

THE DISTRICT COURT COMMISSIONER



DEPARTMENT OF LEGISLATIVE SERVICES 2013

The District Court Commissioner

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux
Director

April 16, 2013

The Honorable Thomas V. Mike Miller, Jr., Co-Chairman
The Honorable Michael E. Busch, Co-Chairman
Members of the Maryland General Assembly

Ladies and Gentlemen:

This report, *The District Court Commissioner*, was prepared in response to legislative interest in this part of the criminal justice process. The report discusses the various functions of a Maryland District Court commissioner and the positions that handle comparative functions in other U.S. jurisdictions.

The report was written by Amy A. Devadas, Guy G. Cherry, Sally M. Guy, and Jordan D. More. Amy A. Devadas and Shirleen M. Pilgrim reviewed the report.

I trust that this information will be of assistance to you.

Sincerely,

Warren G. Deschenaux
Director

WGD/SMP/mjp

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The District Court Commissioner

History of the Maryland District Court

The District Court began operation on July 5, 1971, as a result of the ratification of a constitutional amendment consolidating a disparate system of trial magistrates, people's courts, and municipal courts into a fully State-funded and operated court of record possessing statewide jurisdiction.¹ The District Court is divided by statute into 12 geographical jurisdictions, each containing one or more counties, with at least one judge and courthouse in each county.

Justice under the Old System and the Evolution of the District Court

According to the Maryland Judiciary's webpage, "[u]nder the old system, trials were held in homes, basements of retail establishments, or other unsuitable places. Often, untrained magistrates or justices of the peace staffed these courts. As a result, the quality of justice varied from county to county and failed to provide the citizens of Maryland a judicial system that deserved their full trust and confidence."

The Administrative Office of the Courts advises that, prior to 1939, justices of peace in Maryland had concurrent jurisdiction with the State's criminal courts for:

- assault without felonious intent;
- assault and battery;
- petit larceny less than \$5 (a felony);
- all misdemeanors not punishable by confinement in penitentiary; and
- all prosecutions punishable by fine or imprisonment in jail or in the Maryland House of Correction.

From 1939 to 1971, the duties of justices of the peace began to change, including preventing breaches of peace, arresting individuals for breaches of peace, service as notaries public, and forwarding some cases to trial courts. In addition, during this period, committing magistrates were authorized to issue criminal warrants, set bail or collateral, and commit defendants to jail in default of posting cases for minor offenses. Trial magistrates, a third of whom were lawyers, were given certain civil trial authority for cases involving \$500 or less, certain criminal trial authority, as well as the authority to handle support cases and to issue

¹ The District Court of Maryland replaced all of the then existing local trial magistrates; justices of the peace (existing in 11 counties); the Municipal Court of Baltimore City; the Housing Court of Baltimore City; and the people's courts in Baltimore City and Anne Arundel, Baltimore, Harford, Montgomery, Prince George's, and Wicomico counties.

search warrants. Trial magistrates also handled some adjudications in police courts, people's courts, and municipal courts.

In 1971, pursuant to the constitutional amendment, people's court and municipal court judges automatically became District Court judges. The establishment of the new court also included the creation of District Court commissioners as constitutional judicial officers.

The limited role and powers of commissioners had been robustly debated throughout 1969 by the Maryland Legislative Council's Subcommittee on District Courts. Generally, there was a desire to avoid the revival of inherent problems of the trial magistrate system by vesting judicial responsibility in lay commissioners within the Judiciary. The subcommittee did not wish to allow the commissioner authority to extend to show cause orders, subpoena *duces tecum*, preliminary trial hearings, or search warrants. The subcommittee also thought it wise that the issuance of arrest warrants by District Court judges who might later adjudicate the related case be kept to a minimum. Such a commissioner system was thought to provide greater access to the judicial system to citizens and the police.

In general, under the 1970 constitutional and legislative enactments, commissioners were authorized to "perform all the functions of committing magistrates as exercised by the justices of the peace prior to July 5, 1971." Accordingly, under the new constitutional provisions and statutory changes, a District Court commissioner is charged with the duty and authority to issue charging documents or warrants of arrest, and determining the conditions of pre-trial release of persons arrested and accused of violations of law. Commissioners are appointed by the Administrative Judge of each District Court district, subject to the approval of the Chief Judge of the District Court, at whose pleasure they serve. Though the District Court Act stipulates that a commissioner need not be an attorney, as of February 1998, newly appointed commissioners are required to have at least a bachelor's degree.²

The Maryland Rules adopted by the Court of Appeals to govern procedures in the District Court stipulate that a commissioner is a judicial officer, and those rules, together with provisions of Section 2-607 of the Courts and Judicial Proceedings Article, detail the rights, responsibilities and authority of the commissioners. A commissioner, like a judge, is prohibited from engaging in partisan political activity. In addition, as judicial officers, commissioners are guided by the Canons of Ethics adopted by the Court of Appeals.

Most people experience Maryland's court system through the District Court. Cases heard in the District Court include motor vehicle (traffic) and boating violations and other misdemeanors and specified felonies, domestic violence and peace order petitions, landlord-tenant disputes, small claims and other civil cases involving limited dollar amounts, and

² According to information provided by the Administrative Office of the Courts in October 2012, of the 279 District Court commissioners, 233 have a bachelor's degree, 18 have master's degrees, one has a Ph.D., 18 have Juris Doctorate degrees, 5 have associates degrees, and 4 have high school diplomas. The 9 commissioners who do not have bachelor's degrees were employed as District Court commissioners prior to the implementation of the educational requirement in February 1998.

replevin (recovery of wrongfully taken or detained goods). Each county and the City of Baltimore have at least one District Court location. Cases in the District Court are argued before judges only; there are no jury trials in District Court. During its first year of operation, the District Court processed a total of 778,718 cases. In fiscal 2011, 1,818,028 cases were filed in the District Court.

When the District Court was established, Maryland stood almost alone among the states in abolishing all part-time and local courts of limited jurisdiction and replacing them with a single statewide court, centrally administered, and staffed by experienced judges. Since that time, several states have replicated the Maryland model.

Duties of Maryland District Court Commissioners

Two of the primary duties of Maryland's District Court commissioners are (1) conducting initial appearances by arrestees (including pretrial release and bail determinations); and (2) issuing arrest warrants under certain circumstances.

Initial Appearances by Arrestees/Criminal Defendants

Within 24 hours after arrest, a criminal defendant is taken before a judicial office, typically a District Court commissioner, for an initial appearance. At the initial appearance, the defendant is advised of (1) each offense charged; (2) the right to counsel; and (3) the right to a preliminary hearing, if applicable. In some jurisdictions, the defendant is given a District Court trial date at the initial appearance. Otherwise, the defendant is told that notice of the trial date will follow by mail.

If the defendant was arrested without a warrant, the commissioner must determine whether there was probable cause for the arrest. If it is determined that there was no probable cause, the defendant is released on personal recognizance with no other conditions of release. If it is determined that there was probable cause, the commissioner must also determine whether the defendant is eligible for release from custody prior to trial and, if so, under what conditions. A defendant who is denied pretrial release by the commissioner, or one who remains in custody 24 hours after the commissioner has set the conditions of release, is entitled to a bail review hearing before a judge. The primary purpose of the bail review hearing is to determine whether the conditions of release set by the commissioner should be continued, amended, or revoked.

Pretrial Release of a Criminal Defendant

A criminal defendant is entitled to be released pending trial unless a judge ultimately determines that no conditions can be placed on the defendant's release that would reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. Historically, approximately 50% of people who appear before

commissioners are released on personal recognizance. However, if a judicial officer determines that release on personal recognizance alone is not appropriate, or the defendant is by law ineligible for release on recognizance, the defendant may be released prior to trial only by posting bail in an amount set by the judicial officer.

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer is required to take into account the following information, if available: (1) the nature and circumstances of the offense; (2) the nature of the evidence against the defendant and the potential sentence upon conviction; (3) the defendant's prior record and history with regard to appearing in court as required; (4) the defendant's employment status and history, family ties, financial resources, reputation, character and mental condition, and length of residence in the community and the State; (5) the potential danger of the defendant to himself or herself, the victim, or others; (6) recommendations of the State's Attorney and any agency that conducts a pretrial release investigation; (7) information provided by the defendant or the defendant's counsel; and (8) any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants registered with the sex offender registry maintained by the Department of Public Safety and Correctional Services and defendants charged with specific offenses (*e.g.*, crimes of violence, violation of a protective order, drug kingpin, etc.). Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions. See **Appendix 1** for a more comprehensive list of defendants ineligible for pretrial release by a District Court commissioner.

At the initial appearance, the commissioner has access to several criminal justice databases to review the defendant's criminal history and to determine whether there are any pending charges, any prior occasions when the defendant failed to appear in court, or any outstanding warrants. The commissioner also relies on information provided in the statement of probable cause or charging document, the defendant's Record of Arrest and Prosecution sheet, and information learned from the defendant. A typical initial appearance involves the defendant and the commissioner, and the appearance must occur within 24 hours of arrest. Initial appearances currently take between 15 to 30 minutes to complete.

In some jurisdictions, a pretrial investigation services unit provides verified factual information that becomes available to assist the judge in setting conditions for release at a bail review hearing. The investigation by the pretrial services unit could include a community background check, verification of employment, information provided by the defendant or the

defendant's family, and additional factors concerning the defendant's criminal history that were not available to the commissioner.

Currently, 279 District Court commissioners occupy 41 stations with 125 desks throughout the State. District Court commissioners handled 171,144 initial appearances in fiscal 2010 and 176,523 initial appearances in fiscal 2011, as detailed in **Exhibit 1**. According to the Judiciary, commissioners granted a release on personal recognizance to 77,704 defendants (44%) in fiscal 2011. District Court commissioners worked 493,067 hours during fiscal 2011. This number represents time spent on all commissioner duties.

Exhibit 1
Initial Appearances by Jurisdiction
Fiscal 2010 and 2011

County	FY 2010 Initial Appearances	FY 2011 Initial Appearances
Allegany	2,141	2,034
Anne Arundel	13,481	14,475
Baltimore City	54,058	52,686
Baltimore	17,477	17,527
Calvert	2,035	2,162
Caroline	888	1,004
Carroll	2,025	2,225
Cecil	2,946	3,651
Charles	4,684	4,514
Dorchester	1,106	1,188
Frederick	3,827	3,719
Garrett	630	850
Harford	3,361	3,213
Howard	4,240	3,988
Kent	485	533
Montgomery	14,668	15,008
Prince George's	26,745	30,340
Queen Anne's	1,154	1,277
St. Mary's	2,760	2,469
Somerset	625	722
Talbot	922	1,098
Washington	2,577	3,016
Wicomico	4,336	4,311
Worcester	3,973	4,513
Statewide Total	171,144	176,523

Source: Administrative Office of the Courts

Issuance of Arrest Warrants

The criminal justice process generally begins when a person is alleged to have committed a crime that is observed by or reported to a law enforcement officer. This is followed by an arrest, which is the detention of a suspected offender for the purpose of potential criminal prosecution. An arrest may be made either on the issuance of an arrest warrant after a charging document has been filed or without a warrant in certain situations.

Warrantless Arrest

A law enforcement officer may make a warrantless arrest when (1) a crime is committed in the officer’s presence; (2) the officer has probable cause to believe that a felony was attempted or committed, even though the crime did not occur in the officer’s presence; or (3) the officer has probable cause to believe that one of a limited number of misdemeanors was committed (*e.g.*, illegally carrying a handgun or other weapon, theft, domestic abuse, stalking) even though the crime did not occur in the officer’s presence. Otherwise, for a police officer to be authorized to make an arrest, a judge or District Court commissioner must first issue a warrant based on a finding of probable cause.

Charging Documents

The issuance of a charging document, regardless of whether an individual is arrested, formally initiates the criminal process. The charging document is a written accusation alleging that the defendant has committed a crime. A charging document may come in the form of a citation, a statement of charges, an information, or an indictment.

A charging document must contain (1) the identity of the accused; (2) a concise and definite statement of the essential facts establishing the offense; (3) the time and location of the offense; and (4) the rights of the accused, including the right to counsel. The statute or other law allegedly violated must follow each charge or count in the charging document.

There are four types of charging documents. **Exhibit 2** provides a summary of which official or entity files each type of charging document and the court in which each type of charging document is filed.

Exhibit 2 Summary of Charging Documents

<u>Charging Document</u>	<u>Filed by</u>	<u>Where Filed</u>
Citation	Law Enforcement Officer	District Court
Statement of Charges	Judge or Court Commissioner (based on application made by a law enforcement officer or any other individual)	District Court
Information	State’s Attorney	District Court or Circuit Court
Grand Jury Indictment	Circuit Court	Circuit Court

Source: Department of Legislative Services

Citation

A citation is issued to a defendant by a law enforcement officer and filed by the officer in the District Court. The term “citation” means a written charging document that a police officer or fire marshal issues to a defendant, alleging the defendant has committed a crime. It does not include an indictment, information, or statement of charges. In general, a defendant who has been issued a citation (or a summons) does not have an initial appearance before a District Court commissioner. Instead, the defendant appears before a judge on the date of arraignment or trial. At that time, the judge will advise the defendant of the nature of the charges and the right to counsel and confirm that the defendant received a copy of the charging document. However, some jurisdictions, such as Anne Arundel and Montgomery counties, require cited individuals to appear before a District Court commissioner for an explanation of the right to counsel.

Pursuant to Chapter 505 of 2012, a police officer is required to issue a citation for possession of marijuana or any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment or for which the maximum penalty of imprisonment is 90 days or less, except for (1) failure to comply with a peace order or protective order; (2) violation of a condition of pretrial or posttrial release while charged with a sexual crime against a minor; (3) possession of an electronic control device after conviction of a drug felony or a crime of violence; (4) violation of an out-of-state domestic violence order; or (5) abuse or neglect of an animal.

A police officer is authorized to charge a defendant by citation only if (1) the officer is satisfied with the defendant’s evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) the defendant complies with all lawful orders by the officer. A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation may (1) issue a citation in lieu of making the arrest; or (2) make the arrest and subsequently issue a citation in lieu of continued custody.

Statement of Charges

Before the arrest of an alleged offender, a statement of charges may be filed by a judicial officer with the District Court based on an application of a law enforcement officer or any other individual (including a private citizen). The application contains an affidavit demonstrating probable cause that the defendant committed the crime charged. The judicial officer has the authority to determine whether the application establishes probable cause.

Although the judicial officer may be a judge, it is more likely that the officer will be a District Court commissioner. District Court commissioners are available 24 hours a day for judicial duties. A statement of charges may only be used for offenses that may be prosecuted in the District Court.

If a law enforcement officer makes a warrantless arrest, the officer must then apply for a statement of charges to be filed in the District Court, along with an affidavit showing probable cause.

Chapter 505 of 2012 authorizes a District Court commissioner to issue an arrest warrant based on an application for a statement of charges filed by an individual only on a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and (1) the defendant previously has failed to respond to a summons that has been personally served or a citation; (2) the defendant's whereabouts are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court; (3) the defendant is in custody for another offense; or (4) there is probable cause to believe that the defendant poses a danger to another person or the community. If a commissioner is not authorized to issue an arrest warrant based on application for a statement of charges filed by an individual, he/she may issue a summons.

Information

An information is filed by a State's Attorney in either a circuit court or the District Court. Any offense within the jurisdiction of the District Court may be tried on an information, although some offenses may be tried by information in a circuit court.

Grand Jury Indictment

Rather than filing an information, a State's Attorney may seek to have the accused charged by grand jury indictment when the charge is a felony. The circuit court files an indictment returned by a grand jury.

Summons or Arrest Warrant

Once a charging document is filed, the court must issue a summons or arrest warrant. A copy of the charging document accompanies the summons or warrant. A summons notifies the defendant of the time and place to make an initial appearance before the court to answer the charges. It may be served to the defendant by mail or in person. A summons will be issued unless (1) an arrest warrant has been issued; (2) the defendant is in custody; or (3) the charging document is a citation.

There are several circumstances in which an arrest warrant may be issued in lieu of a summons. An arrest warrant may be issued from either the District Court or a circuit court if the defendant is not in custody and there is a substantial likelihood that the defendant will not respond to a summons. Additionally, the District Court may issue an arrest warrant if either the defendant previously failed to respond to a summons or citation or the defendant's whereabouts are unknown, or if there are concerns about the safety of the victim.

Exhibit 3 shows the numbers of applications for a statement of charges made by private citizens and law enforcement and the number of arrest warrants issued based on these applications in fiscal 2010 and 2011.

Exhibit 3
Applications for Statement of Charges and Warrants Issued Based on
Applications Made to District Court Commissioners

	<u>Fiscal 2010</u>	<u>Fiscal 2011</u>
Applications by Citizens	28,295	28,095
Applications by Law Enforcement	37,445	40,026
Warrants Issued Based on Citizen Applications	13,333	12,907
Warrants Issued Based on Law Enforcement Applications	15,652	15,152

Source: Administrative Office of the Courts

According to the Judiciary, in fiscal 2011, the sources for cases appearing before District Court commissioners were as follows: (1) 68,121 from applications for statements of charges made by private citizens or law enforcement; (2) 2,303 based on a criminal information; and (3) 103,689 from warrantless arrests made by law enforcement officers. District Court commissioners conducted 176,523 initial appearance hearings in fiscal 2011, of which 72,834 were based on arrest warrants or bench warrants.

The Survey

Methodology

The primary functions of Maryland District Court commissioners are performed by individuals in every state. Preliminary research indicated that the titles of these individuals varied by state, and that the requirements for a position in one state could differ greatly from the requirements for a position carrying the same title in another state. For instance, several states have “magistrates” who issue arrest warrants or make pretrial release determinations. However, the term “magistrate” is used to refer to individuals with a variety of educational and professional requirements, and a person who is a “magistrate” in one state may not be qualified to be a “magistrate” in another state.

In addition, the available academic research on this topic was not current, was limited in scope, or did not contain information on Maryland's system in order to get a better sense of the research techniques or labels/categorization utilized by the authors.

As a result, the Department of Legislative Services contacted officials in 49 states and the District of Columbia with a survey on individuals authorized to issue arrest warrants and make pretrial release/bail determinations. The survey contained several questions, including questions regarding (1) individuals authorized to issue arrest warrants, determine pretrial release, and issue bail; (2) whether individuals who are not attorneys or law school graduates are authorized to conduct these functions; (3) the availability of individuals authorized to issue bail or authorize pretrial release; and (4) the location of bail/pretrial release determinations.

Survey Results

Out of the 50 jurisdictions contacted, 30 responded to the survey. Twenty of the respondents indicated that non-attorneys/law school graduates are authorized to issue arrest warrants, while nine states reported that only positions requiring a law degree or license to practice law are authorized to issue arrest warrants. Nineteen states indicated that non-attorneys/law school graduates are authorized to make pretrial release determinations while 10 states responded that individuals conducting these duties must have a law degree/law license. One responding state (California) did not provide answers to these questions in its survey response. In several states, such as Alabama and North Carolina, non-attorney magistrates were the individuals primarily responsible for these functions. However, some states indicated that individuals in these positions, though not primarily responsible for these functions, ensure that coverage is available during non-court hours. **Exhibit 4** provides a list of state responses to these questions.

Exhibit 4
Authorization for Non-Attorneys/Law School Graduates to Issue Arrest Warrants or Make Pretrial Release/Bail Determinations

<u>Arrest Warrants</u>		<u>Pretrial Release/Bail Determinations</u>	
Non-attorney/law school graduate positions authorized to issue <u>arrest warrants</u>	Non-attorney/law school graduate positions <u>NOT</u> authorized to issue <u>arrest warrants</u>	Non-attorney/law school graduate positions authorized to make pretrial release/bail <u>determinations</u>	Non-attorney/law school graduate positions <u>NOT</u> authorized to make pretrial release/bail <u>determinations</u>
Alabama	Arkansas	Alabama	Arkansas
Alaska	Colorado	Alaska	Florida
Arizona	Connecticut	Arizona	Idaho ⁶
Delaware	Florida	Colorado	Iowa
Georgia	Idaho ⁴	Connecticut	Kentucky
Kentucky	Indiana	Delaware	Louisiana
Maine	Iowa	Georgia	New Mexico
Massachusetts	Louisiana	Indiana	Ohio
Michigan	New Mexico	Maine	South Dakota
Mississippi		Massachusetts	Washington
Montana		Michigan	
New Hampshire		Mississippi	
North Carolina		Montana	
Ohio		New Hampshire	
Pennsylvania		North Carolina	
South Dakota		Pennsylvania	
Texas		Texas	
Utah		Utah	
Virginia ³		Virginia ⁵	
Washington			

Source: Department of Legislative Services

³ In Virginia, after 2008 reforms, almost all magistrates have law degrees and/or are licensed attorneys.

⁴ Though non-attorney magistrate judges are authorized in statute, Idaho has not had non-attorney magistrate judges for several years.

⁵ Please see Footnote 3

⁶ Please see Footnote 4.

Another theme that emerged through the survey responses was the existence and use of bail schedules. Bail schedules prescribe a bail range for specified offenses. Though the survey did not specifically ask about bail schedules, 15 of the 30 responding states indicated that they use bail schedules. The use of these schedules varies by state. In some states, the schedule is advisory in nature or provides a guideline for bail decisions. In other jurisdictions, specified individuals (typically bail commissioners) are required to use the schedules. Some jurisdictions indicated that they use bail schedules as a matter of practice. However in other states, bail schedules provide an opportunity to delegate limited bail setting authority to additional personnel. For instance, in New Mexico, judges make bail determinations. However, some courts in New Mexico have authorized local detention facilities to release arrestees if the arrestee posts bail in an amount specified in the bail schedule for the alleged offense. See **Appendix 2** for detailed information regarding the responses to the survey. **Appendix 3** provides further detailed Fact Sheets based on responses to the survey for select states.

Appendices

Appendix 1

Defendants Ineligible for Pretrial Release by a District Court Commissioner

Please refer to Criminal Procedure Article, § 5-202 for complete information on defendants who are not eligible for pretrial release by a District Court commissioner.

In General

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants who are registered sex offenders and defendants charged:

- with a crime punishable by death or life imprisonment;
- with escaping from a correctional facility or any other place of confinement in the State;
- as a drug kingpin;
- with a crime of violence (as defined under Criminal Law Article, § 14-101), if the defendant has been previously convicted of a crime of violence under the laws of this State or has been convicted under the laws of another state of a crime classified as a crime of violence in Maryland; and
- with violating the provisions of a domestic violence protective order (temporary or otherwise) ordering the defendant to refrain from abusing or threatening to abuse a person eligible for relief (applies to orders issued by a court in Maryland, another state, or by a Native American tribe).

Repeat Offender – Defendant Charged with a Specified Crime Who Has a Prior Conviction for a Specified Crime

A District Court commissioner may not authorize the pretrial release of a defendant charged with one of the following crimes *if the defendant has previously been convicted of one of the following crimes*:

- (1) wearing, carrying, or transporting a handgun;
- (2) use of a handgun or an antique firearm in commission of a crime;
- (3) violating prohibitions relating to assault pistols under § 4–303 of the Criminal Law Article;
- (4) use of a machine gun in a crime of violence;
- (5) use of a machine gun for an aggressive purpose;

- (6) possessing, using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime under § 5–621 of the Criminal Law Article;
- (7) possession of a regulated firearm under § 5–133 of the Public Safety Article;
- (8) transporting a regulated firearm for unlawful sale or trafficking; or
- (9) possession of a rifle or shotgun by a person with a mental disorder.

Repeat Offender – Defendant Charged with Committing a Specified Crime While Released on Bail or Personal Recognizance on a Prior Charge of Committing a Specified Crime

A District Court commissioner also may not authorize the pretrial release of a defendant charged with committing one of the following crimes *while the defendant was released on bail or personal recognizance for a pending prior charge of committing one of the following crimes*:

- (1) aiding, counseling, or procuring arson in the first degree;
- (2) arson in the second degree or attempting, aiding, counseling, or procuring arson in the second degree;
- (3) burglary in the first, second, or third degree;
- (4) child abuse or sexual abuse of a minor;
- (5) manufacture or possession of a destructive device;
- (6) various offenses related to controlled dangerous substances (CDS), except for possessing or administering CDS;
- (7) manslaughter by vehicle or vessel; and
- (8) a crime of violence.

Appendix 2.
**Individuals Responsible⁷ for the Issuance of Arrest Warrants and Pretrial Release
Determinations in Jurisdictions Other than Maryland**

<u>State</u>	<u>Issuers of Arrest Warrants</u>	<u>Issuers for Whom a Law Degree or License to Practice Law Is Not Required</u>	<u>Individuals Who Can Authorize Bail/Pretrial Release</u>	<u>Issuers for Whom a Law Degree or License Practice Is Not Required</u>	<u>Availability of Individuals Authorized to Issue Bail/Pretrial Release</u>	<u>Location of Bail/Pretrial Release Determinations</u>	<u>Bail Schedule⁸</u>
Alabama	Judges, District magistrates, circuit clerks, municipal court clerks, and municipal court magistrates.	Clerks and magistrates.	Judges, District magistrates, circuit clerks, municipal court clerks, and municipal court magistrates.	Clerks and magistrates.	Municipal court clerks and municipal magistrates provide night and weekend coverage.	Jail for most misdemeanor cases; courthouse for felony cases; electronic communications used in limited circumstances.	Advisory bail schedule used (Clerks and magistrates may only approve bail within ranges provided in schedule).
Alaska	Judges, magistrates, and deputy magistrates.	Magistrates and deputy magistrates.	Judges, magistrates, and deputy magistrates (Corrections Office can set bail in	Magistrates and deputy magistrates.	Varies by jurisdiction, but all jurisdictions have weekend coverage.	Varies by jurisdiction, but may be held in jail or courthouse. May also be made via	Bail schedule used for certain offenses.

⁷ The repeated referral to a particular position title is not meant to imply that there are uniform educational/professional requirements or occupational duties associated with that position among the responding states.

⁸ Bail schedules prescribe a set bail amount or bail range based on the offense the arrestee is alleged to have committed. Though the survey did not contain questions regarding the existence or use of bail schedules, the use of these schedules emerged as a recurring theme among responses to the survey.

<u>State</u>	<u>Issuers of Arrest Warrants</u>	<u>Issuers for Whom a Law Degree or License to Practice Law Is Not Required</u>	<u>Individuals Who Can Authorize Bail/Pretrial Release</u>	<u>Issuers for Whom a Law Degree or License to Practice Is Not Required</u>	<u>Availability of Individuals Authorized to Issue Bail/Pretrial Release</u>	<u>Location of Bail/Pretrial Release Determinations</u>	<u>Bail Schedule⁸</u>
Alaska (cont.)			misdemeanor cases using bail schedule).			telephone or video conference.	
Arizona	Judges and commissioners.	Municipal court judges and Justice of the Peace Court judges ⁹ .	Judges and commissioners.	Municipal court judges and Justice of the Peace Court judges.	Varies by jurisdiction, but all jurisdictions have weekend coverage.	Courthouse or courtroom located in a jail.	Bail schedule used for misdemeanor offenses.
Arkansas	Judges.	None.	Judges.	None.	Varies by jurisdiction.	Courthouse for overwhelming majority of cases. Video conference used in limited circumstances.	None cited.

⁹ In Arizona, some jurisdictions require Municipal Court judges to be attorneys.

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California	Judges acting as magistrates.	Did not respond.	Judges acting as magistrates Law enforcement authorized to release persons subject to certain statutory limitations.	Did not respond.	Mandatory night court for large jurisdictions (CA Penal Code 750). On-call system during non-business hours in other jurisdictions (CA Penal Code 810).	Did not respond.	Presumptive bail schedule used (may deviate on case by case basis).
Colorado	Judges and magistrates.	County judges in small counties.	Sheriff's officers (must use bond schedule, use the bail amount listed on the arrest warrant, or call a judge (rare)).	Sheriff's officers.	Decisions are reached 24 hours a day by the sheriff's officers.	Jail.	Option to use a bond schedule.
Connecticut	Judges.	None.	Police, bail staff, and judges.	Police and bail staff.	Day shift (8am-5pm) and Night shift (6pm-3am).	Police departments and courthouses.	None cited.

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Delaware	Judges, commissioners, and Justices of the Peace.	Justices of the Peace.	Judges, commissioners, and Justices of the Peace.	Justices of the Peace.	24 hour coverage provided by having at least one Justice of the Peace Court open in each county.	Courthouse, but may use video conferencing.	Advisory bail schedule.
District of Columbia	Did not respond.						
Florida	Judges.	None.	Judges, but only if arrestee cannot post the bond amount indicated on the arrest warrant or on the bond schedule.	None.	Arrestees must be seen by judge within 24 hours of arrest if they do not make bail.	Jail (courtrooms inside jail).	Option to use a bond schedule.
Georgia	Judges and magistrates.	Magistrates. ¹⁰	Judges and magistrates.	Magistrates.	Varies by jurisdiction.	Varies by jurisdiction.	Jurisdictions are authorized to adopt their own bail schedules for certain offenses.
Hawaii	Did not respond.						

¹⁰ Approximately 12% of Georgia's counties have passed laws requiring magistrates to be attorneys.

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Idaho	Did not respond.	Non-attorney magistrate judges are authorized in statute, but Idaho has not had non-attorney magistrate judges for several years.	Judges.	Non-attorney magistrate judges are authorized in statute, but Idaho has not had non-attorney magistrate judges for several years.	Magistrate judges are generally on call 24 hours.	Courthouse.	Bail schedule used for misdemeanor offenses.
Illinois	Did not respond.						
Indiana	Judge or magistrate.	None.	Judge or magistrate. Jail staff for certain charges pursuant to bail schedule).	Jail Staff.	Normally court hours, some jurisdictions provide 24/7 judges.	Courthouse or jail (if bail set by jail staff).	Yes—locally set.
Iowa	Judicial magistrates or judges.	None.	Judicial magistrates or judges.	None.	Magistrates on call 24/7, rotational duty.	Court.	Bail guidelines apply, can only exceed for good cause.
Kansas	Did not respond.						

<u>State</u>	<u>Issuers of Arrest Warrants</u>	<u>Issuers for Whom a Law Degree or License to Practice Law Is Not Required</u>	<u>Individuals Who Can Authorize Bail/Pretrial Release</u>	<u>Issuers for Whom a Law Degree or License Practice Is Not Required</u>	<u>Availability of Individuals Authorized to Issue Bail/Pretrial Release</u>	<u>Location of Bail/Pretrial Release Determinations</u>	<u>Bail Schedule⁸</u>
Kentucky	District Court judges (mostly), circuit court judges, and trial commissioners. County circuit clerks only if all others are unavailable.	County circuit clerks and trial commissioner. ¹¹	District Court judges.	None.	Off-duty judges rotate coverage during non-business hours.	Wherever judges are located through the e-warrant system.	Yes—for a misdemeanor.
Louisiana	District Court judges, city court judges, or magistrates.	None.	District Court judge, city court judge, or magistrates.	None.	24/7 duty rotations based on local need.	Courtroom, jail, and/or closed circuit television to jail.	None cited.
Maine	Judges (primary). Clerks with approval of Chief Judge if other judges are not available.	Clerks of Court.	Bail commissioners and judges.	Bail commissioners.	Judges during court hours, bail commissioners outside of court hours.	Anywhere (usually courthouse, county jail, or police station; more flexible in rural areas).	None cited.
Massachusetts	Judges. Clerks/magistrates.	Clerks/magistrates.	Judges, clerks/magistrates, and bail commissioners.	Clerks/magistrates and bail commissioners.	24/7 coverage (According to the survey response, bail commissioners are used during	Police stations, jails, and courthouses.	None cited.

¹¹ In Kentucky, before a non-attorney trial commissioner can be appointed, the Chief Judge of the District Court must certify to the Chief Justice that no attorney is qualified and available to serve as a trial commissioner.

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					non-court hours. During court hours, arrestees are taken to judge for arraignment).		
Michigan	District and circuit court judges and magistrates.	Magistrates.	District and circuit court judges and magistrates.	Magistrates.	24/7.	Courthouse.	None cited.
Minnesota	Did not respond.						
Mississippi	Municipal, county, circuit, and justice court judges.	Justice court judges.	Municipal, county, circuit, and justice court judges.	Justice court judges.	Business hours.	Jails.	None cited.
Missouri	Did not respond.						
Montana	Justices of the Peace, city court judges, District Court judges.	Justices of the Peace.	District Court judges (felonies); city court judges and Justices of the Peace (misdemeanor)	Justices of the Peace.	Business hours.	Courthouse or Jail. Inmates often appear by video.	None cited.
Nebraska	Did not respond.						
Nevada	Did not respond.						

<u>State</u>	<u>Issuers of Arrest Warrants</u>	<u>Issuers for Whom a Law Degree or License to Practice Law Is Not Required</u>	<u>Individuals Who Can Authorize Bail/Pretrial Release</u>	<u>Issuers for Whom a Law Degree or License Practice Is Not Required</u>	<u>Availability of Individuals Authorized to Issue Bail/Pretrial Release</u>	<u>Location of Bail/Pretrial Release Determinations</u>	<u>Bail Schedule⁸</u>
New Hampshire	Judges and Justices of the Peace.	Justices of the Peace ¹² .	Judge or bail commissioner (Arresting officer may choose to release arrestee on summons rather than take him/her into physical custody).	Bail commissioners.	8am – 4pm, on call 24 hours (bail commissioners usually handle work after business hours, but cannot set bail for certain offenses and cannot change bail amount if judge has already set bail in a case).	Court (business hours) and law enforcement agency (outside business hours).	None cited.
New Jersey	Did not respond.						
New Mexico	Judges.	None.	Judges.	None.	24/7.	Video arraignment with judge in courtroom and arrestee in jail.	Some courts have designated local detention facilities to release arrestees if the arrestee posts a specified bail amount for a specified offense.

¹² According to New Hampshire’s survey response, there are no statutory or constitutional requirements for appointment as a judge. However, based on the New Hampshire Judicial Selection Commission’s application, it is assumed that there is a *de facto* requirement that judges in most New Hampshire courts be licensed attorneys or law school graduates.

<u>State</u>	<u>Issuers of Arrest Warrants</u>	<u>Issuers for Whom a Law Degree or License to Practice Law Is Not Required</u>	<u>Individuals Who Can Authorize Bail/Pretrial Release</u>	<u>Issuers for Whom a Law Degree or License to Practice Is Not Required</u>	<u>Availability of Individuals Authorized to Issue Bail/Pretrial Release</u>	<u>Location of Bail/Pretrial Release Determinations</u>	<u>Bail Schedule⁸</u>
New York	Did not respond.						
North Carolina	Magistrates (primarily). Supreme Court Justices, Court of Appeals judges, Supreme Court judges, District Court judges, and clerks.	Magistrates and clerks.	Supreme Court Justices, judges, magistrates, and clerks (magistrates primarily).	Magistrates and clerks.	Magistrates – 24 hour coverage. Other individuals – normal business hours.	Magistrate offices (located in courthouses and jails). Audio/visual transmission also available by statute.	None cited.
North Dakota	Did not respond.						
Ohio¹³	Judges, magistrates, and clerks of court.	Clerks.	Judges.	None.	Some courts have duty judges on call during weekends and nights.	Courthouse or jail.	Yes.
Oklahoma	Did not respond.						
Oregon	Did not respond.						
Pennsylvania	“Issuing authority” (defined as any public official having the authority of a magistrate, a Philadelphia	Magisterial district judges.	Magisterial district judges, magistrates, Philadelphia arraignment court magistrates, or	Magisterial district judge.	Varies by jurisdiction. Each judicial district must develop local rules to provide continuous coverage.	Varies by jurisdiction. May include two-way simultaneous audio-visual communications.	None cited.

¹³ Ohio does not have a unified court system. Therefore, procedures may vary by jurisdiction.

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Pennsylvania (cont.)	arraignment court magistrate, or a magisterial district judge) Appellate judges/justices and judges for the Court of Common Pleas.		the judge with jurisdiction over the case who is authorized by law to set, modify, revoke, or deny bail.				
Rhode Island	Did not respond.						
South Carolina	Did not respond.						
South Dakota	Magistrate Court judges, Circuit judges, and clerk magistrates.	Clerk magistrates.	Circuit court judges (felonies) and Magistrate Court judges (misdemeanor).	None (Clerk magistrates have some “technical authority” to make pretrial release/bail determinations, but it is not utilized).	M – F, 8am – 5pm. “sometimes weekends”.	Courthouse.	None cited.
Tennessee	Did not respond.						

<u>State</u>	<u>Issuers of Arrest Warrants</u>	<u>Issuers for Whom a Law Degree or License to Practice Law Is Not Required</u>	<u>Individuals Who Can Authorize Bail/Pretrial Release</u>	<u>Issuers for Whom a Law Degree or License Practice Is Not Required</u>	<u>Availability of Individuals Authorized to Issue Bail/Pretrial Release</u>	<u>Location of Bail/Pretrial Release Determinations</u>	<u>Bail Schedule⁸</u>
Texas	Magistrates (includes all judges and Justices of the Peace).	Justices of the Peace and some municipal judges.	Magistrates (includes all judges and Justices of the Peace).	Justices of the Peace and some municipal judges.	24 hours in larger cities; business day hours on smaller locales.	Courthouses (usually).	None cited.
Utah	All judges (“acting as magistrates”).	Judges of courts not of record.	Judges and bail commissioners for minor offenses.	Bail commissioners.	24/7 for those assigned.	Jails for bail commissioners. Courthouse or electronically for judges.	Yes, for bail commissioners.
Vermont	Did not respond.						
Virginia	Magistrates (primary) ¹⁴ . Clerks, deputy clerks, and judges (rarely).	Magistrates ¹⁵ . Clerks, deputy clerks.	Magistrates (appeals of magistrate bail decisions go to next highest court). Court clerks and judges (rarely) ¹⁶ .	Magistrates ¹⁷ and clerks.	24/7.	Magistrate offices (located in courthouses, jails, law enforcement agency facilities, and elsewhere).	None cited.

¹⁴ Pursuant to 2012 change in law, Virginia magistrates cannot issue felony warrants based on a complaint filed by a person other than a law enforcement officer unless a law enforcement officer or prosecutor authorizes the magistrate to do so.

¹⁵ In Virginia, after 2008 reforms, almost all magistrates have law degrees and/or are licensed attorneys.

¹⁶ Beginning in July 2011, in situations where a judge issues a *capias*, Virginia law allows the judge to set bail without conducting a bail hearing and note the bail decision on the *capias* document. Magistrates are legally bound to follow the judge’s bail decision.

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Washington	Each local court of limited jurisdiction.	Some “lay judicial officers” in smaller counties.	Judges.	None.	Varies by court.	Varies by jurisdiction (generally courthouses, some video).	None cited.
West Virginia	Did not respond.						
Wisconsin	Did not respond.						
Wyoming	Did not respond.						

¹⁷ In Virginia, after 2008 reforms, almost all magistrates have law degrees and/or are licensed attorneys.

Appendix 3

Selected States Fact Sheet

Based on the responses to the survey, states vary greatly in whom they entrust to issue arrest warrants and/or make pretrial release determinations. One significant theme that emerged from the responses was that while many states authorized “magistrates” to conduct these functions, the educational/professional requirements of a magistrate and the scope of a magistrate’s authority varied from state to state. Though information on how the responding states address these functions can be found in **Appendix 2**, detailed information on selected states is provided below to highlight these disparities.

Issuance of Arrest Warrants

Alabama

In Alabama, magistrates are the primary issuers of arrest warrants. Circuit clerks and municipal court clerks are magistrates by virtue of their offices, and district court magistrates work under the supervision of the circuit clerks. Municipal court magistrates are only authorized to issue arrest warrants for their respective municipal courts while circuit clerks and District Court magistrates may issue arrest warrants that are applicable statewide.

While there are no formal educational requirements for magistrates, they are required to become certified by attending various educational seminars. Circuit and District judges and circuit clerks are elected; municipal judges are hired by their respective cities. Municipal court clerks and magistrates are hired by their respective cities and then must also be appointed by the Administrative Office of the Courts.

Arizona

According to Arizona’s responses, judges and commissioners are the primary issuers of arrest warrants. Commissioners are judicial officers with limited authority. Judicial officers in Arizona are also referred to as magistrates. With the exception of municipal court judges and Justice of the Peace Court judges, judges and commissioners must be licensed attorneys. However, larger municipalities may require municipal court judges to be licensed attorneys. Superior Court judges are elected in smaller counties, but are appointed in counties with a population of 250,000 or more. Justices of the Peace are elected; municipal court judges and commissioners are appointed.

Colorado

Colorado indicated that judges and magistrates are the primary issuers of arrest warrants in that state. A magistrate must be a licensed Colorado attorney with at least five years of experience. However, in small counties, magistrates are not subject to the five years of

experience requirement. A district judge must be a qualified elector and licensed to practice law in Colorado for at least five years. A county judge must be a qualified elector and licensed to practice law in Colorado. However, in small counties, county judges are required to have graduated from high school or have obtained a general equivalency certificate. Judges are appointed and retained by the voters.

Louisiana

Louisiana indicated in its response that District Court judges are the primary issuers of arrest warrants, while city court judges and magistrates are also authorized to conduct this function. Individuals in all of these positions must be practicing attorneys in the state for at least eight years prior to qualifying for judicial election.

Pretrial Release/Bail Determinations

The same variations that exist among responding states with respect to arrest warrants were also evident in how states make pretrial determinations and/or issue bail.

Delaware

In Delaware, Justices of the Peace are the individuals primarily responsible for making pretrial release and bail determinations. Though Justices of the Peace typically conduct an arrestee's first bail hearing, other higher level courts conduct additional bail review hearings and arraignments. While Justices of the Peace typically follow bail guidelines when setting bail, the guidelines are not mandatory and bail may be set at the discretion of the Justice of the Peace after taking into account the individual circumstances of the case.

At least one Justice of the Peace Court in each county operates on a 24-hour basis, with Justices of the Peace on duty during this time with video capabilities available. While there are no statutory educational requirements for Delaware's Justices of the Peace, all Justice of the Peace candidates must take an examination and be reviewed and recommended by the Magistrate Screening Committee (established by the Governor) prior to their appointment by the Governor and confirmation by the Senate for a first term of four years and subsequent six-year terms. Justices of the Peace are salaried.

In addition to their bail hearing duties, Justices of the Peace in Delaware are also authorized to issue warrants and hear (1) civil cases with amounts in controversy of up to \$15,000; (2) landlord/tenant actions (exclusive authority); and (3) most traffic and non-drug related misdemeanor cases in which the prison time authorized is less than two years.

Florida

Unlike Delaware, judges are the primary pretrial release decisionmakers in Florida. Decisions are made in courtrooms in the jail, and arrestees are seen by a judge within 24 hours of arrest if they do not bond out on the amount of bail indicated on the arrest warrant or on the bond

schedule approved by the local judges. Judges are required to be licensed attorneys. Most circuit court and county court judges in Florida are elected. Florida Supreme Court justices and District Courts of Appeal judges are appointed by the Governor and then run in merit retention elections to stay in office. Florida judges are salaried.

Georgia

Georgia indicated in its survey response that magistrates are the primary individuals responsible for making pretrial release and bail determinations. Juvenile court judges, municipal court judges, and State court judges also have bail setting authority. Superior Court judges have the exclusive right to grant or set bail for individuals arrested for specified offenses, most of which are violent crimes, as well as *habeas corpus* appeals. A magistrate is not authorized to grant bail in cases (1) involving one of the specified offenses mentioned above; or (2) where the bail has been exclusively committed to some other court or officer.

Magistrates must possess a high school diploma or its equivalent. However, additional requirements for the position of chief magistrate or magistrate may be imposed by local law. Approximately 12% of Georgia's counties have passed local laws requiring magistrates to be attorneys. The vast majority of chief magistrates are elected, whereas the majority of magistrates are appointed by the chief magistrates. Full-time chief magistrates receive a minimum annual salary that varies based on the population of the jurisdiction. Full-time magistrates receive a minimum monthly salary of approximately \$3,850 or 90% of the monthly salary of a chief magistrate in the jurisdiction, whichever is less. However, the salaries of chief magistrates and magistrates are usually supplemented by local law.

Superior and State court judges are required to have practiced law in Georgia for seven years prior to their election. Juvenile court judges are required to have practiced law in Georgia for five years prior to their election. Pursuant to legislation enacted in 2011, municipal court judges must be licensed to practice law in Georgia and be active members in good standing of the State Bar of Georgia. Municipal court judges serving as of June 30, 2011, can continue to serve until retirement without a law license. Municipal court judges are typically appointed by the governing authority of the applicable municipality. Judges are salaried with some salaries supplemented by local law.

According to Georgia's response, coverage for initial appearances varies by county, with larger counties (*e.g.*, Fulton County) being more likely to have 24-hour coverage. Jurisdictions are authorized to adopt their own bail schedules for certain offenses.

Indiana

In Indiana, judges or magistrates make pretrial release/bail determinations. However, jail staff may use a bail schedule set by the judges in each county to determine if (1) an arrestee is to be released or held pending their court hearing; and (2) the amount of bond to be set for an arrestee if he/she is eligible for release. If an arrest warrant had been issued for the defendant by a judge or magistrate, that judge or magistrate must determine if the arrestee should be held or released on bail and the bail amount, if any.

Judges and magistrates must be admitted to practice law in Indiana. While judges are elected, magistrates are appointed. Both judges and magistrates are salaried. Though jail staff provides 24-hour coverage, the availability of a judge or magistrate varies by jurisdiction. Indiana indicated in its response that Marion County (Indianapolis) has an arrestee processing center with judges who work 24 hours and make all bond determinations.

Maine

Bail commissioners, judges in the District and Superior courts, and Justices of the Peace typically make bail and pretrial release determinations in Maine. However, law enforcement officers are authorized to take the personal recognizance, without a fee, of any defendant for a Class D or E crime (misdemeanors). In rare instances, a Clerk of Court, with the approval of the judge, can set a bail amount.

Judges and Justices of the Peace must be licensed to practice law in Maine. Justices of the Peace are appointed by the Chief Judge of the District Court. Judges are nominated by the Governor and subject to approval by the legislature. Judicial salaries are prescribed by statute. Justices of the Peace serve at the pleasure of the Chief Judge of the District Court for a term of up to five years and for a salary determined by the Chief Judge.

There is no mandatory education level for bail commissioners. However, commissioners must go through mandatory training sessions. Bail commissioners may charge up to \$60 per defendant for setting bail. If a defendant is indigent, the bail commissioner must waive his/her fee and do the work *pro bono*.

While judges set bail at the courthouse during normal business hours, they will, on rare occasion, set bail when they approve a nighttime arrest warrant. Though bail commissioners are considered independent contractors, they report to the court. Bail commissioners in each county establish between themselves a rotating schedule to ensure 24-hour availability. In some of the more rural areas, a bail commissioner is presumed available and called as needed. For instance, on one of Maine's islands, two commissioners are available to set bail but usually average 10-12 calls per year.