

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted a Supplement to its Two Hundred and Twenty-First Report to the Supreme Court of Maryland, recommending amendments to current Rules 4-251 and 4-252 of the Maryland Rules of Procedure.

The Committee's Supplement to the Two Hundred and Twenty-First Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before March 15, 2024 any written comments they may wish to make to rules@mdcourts.gov or:

Sandra F. Haines, Esquire
Reporter, Rules Committee
Judiciary A-POD
580 Taylor Avenue
Annapolis, Maryland 21401

Gregory Hilton
Clerk
Supreme Court of Maryland

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

Hon. ALAN M. WILNER, Chair
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair
SANDRA F. HAINES, Reporter
COLBY L. SCHMIDT, Deputy Reporter
HEATHER COBUN, Assistant Reporter
MEREDITH A. DRUMMOND, Assistant Reporter

Judiciary A-POD
580 Taylor Avenue
Annapolis, Maryland
21401
(410) 260-3630
FAX: (410) 260-3631

February 14, 2024

The Honorable Matthew J. Fader,
Chief Justice

The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Brynja M. Booth
The Honorable Jonathan Biran
The Honorable Steven B. Gould
The Honorable Angela M. Eaves,
Justices

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

Re: Supplement to the Two Hundred and
Twenty-First Report of the Rules
Committee

Your Honors:

The Rules Committee submits this Supplement to its Two Hundred and Twenty-First Report and recommends that the Court adopt amendments to Rules 4-251 and 4-252 transmitted with this Supplement.

In Category Nine of its Two Hundred and Twenty-First Report, the Rules Committee recommends the adoption of new Rule 11-420.2 to implement 2023 Maryland Laws, Chapters 686 and 687. The new legislation generally prohibits a minor from being prosecuted or the subject of a delinquency petition for certain offenses if the alleged offense was committed as a direct result of the child being a victim of sex trafficking or human trafficking.

Part of the legislation created new Code, Criminal Law Article, § 1-402, which states, “a minor may not be **criminally prosecuted** or proceeded against under Title 3, Subtitle 8A” for certain enumerated offenses (emphasis added).

Committee staff consulted with advocates involved in the legislation who confirmed that the legislature contemplated that a motion seeking relief under the statute could be made not only in the juvenile court but also in a court exercising criminal jurisdiction.

Proposed amendments to Rules 4-251 and 4-252 add to the District Court and Circuit Court motions Rules a provision for a motion under the statute and refer the parties and the court to the procedures in Rule 11-420.2 for handling that motion, with appropriate terminology adjustments.

For the further guidance of the Court and the public, following the proposed amendments to each of the Rules is a Reporter's note describing in further detail the reasons for the proposals. We caution that the Reporter's notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully Submitted,

/ s /

Alan M. Wilner
Chair

AMW:sdm

cc: Gregory Hilton, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-251 by adding new subsection (b)(4) pertaining to a motion seeking relief under Code, Criminal Law Article, § 1-402; by adding a cross reference following new subsection (b)(4); and by renumbering current subsection (b)(4) as (b)(5), as follows:

Rule 4-251. MOTIONS IN DISTRICT COURT

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(b) When Made; Determination

(1) A motion asserting a defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense shall be made and determined before the first witness is sworn and before evidence is received on the merits.

(2) A motion filed before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial.

(3) A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the hearing on the motion.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court. See also *Davis v. State*, 474 Md. 439 (2021) for discussion of the statutory factors in Code, Criminal Procedure Article, § 4-202(d) governing transfer of jurisdiction to the juvenile court.

(4) Child Victim of Trafficking – Court Determination

A motion seeking relief under Code, Criminal Law Article, § 1-402 may be raised at any time prior to entry of judgment. The court shall follow the procedure set forth in Rule 11-420.2. “Petition” as used in Rule 11-420.2 shall be construed to refer to a “charging document.” “Disposition” as used in Rule 11-420.2 shall be construed to refer to a “judgment.”

Cross reference: See Code, Courts Article, § 3-8A-17.13.

(4)(5) Other motions, including a motion under Code, Courts Article, § 10-923, may be determined at any appropriate time.

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REPORTER’S NOTE

Proposed amendments to Rules 4-251 and 4-252 implement Chapter 686/687, 2023 Laws of Maryland (SB 292/HB 297). The legislation generally prohibits a minor from being criminally prosecuted or the subject of a delinquency petition for certain offenses if the alleged act was committed as a direct result of the child being a victim of sex trafficking or human trafficking. This “safe harbor” legislation creates new Code, Courts Article, § 3-8A-17.13 and places certain duties on the court, including requiring a stay of proceedings, referral for services, and a determination by the court as to whether the child was a victim of trafficking and the child’s actions were a direct result of being trafficked.

In its Two Hundred and Twenty-First Report, the Rules Committee recommended the creation of new Rule 11-420.2 to implement this legislation. However, part of the legislation also created new Code, Criminal Law Article, § 1-402, which states, “a minor may not be **criminally prosecuted** or proceeded against under Title 3, Subtitle 8A” for certain enumerated offenses (emphasis added). Committee staff consulted with advocates involved in the legislation who confirmed that the legislature contemplated motions made pursuant to the statute in Title 4 proceedings in addition to juvenile court proceedings.

Proposed amendments to Rules 4-251 and 4-252 add to the District Court and circuit court motions Rules a provision for a motion under the statute and refer the parties and the court to the procedures in Rule 11-420.2 for handling that motion, with appropriate terminology adjustments. “Petition” is to be read as “charging document” and “disposition” is to be read as “judgment” in the two Title 4 Rules. A cross reference to the delinquency subtitle in the Courts Article follows the new subsection in each Title 4 Rule.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-252 by adding creating new subsection (d)(1) comprised of the first sentence from section (d); by adding new subsection (d)(2) pertaining to a motion seeking relief under Code, Criminal Law Article, § 1-402; by adding a cross reference following new subsection (d)(2); and by creating new subsection (d)(3) comprised of the second sentence from section (d), as follows:

RULE 4-252. MOTIONS IN CIRCUIT COURT

..

(d) Other Motions

(1) Defect in Charging Document

A motion asserting failure of the charging document to show jurisdiction in the court or to charge an offense may be raised and determined at any time.

(2) Child Victim of Trafficking – Court Determination

A motion seeking relief under Code, Criminal Law Article, § 1-402 may be raised at any time prior to entry of judgment. The court shall follow the procedure set forth in Rule 11-420.2. “Petition” as used in Rule 11-420.2 shall be construed to refer to a “charging document.” “Disposition” as used in Rule 11-420.2 shall be construed to refer to a “judgment.”

Cross reference: See Code, Courts Article, § 3-8A-17.13.

(3) Any Other Motion

Any other defense, objection, or request capable of determination before trial without trial of the general issue, shall be raised by motion filed at any time before trial.

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REPORTER'S NOTE

See the Reporter's note to Rule 4-251.