mr. Niemann addressed three current mechanisms to modify sentences. First, the current ability to reconsider sentences expires at five years, long before change is demonstrated. Second, a motion pursuant to Code, Health – General Article, § 8-507 is aimed at drug users and is not appropriate for an individual incarcerated for 20 years or more. Third, the parole process has serious limitations and is not equipped to deal with the volume of cases being discussed here. Mr. Nieman added that, in cases involving juvenile offenders, more than 400

people in the Department of Public Safety and Correctional Services have served 20 years or more, including a large number that served over 30 years. About 70 of these referenced inmates are in Prince George's County. If the numbers are expanded to include emerging adults, there would be more inmates and a larger backlog that is not being handled by the parole commission.

Mr. Niemann explained that a judge is more than capable of using his or her discretion to decide a direct motion to reconsider. A motion to reconsider provides for notice to victims, an opportunity to be heard, and an impartial examination of the record. Mr. Niemann remarked that, based on his own experience, there are some impressive records of rehabilitation. He commented that he has two letters today from the Department of Public Safety and Correctional Services discussing one individual who has distinguished himself in a significant way in the prison system. It is in the interests of fairness and justice to address these records of rehabilitation. He said that the alternate proposal is more effective because the Subcommittee proposal does not give inmates an opportunity to establish themselves and create a life when released. Those individuals would likely rely on public support or engage in inappropriate activities ten years down the road. Mr. Niemann urged the Committee to adopt the alternate proposal to provide a

clear mechanism to look at these types of cases and to release those deserving in time to become productive members of society. He expressed thanks for all the work that has been done on this topic.

Mr. Shellenberger stated that he is very opposed to the Rule change. He commented that, although the Chair worked with two State's Attorneys to develop the proposed changes, the vast majority of the State's Attorneys are opposed to the amendments. Mr. Shellenberger stated that he will explain the reasons why the change is not needed with a Powerpoint presentation. See Appendix 7.

Mr. Shellenberger explained that the Rule is premature. There are six bills pending in the State legislature that, if passed, will necessitate another Rule change in June. For example, Senate Bill 494, the Juvenile Restoration Act, passed the Senate and is in the House. He added that the proposed alternate version of the Rule was not reviewed by the Subcommittee.

Mr. Shellenberger commented that the Committee has been here before. There had been no required timeframe to decide motions filed pursuant to Rule 4-345 until public outcry resulted in the changes to the Rule in 2004. Mr. Shellenberger offered examples of cases that led to the public outcry and the Rule change. He discussed the impact of *State v. Greco*, 347 Md.

423 (1997). The defendant killed his girlfriend's grandmother and was given two consecutive life sentences, having been convicted of first-degree murder and rape. Ten years later, a motion to modify was granted, and the two life sentences became concurrent. All but 50 years of the sentence were suspended. Mr. Shellenberger explained that there was a lot of litigation in the case, including a post-conviction proceeding. In 2012, the Court of Appeals ordered a re-sentencing, and the defendant was released. The victim's family talked about the difficulty of repeatedly going through the process.

Mr. Shellenberger noted that *Greco* was not the only case that influenced the Rule change in 2004. He cited another case involving rape in Prince George's County in 1995. The defendant served only two years of a seven-year sentence. In 2000, a reconsideration of the sentence was granted, without the victim having been notified, and the defendant received a probation before judgment. As a result, after having been convicted of rape and serving time in the Department of Public Safety and Correctional Services, the defendant became eligible for expungement.

Mr. Shellenberger presented quotations from *The Washington Post* demonstrating the public outcry. He pointed out that, in 2003, Chief Judge Robert Bell stated that state judges would support a limit on the time in which to reconsider sentences.

The Washington Post reported that Maryland was the only state at that time allowing reconsiderations with no time limit. Mr. Shellenberger provided additional quotations from *The Washington Post* concerning the bench's opinions about a time limit. He said that the 2004 Rule change limiting the power to reconsider a sentence to five years resulted from a problem that the Committee is going to reopen.

Mr. Shellenberger explained that there are already 13 post-trial rights available to defendants. While many of the rights concern the defendant's innocence, there are several other rights available. He added that victims have not yet been mentioned in the discussion before the Committee.

Mr. Shellenberger emphasized that defendants can utilize the parole system. The proposed Rule change attempts to take the place of the parole system. He added that, if Senate Bill 495 passes, three additional post-trial hearings will be allowed. Victims may need to attend 16 additional hearings after conclusion of the case. The proposed Rule change would create an additional hearing, resulting in 17 possible hearings after closure of the case, with one version of the Rule permitting a hearing every three years.

Mr. Shellenberger stated that the proposed Rule changes create a separation of powers issue. The Executive Branch controls parole. If a judge sentences an individual to life

without parole, the Executive Branch cannot change that sentence.

Mr. Shellenberger indicated that he received current numbers regarding the 374 individuals in Maryland serving life without parole in the Division of Corrections. The motion to reconsider a sentence may occur thirty years later, with a different judge. A different prosecutor will need to present the case again and the family, previously told that the defendant received life without parole, will need to be informed that the defendant's sentence can change. There are 374 victims and families that will go through this. Examples of crimes that may result in life without parole include first-degree murder, first-degree rape, and first-degree sex offense.

Mr. Shellenberger referred to the proposed amendments as a solution in search of a problem. Although former governors paroled no inmates serving life sentences, Governor Hogan has already paroled 26 lifers. The State's Attorney's office receives many letters from the Governor asking for its stance on parole for certain inmates serving life sentences.

Mr. Shellenberger reiterated that there is a separation of powers issue. The legislature has determined that 50% of a sentence for violent crime must be served before the defendant is eligible for parole. The proposed Rule changes do not limit the filings of defendants convicted of violent crimes. Mr.

Shellenberger indicated that the Rule permits the Judiciary to work around a law that the legislature passed just a few years ago regarding how violent criminals should be treated.

Mr. Shellenberger noted that if either version of Rule 4-345 is approved today, the current 2,785 lifers in the Division of Corrections will be able to file motions. 2,785 victims and families will also receive a letter indicating that they are coming back to court. Mr. Shellenberger argued that there may be even more hearings because it appears difficult for a court to address the factors included in the Rule without a hearing.

Mr. Shellenberger said that he asked Mr. Robert Green, Secretary of the Maryland Department of Public Safety and Correctional Services, how many incarcerated individuals would qualify for relief under this Rule. Mr. Shellenberger stated that Mr. Marcus was close with his numbers. There are 18,000 inmates in the Division of Corrections and somewhere between 45% to 47% will qualify as either youthful offenders or geriatric inmates under either version of the Rule. The proposed Rule change will result in about 8,000 or more hearings, requiring notice to 8,000 or more victims and families that their case is not over.

Mr. Shellenberger provided the example of Officer Amy Caprio. She was murdered in 2018 and there are four co-defendants in her case. Mr. Shellenberger presented video

evidence from the case and noted that it was the worst he has seen. He pointed out that Officer Caprio's family will need to be in the courtroom when the video is played again in 30 years at a reconsideration hearing for a judge who did not preside over the original trial. Officer Caprio's family has attended every hearing in the case. Mr. Shellenberger presented a video news clip featuring the family of Officer Caprio. He explained that one defendant was sentenced to life in prison and three co-defendants were each sentenced to 30 years in prison. If Rule 4-345 is approved, Officer Caprio's family will need to return to court multiple times for multiple defendants, in addition to receiving letters from the parole commission. Mr. Shellenberger acknowledged the chart prepared by the Office of the Attorney General and responded that Officer Amy Caprio will be forever 29 years old. He commented that those convicted for involvement in her death should serve their time and the parole commission system should decide when the defendants may be released. There needs to be a point where the State's Attorney can inform a victim or victim's family that the case is over. Mr. Shellenberger concluded that there will never be finality if either version of Rule 4-345 is approved.

The Chair responded that portions of Mr. Shellenberger's presentation were incorrect, as well as out of touch with current social science and judicial policy. The Chair

emphasized that the Rule assumes sentences were appropriate at the time of disposition, but reconsideration looks at a different person at a different time. He added that it is not clear what bills pending in the legislature, if any, will pass. If the legislature addresses this issue, the Rule can be adjusted. The Chair commented that there is no violation of the separation of powers because the court has control over its own judgments. Although the Governor can commute sentences, the Executive Branch cannot change a judicial sentence by statute. The Executive Branch may decide where a prisoner will serve the sentence. Parole, an executive function, is simply serving a sentence outside of prison walls.

The Chair added that he has not seen any cases with 17 different post-trial hearings. The various mechanisms for post-trial relief concern different issues, primarily dealing with an illegality in the proceeding or a claim of innocence. The Chair emphasized that proposed amendments to Rule 4-345 address a different situation.

The Chair acknowledged the previous statements of Judge Bell in 2004, but noted that Judge Bell had not been asked for his current view. For years, there was no limit on a court's ability to review and revise a sentence and there is no constitutional limit. The Chair added that the Committee opposed the addition of the five-year limitation in 2004. The

Court acted on its own because of pressure from the legislature after certain case results. The Chair stated that the Committee needs to consider, as part of sound judicial policy, whether rehabilitation has any role in the revision of a sentence years later. If the philosophy is to lock defendants up and throw away the key, then the Rule should not be amended. The Chair said, however, that he does not believe that the Committee, the General Assembly, or the country currently hold that position.

Ms. Gingerich introduced herself as an advocate with the National Organization for Victims of Juvenile Murderers. She expressed concerns with the current proposed versions of the Rule and the impact on victims. Although most juvenile offenders can be reformed, life and long sentences are appropriate in some cases. She noted that some juveniles commit evil crimes with full knowledge of their actions and an understanding of the results of their actions. Ms. Gingerich provided two examples of juvenile offenders who met this description. She first discussed the case of 17-year-old Daniel LePlant from Massachusetts. She explained that Ms. Gustafson, who was pregnant at the time, and her children returned to their home while Mr. LePlant was burglarizing it. Mr. LePlant then raped Ms. Gustafson and shot her twice in the head, killing her. He drowned the five-year-old and seven-year-old children. The second example was Johnny Freeman from Chicago, also 17-years-

old. Ms. Gingerich recounted that Mr. Freeman lured a five-year-old child to a vacant apartment on the 14th floor of a housing project. After committing rape, Mr. Freeman tried to kill the five-year-old by throwing her out of the 14th-floor window. Although the victim initially grabbed the window ledge, Mr. Freeman shoved her again and the child fell to her death.

Ms. Gingerich added that many victims and families oppose the release of convicted killers. They are forced to relive the murder when speaking out. Traumatizing criminal justice hearings should be kept to an absolute minimum. Ms. Gingerich raised the issue that the Rule gives murderers a lot of chances to be released. In Maryland, a defendant sentenced to life with parole gets his or her first parole hearing after 15 years. The hearing may occur after only 11 and a half years for good behavior. In addition to these parole hearings, the defendant would now have judicial review hearings after 20 years, each review just 3 years apart. As a result, a victim or victim's family may go through four or five hearings for just one offender in 26 years. Cases involving multiple juveniles would need even more hearings, such as in the case of Officer Caprio. Ms. Gingerich noted that the proponents of this Rule talk about second chances, but the Rule goes further by granting third, fourth, and even fifth chances. Ms. Gingerich requested that the number of traumatizing hearings be reduced.

Mr. Marcus directed the Committee to the materials. He noted that the alternate version of Rule 4-345 shows the changes from the Subcommittee version in bold. He said that he will lead the discussion with the alternate version because it contains new changes, as well as the changes proposed in the Subcommittee version.

Mr. Marcus highlighted the proposed changes to section (e), including a stylistic change to amend the tagline and to add language in the middle of the paragraph reaffirming the existing state of the Rule. He said that later added language concerning special circumstances relates to other proposed additions to the Rule of an additional opportunity for the court to review a sentence.

Mr. Shellenberger inquired whether the Committee should first address larger issues, such as whether it should wait until June to address this Rule. Mr. Shellenberger made a motion to defer consideration of the Rule unless or until the General Assembly finishes its work and the Committee knows what bills may affect the Rule. The motion was seconded.

The Chair opposed the motion. He stated that the Committee does not need to wait for the legislature to act as if the Court has no role to play. Each year the Committee deals with new laws passed by the legislature. The Chair emphasized that Rule 4-345 concerns a matter within the authority of the Committee.

The Rule is currently before the Committee with a proposal from the Subcommittee.

Mr. Zollicoffer agreed with the Chair's opposition. He added that the Committee should not waste the time and efforts of the multiple agencies that weighed in on this issue. Mr. Zollicoffer commented that this Rule is ripe to address and there are a lot of incarcerated people who have had the opportunity to change. Is there a Department of Public Safety and Correctional Services or should the name be changed to the department of warehousing? Mr. Zollicoffer said that foreclosing this issue because the legislature may act is inappropriate and the Committee should act while the issue is currently before it.

Mr. Kramer commented that this is a fascinating issue. No member of the Committee would contend that people cannot change or that no one should ever get an opportunity at life again. Mr. Kramer stated that he has been advocating that sentiment for his own colleagues for many years. A person may change, but that does not mean that the sentence imposed was unjust or unfair. If the Judiciary does not believe that defendants should be locked up and the key thrown away, then it should not be a sentencing option. When life without parole is an option, the very notion that a judge or factfinder with no familiarity with the case can later poke holes in the original sentence does

not make a lot of sense. Mr. Kramer noted that problems with the parole board should be addressed with the parole board. These discussions involve public policy decisions that sound very legislative. Mr. Kramer questioned the purpose of a parole board if the court has continuing jurisdiction to modify a sentence in every case and suggested that a separation of powers issue exists.

Judge Bryant commented that the Supreme Court has taken up the issue of the constitutionality of juvenile life sentences several times since 2008. The issue is properly addressed by the Court. She added that the motion currently before the Committee is not a policy issue, but a question of whether the Committee should go forward at this time.

Mr. Marcus inquired whether Mr. Kramer supported Mr. Shellenberger's motion to defer consideration of the proposed Rule changes. Mr. Kramer responded that he supported the motion. He further suggested that he does not know why the Court of Appeals would limit sentence revision to five years unless it was concerned with binding any action on a sentence to the circumstances surrounding the imposition of the sentence. Mr. Marcus clarified that the current discussion concerns the motion of whether to defer consideration of the proposed amendments and that policy issues will not be addressed at this time if the matter is delayed.

Judge Price added that there was a discussion at the Subcommittee meeting as to whether there should be limitations for who is eligible for relief based on age. Judge Price opposed using an age limitation because the cut off was arbitrary. She echoed Mr. Shellenberger's point that the General Assembly appears ready to address this issue in a month. The delay to consider the Rule would be only for a month to see what action the legislature takes. Judge Price supported Mr. Shellenberger's motion. Mr. Shellenberger noted that a meeting can be scheduled for April 14, when the Committee will know if there is a statute that requires changes to the proposed amendments.

Judge Nazarian opposed Mr. Shellenberger's motion. He explained that the Committee can consider the Rule today and the issue can be addressed again in April or May if the legislature takes action. The proposed amendments can also be revised in the Report to the Court or fixed by the Court before the amended Rule is adopted.

Mr. Saccenti commented that there are two bills with the potential to pass in the legislature, but he is unsure whether the bills would affect any action of the Committee. The first bill is to remove the Governor from the parole system, which does not affect Rule 4-345. The second bill is the Juvenile Restoration Act, allowing juvenile offenders to file a motion

for modification after serving 20 years. If the Committee were to recommend one of the amendments proposed today and the Juvenile Restoration Act passes, aspects of the Rule would need to be slightly tweaked for those who committed crimes while under the age of 18.

There was no further discussion on the motion to defer consideration of the Rule. The motion failed with a majority opposed.

Mr. Marcus directed the Committee's attention to the language of the proposed amendments. He started with section (f) of the alternate version. Two special circumstances do not require having a motion for reconsideration filed or pending within 90 days after the disposition. The first special circumstance in subsection (f)(1) is a civil commitment pursuant to Code, Health – General Article, § 8-507. Mr. Marcus noted that subsection (f)(1) contains the special circumstance that already appeared in the Rule, but it is presented in a new format in the alternate version. A Committee note clarifies that, for the civil commitment to occur, a defendant must be placed on probation or have his sentence suspended. A defendant cannot be civilly committed to a facility if incarcerated.

Mr. Marcus next pointed to subsection (f)(2). The Subcommittee's version requires a defendant sentenced to 25 years or more to have served two-thirds of that sentence before

seeking relief. The alternate version requires a defendant who committed the offense prior to age 25 to have served 15 years or 60% of the sentence. Mr. Marcus noted that the letter from the Office of the Public Defender presents another alternative. See Appendix 3.

Mr. Marcus clarified the differences between the alternate version and the version proposed by the Office of the Public Defender. He explained that the suggestion from the Office of the Public Defender primarily concerns what amount of time should be used for calculations involving life sentences and greater aggregate sentences.

Mr. Shellenberger pointed out that the Department of Public Safety and Correctional Services considers a life sentence to be 60 years. He stated that the Committee should be consistent with the parole process and the Department. The Chair asked why the Committee should be bound by the parole board or the Department. Mr. Shellenberger responded that he was not suggesting that the Committee should be bound, but that using the same definition of a life sentence would make court actions consistent with the actions of the Department. The Chair stated that the issue is what time period is best for the purpose of judicial review and Rule 4-345.

The Chair completed comparisons. If a person committed a crime at 18 years old and was sentenced to 40 years, the person

would need to serve 27 years pursuant to the Subcommittee's version of the Rule, but would need to serve only 24 years under the alternate version. There is a difference of five years before the defendant is eligible to file a motion. If a person committed a crime at age 24 and received a 30-year sentence, the person would need to serve 20 years under the Subcommittee version or 18 years under the alternative version before becoming eligible to file a motion. The Chair added that the Subcommittee's version tries to help all those incarcerated, while the alternate version focuses on the young and old populations by making those groups eligible for relief earlier.

Mr. Kramer inquired whether there have been any studies done, irrespective of age, concerning how the duration of incarceration may impact recidivism. He expressed concern that the cut off at age 25 may be arbitrary.

Mr. Marcus stated that Rule 4-345 addresses at what point in time the court cannot entertain further review of a sentence. The Rule does not guarantee release, but gives the court an opportunity to review the sentence. Mr. Kramer asked, if this change is not about release, why not give judges continuing jurisdiction over sentences?

Chief Judge Morrissey noted that he was a guest at the Subcommittee meeting addressing these proposed amendments. He said that he is in favor of the amendments because of the

science on brain development and the lack of recidivism when older inmates are released. He wondered, however, whether the amendment should apply to everyone. It seems unfair that someone who committed a crime when 25 years old would be treated differently than someone who committed a crime when 26 years old. This rationale is why the Subcommittee version takes a different approach than the alternate version, which was rejected at the Subcommittee hearing.

Judge Price echoed Chief Judge Morrissey's statements. The comparisons given by the Chair do not seem to create such a great differential that the Rule should exclude the rest of the population from this relief. Judge Price agreed that the proposed amendments are discriminating based on age, especially by utilizing cut-off ages. She compared the proposed Rule changes to tax brackets. Judge Price stated that the Rule should provide a chance for review for every person after serving a certain amount of his or her sentence. The Chair responded that a simple solution to this issue would be repealing the five-year provision and the 90-day filing requirement currently in Rule 4-345.

Mr. Laws spoke in favor of some bright-line Rules. These changes are addressing defendants who either committed crimes before their brains were fully formed or are geriatric prisoners. If the criteria for these populations is taken out

of the equation, the Committee needs to weigh more carefully the idea of finality and the concern of repetitive proceedings. Mr. Laws expressed concern that the Subcommittee version already veers too far in favor of repetitive hearings. He wondered how much of the court's time will be taken up by these petitions. He added that keeping a case open should be the exception, rather than the rule. For example, a bankruptcy petitioner cannot file another bankruptcy petition for eight years after receiving a discharge. Mr. Laws stated that permitting filings every three years raises the possibility of many repetitive hearings that victims and State's Attorneys will need to devote a lot of resources to address.

Judge Bryant commented that the bright-line version is premised on science and social science, specifically on the premises that brains do not mature until age 25 and recidivism decreases with age. Judge Price questioned whether the brain of a person who is 25 and a half years old is really different from the brain of a 25-year-old. Judge Bryant indicated that she cannot respond to that issue because she did not complete the research. She noted that while a 17-year-old may be considered mature enough to work at a restaurant, the Rule indicates that another 17-year-old holding up the restaurant is not mature enough to commit the crime.

Mr. Laws stated that the Subcommittee version appears to give defendants one bite of the apple. After a petition is denied, it cannot be brought back to court. In the alternate draft, a defendant can file again after three years. Mr. Laws noted that the three-year time period is short. He suggested that the time period for re-filing be every six or seven years.

Judge Davey moved to adopt the alternate version of subsection (f)(2). The motion was seconded. Judge Nazarian requested that Judge Davey accept an amendment to his motion to incorporate the changes from the version of subsection (f)(2) offered by the Office of the Public Defender. Judge Davey declined to amend the motion.

The motion to recommend Rule 4-345 (f)(2)(A) as it appears in the alternate version passed by a majority vote.

Judge Nazarian noted that the Committee needs to determine whether it will stick with the parameters in the alternate proposal or consider the amendments within subsection (f)(2) that were proposed by the Office of the Public Defender.

Mr. Shellenberger commented that he wanted the Committee to understand how these amendments give inmates an opportunity for release. Judge Nazarian commented that he was a member of the Subcommittee that voted to remove the age restriction based on the arbitrariness of the bright line, but it had the unintended consequence of turning the resulting chart into something less

desirable than the alternatives considered today. Judge Nazarian acknowledged that Mr. Shellenberger is correct about the effect of these amendments, but noted that he believes this is the correct effect.

Judge Nazarian moved to amend subsection (f)(2)(A)(ii) of the alternate version to change age 65 to age 60 and to change the reference in the next sentence from 50 years to 40 years, as proposed by the Office of the Public Defender. The motion was seconded and passed by a majority vote.

Mr. Marcus directed the Committee's attention to subsection (f)(2)(B), addressing the court's authority to entertain a motion or a petition to revisit a sentence. He acknowledged that there was robust debate about the change in the Rule, but stated that this subsection effectuates only what was discussed.

Mr. Marcus next addressed section (g), explaining that the differences between the two versions are largely stylistic. He stated that the language in subsection (g)(1) clarifies that, if there were multiple sentences in different jurisdictions, a petition must be filed in each court where the sentence was handed down. Mr. Marcus explained that the alternate version states this idea more clearly than the Subcommittee version.

Mr. Zollicoffer moved to adopt subsection (g)(1) of the alternate versions. The motion was seconded and passed by a majority vote.

Mr. Marcus next discussed subsection (g)(2) of the alternate version, providing that the State's Attorney may, but is not required to, file an answer. The State's Attorney, however, is required to ensure that each victim is given notice of the pending petition in accordance with Code, Criminal Procedure Article, Title 11.

Judge Brown moved to adopt subsections (g)(2) and (g)(3) of the alternate version. The motion was seconded and passed by a majority vote.

Mr. Marcus highlighted the stylistic changes to subsection (g)(4) of the alternate version. Mr. Marcus explained that subsections (g)(5) and (g)(6) of the alternate version relate to notice to the Office of the Public Defender and provide that the Court will have an opportunity to request a report concerning inmate status and conduct during the period of incarceration, respectively.

Judge Bryant raised an issue of ethical discomfort with a judge requesting factual information and seeking out information that may either help or hinder a movant. She noted that asking for a competency evaluation or an evaluation of the propriety of the sentence is different than the actual fact-finding proposed in this Rule. Judge Bryant concluded that, if the Rule requires a judge to consider such a report by using the term "shall" in

subsection (h)(4) of the alternate version, the onus should be placed on either the defendant or the State to request a report.

Mr. Marcus responded that he thought the report would be kept and maintained by the Department of Public Safety and Correctional Services and would be fairly confined. He asked whether there is an issue with limiting the request to a report kept and maintained by the institution recording an inmate's incarcerated conduct.

Judge Bryant stated that the problem concerns a judge asking for the information. She proposed amending the language to state that the person seeking action from the court should provide a certified copy of his or her adjustment record. Mr. Marcus asked whether Judge Bryant sought to place the onus on the defendant to present the record if the defendant wished to include that information. Judge Bryant responded that it is not a matter of whether the defendant wishes to have the information because the Rule requires the Court to consider it. She clarified that she would prefer a certified copy to ensure there are no alterations. The Chair inquired whether an inmate can receive a report from the Department of Public Safety and Correctional Services simply by asking. Judge Bryant noted that attorneys have secured the report and submitted it to court before. Mr. Marcus added that a caseworker is normally involved, helping the flow of information.

The Reporter asked for clarification as to the name of the referenced report. Judge Bryant noted that it may be called an institutional adjustment record.

Judge Bryant moved to amend subsection (g)(1) of the alternate version to require a movant to submit a certified copy of the institutional adjustment record with the petition. The motion was seconded and passed by majority vote.

Mr. Marcus next addressed section (h) concerning a hearing pursuant to the Rule. He explained that subsection (h)(1) in the alternate version permits dismissal of a petition without a hearing if a petition under this Rule was denied after a hearing during the preceding three years. A hearing will not be held unless the petitioner makes his or her eligibility for review under this section clear in the petition. If the court determines in a review of the petition that the petitioner does not qualify for relief, that determination can be made without a hearing.

Mr. Laws noted that repetitive filings would be a burden on the offices involved and an imposition on victims. He suggested that the three-year limitation in subsection (h)(1) be changed to six years. Mr. Laws added that the Rule is permissive, and repetitive filings may occur if not summarily dismissed. Permitting hearings every three years tips the balance too far

in favor of repetitive reviews of youthful and geriatric prisoner cases.

Mr. Zollicoffer commented that he has no issue with youthful offenders being permitted to file every six instead of three years. He noted, however, that when a geriatric offender is not eligible until age 60, the impact of a motion being heard only every six years may be too severe. Mr. Wells agreed and added that the Rule is a combination of age and percentage of sentence served. Some inmates may only have the opportunity to file one petition. Mr. Laws acknowledged the concerns, but noted that keeping the permissive word "may" in the Rule creates a safety valve that enables a judge to consider a geriatric inmate's petition less than six years after another petition was filed. Mr. Shellenberger explained that he supported changing the time in subsection (h)(1) to six years because in cases with multiple defendants, such as the Officer Caprio case, victims or families are constantly coming back for hearings. It is not unreasonable to be required to wait a little longer between petitions. Mr. Kramer added that if an older inmate cannot demonstrate reform at age 62, it is unlikely he or she will be able to demonstrate reform at age 65.

Mr. Zollicoffer stated that the Committee must also consider the effect on the government. Money can be used in a more positive way to help society instead of being used to house

an inmate over age 60 who poses no threat of recidivism. Mr. Zollicoffer noted that the letter from the Office of the Public Defender indicated that two young adults can attend college for the cost it takes to imprison one elderly individual for one year. See Appendix 3. Mr. Shellenberger noted that there is a bill in Annapolis to change the geriatric parole limit from 65 years to 60 years.

Mr. Marcus asked whether the use of "may" in the first line of subsection (h)(1) may be misconstrued and read as an exclusion of further consideration of a motion filed within three years of an earlier motion. Mr. Laws responded that it is difficult to comment on the correct interpretation because he did not prepare the draft. Mr. Marcus agreed that the phrase was meant to be permissive, but he wanted to make the intention clear. Mr. Laws commented that it appears the court has the power, but is not required, to dismiss for either ground mentioned in subsection (h)(1). He added that the Style Subcommittee may clarify the language.

Mr. Laws moved to amend the three-year limitation in subsection (h)(1) to six years. The motion was seconded and passed by a majority vote.

Mr. Marcus next addressed subsection (h)(4) of the alternate version. This subsection lists items to be considered by the trial judge and was added to the Subcommittee proposal.

The subsection in the alternate version sets out a series of factors that the court must consider in ruling on the petition. Judge Bryant commented that subsection (h)(4)(A) should use the term "institutional adjustment record" to be consistent with subsection (g)(1). She added that she does not understand the sliding scale of substantial compliance with the rules of the institution referenced in subsection (h)(4)(A). Judge Bryant noted that the range of discretion may become problematic.

Judge Price suggested that the Rule state that the court shall consider the defendant's institutional record. Judge Bryant responded that consistency is key because judges may read the Rule differently. Using the term "institutional adjustment record" makes clear exactly what is being considered.

Judge Bryant moved to amend subsection (h)(4)(A) to refer to consideration of the petitioner's institutional adjustment record. The motion was seconded and passed by a majority vote.

Judge Bryant questioned how to judge the defendant's ability to waive his presence as noted in subsection (h)(3) of the alternate version. Considering a waiver requires judging the maturity of the defendant without the defendant present. She noted that the waiver language is not new, and she has not had any defendant waive his presence for a hearing under this Rule. It is difficult for judges to consider a waiver when the only information available is from the paperwork. The Chair

responded that requiring notice to the Office of the Public Defender will help an attorney enter the case, which makes a waiver more unlikely.

Judge Bryant commented that, as a practical matter, a judge hearing the motion may not have tried the case and does not have the ability to judge sincerity or other intangibles without the defendant's presence. The Chair noted that the alternative is to require the defendant's presence. Judge Bryant suggested that the waiver be eliminated from this special category. The victims should have the right to see the maturity of the defendant. Judge Bryant noted that she has personal experience with murders and a range of responses from family members, with some unable to speak the victim's name years later.

The Chair asked about a waiver if the defendant is physically or mentally incapable of appearing. Judge Bryant responded that appearance can be by video conferencing, but she opposed a flat waiver in the special circumstances of this subsection. The Chair stated that a defendant may have dementia or be physically incapable of appearing. Judge Bryant commented that a defendant may submit a medical certification, but the need to appear is different if the person is whole and able.

Judge Bryant moved to require the defendant's presence at hearings pursuant to this Rule unless the defendant is physically or mentally incapable of actively participating in

the hearing. The motion was seconded and passed by majority vote.

By consensus, the Committee approved the alternate version of the Rule as amended.

Agenda Item 2. Consideration of proposed Rules changes pertaining to Virtual Jury Trials

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Judge Davey, Chair of the Trial Subcommittee, presented proposed amendments to Rule 2-801 (Definitions), proposed new Rule 2-807 (Virtual Jury Trials), proposed amendments to Rule 16-302 (Assignment of Actions for Trial; Case Management Plan), proposed new Rule 16-309 (Remote Electronic Participation in Jury Cases), and proposed amendments to Rule 16-803 (Continuity of Operations Plan), Rule 2-504 (Scheduling Order), and Rule 2-504.1 (Scheduling Conference), for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 – REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

AMEND Rule 2-801 to define "evidentiary proceedings" in new section (a), to define "judicial proceeding" in new section (b), to define "virtual jury trial" in new section (h), and to renumber current sections (a), (b), (c), (d), and (e), as follows:

RULE 2-801. DEFINITIONS

In this Chapter, the following definitions apply except as otherwise provided or as necessary implication requires:

(a) Evidentiary Proceeding

"Evidentiary proceeding" means a judicial proceeding, including a motions hearing, bench trial, jury trial, or hybrid jury trial (virtual jury selection with in-person evidence presentation and deliberation) where testimony and documentary or physical evidence will be presented to a jury or a judge.

(b) Judicial Proceeding

"Judicial proceeding" means any evidentiary or non-evidentiary proceeding over which a judicial officer presides, to include a judge, magistrate, auditor, or examiner.

~~(a)~~(c) Non-evidentiary Proceeding

"Non-evidentiary proceeding" means a judicial proceeding, including a conference, presided over by a judge, magistrate, auditor, or examiner, where neither testimony nor documentary or physical evidence will be presented, other than by stipulation by all parties. Committee note: Consideration of documents attached to a motion or a response to a motion does not, itself, preclude a hearing on the motion from being deemed a "non-evidentiary proceeding."

~~(b)~~(d) Participant

"Participant" includes a party, witness, attorney for a party or witness, judge, magistrate, auditor, or examiner, and any other individual entitled to speak or make a presentation at the proceeding.

~~(c)~~(e) Remote Electronic Participation

"Remote electronic participation" means simultaneous participation in a judicial proceeding or

conference from a remote location by means of telephone, video conferencing, or other electronic means approved by the court pursuant to the Rules in this Chapter.

~~(d)~~ (f) Remote Location

"Remote location" means a place other than the courtroom or other physical location where a judicial proceeding or conference is to be conducted.

~~(e)~~ (g) Video Conferencing

"Video conferencing" means a method of conducting a judicial proceeding, including a virtual jury trial under Rule 2-807, ~~conducted~~ by the use of an interactive technology that sends video, voice, and data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video monitors and related audio equipment.

(h) Virtual Jury Trial

"Virtual jury trial" means a jury trial conducted by remote electronic participation.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 – REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

ADD new Rule 2-807, as follows:

RULE 2-807. VIRTUAL JURY TRIALS

(a) Applicability

This Rule applies to situations in which any proceeding in a case that may be tried before a jury may or will be conducted by remote electronic participation. Except to the extent of any inconsistency with the Rules in this Chapter, the other applicable Maryland Rules apply. To the extent there is any inconsistency, the Rules in this Chapter prevail.

(b) Circumstances Warranting Virtual Jury Trial

In any case where (1) the parties and the county administrative judge consent to a virtual jury trial or (2) the court orders a trial to be heard remotely due to a state of emergency as declared by the Governor and the Chief Judge of the Court of Appeals, the trial shall proceed through remote video conferencing.

Committee note: The advent and implementation of this Rule was deemed necessary as a consequence of the COVID-19 pandemic. While not limited to pandemics or other natural disasters, it is the intention that the invocation of this Rule be considered only in the most dire and emergent circumstances. The Rule is not intended to supplant or substitute trial processes on virtual platforms for trials conducted in courthouses or suitable substitute locations with all parties, counsel, witnesses, and jurors physically present in a designated location. Trial judges are reminded to employ virtual jury trials as a procedure of last resort and to preserve the time-honored process of public trials with full and unfettered opportunity of all parties to participate in the proceedings in person, except as otherwise permitted elsewhere in the Rules of Procedure.

(c) Subpoenas

(1) Generally

Any subpoena issued to require the presence of an individual at a proceeding to be conducted by remote electronic participation shall, in addition to the content requirements of Rule 2-510, describe the method by which that presence will be implemented and shall state that details will be supplied by a court

official before the court proceeding. The party requesting the subpoena shall in writing provide the court official with an e-mail address for the individual subject to the subpoena. Unless impracticable, the court official shall send log-in information at least five days before the date of the virtual jury trial.

The subpoena shall direct the individual to contact the party who requested the subpoena within three days if the individual is unable to effect his or her presence in that manner.

(2) If Remote Electronic Participation by Witness is Impracticable

If it is impracticable for a witness to appear by remote electronic participation for the proceeding, the subpoena may direct the witness to appear at the courthouse to participate with lawful and appropriate assistance from court personnel. The party requesting the subpoena shall (A) file a return of service and (B) notify the clerk in writing at least three days before the trial if a witness was served with a subpoena pursuant to subsection (c)(2) of this Rule.

Committee note: The party requesting the subpoena should make reasonable efforts to secure an e-mail address for the witness to comply with subsection (c)(1). However, in the instance where remote electronic participation cannot be secured, subsection (c)(2) requires the witness to physically appear at the courthouse for assistance.

(d) Pretrial Proceedings

(1) Scheduling Conference

If the court anticipates that a jury trial will be conducted by remote electronic participation, or upon motion of a party, the court shall conduct a scheduling conference pursuant to Rule 2-504.1. At the scheduling conference, any party may note an objection to a virtual jury trial and provide reasons for the objection. The court shall consider the objection

prior to determining whether a jury trial shall be conducted by remote electronic participation.

(2) Pretrial Conference

(A) Timing

The court shall conduct a pretrial conference no later than ten (10) days before the virtual jury trial.

(B) Prior to Pretrial Conference

To the extent practicable, all proposed exhibits, other than rebuttal and impeachment exhibits, and requested jury selection questions shall be filed with the court and served on the other parties at least ten days before pretrial conference. To the extent practicable, any objections to the admissibility of exhibits shall be filed and served within three days after service.

(C) Considerations at Pretrial Conference

In addition to the matters listed in Rule 2-504.2 (b), the court shall consider the following matters in preparation for a virtual jury trial:

(i) An inquiry to confirm that each attorney, party, and witness have the technology required to participate;

Committee note: The Court should direct all participants to troubleshoot the video conferencing software, exhibit presentation, use of breakout rooms, bench conferences, and other aspects of the virtual trial to gain familiarity with the process.

(ii) Appropriate virtual backgrounds to be displayed by each attorney, party, and witness at all times;

(iii) Resolution of any objections raised pursuant to subsection (d)(2)(B);

(iv) Conversion into electronically viewable format of exhibits to be offered into evidence and, as appropriate, made available to jurors and witnesses;

(v) Identification and determination of any objections to depositions under Rule 2-419 (d) at the pretrial conference;

(vi) Additional instructions that are to be given pertaining to the remote nature of the jury trial;

Committee note: Instructions should include guidelines for participating in the virtual proceedings, such as a requirement that video cameras remain powered on throughout the entirety of the hearing, background noises and other distractions should be minimized, participants may only use their technological device to attend the proceeding, and all other technological devices must be powered off.

(vii) The method for providing jury instructions to jurors, such as through e-mail or via a court approved secure file sharing service;

(xiii) The judge and attorneys shall agree on a trial schedule designed to minimize the fatigue associated with online participation in a virtual trial. After a reasonable effort to reach an agreement, the court shall enter a trial schedule;

Committee note: A trial schedule designed to minimize fatigue may include limiting morning and afternoon sessions to three hours and scheduling periodic breaks.

(ix) Any other matters that can be resolved prior to trial to minimize sidebar conferences or otherwise expedite the trial proceedings.

(D) Pretrial Conference Order

Following the pretrial conference, all parties shall sign a Pretrial Conference Order reciting the actions taken and stipulations made. The Order shall control the subsequent proceedings and may only be modified to prevent injustice.

(e) Jurors

(1) Jury Selection

(A) Juror Qualification Forms

Juror qualification forms may be used to collect information regarding the juror's ability to participate in a virtual trial and the contents of the form shall comply with Rule 16-309 (b). Except as provided in Rule 2-512 (c), responses to juror qualification forms shall remain confidential.

(B) Examination

Jury selection may occur by video conferencing. In advance of the examination, case-specific written questionnaires may be used to elicit appropriate information. The parties shall have access to the jurors' responses to case-specific written questionnaires in advance of the examination to expedite the selection process.

(C) Additional Jurors

The Court may select up to two additional alternate jurors to serve on the jury panel. This will be in addition to the alternates ordinarily selected for an in-person jury trial. The extras will account for jurors who experience technical difficulties, which could prevent them from continuing with the trial, or who develop a COVID-19 or other health-related issue that requires them to be excused.

(2) Jury Instructions

(A) Empaneled jurors will receive instructions and training on the use of remote technology and the protocol for informing the judge if they experience technical problems during the trial. As with other virtual court events, designated staff will be available and responsible to monitor and address technical issues. All jurors will have a way to contact designated court staff (including by phone) to convey any technical problems or other issues during trial.

(B) At the commencement of trial, the court shall provide specific instructions and information to the jury that pertain to the remote format of the trial.

Committee note: The trial judge should provide an enhanced jury charge that emphasizes the need for jurors to give their full attention to the trial and to maintain the secrecy of jury proceedings.

(C) After all evidence has been presented, and pursuant to Rule 2-520, the court shall issue instructions to the jury by video conferencing. At the court's discretion, jury instructions may be made available to jurors during deliberations in a digital viewing format.

(3) Jurors' Notes

Jurors shall be permitted to take notes but shall be instructed to destroy or delete those notes at the conclusion of the trial. A juror's notes may not be reviewed by or relied upon for any purpose by any person other than the author.

Cross reference: See Rule 2-521 (a) for treatment of jurors' notes during an in-person trial.

(4) Juror Review of Evidence

The court shall arrange for documentary evidence and a verdict sheet to be converted into a digital viewing format that shall be secure but available for juror access during deliberations.

(5) Deliberations

Jurors shall deliberate using the same video conferencing software used to participate during the virtual jury trial. However, jurors shall be placed in a separate virtual breakout room where access will be restricted to jurors. Except for the jurors, no one will be permitted access to the virtual deliberation room. Once a verdict has been reached, the jury foreperson shall notify the designated officer of the court, who will then notify the judge.

(6) Jury Verdict

Once a verdict has been reached, the jury shall be moved from the separate virtual breakout room to the virtual courtroom to return the verdict in open court. The jury shall be polled before it is discharged. If the poll discloses that the jury, or stated majority, has not concurred in the verdict, the court may direct the jury to retire for further deliberations or may discharge the jury.

(7) Communication with Court

All communications by a juror shall be made to the court employee designated by the judge to receive them, who shall forward them to the judge. If the judge determines that the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response.

Cross reference: See Rule 2-521 (d) for communications with the jury during an in-person trial.

(f) Use of Electronic Devices

In accordance with Rule 2-805 standards and requirements, all court personnel, parties to a case, and witnesses are permitted to use technological equipment and video conferencing software to facilitate a virtual jury trial. Jurors shall be permitted to use an electronic device with audio and video capabilities, and video conferencing software, to participate in the virtual jury trial. Jurors shall be prohibited from using their electronic device for any purpose other than participating in the virtual jury trial while the trial is in session. Except during periods specified by the judge, other electronic devices shall be turned off or put on vibrate while the trial is in session.

(g) Recording Proceedings

A person may not record, download, or transmit an audio, audio-video, video, or still image of proceedings under this Rule except as directed by the court for compliance with Rule 2-804 (e) and (f).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

AMEND Rule 16-302 to require a certain addition to a case management plan pertaining to virtual jury trials; to renumber current subsections (b)(5) and (b)6) as subsections (b)(6) and (b)(7), respectively; and to add a Committee note and cross-reference following new subsection (b)(5), as follows:

RULE 16-302. ASSIGNMENT OF ACTIONS FOR TRIAL; CASE MANAGEMENT PLAN

(a) Generally

The County Administrative Judge in each county shall supervise the assignment of actions for trial in a manner that maximizes the efficient use of available judicial personnel, brings pending actions to trial, and disposes of them as expeditiously as feasible.

(b) Case Management Plan; Information Report

(1) Development and Implementation

(A) The County Administrative Judge shall develop and, upon approval by the Chief Judge of the Court of Appeals, implement a case management plan for the prompt and efficient scheduling and disposition of actions in the circuit court. The plan shall include a system of differentiated case management in which actions are classified according to complexity and priority and are assigned to a scheduling category

based on that classification and, to the extent practicable, follow any template established by the Chief Judge of the Court of Appeals.

(B) The County Administrative Judge shall send a copy of the plan and all amendments to it to the State Court Administrator. The State Court Administrator shall review the plan or amendments and transmit the plan or amendments, together with any recommended changes, to the Chief Judge of the Court of Appeals.

(C) The County Administrative Judge shall monitor the operation of the plan, develop any necessary amendments to it, and, upon approval by the Chief Judge of the Court of Appeals, implement the amended plan.

. . .

(5) Virtual Jury Trials

In any jurisdiction where the County Administrative Judge deems it appropriate, the plan shall include procedures for the operation of virtual jury trials. The plan shall consider each phase of a trial and the roles of the judge, courtroom clerk, bailiff, jury office, clerk's office, and IT department. The plan for conducting a virtual jury trial shall include:

(A) criteria to evaluate and determine which cases are appropriate for virtual jury trials;

Committee note: Examples of criteria to determine a case's suitability for a virtual trial include the number of plaintiffs and defendants, the number of parties that require translation services, and the complexity of legal issues raised.

(B) criteria to evaluate and determine which cases are appropriate for virtual trials;
Committee note: Examples of criteria to determine a case's suitability for a virtual trial include the number of plaintiffs and defendants, the number of parties that require translation services, and the complexity of legal issues raised.

(C) procedures for summoning jurors;

(D) methods to determine whether prospective jurors have access to technology with which to participate and the ability to participate in a private space;

(E) alternative means, if available, to offer prospective jurors that lack the ability to participate virtually;

Committee note: Alternative means may include providing each juror a technological device to use throughout the virtual proceedings or providing a secluded location, such as a conference room inside the courthouse or other Remote Location pursuant to Rule 2-801 (d), within which jurors may participate.

(F) exhibits and evidence management;

(G) technical training for bailiffs or other designated court personnel to assist prospective jurors with technical issues during check-in, trial, and deliberations; and

(H) measures to provide public access to virtual trials pursuant to Rule 2-804 (g).

Committee note: The intent of subsection (b)(5) is to allow for the possibility of remote electronic participation where appropriate, pursuant to the Seventh Administrative Order Restricting Statewide Judiciary Operations Due to the COVID-19 Emergency issued by the Chief Judge of the Court of Appeals on December 22, 2020, and any subsequent orders issued by the Court.

Cross reference: See Title 2, Chapter 800 and Rule 16-309 for provisions that may be included in the case management plan concerning the operation of remote jury trials.

~~(5)~~(6) Consultation.

. . .

~~(6)~~(7) Information Report.

. . .

Source: This Rule is derived from former Rule 16-202 (2016).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

ADD new Rule 16-309, as follows:

RULE 16-309. REMOTE ELECTRONIC PARTICIPATION IN JURY CASES

(a) Applicability

This Rule applies to situations in which any significant proceeding in a case that may be tried before a jury may or will be conducted by remote electronic participation under Rule 2-807.

(b) Jury Plan

The Jury Plan adopted by the court pursuant to Code, Courts Article, Title 8, Subtitle 2 shall require that the juror qualification form created pursuant to Code, Courts Article, § 8-302 (1) inform a prospective juror that one or more proceedings in a case in which he or she may be called to sit as a juror may be conducted by remote electronic participation; (2) explain in sufficient detail and with clarity what that means and what that would require of a prospective juror; (3) inquire whether the prospective juror has the kind of equipment and the knowledge and ability to operate that equipment necessary to be able to participate by means of remote electronic participation; and (4) inform the prospective juror that, if the answer to that question

is "no" and if the prospective juror is otherwise found qualified and summoned to act as a juror, he or she may be able to participate from the courthouse with lawful and appropriate assistance from court personnel.

Committee note: Code, Courts Article, § 8-212 permits a jury plan to state any question to be included in the juror qualification form consistent with the interest of sound administration of justice and not inconsistent with the Code. It is critical, even when physical appearance at a proceeding is not feasible, that virtual jury pools represent a fair cross-section of the qualified citizenry. Remote electronic participation may be impossible or inordinately difficult for some people. Jury plans must take account of that and, when possible, make suitable provision for an alternative.

(c) Trial

(1) Generally

The county administrative judge, with the assistance of the court administrator, the clerk of the court, the Administrative Office of the Courts, and such other persons or entities that the county administrative judge finds necessary or useful, shall make reasonable efforts to make courtrooms, jury rooms, and other facilities safely available for jurors, witnesses, and court personnel to use, to avoid the need for individual remote electronic participation in the trial itself or to reduce that need to the extent practicable.

(2) If Remote Electronic Participation at Trial is Required

If remote electronic participation at trial is required, the county administrative judge shall:

(A) designate and authorize one or more judicial employees to assist prospective jurors who require assistance in participating in juror selection procedures by remote electronic participation;

Committee note: Those employees should be instructed that their role is strictly limited to assisting the prospective juror in responding to questions and that they are not to discuss what the juror's responses should be.

(B) assure that all members of the jury, including alternates, witnesses, and court personnel are able to participate by remote electronic participation; and

(C) provide a method for jurors to communicate with the judge when necessary and appropriate.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 800 – MISCELLANEOUS COURT ADMINISTRATION MATTERS

AMEND Rule 16-803 by adding a reference to Emergency Orders in section (b), as follows:

RULE 16-803. CONTINUITY OF OPERATIONS PLAN

. . .

(b) Conformance to AOC Guidelines and Emergency Orders

The plan shall conform to guidelines established by the Administrative Office of the Courts and is subject to emergency orders issued by the Chief Judge of the Court of Appeals pursuant to Rules 16-1001 through 16-1003. The plan and any amendments to it shall be submitted to the State Court Administrator.

Committee note: Jury plans are governed in part by Code, Courts Article, Title 8, Subtitle 2, but the Court of Appeals may adopt Rules to govern the

provisions and implementation of those plans. See Code, Courts Article, § 8-202. Jury plans proposed by the circuit courts are subject to approval by the Court of Appeals. See Code, Courts Article, § 8-203.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-504 by amending subsection (b)(2)(I) to reference remote electronic participation and by making stylistic changes, as follows:

RULE 2-504. SCHEDULING ORDER

. . .

(b) Contents of Scheduling Order

. . .

(2) Permitted

A scheduling order ~~may~~ also may contain:

. . .

(H) a process by which the parties may assert claims of privilege or of protection after production; ~~and~~

(I) ~~any other matter pertinent to the management of the action.~~ procedures and requirements the court finds necessary when any proceedings in the action will be conducted by remote electronic participation pursuant to Title 2, Chapter 800 of these Rules; and

(J) any other matter pertinent to the management of the action.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-504.1 by amending section (a) to reference remote electronic proceedings, by adding new subsection (a)(3) regarding proceedings conducted by remote electronic means, and by making stylistic changes, as follows:

RULE 2-504.1. SCHEDULING CONFERENCE

(a) When Required

In any of the following circumstances, the court shall issue an order requiring the parties to attend a scheduling conference, in person or by remote electronic participation pursuant to the Rules in Title 2, Chapter 800 of these Rules:

(1) in an action placed or likely to be placed in a scheduling category for which the case management plan adopted pursuant to Rule 16-302 (b) requires a scheduling conference;

(2) in an action in which an objection to computer-generated evidence is filed under Rule 2-504.3 (d); ~~or~~

(3) in an action in which jury selection or any other significant proceeding will be conducted by remote electronic participation; or

~~(3)~~(4) in an action, in which a party requests a scheduling conference and represents that, despite a good faith effort, the parties have been unable to reach an agreement ~~(i)~~(A) on a plan for the scheduling and completion of discovery, ~~(ii)~~(B) on the proposal

of any party to pursue an available and appropriate form of alternative dispute resolution, or ~~(iii)~~(C) on any other matter eligible for inclusion in a scheduling order under Rule 2-504.

. . .

Judge Davey commented that these Rules governing virtual jury trials are not the start of a slippery slope. The proposed amendments to Rule 16-309 direct county administrative judges to do everything reasonable to make courthouses safe for live jury trials. Judge Davey pointed out that a Committee note in Rule 2-807 reminds judges that virtual jury trials are a last resort and these Rules are not an attempt to move away from the time-honored process of public trials and live courtrooms.

Judge Davey added that the Rules in Title 2, Chapter 800 already govern remote electronic participation. The Chief Judge has authorized courts to try as many cases as possible using virtual opportunities. The most recent Administrative Order provides that courts will attempt to resume in-person jury trials, but also indicates that virtual formats may be used when there is the opportunity. Judge Davey explained that the Trial Subcommittee built on these precedents and specified that civil jury trials may be conducted virtually when there is an appropriate case. He pointed out that, if these Rules are adopted by the Court of Appeals, each county administrative judge will need to amend the county's case management and jury

plans to indicate how virtual jury trials will be conducted in that county.

Mr. Baxter introduced himself as a civil trial attorney in Baltimore City. He has tried jury trials in jurisdictions throughout the state. Although a former President of the Maryland State Bar Association, Mr. Baxter indicated that his comments today are his own. Mr. Baxter suggested that instead of stating in Rule 2-807 (b) that a virtual jury trial may be held when the parties agree or when emergency orders are issued, the Rule should state that the parties' agreement is always required. Live jury trials are infinitely better than virtual jury trials because the crucial face-to-face dynamic is lost in virtual trials. Mr. Baxter acknowledged the backlog of cases, but suggested that requiring virtual trials absent full party consent is not a good answer. He added that there are concerns about the efficacy and fairness of virtual trials. Issues about the jury pool may arise, for example, in Baltimore City where many citizens only access the internet by phone.

Mr. Baxter proposed two possible alternatives instead of proceeding with virtual jury trials. First, the Judiciary may continue the current plan of reopening for socially distanced jury trials on April 26. He acknowledged that this alternative requires some participants to submit to jury trials and face the risks of gathering with strangers in one room before vaccines

have been made available to them. President Biden said that vaccines should be widely available by the Fourth of July. Mr. Baxter proposed, as a second alternative, that the start date for in-person trials can be moved back. He acknowledged that these alternatives may not be within the authority of the Committee.

Judge Davey directed the Committee's attention to Rule 2-801. He explained that additional definitions have been added to clarify the definition of what constitutes a virtual jury trial. These definitions create the building blocks to develop a uniform definition.

Judge Davey next addressed Rule 2-807. He noted that section (b) sets forth when the Rule applies and initially included three circumstances. The Trial Subcommittee narrowed section (b) to only two options. The third option, letting the county administrative judges make independent decisions, was considered too broad.

Mr. Wells moved to amend Rule 2-807 (b) by changing "or" to "and," as suggested by Mr. Baxter. This amendment would also necessitate the deletion of the second sentence about objections to a virtual jury trial. He commented that the amendment prevents a slippery slope and emphasized the intangibles of a jury trial.

The Chair inquired whether the amendment aims to limit the ability to hold a virtual jury trial to circumstances where there is consent by the parties. Mr. Wells responded that the amendment limits virtual jury trials to instances where there is consent by the parties and the county administrative judge. The Chair further inquired how the amendment would address the language about virtual jury trials when an emergency is declared by the Governor or the Chief Judge. Mr. Wells responded that he did not believe any Orders from the Governor or the Chief Judge directed remote virtual jury trials, but just encouraged the courts to consider remote proceedings to the extent practicable. The Chair noted that the Rule states that remote virtual jury trials would not be allowed except when an emergency is declared by the Governor and the Chief Judge. Mr. Wells agreed that language is consistent with the Committee note and should remain in the Rule.

Judge Davey commented that Mr. Wells's proposal means that no virtual jury trials can be held without the consent of the parties. There is no need for the Rule if it will be limited to that extent. Judge Davey indicated that his courthouse has about 4,500 track 2 civil trials waiting to be heard. Those cases have had opportunities all year to use other mechanisms, such as mediations or bench trials. He noted that the Rule is needed for the court to address a backlog that continues to

grow, including cases that involve one- or two-day trials with only two parties and minimal witnesses. Judge Davey explained that criminal cases will get priority when in-person trials are permitted. Pursuant to safety procedures, every criminal trial at his courthouse will utilize three courtrooms, leaving limited space for civil trials.

Mr. Wells responded that the failure to use remote jury trials earlier expresses a preference for the constitutional right to a jury trial. The backlog of cases forces attorneys and parties to face reality: either wait to get a jury trial or resolve the case. Mr. Wells noted that the Rule is not limited to the kinds of cases described by Judge Davey. The Rule removes the consideration of the parties and the attorneys in determining whether a virtual jury trial should be held.

Judge Bryant expressed concern that a party may not have the required technology to appear. She pointed to section (c)(2) of Rule 2-807, suggesting that the section may be amended to include those who do not have access to appropriate technology. The Chair noted that the subsection was intended to mean that those without access to technology should go to the courthouse for assistance. He noted that the section can be worded more clearly. There is a concern about ensuring that persons can appear at trial, including pursuant to a subpoena, if the appearance occurs electronically.

Mr. Wells stated that trial attorneys he has spoken to are worried about two things. The first concern is holding a jury trial before there is reasonable certainty that it is safe, such as before vaccinations are available. The second concern is dealing with technical issues and losing the essence of a jury trial by participating in a remote proceeding. Although there is frustration about waiting for a trial, Mr. Wells has not heard that anyone would prefer a virtual jury trial instead of waiting a year for an in-person jury trial.

The Chair asked whether there has been consideration of the impact on the pool of potential jurors if vaccinations are required for individuals to be a part of the jury. He noted that some communities may refuse vaccination. Mr. Wells responded that the concern exists for any vaccine. There will be a point where there are reasonable assurances that most individuals entering the courthouse have the vaccine available to them. He added that there will not be a point where those who refuse the vaccine are eliminated from the jury pool.

Mr. Marcus seconded Mr. Wells's proposed amendment. Ms. McBride agreed with the proposed amendment, stating that it is difficult to imagine the same results with virtual trials. She commented that the trials lose too much when held virtually and she would hate to be forced into trying a case virtually. A balance is needed. Ms. McBride acknowledged the backlog of

cases, but noted that this issue may not need to be addressed because vaccines are becoming available.

Judge Bryant suggested including a mechanism in the Rule allowing a court to defer a case on an individual basis. Judge Davey stated that such a mechanism is in the Rule because objections for any reason may be raised at the scheduling conference.

Mr. Laws asked whether certain types of proceedings are more amenable to virtual jury trials. He raised some concerns about the proposed Rules. For example, a member of the virtual jury may be gaming on a different device and not paying attention to the trial. He added that the dynamics affecting credibility determinations are impacted. Judge Davey pointed to Rule 16-302 requiring that the criteria to evaluate and determine appropriate cases for virtual jury trials be put in writing. He added that Prince George's County has already created a workgroup in anticipation of virtual jury trials. Most cases being considered are motor torts, contract disputes, and slip and fall cases. More complex cases would not be tried virtually.

Mr. Wells inquired whether the Trial Subcommittee considered drafting a Rule limited to cases as described in the differentiated case management ("DCM") plan. Judge Davey responded that the Rule applies to all cases, but the county

administrative judge is required to identify cases that can be considered for virtual jury trials in the DCM plan. Mr. Wells noted that, conceivably, a virtual jury trial can be required for a two-week jury trial with multiple witnesses, including out-of-state experts. Judge Davey commented that it would depend on whether the DCM plan approved by the Administrative Office of the Courts permits a virtual jury trial in that case. Mr. Wells questioned whether Rule 2-807 should be considered in conjunction with the proposed changes to DCM plans. Judge Davey noted that the DCM plans are completed by individual jurisdictions. He added that the Rule should be more specific and precise about what to include or exclude in the plans concerning virtual jury trials.

Judge Bryant asked about the timing. She stated that attorneys would want to know the court's action as early as possible. Early notice should alleviate some of the anxiety associated with virtual jury trials. Trial attorneys would like to be informed well before a trial date if an in-person jury trial is not permitted. Jurisdictions handle matters differently, and the scheduling conference may occur at various times at different courthouses.

The Chair asked whether the DCM plan should categorically limit the cases considered for virtual jury trials. If a case falls within a specific track, a prompt scheduling conference

should be held to determine if the case is a good candidate for a virtual jury trial. He acknowledged that the tracks vary in different counties. Judge Davey responded that specific language can be added to subsection (d)(1) of Rule 2-807 clarifying the timing of a scheduling conference. A conference may be set as soon as an answer is filed. Judge Bryant noted that there may not be the capacity to conduct scheduling conferences immediately in jurisdictions with heavy caseloads. Instead, scheduling orders are issued without a conference in some cases, and parties move to modify the orders. Judge Davey pointed out that holding an early scheduling conference would apply only in a case that the court believes is a candidate for a virtual jury trial.

The Chair questioned whether potential qualifying cases should be categorized with quick scheduling conferences held in those cases. Judge Davey responded that a category should be created for likely candidates for virtual jury trials, such as judicial review of Worker's Compensation Commission cases. The Chair commented that those cases typically involve only a plaintiff, a defendant, and two doctors.

Mr. Marcus recognized that there should be some mechanism to deal with the backlog. He commented that he is in favor of determining certain case types that can be considered for this process. In the District Court, a statute states what cases are

within the exclusive jurisdiction of the District Court. A category for virtual jury trial cases should be similarly defined. If the case types considered for virtual jury trials involve an amount in controversy of less than a certain amount, such as $30,000, there would be no concern about determining specific case types. This approach would require an accurately pled addendum clause. The cases that may be candidates for virtual jury trials would be easily identifiable. Judge Davey responded that complaints simply plead above that statutory number to qualify for circuit court. An exact amount in controversy is not specified.

Mr. Wells acknowledged the problem of backlogs and suggested redrafting the Rule to delineate the kinds of cases contemplated. For example, the case information sheet may have a box for individuals to check indicating the qualifications for a virtual jury trial. Mr. Brown agreed with Mr. Wells's suggestion. He added that the civil cover sheet can list case types to inform the court and the parties what cases can be mandated to proceed as virtual jury trials. Judge Davey responded that virtual jury trial may be limited to tracks 1 and 2 at his courthouse, but noted that he does not know the categories or tracks used by other courts. Ms. Harris commented that such a notice may be difficult to create due to the different case tracks used in different courts.

Judge Davey asked whether there is a definition for complex litigation. Mr. Wells responded that it depends what the attorney checks off on the case information sheet. He added that most jurisdictions require an anticipated length of the trial to be provided, and that time can be used to determine applicability of the Rules. Ms. Day commented that filers would simply change the time estimate of the trial. If a box needs to be checked for virtual jury trials, no one is going to check it. Mr. Wells responded that most attorneys prefer an in-person trial. He noted that the current version of the Rule has no assurances that other judges or courts will limit the types of cases that can be mandated to have virtual jury trials.

The Chair acknowledged that there is a suggestion to hold virtual jury trials only when both parties consent, but the court has a role in the decision as well. He raised a comparison to the medical field, noting that doctors used to schedule surgeries until the hospitals began creating the schedules. The doctors were not running the hospitals. The court has an interest in not allowing these cases to create a backlog because they will have to be addressed at some point, as well as all the new cases. The Chair inquired what compromise would honor both interests.

Mr. Wells said that a compromise would be to better differentiate in the Rule which cases can be considered for

virtual jury trials. He added that he will always take the position that the parties' consent should be needed, but creating a list of eligible cases can be a compromise. The Chair expressed concern that the Rule cannot delineate by case tracks and suggested that county administrative judges should determine applicable case types for their own counties. The parties may then argue up front why their case should not be considered for a virtual jury trial. It may be more work for the court to hold these scheduling conferences, but they are already permitted.

Judge Davey explained that the proposed Rules contemplate that the Administrative Judge in each jurisdiction will either develop criteria or state which trials could be held virtually. He noted that he is trying to work from the court's current management system in giving the Administrative Judge some flexibility. The plan would still need to be approved as provided in Rule 16-302 (b). Judge Davey added that the list of case types should either indicate which cases may be considered, or which cases may not be considered for virtual jury trials.

Mr. Wells proposed amending section (a) to state that the Rule applies to those cases described in the county DCM plan as eligible for consideration for virtual jury trials. Judge Davey agreed with the proposed change. The Reporter clarified that the change to section (a) is to reference cases described in the

county's DCM plan as cases that are eligible for virtual jury trials. Ms. Harris noted that there will not be uniformity because every circuit court may choose different cases. The Chair noted that there has never been uniformity with the different case tracks. Some judges wanted tracks to be based on the length of trial, while others wanted them to be based on how much money was involved. Ms. Harris noted that case tracks are still different throughout the State. The Chair noted that the lack of uniformity in this instance may be acceptable because the facilities of each court will be different and may require different actions to make them safe. Virtual jury trials may need to be more limited in one county than another. Judge Davey noted that a jurisdiction can decide not to hold virtual jury trials. The Chair suggested letting county administrative judges make the first call.

Mr. Wells said that he would interpret this Rule, with the proposed amendment to section (a), as permitting virtual jury trials when the parties consent or when there is a declared state of emergency. Absent a declared state of emergency, the court would not have the authority to order a virtual jury trial without the parties' consent. Judge Davey agreed with Mr. Wells's interpretation.

Judge Davey noted that administrative orders recently have been issued by the Chief Judge regarding the reopening of the

courts in phases. An administrative order will need to specifically indicate whether virtual jury trials are authorized under the circumstances. Mr. Wells clarified that when the emergency is over, courts will not have unilateral authority to order virtual jury trials. The Chair noted that the category of cases appropriate for virtual jury trials as determined by the county administrative judge will only be relevant in case of an emergency.

Judge Davey next addressed the section of Rule 2-807 concerning subpoenas. The Trial Subcommittee faced several issues related to the section concerning subpoenas. Mr. Armstrong and Ms. Lindsey helped draft the section to try to satisfy both the court and the litigators. The requestor must indicate in the subpoena that the appearance is virtual, and an e-mail address must be provided to the clerk so that login information may be sent to the witness. If the witness is unable to appear virtually, there is a method to notify the requestor and a process for the witness to come to the courthouse to participate and testify.

Judge Davey explained the scheduling conference in subsection (d)(1) gives attorneys the right to argue that the case is not appropriate for a virtual jury trial. All parties will be aware at that time that the case is scheduled for a virtual jury trial.

Judge Davey pointed out expanded subsection (d)(2) concerning pretrial conferences. Pretrial conferences for virtual jury trials should resolve as many issues as possible so that there are limited bench conferences during the virtual proceedings and the exhibits can be pre-filed. He noted that the Rule has a mechanism for challenging exhibits. The pretrial conference also involves development of a trial schedule with the understanding that people can be kept in a virtual environment for only so many hours a day and breaks will be needed.

Judge Bryant questioned how to get voir dire into the jurors' hands and how to handle sensitive information, such as the name of a rape victim. She suggested that voir dire be discussed in the Rule just as jury instructions are addressed. Judge Davey said that, in the virtual jury selection process, the judge will ask the questions and identify jurors with positive responses. The potential juror would then be moved into a separate breakout room, similar to when the juror and the parties are at the bench during voir dire. Potentially sensitive information would only be addressed in this separate breakout room. Judge Bryant noted that, in Baltimore City, a written questionnaire is circulated to jurors in advance. She expressed concern about the written portion of voir dire, not the questioning of individual jurors. Judge Davey added that

parties can formulate a case-specific voir dire under the Rule. The first questionnaire typically deals with the statutory requirements to be a juror, followed by a supplemental questionnaire determining the potential juror's ability to serve virtually. A case-specific questionnaire is then permitted. Judge Davey noted that jurors are asked to complete questionnaires online before they become part of the jury pool. Judge Bryant commented that it does not appear that there will be a universal process.

Judge Davey presented additional sections of Rule 2-807. The judge will need to caution potential jurors as to behavior, including that the jurors should not be on other electronic devices during the trial. The Rule requires a specific order from the pretrial conference to memorialize the agreed-upon procedures. Judge Davey noted that subsection (e)(2) addresses jury instructions. Jury instructions and exhibits must be collected, categorized, and put into a shared drive to permit the jury to have access to the instructions and the exhibits during deliberation. Judge Davey noted that once deliberations begin, the jury will be moved to a separate breakout room with restricted access. The Rule requires that the jury receive explicit instructions on how to communicate with the court when there are questions and when a verdict is reached. Judge Davey pointed out that there is no recording, downloading, or

transmitting of anything as it relates to the trial. The court will have to rely on the jury's honesty to a great extent.

Judge Davey next addressed Rule 16-302, noting that the Rule requires that DCM plans be modified to include a section on virtual jury trials. He reviewed the information required in the section about virtual jury trials and noted that courts will need to have alternative processes available for those unable to participate virtually.

The Chair asked whether the list of cases eligible for virtual jury trials should be included in Rule 16-302 or Rule 2-807. Judge Davey responded that he prefers the information up front in Rule 2-807 to address the issue right away.

Judge Davey explained that the training requirements included in Rule 16-302 (b)(5) will require tremendous effort between court officers and the Administrative Office of the Courts. Fundamental changes will be needed to the way court employees have done business in the past. On a local level, a lot of work still needs to be done to be able to successfully conduct virtual jury trials. The Chair noted that Judge Davey was planning to conduct mock trials as training exercises and asked whether the training should be more uniform throughout jurisdictions. Ms. Harris responded that every court conducts virtual hearings a little differently, including the District Court. Judge Davey noted that some jurisdictions have their own

information technology ("IT") systems. Ms. Harris noted that there are some other IT people in large courts, but everyone is trained by the Judiciary. She noted that the same trainings on virtual hearings have been held repeatedly. She commented that a lot of people will need training. Judge Davey noted that contested family hearings now have been held virtually for six or seven months, and cases are getting resolved. Although those cases do not involve juries, witnesses and exhibits are handled virtually.

Judge Davey noted that Rule 16-309 requires amendments to jury plans. He stated that there will need to be a buy-in by the public that this is an alternate way to serve jury duty. This is a mechanism where jurors will not need to come out in public. He added that the Rules require an alternate mechanism for those unable to appear virtually.

Judge Davey explained that Rule 16-309 (c)(1) provides that the county administrative judge must make reasonable efforts to modify courtrooms and the courthouse to make jury trials as safe as possible. Rule 16-803 addresses requirements of the continuity of operations plans. Proposed changes to Rule 2-504 ensure that new Rules are in compliance with already existing Rules regarding scheduling conferences.

The Chair noted that the proposed new Rules and amendments are Subcommittee recommendations and do not require a motion for

approval. Mr. Wells withdrew his motion to amend Rule 2-807 (b) based on the discussed changes to wording in Rule 2-807 (a).

Mr. Wells moved to amend the first sentence of Rule 2-807 (a). Judge Davey responded that the amendment was agreed to. The Reporter clarified that there was a consensus to add to section (a) the concept that the ability to hold a virtual jury trial applies only to cases in a category of cases that are eligible for virtual jury trials as set forth in the county's DCM plan.

There being no further motion to amend or reject the proposed Rules, they were approved as amended.

There being no further business before the Committee, the Chair adjourned the meeting.