

Part E

Crimes, Corrections, and Public Safety

Criminal Law

Criminal Gang Offenses

Criminal street gangs and drug gangs are a continuing problem in the State. Eight states and the federal government have recently passed substantive criminal prohibitions or enhanced penalty provisions addressing criminal street gangs.

Senate Bill 488/House Bill 849 (both passed) define “criminal gang” and prohibit a person from threatening an individual, or a friend or family member of an individual, with physical violence with the intent to coerce, induce, or solicit the individual to participate in or prevent the individual from leaving a criminal gang. The bills also prohibit making such threats in a school vehicle or within 1,000 feet of a school. A conviction for the latter offense does not merge with a conviction for the former offense. The bills authorize prior felony or misdemeanor convictions, if related to the defendant’s membership in a criminal gang, to be included in a presentence investigation report for a court by the Division of Parole and Probation.

Other Threat Crimes

House Bill 275 (passed) expands the scope of the felony of manufacturing, possessing, transporting, or placing a device representing a destructive device with the intent to terrorize to include the manufacture, possession, transport, or placement of a device or container that is labeled as containing or is intended to represent a toxic material.

Senate Bill 579/House Bill 663 (both passed) make it a felony for a person to commit or attempt to commit a robbery by displaying a written instrument threatening that the person has possession of a dangerous weapon.

Senate Bill 386/House Bill 811 (both passed) expand the category of public sector officers or employees who are included under specified prohibitions against extortion by adding officers and employees of a county board of education, a public authority, or a special taxing district. The bills also extend a provision permanently barring a person convicted of felony

extortion, notwithstanding a pardon, from holding another public sector position in the State to officers and employees of the same entities.

Hate Crimes

The Federal Bureau of Investigation (FBI) reports that, in 2003, nearly 7,500 hate-based offenses occurred nationwide. Of these offenses, 51.4 percent were motivated by racial bias, 17.9 percent by religious bias, 16.6 percent by sexual orientation bias, and 13.7 percent by ethnic or nationality bias. Maryland law enforcement agencies reported 248 incidents comprising 260 hate crime offenses to the FBI in 2003, with nearly 1 in 10 motivated by sexual orientation bias.

House Bill 692 (passed) provides that a person may not take certain actions against another because of the other's "sexual orientation" (defined as the identification of an individual as to male or female homosexuality, heterosexuality, bisexuality, or gender-related identity). Those actions include harassment; commission of a crime; defacement damage, or destruction, or attempted defacement, damage or destruction of property; or burning or attempting to burn an object on the person's property.

The bill expressly provides that the hate crimes statute is not to be construed to infringe on the expression of speech during peaceable activity intended to express the person's religious beliefs or convictions.

Protection of Law Enforcement Officers

The FBI reports that, in its study area in 2003, nearly 58,000 assaults were committed against law enforcement officers while they were performing their duties. In Maryland, a total of 3,742 law enforcement officers were assault victims in the line of duty in 2003.

Senate Bill 47 (passed) establishes that a person who intentionally causes physical injury to another person knowing or having reason to know that the other person is a law enforcement officer engaged in the performance of the officer's official duties is guilty of assault in the second degree and is subject to maximum penalties of 15 years' imprisonment and/or a \$5,000 fine.

Identity Theft

Identity theft is commonly regarded as one of the fastest growing crimes in the United States. Thieves employ a variety of methods, including looking through dumpsters, watching people enter passwords, and "phishing" for personal information, over the telephone or via the Internet to siphon off the value of a person's good name and credit.

In September 2003, the Federal Trade Commission (FTC) released an *Identity Theft Survey Report* which suggested that 9.9 million Americans are victimized by identity theft annually. According to FTC, in calendar 2004 Maryland was ranked thirteenth out of 50 states for identity theft, with 83 victims per 100,000 population and 4,612 identity theft victims. The

most common type of identity theft in Maryland was credit card fraud (32 percent of victims), followed by phone or utilities fraud (21 percent), and bank fraud (17 percent).

Senate Bill 43/House Bill 818 (both passed) establish a task force to study problems associated with identity theft in Maryland, privacy laws in other states and at the federal level, and issues relating to the restriction of information provided to consumer reports. The task force is required to submit a report to the General Assembly by December 31, 2006.

Unborn Victims

House Bill 398 (passed) allows for the prosecution of murder or manslaughter of a viable fetus if the defendant (1) intended to cause the viable fetus' death; (2) intended to cause serious physical injury to the viable fetus; or (3) wantonly or recklessly disregarded the likelihood that the person's actions would cause the death of or serious physical injury to the viable fetus. The bill specifies that the statute may not be construed to infringe on a woman's right to terminate a pregnancy; subject a physician or other licensed medical professional to liability for fetal death that occurs in the course of administering lawful medical care; apply to an act or failure of a pregnant woman with regard to her own fetus; or confer personhood or any rights on the fetus. Additionally, the bill establishes that the first degree murder of a viable fetus committed in the same incident as another first degree murder is not an aggravating circumstance for purposes of subjecting a defendant to the death penalty.

Enhanced Penalty Revisions

The Committee to Revise Article 27 was appointed in 1991 by the Speaker and the President and charged with making both substantive and stylistic changes to the State's criminal law. The committee is composed of legislators, judges, lawyers representing both defendants and the State, and a victims' rights representative.

In June 2004, the Supreme Court held in *Blakely v. Washington*, No. 02-1632 (2004), that a sentencing judge's imposition of an enhanced penalty, based on facts that were not admitted by the defendant or found by a jury, violated the defendant's right to a trial by jury. The finding in *Blakely* applied an earlier decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which requires that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be admitted to a jury and proved beyond a reasonable doubt." Fortunately, Maryland has a largely indeterminate sentencing structure that features, in most instances, only a maximum statutory sentence. However, Maryland does have a handful of statutory crimes that provide for enhanced penalties based on the existence of certain facts beyond the elements of the underlying crime. The committee recommended the introduction of *Senate Bill 429/House Bill 822 (both passed)* to correct this apparent defect by repealing the factual penalty enhancement in the penalty provisions for certain crimes and placing the factual circumstances that lead to the increased penalty into the factual elements of the underlying offense.

Criminal Procedure

Witness Intimidation

Witness intimidation continues to be an impediment to the effective prosecution of violent crimes, especially in jurisdictions where witnesses are reluctant to testify for fear of their lives. Intimidation by drug dealers has been a top concern in Baltimore City, where a husband, wife, and five children were killed in 2002 after their home was firebombed in retaliation for calls to police against local drug dealers. In January 2005, city detectives sought federal grand jury indictments against four men accused of involvement in a retaliatory firebombing at the North Baltimore home of a woman who had reported drug activity to police. In addition, a so-called “Stop Snitching” DVD has been distributed in Baltimore.

The Standing Committee on Rules of Practice and Procedure of Maryland’s Court of Appeals recommended hearsay exceptions to be applied when a witness has been made unavailable for court as one response to intimidation. Legislation to curtail witness intimidation was introduced by the Administration.

As amended, *Senate Bill 188 (passed)*, an Administration bill, provides for a limited exception to the hearsay rule in felony cases or cases involving a crime of violence if a statement is offered against a party that has engaged in, directed, or conspired to commit wrongdoing that was intended to and did procure the unavailability of the witness who made the statement. The court must hold a hearing and find by clear and convincing evidence that the party against whom the statement is offered has engaged in, directed, or conspired to commit the wrongdoing that rendered the witness unavailable. A statement may not be introduced into evidence unless it was made under oath and subject to the penalties of perjury at a proceeding or in a deposition, was written and signed by the declarant, or was recorded at the same time the statement is made. Additionally, after learning that the declarant is unavailable, the party offering the statement must, as soon as practicable, notify the adverse party of its intention to offer the statement, the particulars of the statement, and the identity of the witness through whom the statement will be offered.

Another bill, *Senate Bill 122 (passed)*, creates offenses involving soliciting to take actions to induce false testimony, retaliate against a witness, or intimidate a witness. The bill also alters provisions and penalties for the existing offenses of inducing false testimony, retaliating against a witness, and intimidating a witness.

House Bill 707 (failed) would have authorized a State’s Attorney to make an electronic video and audio recording of the questioning of a witness to a homicide. The recording would have been admissible as evidence against a defendant accused of homicide, if the witness is unavailable to testify at trial due to the witness’s death, incapacity, or absence.

Sex Offenders/Sexual Abuse

Sex Offender Registration

House Bill 774 (passed) makes several substantive changes to the Maryland sex offender registration program, including altering the definition of “release” to require a person entering the community as part of a graduated reentry release for offenders under the jurisdiction of the Department of Health and Mental Hygiene (DHMH) and a person placed on home detention to register, providing for registration of nonresident individuals who are in Maryland for purposes other than employment or school enrollment, and requiring notice of the location of employment for inmates on work release. Other legislation dealing with sex offender registration includes *House Bill 772 (passed)*, which requires annual photographs of child sexual offenders, sexually violent offenders, and sexually violent predators to be included as part of the individual’s sex offender registration. Another bill, *House Bill 770 (passed)*, alters the definition of “supervising authority” to include the court in which a sex offender was convicted if the sentence is modified to time served.

Sexual Abuse Involving a Minor

Senate Bill 107/House Bill 895 (both passed) prohibit a court from placing a defendant on probation before judgment for any of the following offenses if the victim is under the age of 16: first degree attempted rape; second degree attempted rape; first degree attempted sexual offense; second degree attempted sexual offense; continuing rape or sexual abuse of a child; or sexual abuse of a minor.

House Bill 644 (failed) would have decreased from 10 to 5 the number of days per month that an inmate serving a term of confinement that includes a consecutive or concurrent sentence for a crime of abuse of a minor or sexual abuse of a minor is allowed as a deduction in advance from the inmate’s term of confinement.

Miscellaneous

Time limits relating to HIV testing of persons charged with crimes or delinquent acts that may have caused or resulted in the exposure of another to HIV are established in *House Bill 944 (passed)*.

A Task Force to Study Identity Theft is established by *Senate Bill 43 (passed)* to study problems associated with identity theft in Maryland and privacy laws in other states.

Wiretapping and Electronic Surveillance

Obstructing Justice/Witness Intimidation

It is generally unlawful to intercept an oral, wire, or electronic communication without the consent of all parties to the communication. However, an investigative or law enforcement

officer acting in a criminal investigation, and specified others, may intercept a covered communication in order to provide evidence of the commission of certain crimes.

Senate Bill 645/House Bill 1218 (both passed) allow the Attorney General, State Prosecutor, or any State's Attorney to apply for an order authorizing the interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide evidence of the commission of an offense relating to obstruction of justice under the prohibitions against witness intimidation.

The authority of an investigative or law enforcement officer acting in a criminal investigation to intercept a wire, oral, or electronic communication is expanded by *Senate Bill 643/House Bill 1208 (both passed)*, which authorize the interception of a communication to provide evidence of an offense relating to obstruction of justice under prohibitions against witness intimidation.

Vehicle Theft Surveillance

In 2003, there were 35,627 vehicle thefts in Maryland. Law enforcement agencies often use "bait cars," equipped with video cameras and a Global Positioning Satellite (GPS) system, in auto-theft target areas. When someone enters the car, an automatic system videotapes the individual, and the GPS is activated. A police unit is then sent to investigate and, upon visual contact with the car, they remotely disable the car's engine. *Senate Bill 548/House Bill 610 (both passed)* authorize an investigative or law enforcement officer to intercept a wire, oral, or electronic communication in the course of an investigation to provide evidence of the commission of vehicle theft, if the device is placed in the vehicle by or at the direction of law enforcement personnel under circumstances in which it is thought that vehicle theft might occur.

Search and Seizure Warrants

"No-knock" Warrants

The Court of Appeals most recently addressed the issue of "no-knock" warrants in a 2004 case, *Davis v. State*, 383 Md. 394. In *Davis*, two defendants were arrested, charged, and convicted of possession of marijuana with intent to distribute and a handgun violation. The Court of Appeals overturned the convictions, holding that absent valid statutory authority, a judicial officer in Maryland may not issue a "no-knock" warrant.

In response, *House Bill 577 (passed)* authorizes a law enforcement officer to request and a judge to issue a search warrant that specifically allows a law enforcement officer to enter a building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose. The request must be based on an assertion that there are reasonable grounds to believe that the property subject to seizure might be lost or the officer's life endangered if the officer gives notice.

Sealed Affidavits

Senate Bill 475/House Bill 1059 (both passed) repeal a provision limiting the court's authority to seal an affidavit in support of a search and seizure warrant to only cases involving controlled dangerous substances, murder, or pornography. The bill also authorizes a court to grant one 30-day extension of time that an affidavit may remain sealed if law enforcement provides continued evidence that the investigation is continuing in nature and that failure to maintain its confidentiality would jeopardize the use of the information, impair the continuation of the investigation, or jeopardize the source of the information.

Criminal Prosecution

Appeal by the State

Under common law, the State had no right to appeal an order granting a defendant's motion to suppress evidence. Until 1982, the State had no statutory right to appeal such an order because suppression orders are not final judgments.

The current statute has received substantial attention in the cases of two defendants charged with first degree murder in connection with a death that occurred in the Annapolis Historic District in September 2002. Each defendant confessed to the crime, but their confessions were ruled inadmissible by the trial court. The Court of Appeals also ruled that the statement of one of the defendants was inadmissible. The case is now pending before the U.S. Supreme Court. The Court of Appeals ruled in February 2004 that the confession of the other defendant was in fact admissible and remanded the matter for trial. That defendant was convicted of first degree murder in January 2005.

Senate Bill 642 (passed) excludes homicide cases from the requirement that charges against a criminal defendant be dismissed and that no further prosecution under related charges be undertaken if a decision of the trial court excluding evidence or requiring the return of property alleged to have been unlawfully seized is affirmed following an appeal by the State.

Evidence of Motor Vehicle Theft

Under *Senate Bill 827 (passed)*, the State is allowed to introduce an affidavit by the owner of a motor vehicle involved in a motor vehicle theft case as substantive evidence that the vehicle was taken and used without the owner's authorization. The bill requires the State to provide notice to the defendant of the intent to use the affidavit and authorizes the defendant to make a written demand for the presence of the vehicle owner at trial.

Retroactive Right to Review of Sentences

In *Cox v. State* (134 Md. App. 466), the Court of Special Appeals held that there was no retroactive right to a sentence review. The defendant was convicted of housebreaking in 1992 and received a mandatory minimum sentence of 25 years. After several appeals, the defendant applied for a review of sentence by a three-judge panel. The statute allowing panel review had

an effective date of July 1, 1999, and there was no provision in the statute allowing for retroactive review. His request was denied by the circuit court and the defendant appealed. The Court of Special Appeals held that there was no right to retroactive review of a sentence due to the presumption against retroactivity and the General Assembly's rejection of a bill that would have allowed review of sentences imposed prior to July 1, 1999.

House Bill 596 (passed) allows a person serving a term of confinement for burglary or daytime housebreaking that includes a mandatory minimum sentence that was imposed before October 1, 1994, to apply for and receive one review of the mandatory minimum sentence. The panel may strike the restriction against parole but may not reduce the length of the sentence.

Criminal Injuries Compensation Board

The Criminal Injuries Compensation Board administers a compensation program for victims of crime, persons who have made efforts to prevent a crime, or the dependent survivors of such persons. Under certain circumstances, a crime victim or a dependent of a crime victim may be compensated for medical expenses, funeral expenses, property damage, disability or dependency claims, other necessary services, and lost wages. It is the board's responsibility to review and evaluate claims for monetary awards. The awards are dispensed from the Criminal Injuries Compensation Fund which obtains its principal source of money from court costs and criminal injuries compensation costs imposed in criminal cases.

Senate Bill 151 (passed) allows a parent, child, or spouse of an individual incarcerated for domestic violence to be eligible for an award from the Criminal Injuries Compensation Fund if, prior to incarceration, the individual resided with and provided financial support to the parent, child, or spouse.

Expungement

A person who has been charged with the commission of a crime may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by a public entity under various circumstances listed in statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi* (a decision not to prosecute), stet of charge (a decision to indefinitely postpone prosecution), and gubernatorial pardon. A person is not entitled to expungement if the petition is based on the entry of probation before judgment, a *nolle prosequi*, a stet, or a gubernatorial pardon and the person has subsequently been convicted of a crime or is a defendant in a criminal proceeding. Except in cases of gubernatorial pardon, a person may not expunge records of a conviction.

Several bills in the 2005 session sought to modify expungement procedures. **House Bill 607 (passed)** authorizes a person convicted of certain public nuisance crimes, including urination in a public place, panhandling, loitering, and vagrancy, to seek expungement of the associated criminal records. **House Bill 1156 (failed)** would have allowed a person to seek expungement of a *nolle prosequi*, stet, or pardon, if the person has a subsequent conviction, unless the charge

sought to be expunged and the subsequent conviction both involve either child abuse, sexual abuse of a minor, or a crime of violence.

Restitution

Senate Bill 873/House Bill 1010 (both passed) make several revisions to the State’s restitution laws, including (1) expanding the definition of “victim” for the purposes of restitution eligibility to include a person who dies as a result of a crime or delinquent act; (2) prohibiting the assessment of court costs on a payee for filing a notice of satisfaction with the court; (3) allowing a victim to receive a restitution judgment up to \$10,000 for each child’s act arising out of a single incident, instead of a maximum cap of \$10,000 for the incident, regardless of the number of actors; and (4) allowing the court to award compensation for losses as a component of restitution damages.

Miscellaneous

National Crime Prevention and Privacy Compact

Interstate compacts and agreements are formal binding contracts, entered into voluntarily by two or more states that require consent from Congress under the compact clause of the U.S. Constitution. The congressional consent requirement distinguishes compacts from other forms of interstate agreements. Congressional approval of the National Crime Prevention and Privacy Compact, which was embodied in the Crime Identification and Technology Act of 1998, gave states control when other states or the federal government accessed their criminal history records through the Interstate Identification Index System for security clearances, background checks for licenses, and applicants in sensitive occupations such as child and senior care.

Senate Bill 216/House Bill 241 (both passed) adopt the National Crime Prevention and Privacy Compact. Maryland currently has approximately 30 statutes that authorize State and national criminal history record checks for noncriminal justice purposes, which include requirements for fingerprint submissions and fees.

Juvenile Law

Department of Juvenile Services

History

The treatment of youth in and the conditions of Department of Juvenile Services (DJS) facilities have been in the news frequently over the last several years. In particular, reports of abuses at the Charles H. Hickey, Jr. School and Cheltenham Youth Facility have repeatedly caught the attention of the Office of the Independent Juvenile Justice Monitor (OIJJM) within the Office for Children, Youth, and Families (OCYF). OIJJM has cited numerous problems at these institutions, including child abuse, violence, overcrowding, a lack of appropriate services, and understaffing. Most recently, there have been reports of child abuse at the Alfred D. Noyes

Children's Center, including allegations that a guard physically assaulted youths and encouraged detainees to join in the attacks.

Department of Juvenile Services Reform Act of 2005

House Bill 979 (passed) establishes a two-year Joint Oversight Committee on the Department of Juvenile Services. The committee is required to review all reports from DJS required to be reported to the General Assembly; review the operations of DJS; and monitor the progress made by DJS in developing and implementing the Facilities Master Plan required by Chapter 431 of 2004.

The committee is authorized to recommend legislation to improve the programs and operations of DJS and investigate any other matter concerning DJS or the provision of services to juveniles under its jurisdiction. The committee must submit an annual report to the General Assembly on its findings and recommendations.

In addition, *House Bill 979* requires DJS to report to the Governor, the President of the Senate, the Speaker of the House, and relevant legislative committees, as follows:

- by January 1, 2006, on all specific action taken by DJS in response to the findings and recommendations of OIJJM and an inventory of all facilities used by DJS to place children under DJS's jurisdiction in out-of-home placement; and
- by October 1, 2005, on the feasibility of establishing a volunteer mentoring program for children in committed facilities.

Office of the Independent Juvenile Justice Monitor

OIJJM, within OCYF, is charged with investigating facilities of DJS to determine whether the needs of children under the jurisdiction of DJS are being met in accordance with State law, that their rights are being upheld, and that they are not being abused. OCYF is subject to termination on June 30, 2005. For a more detailed discussion of OCYF, see the subpart "Children" within Part M – Human Resources of this *90 Day Report*.

House Bill 1342 (passed) transfers all duties of OIJJM from OCYF to the Office of the Attorney General and establishes the Juvenile Justice Monitoring Unit of the Office of the Attorney General. The responsibilities of the monitoring unit include evaluating, at each DJS facility, the child advocacy grievance process, DJS's monitoring process, the treatment of and services to youth, the facility's physical conditions, and the adequacy of staffing.

Education Programs – Private Residential Rehabilitative Institutions

Chapter 431 of 2004 stated the intent of the General Assembly that, to the extent practicable, juvenile services be delivered regionally through operational regions and that detention and committed facilities do not contain more than 48 children.

Senate Bill 503/House Bill 1148 (both passed) exempt private residential rehabilitative institutions from the size and regionalization restrictions described above. “Private residential rehabilitative institution” is defined as a nonprofit facility that (1) serves 150 or more court-adjudicated youths; (2) provides academic, athletic, and workforce development services; and (3) is approved to serve youths by October 1, 2005. At present, only one program, Bowling Brook Preparatory School, meets the definition of private residential rehabilitation institution. The legislation ensures that Bowling Brook could continue to receive statewide referrals from DJS.

Juvenile Detention

Under current law, the juvenile court or an intake officer may authorize detention, community detention, or shelter care for a child who may be in need of supervision or delinquent. If a child is taken into custody, the child may be placed in detention, community detention, or shelter care prior to a hearing if detention is required to protect the child or others or the child is likely to leave the jurisdiction of the court.

If the child is not released, the intake officer or the official who authorized detention, community detention, or shelter care must file a petition to authorize continued detention, community detention, or shelter care. A hearing on the petition must be held not later than the next court day, unless extended by the court after a showing of good cause.

Senate Bill 654 (passed) limits the maximum number of days that a juvenile court may extend the date of a hearing on a petition to authorize continued detention, community detention, or shelter care to five days.

House Bill 979 requires DJS to appear at a juvenile court hearing every 25 days to explain the reasons for continued detention of a child for whom the juvenile court has made a disposition.

Predelinquent Diversion Services

Youth service bureaus (YSBs) are community-based entities that are operated to (1) provide community-oriented delinquency prevention, youth suicide prevention, drug and alcohol abuse prevention, and youth development; (2) improve the conditions that breed delinquency, youth suicide, drug and alcohol abuse, and family disruption; and (3) function as an advocate of youth needs. DJS regulations require each State-aided YSB to provide individual, family, and group counseling; referral and information services; and crisis intervention. The services must be provided at no charge or at a rate based on the client’s family income.

Senate Bill 468/House Bill 405 (both passed) require DJS to (1) promote predelinquent programs, including greater utilization of YSBs; (2) collaborate with local governments to encourage the use of predelinquent services provided by YSBs; and (3) provide technical assistance to YSBs to identify alternative funding sources for predelinquent programs.

Juvenile Competency

Unlike adult criminal proceedings, there are no statutory procedures for determining whether a child who is alleged to have committed a delinquent offense is incompetent to face proceedings. As a result of the lack of uniform procedures, some courts have dismissed cases involving incompetent children, while others have devised their own procedures on a case-by-case basis.

House Bill 802 (passed) establishes court processes for determining the competency of a child alleged to have committed a delinquent act. On its own motion, or a motion by a child's counsel or the State's Attorney, a juvenile court must stay all proceedings and order an evaluation of a child's mental condition and developmental levels if there is probable cause to believe that the child has committed the delinquent act and there is reason to believe that the child may be incompetent to proceed with a required waiver, adjudicatory, or disposition hearing or violation of probation hearing.

"Incompetent to proceed" means that a child is not able to understand the nature or object of the proceeding or assist in the child's defense. The competency evaluation must be performed by a "qualified expert," which is defined as a licensed psychologist or psychiatrist who has expertise in child development and is familiar with competency standards and programs available to youths in the State

The legislation requires the court to hold a competency hearing to determine whether the child is incompetent to proceed based on the evidence presented on the record. If the child is found to be competent, the stay is lifted, and proceedings on the child's petition continue.

However, if a court determines that a child is unable to attain competency in the foreseeable future, the court may order that proceedings for involuntary admission be instituted or dismiss the delinquency petition or violation of probation petition.

Children in Need of Supervision

Children in Need of Supervision Pilot Program – Baltimore City and County

House Bill 1339 (passed) requires the Secretary of Juvenile Services to establish a child in need of supervision pilot program in Baltimore City and Baltimore County. Under the program, a juvenile intake officer must refer a child alleged to be in need of supervision to a designated community-based, nonprofit service provider to assess the child and establish a case plan for the provision of services to the child.

Notice of Truancy

House Bill 957 (passed) provides that if a court finds that a child is in need of supervision or assistance and commits the child to DJS or the local department of social services, the court may notify school personnel that the child has been found to be a child in need of supervision or assistance and committed to DJS or the local department. The notice may not

include any order or pleading related to the child's case. Upon receipt of a report from a school principal or head teacher that a student has been habitually truant without lawful excuse, the appropriate representative of the school system, following an investigation or intervention, must notify DJS or the local department.

Access to Children's Records – Baltimore City Health Department

House Bill 900 (passed) provides for the disclosure to the Baltimore City Health Department of certain confidential records concerning (1) a child to whom the Baltimore City Health Department is providing treatment or care, for a purpose relevant to the provision of treatment or care and (2) a victim of a crime of violence who is a child residing in Baltimore City for the purpose of developing appropriate programs and policies aimed at reducing violence against children in Baltimore City.

The confidential records included in *House Bill 900* are records maintained for research purposes by DJS; child abuse and neglect records; juvenile court records; police records; and records maintained by the Department of State Police.

Public Safety

Correctional Services

Correctional Standards

With the advice of the Commission on Correctional Standards, the Secretary of Public Safety and Correctional Services sets for both State and local correctional facilities, minimum mandatory standards applicable to security and inmate control, inmate safety, inmate food services, inmate housing and sanitation, inmate rights, classification, hearings, and administrative record keeping.

House Bill 314 (passed) increases the membership of the Commission on Correctional Standards from 11 to 12 by adding a State licensed, certified, or registered mental health or medical professional. The bill also allows the commission, after having determined that a correctional facility is in violation of minimum standards following a letter of reprimand and re-inspection, to periodically inspect the facility until compliance is attained. Under such circumstances, the commission must send a report of each inspection to the executive and legislative body responsible for the facility.

State Use Industries

State Use Industries (SUI) provides work and job training for inmates incarcerated in the Division of Correction (DOC) funded by the revenue from the sale of the goods it produces and the services it supplies to local, State, and federal agencies. These goods and services are also available for purchase by charitable, civic, educational, fraternal, and religious organizations. SUI's cost is at or below the prevailing average market price. *Senate Bill 84 (Ch. 6)* allows the

Department of Public Safety and Correctional Services (DPSCS) to transfer revenue from SUI's revolving special fund to provide financial assistance, up to \$250,000 in a fiscal year, to DOC to establish and operate employment readiness training programs and transitional services to rehabilitate inmates currently or previously employed by SUI.

Patuxent Institution

Under current law, at the Patuxent Institution, if an eligible person commits a major violation while on parole, work release, or leave, the person must be confined to the institution and is ineligible for parole, work release, or leave for at least six months. If the Board of Review or the Secretary determines that a major violation was severe enough to warrant removing an eligible person from the institution, the person may be removed from the institution and returned to DOC to serve the remainder of the person's original sentence. If a person commits a second major violation while on parole, work release, or leave, the person must be removed from the institution and returned to DOC to serve the remainder of the person's original sentence.

Senate Bill 132 (passed) allows the Board of Review at the Patuxent Institution to impose appropriate sanctions consistent with the best interests of public safety on an inmate in the Eligible Person Program or the Patuxent Youth Program who commits a major violation while on parole, work release, or leave.

Inmate Death Investigations

In July 1985, an investigative unit was formed within DPSCS composed of the Maryland State Police, then a part of DPSCS, and correctional officers of DOC. Investigators in this unit conducted criminal and misconduct investigations. Correctional officers in the unit were sent to entrance level police academies and certified as police officers. When the Maryland State Police became a separate State department in July 1996, the unit consisted of only DOC investigators.

In response to the 2004 death of inmate Ifeanyi A. Iko at Western Correctional Institution in Allegany County after a confrontation with correctional officers, *Senate Bill 394 (passed)* requires the State Police to investigate the death of an inmate suspected to be a homicide that occurs while the inmate is in the custody of DOC whether inside or outside of a correctional facility. The State Police is authorized to act within the limits of a municipal corporation that maintains a police force when conducting an investigation under the bill.

Law Enforcement

DNA

A person convicted of a felony, fourth degree burglary, or breaking and entering a motor vehicle is required to have a DNA sample collected on intake at a correctional facility. A person not sentenced to a term of imprisonment is required to provide a DNA sample as a condition of probation or sentence at a facility designated by the Director of the Crime Laboratory.

Senate Bill 213/House Bill 240 (both passed), both Administration bills, add to the current law the authorization of the collection of a DNA sample at a suitable location in a circuit court at the time of sentencing from a person convicted of a felony, fourth degree burglary, or breaking and entering into a vehicle. DNA samples are to be collected by an individual designated, as opposed to appointed, by the Director of the State Police Crime Laboratory.

Senate Bill 622 (passed) repeals the requirement that adequate funds be appropriated in the State budget before an individual convicted of a felony, fourth degree burglary, or breaking and entering a motor vehicle is required to submit a DNA sample. It also repeals the requirement that adequate funds be appropriated in the State budget before an individual convicted of one of these same offenses on or before October 1, 2003, is required to submit a DNA sample.

A match obtained between an evidence sample of DNA and a database entry may only be used as probable cause to obtain an additional DNA sample and is not admissible at trial unless confirmed by additional testing. DNA evidence is generally admissible in criminal proceedings to prove identity.

In November 2004, the Attorney General issued an opinion concerning the use of a DNA database match to establish probable cause for arrest. The Attorney General advised that DNA evidence may be used to establish probable cause for arrest but recommended that the General Assembly amend the statute to clarify the law. **House Bill 859 (passed)** alters the use as probable cause of a match obtained between a DNA evidence sample and an entry in the statewide DNA database system by repealing the language stating that it may only be used as probable cause to obtain an additional DNA sample from the subject.

Law Enforcement Officers

Death Benefits: Generally codifying current practice with respect to death benefits for State or local public safety personnel, **Senate Bill 838/House Bill 1276 (both passed)** specify the circumstances under which an individual who dies from a heart attack or stroke is presumed to have died in the performance of duties, including that the heart attack or stroke occurred (1) while the individual was engaged in specified stressful activity; (2) while on duty after such activity; or (3) no later than 24 hours after such activity. The presumption is not overcome by competent medical evidence to the contrary.

Protective Body Armor: The Protective Body Armor Fund assists local law enforcement agencies to acquire protective body armor and replace it at least every 10 years, or sooner if testing indicates a need for replacement.

In accordance with the State budget, grants to local law enforcement agencies are made based on the comparative needs of each local law enforcement agency as determined by specified criteria. **Senate Bill 135 (passed)** authorizes the Secretary of State Police to distribute money in the Protective Body Armor Fund to the Division of Parole and Probation for the acquisition of protective body armor for its agents after annual allocations are made under current law provisions if there is money remaining in the fund.

Fire, Rescue, and Explosives

Effective July 1, 2005, *Senate Bill 228/House Bill 841 (both passed)* clarify and alter requirements and limitations on the award of grants and loans from the Volunteer Company Assistance Fund (VCAF). Specifically, the bills clarify that a grant from VCAF must be matched by at least 30 percent of the amount of the grant. They also limit loans from VCAF to 75 percent of the total cost of equipment or facilities being purchased.

In addition, the bills repeal requirements for each request for a grant or loan from the fund to be submitted to the Department of Budget and Management (DBM) for approval and to the Department of Legislative Services for review. The bills substitute the Maryland State Firemen's Association for DBM under provisions detailing responsibilities relating to recommendations to the Board of Public Works (BPW) and the execution of grant or loan agreements.

The Office of the State Fire Marshal issues one-year licenses for the manufacture, dealing, or possession of explosives to each applicant who meets the statutory requirements. New federal regulations arising from the federal Safe Explosives Act (effective May 24, 2003) allow a federally issued explosives license to be valid for three years. *House Bill 769 (passed)* extends the period for explosives licenses from one to three years from the effective date of the license and triples the State fees charged for the licenses to cover the extended license period.

The Explosives Advisory Council was created within DPSCS in 1984 and was transferred to the Department of State Police (DSP) in 1997. The council recommends rules and regulations to the State Police for the storage, use, manufacture, and transport of explosive material. The council also reviews proposed rules, regulations, and laws that affect the manufacture, use, or distribution of explosives.

Although the council has met regularly in recent years, the State Fire Marshal has taken a more active role in the submission and review of legislation affecting the use, storage, sale, and possession of explosives, including fireworks. Noting that the council has not produced any reports, the State Police recommended that the council be abolished having outlived its usefulness. *House Bill 768 (passed)* repeals the council.

The State Fire Prevention Commission has a program to identify by the display of a sign, sticker, or other appropriate symbol, the dwellings of occupants who, because of age, blindness, disability, or physical or mental illness, are unable to evacuate the building without assistance in case of fire. The symbols normally come in the form of a sticker, which have become outmoded and a safety concern for the State Fire Marshal in that they may provide criminals with information as to where a special needs person resides. In addition, the technology of the State's 9-1-1 centers allows occupants to register special evacuation needs in a residence based on the telephone number and address of the person. First responders no longer rely on such stickers to identify special needs dwellings. As a result, *House Bill 1044 (passed)* repeals the program requirement. The bill also repeals the requirement that the commission adopt regulations to govern the distribution and use of the symbols.

Residential dwelling units built after 1990 are required under State law to have both battery backup and alternating current smoke detectors. *Senate Bill 735 (passed)* establishes the Task Force to Study Visual Smoke and Evacuation Alarms for the Deaf and Hard of Hearing to study and make recommendations regarding emergency evacuation plans, emerging technology, installation costs of alarm systems, and potential funding sources related to the safety and security of people who are deaf and hard of hearing who live in apartments or condominiums. A report with findings and recommendations is due by September 30, 2006. The bill terminates after that date.

Firearms

During most legislative sessions, several bills are introduced to address issues relating to the regulation of firearms. The 2005 session was no exception; though none of the bills passed, the following bills drew some attention:

Senate Bill 424 (failed) and *House Bill 179 (failed)* would have repealed handgun shell casing identification requirements that mandates (1) handgun manufacturers to provide to handgun dealers shell casings of projectiles discharged from handguns and other specified additional information; (2) handgun dealers to forward shell casings and other specified information to the DSP Crime Laboratory; and (3) DSP to enter specified information in a relevant database. *House Bill 179* would have also required the Handgun Roster Board to report on the status of personalized handgun technology once every three years rather than annually.

Under current law, a person may not possess a regulated firearm if previously convicted of a crime of violence or certain drug-related crimes. A violator is guilty of a felony and subject to a nonparolable, nonsuspendable mandatory minimum sentence of five years. Each violation is a separate crime. *Senate Bill 585 (failed)* would have altered incarceration penalties applicable to this prohibition by repealing the ban against issuing a suspended sentence and providing for a maximum imprisonment of 20 years. The bill also would have specified that a court may not impose less than the current law minimum sentence of five years and that the convicted person is not eligible for parole in less than five years.

Local Issues

House Bill 915 (passed) alters eligibility criteria for inmates in the custody of the Sheriff of Washington County to participate in a county home detention, work release, or pretrial program. Specifically, an inmate is eligible if recommended for such a program by the court and meets eligibility criteria set by the sheriff. The bill repeals the requirement that the inmate must have no other charges pending in any jurisdiction.

Senate Bill 144/House Bill 224 (both passed) expand the authority of an Anne Arundel County or City of Annapolis fire and explosive investigator. The bill (1) includes an Anne Arundel County or Annapolis fire and explosive investigator in the definition of “law enforcement official” under provisions authorizing the carrying of a handgun by law enforcement personnel; (2) provides that such an investigator has the same authority as the State

Fire Marshal and assistants, including the authority to make a warrantless arrest, while operating in or outside Anne Arundel County or Annapolis under certain circumstances; (3) provides that the Anne Arundel County or Annapolis Fire Chief may limit, in writing, the authority granted to an investigator under these provisions; (4) excludes an Anne Arundel County or Annapolis fire and explosive investigator from the definition of “law enforcement officer” under provisions relating to the Law Enforcement Officers’ Bill of Rights; (5) includes an Anne Arundel County or Annapolis fire and explosive investigator in the definition of “police officer” under provisions relating to the Maryland Police Training Commission; and (6) requires the Police Training Commission to certify Anne Arundel County or Annapolis fire and explosive investigators who meet the requirements of these provisions as police officers.

Mutual Aid Agreements

The federal Intelligence Reform and Terrorism Prevention Act of 2004 delegates authority to the U.S. Secretary of Transportation, in consultation with the U.S. Secretary of Homeland Security, to issue regulations with respect to minimum standards for federal acceptance of drivers’ licenses and personal identification cards. In addition, the new law provides that the Mayor of the District of Columbia, any authorized representative of the federal government, the Governor of Maryland, the Governor of Virginia, or the chief operating officer of a local jurisdiction, may, in accordance with State law, enter into, request, or provide assistance under mutual aid agreements with localities, the Washington Metropolitan Area Transit Authority, the Metropolitan Washington Airports Authority, and any other governmental agency or authority for certain purposes. Maryland and Virginia are encouraged to facilitate the ability of localities to enter into interstate mutual aid agreements in the National Capital Region under these provisions.

Effective June 1, 2005, *House Bill 1514 (passed)* authorizes the State, a county, a municipality, or any other governmental agency within the “National Capital Region” to (1) enter into a reciprocal agreement for a period that it considers advisable with a federal agency, Virginia, DC, or a county or municipality, within or outside Maryland; and (2) establish, train, and implement plans to request or provide mutual aid through the use of its officers, employees, and agents, together with all necessary equipment, in accordance with the federal Act.

House Bill 1514 also provides that any provision or part of a State, local, or municipal corporation statute, law, or ordinance that requires a mutual aid agreement to contain additional terms or conditions is inapplicable to an agreement authorized by and entered into under these provisions.

Several police departments in northern Prince George’s County have joined together to man sobriety checkpoints (Hyattsville, Mt. Rainier, Bladensburg, Riverdale Park, Greenbelt, and Laurel). An August 16, 2004 Attorney General’s opinion, in response to a question involving the Prince George’s County checkpoints, concluded that, if a municipality enters into a mutual aid agreement under applicable current law provisions to pool its resources with those of other

municipalities to operate sobriety checkpoints, its police officers may enforce the relevant provisions of the Maryland Vehicle Law in the participating jurisdictions under that agreement.

Senate Bill 563/House Bill 305 (both passed) clarify that a police officer acting under a lawful mutual aid agreement may enforce the Maryland Vehicle Law beyond the officer's sworn jurisdiction. *House Bill 315 (passed)* establishes that law enforcement officers coming from one county or municipal corporation to another within the State under a mutual aid agreement may enforce the laws of the State to the same extent as authorized law enforcement officers of the receiving county or municipal corporation.

Ocean Pines

Ocean Pines, a housing development in Worcester County, has more than 15,000 full-time residents and an additional 7,500 summertime residents. It is represented by the Ocean Pines Homeowners' Association and has a special police force of 15 sworn officers with full police powers. The Ocean Pines Police Department is currently a special police force.

House Bill 291 (passed) specifies the powers and the duties of the Ocean Pines Police Department and requires the Maryland Police Training Commission to adopt specified related standards. The bill also includes a member of the police department as a "law enforcement officer" in connection with provisions relating to powers of warrantless arrest, notice of contact with certain diseases, and the Law Enforcement Officers' Bill of Rights.

House Bill 291 requires the Board of Directors of Ocean Pines Association, Incorporated, to adopt rules governing the operation and conduct of the police department. Funding for the police department must come from revenue derived from assessments levied on real property located in the Ocean Pines Community, and other sources, if available. The bill provides that the Ocean Pines Police Department is not an agency of Worcester County and that Worcester County is not responsible for certain acts or omissions.

Miscellaneous

The State Fire, Rescue, and Ambulance Fund, established in 1985, was named after Senator William H. Amoss in 1998. The fund promotes the delivery of effective emergency services to the citizens, increased financial support for emergency services companies by local governments, and the continued financial viability of volunteer emergency services companies. As a condition to receiving financial assistance from the fund, each county must participate in the Maryland Fire Incident Reporting System and Ambulance Information System, as appropriate. *Senate Bill 214/House Bill 239 (both passed)* transfer the functions, powers, duties, assets, and liabilities of the fund from the Department of State Police to the Maryland Emergency Management Agency (MEMA).

The ability to assign fuels from an emergency set-aside was previously authorized under an expired federal law. During the 1973 and 1978 oil emergencies and the 1974 and 1979 gasoline emergencies, the State relied heavily on the federal set-aside program to mitigate hardship. In response the General Assembly established the State Standby Petroleum Fuel

Set-Aside Program in 1982 that requires MEMA to maintain a standby petroleum set-aside for use during a severe energy emergency. The program allows the State to assign a portion of the motor gasoline, middle distillate, propane, certain residual oil, and aviation gasoline received in the State to priority activities in the event that the Governor declares a state of emergency due to a severe shortfall of any of those fuels. Since the program was established, the State has not needed to invoke the set-aside program. Under current law, the State Standby Petroleum Fuel Set-Aside Program terminates July 1, 2005. *House Bill 1222 (passed)* extends the termination date of the program to July 1, 2010.

The Maryland Secretary of State is required to issue a State flag to the family of a firefighter, policeman, or sworn member of the Office of the State Fire Marshal killed in the line of duty. The flag must be presented to the family by the State Senator of the legislative district in which the deceased resided or served. According to the Department of Veterans Affairs, 29 Maryland citizens have been killed in action in the last three years as members of the military. This includes 25 in Iraq, 3 in Kuwait, and 1 in Afghanistan. *Senate Bill 823/House Bill 1226 (both passed)* require the Maryland Secretary of State to issue a State flag to the family of a member of the military who is killed in the performance of duty. The bill requires the flag to be presented to the family by the Department of Veterans Affairs.

The Criminal Justice Information Advisory Board provides oversight of the Criminal Justice Information System and provides advice and recommendations to the Secretary of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals. The Commission on Public Safety Technology and Critical Infrastructure recommends standards, procedures, and protocols to the Chief Judge of the Court of Appeals to ensure the compatibility of the communication and information management systems of the Judiciary.

An Administration initiative, *Senate Bill 208 (passed)* transfers certain membership and duties of the Commission on Public Safety Technology and Critical Infrastructure to the Criminal Justice Information Advisory Board and terminates the commission on June 30, 2005.

In addition, *Senate Bill 208* increases the advisory board's responsibilities by requiring it to advise and make recommendations, as specified, to ensure the compatibility and interoperability of communication and information management systems maintained by the Judiciary and State public safety units. The board is also required to recommend legislation related to the compatibility and interoperability of such systems maintained by State, county, and municipal public safety units. The board is required to submit a report on interoperability by December 1 each year to the Governor and the General Assembly.

Budget Issues

The fiscal 2006 State budget includes \$2.7 million for installing and operating laptop computers in 950 State police patrol cars. These laptops will enable troopers to quickly access various public safety databases that include information on stolen vehicles, warrants, and missing persons. Currently troopers contact police dispatchers for this information. The laptops will also be able to utilize software for criminal, accident, and incident reports and email.