

(II) THE DEFENDANT REQUESTS A PRELIMINARY HEARING IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

(2) IF THE DEFENDANT IS CHARGED BY GRAND JURY INDICTMENT, THE RIGHT OF A DEFENDANT TO A PRELIMINARY HEARING IS NOT ABSOLUTE BUT THE COURT MAY ALLOW THE DEFENDANT TO HAVE A PRELIMINARY HEARING.

(3) IN ANY OTHER CASE, THE RIGHT OF A DEFENDANT TO A PRELIMINARY HEARING IS NOT ABSOLUTE, BUT ON MOTION OF THE STATE'S ATTORNEY OR THE DEFENDANT, THE COURT MAY ALLOW THE DEFENDANT TO HAVE A PRELIMINARY HEARING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 592(b).

In subsections (a) and (c)(1)(i) and (ii) of this section, the references to a "defendant" are substituted for the former references to the "accused" for consistency.

In subsection (c)(2) and (3) of this section, the references to a preliminary hearing not being "absolute" are substituted for the former references that a preliminary hearing is "not a matter of right" for consistency with the introductory language of subsection (c)(1) of this section.

In subsection (c)(1) and (2) of this section, the former references to the "State's Attorney" are deleted and the paragraphs are revised in the passive voice because, in some cases, defendants may be charged by the State Prosecutor or the Attorney General. The Criminal Procedure Article Review Committee calls this change to the attention of the General Assembly. The Criminal Procedure Article Review Committee also notes, for consideration by the General Assembly, that subsection (c)(2) of this section refers to only a "court". The General Assembly may wish to clarify that this paragraph applies to a circuit court.

The Criminal Procedure Article Review Committee also notes, for consideration by the General Assembly, that subsection (c)(2) of this section authorizes a court to allow a defendant a preliminary hearing if the defendant is charged by grand jury indictment. This authorization is inconsistent with Maryland Rule 4-221(c)(1), which provides that a preliminary hearing may not be held if, before the hearing, an indictment is filed in circuit court. In *Marshall v. State*, 46 Md. App. 695, 420 A.2d 1266 (1980), *rev'd. on other grounds*, 291 Md. 205, 434 A.2d 555 (1981), the Court of Special Appeals affirmed the existence of the conflict between former Art. 27, § 592(b)(3) and Maryland Rule 4-221(c)(1) and stated that the Maryland Rule prevails as the rule was adopted after the statute.

4-104. MERGER OF COMMON LAW MISDEMEANOR IN STATUTORY FELONY PROHIBITED.

IF A STATUTE MAKES A FELONY OF A CRIME THAT IS A MISDEMEANOR AT COMMON LAW, A CHARGING DOCUMENT: