

## **Part E**

# **Crimes, Corrections, and Public Safety**

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### **Criminal Law**

#### **Gangs**

The proliferation of gang activity in Maryland and nationwide in recent years has become a major law enforcement concern.

*House Bill 713 (passed)*, an Administration and Attorney General initiative, creates a new offense relating to criminal gangs and authorizes the Attorney General to aid in investigations and prosecute violations. The bill prohibits a person from (1) participating in a criminal gang knowing that the members of the gang engage in an ongoing pattern of criminal gang activity; or (2) knowingly or willfully directing or participating in the commission of an underlying crime (or act by a juvenile that would be an underlying crime if committed by an adult) committed for the benefit of, at the direction of, or in association with a criminal gang.

“Criminal gang” is defined as a group or ongoing association of three or more persons whose members:

- individually or collectively engage in a pattern of criminal gang activity;
- have as one of their primary objectives or activities the commission of one or more underlying crimes; and
- have in common an identifying sign, symbol, name, leader, or purpose.

“Pattern of criminal gang activity” is defined as the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes, provided the crimes were not part of the same incident. “Underlying crime” is defined as (1) a crime of violence; (2) felony second degree assault; (3) felony extortion; (4) manufacture or possession of a destructive device; (5) manufacturing or distributing a controlled dangerous substance; (6) second degree arson; (7) first, second, or third degree burglary; (8) felony theft; (9) auto theft; (10) felony witness intimidation; or (11) felony firearm possession.

A violator is guilty of a felony and subject to imprisonment not exceeding 10 years, or 20 years if death to a victim occurs, and/or a fine not exceeding \$100,000. A sentence imposed under the bill may run consecutive to or concurrently with a sentence for any crime establishing a violation of the bill. A person may be charged with a violation only by indictment, criminal information, or petition alleging a delinquent act.

The Attorney General may, at the request of a county State's Attorney, aid in the investigation of or prosecute a violation of the bill. In exercising this authority, the Attorney General has all powers and duties of a State's Attorney. Where violations of this bill are alleged to have been committed in more than one county, the Attorney General and State's Attorney for each county may join the causes of action in a single complaint.

By January 1, 2008, the Attorney General and the Maryland State Attorneys' Association must report to the General Assembly on recommendations for more legislation to assist in the prosecution of gang activity.

## **Identity Theft**

### **Pretexting**

Identity theft is commonly regarded as one of the fastest growing crimes in the United States. Thieves employ a variety of methods to obtain personal information, including "pretexting," which occurs when a person falsely claims to be someone else or to represent a business and tries to obtain confidential information about another person. *House Bill 1036 (passed)* prohibits a person from knowingly and willfully claiming to represent another person without the knowledge and consent of that person, with the intent of soliciting, requesting, or taking any other action to induce another to provide personal identifying information or a payment device number. The definition of "personal identifying information" is expanded to include (without being limited to) the items already specified in statute. A person who violates this provision is guilty of a misdemeanor and subject to maximum penalties of 18 months imprisonment and/or a \$5,000 fine.

### **Task Force**

The Task Force to Study Identity Theft was created by Chapters 241 and 242 of 2005 to study the problems associated with identity theft in Maryland. The task force is charged with studying the adequacy of current Maryland law in deterring identity theft, the privacy laws of other states, and issues related to restricting information provided in consumer reports. While some appointments to the task force were made in 2005, the task force was not fully appointed until August 2006 and was able to meet only once during the 2006 interim. Based on the recommendations of the December 2006 report of the task force, *Senate Bill 70/House Bill 26 (Chs. 9 and 10)*, emergency bills, extend the termination date for the task force to January 31, 2008, and alter the date for reporting findings and recommendations to the General Assembly to December 31, 2007.

## **Crimes Affecting Children**

### **Child Pornography**

*House Bill 285 (passed)* increases penalties for knowingly possessing a film, videotape, photo, or other visual representation of a minor engaged in a sexual act. The maximum term of imprisonment for a first offense increases from one year to two years. For a second or subsequent offense, the bill increases the maximum penalties from two years imprisonment and a \$5,000 fine to five years imprisonment and a \$10,000 fine. The bill also alters the language of the prohibition to require proof that a defendant intentionally retained the material and specifies that the prohibition applies to visual representations of an actual child. In addition, the bill creates an affirmative defense that the person promptly and in good faith took reasonable steps to destroy each visual representation or reported the matter to a law enforcement agency.

### **Child Sex Offenders**

*Senate Bill 413/House Bill 930 (both passed)* and *Senate Bill 170/House Bill 213 (both passed)* continue the State’s efforts to assure that child sex offenders are adequately punished and monitored as registered sex offenders. For further discussion of these bills, see the subpart “Criminal Procedure” within this Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

### **Tobacco Paraphernalia**

Current law prohibits a person from distributing tobacco products, coupons for tobacco products, or cigarette rolling papers to a minor. Other devices besides rolling papers may be used, however, to facilitate the introduction of tobacco into the human body.

*Senate Bill 1017 (passed)* substitutes the term “tobacco paraphernalia” for “cigarette rolling papers” in the criminal provisions pertaining to distribution of tobacco products to minors. “Tobacco paraphernalia” is defined as any object used, intended for use, or designed for use to inhale or otherwise introduce tobacco products into the human body. The penalties in current law for distribution of tobacco products to a minor remain unchanged.

## **Human Trafficking, Extortion, and Involuntary Servitude**

Human trafficking is a modern day form of slavery and a growing and lucrative criminal enterprise in today’s world economy. It involves the recruitment, transportation, and sale of individuals, often members of vulnerable populations in countries outside the United States, for labor and sexual services. Work is forced and maintained through violence, threats, and coercion.

With the passage of *Senate Bill 606/House Bill 876 (both passed)*, Maryland joins twenty five other states that have enacted laws prohibiting human trafficking. These bills expand the prohibition against sexual solicitation of a minor by adding commission of a violation of the prostitution laws as a prohibited offense. The bills also expand the crime of extortion by

prohibiting a person from obtaining or conspiring to obtain labor or services by wrongfully inducing consent, and add actual or threatened destruction, concealment, removal, confiscation, or possession of any immigration or government identification document with intent to harm the immigration status of another person as a prohibited manner of inducing consent. Labor and services are also added to the language of prohibitions against extortion by false accusation and extortion by verbal threat.

In addition, *Senate Bill 606/House Bill 876* rename the crime of pandering as human trafficking, and enhance the penalty for human trafficking that involves a minor. A person who commits human trafficking involving a victim who is a minor is guilty of a felony and subject to maximum penalties of 25 years imprisonment and/or a fine of \$15,000. The bills also give the District Court jurisdiction concurrent with the circuit court over felony human trafficking.

### **Crimes in Correctional Facilities**

*House Bill 1207 (passed)* expands a prohibition against sexual acts with inmates by applying the prohibition to any individual working in a correctional facility, whether on a paid or volunteer basis, including an employee of the Department of Public Safety and Correctional Services (DPSCS) or a correctional facility and any employee of a contractor providing goods or services to DPSCS or a correctional facility. The bill expands the prohibited conduct by including sexual contact under this prohibition as it applies to individuals confined in adult and juvenile facilities. The bill also expands the application of the prohibition against sexual activity with individuals confined in juvenile facilities to any person. In addition, *House Bill 1207* adds a violation of the prohibition against engaging in sexual activity with inmates in correctional and juvenile facilities as a cause for automatic termination of employment from the State Personnel Management System.

The use of cellular telephones by inmates to facilitate escapes and other criminal activity has become a vexing problem for correctional officials. Moreover, the possession of contraband, weapons, alcoholic beverages, or drugs by an inmate is not specifically addressed under existing law. *Senate Bill 214/House Bill 1194 (both passed)* seek to address these problems by establishing several prohibitions relating to contraband in places of confinement.

The bills prohibit a person from knowingly possessing contraband in a place of confinement. A violator is guilty of a misdemeanor and subject to current law maximum penalties of imprisonment for three years and/or a fine of \$1,000. The bills also prohibit a person from knowingly possessing or receiving a weapon or contraband to effect an escape. A violator is guilty of a felony and subject to current law maximum penalties of imprisonment for 10 years and/or a fine of \$5,000.

In addition, a person detained or confined in a place of confinement is prohibited from knowingly possessing or receiving an alcoholic beverage or controlled dangerous substance. A violator is guilty of a misdemeanor and subject to current law maximum penalties of imprisonment for three years and/or a fine of \$1,000.

*Senate Bill 214/House Bill 1194* also provide that (1) a person may not deliver a “telecommunication device” to a person detained or confined in a place of confinement with signs posted indicating that such conduct is prohibited; (2) a person may not possess such a device with the intent to deliver it to a detained or confined person; (3) a person may not deposit or conceal such a device in or about a place of confinement or on any land appurtenant to such a place with the intent that the device be obtained by a detained or confined person; and (4) a detained or confined person may not knowingly possess or receive a telecommunication device. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

## **Hate Crimes**

Under current Maryland law, a person may not commit a crime against another person or deface the real or personal property of another person because of that person’s race, color, religious beliefs, sexual orientation, or national origin. According to the most recent statistics published by the Federal Bureau of Investigation in *Uniform Crime Reports*, 8,380 “hate-based crimes” occurred nationwide in calendar 2005. Hate crimes against the homeless gained national attention in January 2006, when two teenagers brutally beat three homeless men in Florida, killing one and severely injuring the other two.

*Senate Bill 160 (failed)* would have expanded the protected classes under existing hate crimes to include homeless people.

## **Miscellaneous Crimes**

### **AWOL Machines**

A relatively new product, first introduced in the United States in 2004, allows people to take in liquor without actually consuming liquid. The alcohol without liquid machine (AWOL machine) vaporizes alcoholic beverages and blends them with oxygen, creating a very fine alcoholic mist which is then inhaled through the mouth. Sixteen states, including the neighboring states of Virginia and Pennsylvania, currently ban AWOL machines. Maryland joins this group with the passage of *House Bill 670 (passed)*.

*House Bill 670* prohibits a person from using, possessing, purchasing, or selling an AWOL machine. A violator is guilty of a misdemeanor and faces a fine of up to \$1,000.

### **Restraining Dogs Outside**

Tethering dogs is considered inhumane, causing aggression in dogs and making them more likely to bite. Certain counties, such as Montgomery County, impose restrictions against tethering dogs outside. *Senate Bill 696 (passed)*, applicable statewide, prohibits a person from leaving a dog outside and unattended by using a restraint that:

- unreasonably limits the dog’s movement;

- uses a collar made primarily of metal or that is less than one inch larger than the circumference of the dog's neck;
- restricts the dog's access to sufficient clean water or appropriate shelter;
- is in unsanitary or unsafe conditions; or
- causes injury to the dog.

This crime is a misdemeanor and, on conviction, a violator is subject to up to 90 days imprisonment and/or a fine of up to \$1,000.

### **Eluding a Police Officer**

*Senate Bill 754 (passed)* prohibits a driver of a motor vehicle from attempting to elude a police officer by willfully failing to stop the vehicle or flee on foot if the officer is attempting to apprehend the driver for the commission of a crime of violence. For further discussion of this bill, see the subpart "Motor Vehicles" within Part G – Transportation and Motor Vehicles of this *90 Day Report*.

## **Criminal Procedure**

### **Sexual Offenders**

In Florida in 2005, nine-year-old Jessica Lunsford was abducted, molested, and murdered by a previously convicted child sex offender. In response to this and similar cases, stiffer sentencing for child sexual offenses has been considered in a number of states. Many of these bills are collectively known as "Jessica's Law."

Likewise, in 2006, President George W. Bush signed into law the Adam Walsh Child Protection and Safety Act, a comprehensive revision of the national standards for sex offender registration and notification. States will be subject to loss of federal funding for failure to comply with the provisions of the Walsh Act.

The General Assembly also addressed sexual offenders in 2006. Chapter 4 of the 2006 special session extensively revised provisions of law relating to sexual offenders in the areas of treatment, supervision, registration, community notification, and penalties. In particular, the Act requires, when the victim is under age 13, a mandatory minimum, nonsuspendable 25-year sentence for a person at least 18 years old convicted of first degree rape or first degree sexual offense. A similar five-year minimum sentence is required under the same circumstances for second degree rape or second degree sexual offense.

## **Jessica’s Law – Parole Eligibility**

*Senate Bill 413/House Bill 930 (both passed)* make the mandatory minimum sentences created by Chapter 4 of the 2006 special session nonparolable.

## **Crimes of Violence**

*Senate Bill 170/House Bill 213 (both passed)* adds the crime of sexual abuse of a minor under 13 years of age by an adult (if the offense involved specified acts) and the crime of continuing course of conduct with a child to the list of crimes of violence for which enhanced penalties, including mandatory minimum sentences and ineligibility for parole, are applied to repeat offenders.

## **Evaluation Before Sentencing**

*House Bill 390 (passed)* provides that, unless waived by the State’s Attorney and defense counsel, before sentencing a defendant who is required to register on the State sex offender registry for the crime of sexual abuse of a minor, the court must order the defendant to submit to (1) a presentence investigation conducted by the Division of Parole and Probation; and (2) a mental health assessment, including whether the defendant is a danger to self or others, conducted by a qualified mental health professional employed or engaged by the Department of Health and Mental Hygiene.

## **Juvenile Sex Offenders**

*Senate Bill 738/House Bill 1099 (both failed)* would have required a juvenile to register with a supervising authority at the age of 18 for inclusion on the State’s sex offender registry if the juvenile was at least 13 years of age at the time the qualifying delinquent act was committed and is determined by the court after a hearing (at the time a juvenile court jurisdiction is terminated) to be at significant risk of committing another sexually violent offense or child sexual offense. The bills further establish that a police or court record pertaining to a child may be accessed and used by the Department of Public Safety and Correctional Services and other supervising authorities for purposes of including a juvenile in the State’s sex offender registry.

## **Death Penalty**

On December 19, 2006, the Court of Appeals filed four opinions in a major death penalty case (*Evans v. State*, CA Nos. 107, 122, 123, and 124, Sept. Term 2005). In these decisions, the court held that the Division of Correction (DOC) protocols directing the administration of lethal injection are ineffective until either (1) the protocols are adopted as regulations according to the Administrative Procedure Act (APA); or (2) the General Assembly statutorily exempts the protocols from the requirements of the APA. In effect, the decision caused a moratorium on the imposition of the death penalty until DOC or the General Assembly acted.

*Senate Bill 211/House Bill 225 (both failed)* would have repealed the death penalty and all provisions relating to it, including those relating to its administration and post death sentencing proceedings. A person found guilty of murder in the first degree would have to be sentenced to imprisonment for life or imprisonment for life without the possibility of parole. The bills also would have provided that an inmate who had been sentenced to death before the bills' October 1, 2007, effective date and who had not been executed, may not be executed and would be considered as having received a sentence of life imprisonment without the possibility of parole.

*Senate Bill 239/House Bill 690 (both failed)* would have exempted from the requirements of the APA the protocols of the Department of Public Safety and Correctional Services governing the administration of the death penalty, including any execution operations manual. As a practical matter, this bill would have ended the moratorium on the death penalty and provided for the execution of inmates currently sentenced to death.

## **Expungement**

### **Release without Charge**

In recent years, concern has arisen about the large number of people who are arrested in Baltimore City and ultimately released from police custody without having been charged with a crime. Having an arrest on one's record can have serious consequences due to the adverse impact employment and housing opportunities. Although the Baltimore City Police Department contends that all arrests are legal and based upon probable cause, the Baltimore City State's Attorney declines to prosecute 20 to 30 percent of arrests because there is insufficient evidence to support an arrest or obtain a conviction or the time already served in jail is deemed sufficient.

Expungement means removing a police or court record from public inspection by obliteration or by removing the record to a separate secure area to which people without a legitimate reason are denied access. Under current law, a person who has been arrested but never charged with a crime may pay a fee and petition to have the police records relating to the arrest expunged. A person seeking an expungement before the three-year statute of limitations on lawsuits expires must sign a release waiving the right to sue for improper arrest.

In response to the Baltimore City over-arrest issue, *House Bill 10 (Ch. 63)* establishes an automatic expungement that will apply to arrests without charge statewide beginning October 1, 2007. Within 60 days after release of a person entitled to expungement, a law enforcement agency is required to do a diligent search; expunge each police record relating to the arrest, including photographs and fingerprints; and send a notice of expungement to the Criminal Justice Information System Central Repository, each booking facility and law enforcement unit that may have a record of the arrest, and to the person. The booking facility, law enforcement unit, and Central Repository then have 60 days to expunge each police record. If the agencies fail to expunge a police record, the person entitled to expungement may seek relief in the court and recover costs of the action. A police record expunged under this Act must be moved to a

secure, nonaccessible area for three years after the date of expungement. After the three-year period, the expunged record may be obliterated.

The Act provides that a person who is or has been arrested for the suspected commission of a crime before October 1, 2007, and is then released without being charged with the commission of a crime may request expungement of the police record, without having to wait or sign a waiver of the right to sue. A similar procedure must then be followed by law enforcement units to perform the expungement. A person must request expungement within eight years after the arrest.

No fee or costs may be charged for an expungement under the bill, regardless of when the arrest or confinement occurred.

### **Civil Offenses or Infractions**

A person charged with a civil offense or infraction, except a juvenile offense, as a substitute for a criminal charge may file a petition for expungement under the same circumstances as someone charged with a crime under *Senate Bill 299/House Bill 278 (both passed)*. The bills, requested by the Maryland Judicial Conference, apply retroactively.

### **Restoration of Voting Rights**

*Senate Bill 488 (passed)* allows an individual convicted of a felony who has completed the term of imprisonment, including any term of parole or probation, to be eligible to register to vote. For a further discussion of this bill, see the subpart “Elections” under Part C – State Government within this *90 Day Report*.

### **Electronic Citations**

A national study found that an estimated 10 percent of all written citations issued by law enforcement officers and received by courts contain errors from misspelling, poor handwriting, smudges, and inconsistencies. An electronic system could eliminate most, if not all, of these problems. Electronic citations could save time and increase the safety and efficiency of officers in the field. According to the study, 27 states use electronic citations, have active pilot projects, or are in the planning stages for this type of process.

States that use some form of electronic citation technology may transmit data directly from a patrol car or handheld device to a computer server at a court. Some states transmit data to a central server that is controlled by state or local authorities and is accessible by courts and administrative offices. Other states send data directly to a central repository at police headquarters.

The District Court of Maryland manually processes about 1.3 million traffic citations annually. Pilot projects to issue traffic citations or warnings electronically are underway in local jurisdictions in several areas of the State. Also, the State Police are developing a computerized system for citations, traffic warnings, and vehicle equipment repair orders.

*Senate Bill 587/House Bill 459 (both passed)* requested by the Maryland Judicial Conference, authorize the issuance of traffic citations in an electronic format. The Chief Judge of the District Court is required to authorize the use of a single document for the issuance of multiple traffic citations, which must be separately numbered. The Chief Judge must specify the appropriate means in which a citation may be (1) certified by the issuing police officer, under penalties of perjury, that the facts in the citation are true; and (2) acknowledged to have been received by the person to whom the traffic citation is issued. Appropriate means may include a written signature, an electronic signature, or the data encoded on a person's driver's license or identity card.

An electronic or written traffic citation must include a notice that the citation is a summons to appear by a court through a trial notice, or that a court will issue a writ containing that information. In addition, a traffic citation must contain the violations charged and an acknowledgement of receipt of the citation to be executed by the person receiving the citation. The citation must also contain a clear and conspicuous statement that acknowledgement of the citation is not an admission of guilt and failure to acknowledge the citation could subject the person to arrest. A person receiving a citation must comply with the notice to appear contained in a trial notice or writ issued by a court.

A police officer who issues a citation is required to file an electronic or written copy of the citation and keep a written or electronic copy of the citation. If the person cited acknowledges receipt on a written copy of the citation, then the police officer must keep the signed copy to produce as evidence. In consultation with the Chief Judge of the District Court, the Motor Vehicle Administration must adopt regulations to govern the distribution and disposition of electronic, as well as written, traffic citation forms. *Senate Bill 587/House Bill 459* provide that an electronic or written traffic citation that conforms to State requirements is a sufficient charging document for the prosecution of any traffic offense.

### **Posting of Bond**

*Senate Bill 685/House Bill 337 (both passed)* permit a defendant, after appearing in person before a commissioner or judge in a case, to post bond by means of electronic transmission or hand delivery of documentation without appearing before the commissioner or judge. The county administrative judge in circuit court or the Chief Judge in District Court must authorize using this procedure to post bond. Electronic transmission of documentation will make the posting of bond more efficient and reduce local court expenditures. The bills explicitly supersede the Maryland Rule requiring that a bond be signed by the defendant and surety in the presence of the judicial officer.

### **Parole Eligibility of Second-time Drug Offenders**

Maryland law requires judges to sentence certain repeat offenders of drug-related crimes to serve nonsuspendable and nonparolable mandatory minimum terms. *House Bill 992 (passed)* repeals the prohibition against parole applicable to a 10-year mandatory minimum nonsuspendable sentence of incarceration for second offenders convicted of distributing

narcotics and hallucinogens. The bill only applies to a person not convicted of a crime of violence arising out of the incident that resulted in the mandatory minimum sentence.

### **Restitution – Unclaimed Money**

Under the State’s victim compensation law, a person who suffers personal injury or property damage directly resulting from a crime or delinquent act, or the person’s representative in the event of the person’s death, is entitled to restitution to cover the person’s actual expenses, including the loss of wages. In such a case, the court enters a judgment of restitution. At the direction of the Division of Parole and Probation or the Department of Juvenile Services, the Comptroller’s Office distributes restitution payment checks to persons awarded judgments. If the checks are returned as undeliverable, they are considered unclaimed money and held in that status until any eventual claim is made.

*Senate Bill 93/House Bill 1001 (both passed)* require the Comptroller to distribute unclaimed money from judgments of restitution to the State Victims of Crime Fund to assist victims of crimes and delinquent acts and protect victims’ rights as provided by law. If a victim entitled to restitution that has been treated as abandoned is located after the restitution money has been distributed to the State Victims of Crime Fund, the Comptroller must reduce the next distribution to the fund by the amount recovered by the victim. The State Board of Victim Services, administrator of the fund, is required to use the money obtained from unclaimed restitution for annual grants to provide legal counsel to victims.

### **Daytime Housebreaking – Retroactive Review of Mandatory Sentence**

In 1994, the General Assembly removed burglary and daytime housebreaking from the list of violent crimes for which mandatory minimum sentences apply to repeat offenders.

In 2005, Chapter 387 was enacted, which allowed a person serving a mandatory minimum sentence of confinement imposed before October 1, 1994, for burglary or daytime housebreaking to apply for a review of the mandatory minimum sentence. An inmate had to file the application on or before a September 30, 2006, deadline. The review panel was authorized to strike the restriction against parole but not reduce the sentence.

An unintended consequence of the language of Chapter 387 was that only defendants whose last conviction, which directly triggered the applicability of the mandatory minimum sentence, was burglary or daytime housebreaking were allowed to seek a sentence review.

*House Bill 1317 (passed)* is a corrective measure allowing a person serving a mandatory minimum sentence of confinement imposed before October 1, 1994, where burglary or daytime housebreaking was a *predicate offense* for the imposition of the mandatory minimum sentence, to apply for and receive one review of the mandatory minimum sentence. The bill provides a window until September 30, 2008, for an inmate to file an application for review. As in Chapter 387, the review panel may only strike the parole restriction. A small number of inmates remain eligible for review of their sentence under this bill.

## **Custodial Interrogation**

Interest in recorded interrogations has increased following the 2002 release of the five teenagers convicted of the 1989 rape and near-murder of the “Central Park Jogger” on the basis of their nonvideotaped interrogations, but videotaped confessions. They were ordered released after another person confessed to having committed the crime, acting alone, and DNA evidence failed to link the teenagers to the attack.

Recording the *Miranda* warnings at the start of an interrogation could reduce subsequent challenges based on a defendant’s allegation that law enforcement failed to properly advise of these rights. The practice could also help resolve questions as to what was said and done over the course of an interrogation.

Alaska, Illinois, Maine, Minnesota, New Jersey, New Mexico, and Wisconsin have mandatory recording of confessions. The Alaska and Minnesota supreme courts have informed law enforcement officials in those states that they must record interviews of suspects in detention whenever feasible, or risk the statements being ruled inadmissible in court. Some local jurisdictions, including Broward County, Florida; Denver, Colorado; San Diego, California; and Houston, Austin, and Dallas, Texas also require electronic recording. Legislation concerning the mandatory electronic recording of interrogations was introduced in 20 states and the District of Columbia in 2005 or 2006, and 10 states to date in 2007.

*Senate Bill 193/House Bill 67 (both failed)* would have established that a criminal defendant’s statement during a custodial interrogation for a crime of violence is presumed involuntary unless an electronic recording is made of the interrogation. The bills contained provisions outlining the requirements for this recording and the circumstances under which the presumption may be overcome.

## **Juvenile Law**

### **Department of Juvenile Services**

#### **Background**

Pursuant to Chapter 431 of 2004, the Department of Juvenile Services (DJS) contracted with Development Services Group to complete a Facilities Master Plan. Phase 1 of the Facilities Master Plan (Gap Analysis Report) divided the State into five operational areas. Phase 2 of the Facilities Master Plan proposed dividing the State into four operational regions. DJS recommended that each region contain shelter care, secure detention, and a youth center. The plan recommends 15 projects over 10 years with a total estimated cost for design, construction, and equipment of \$111.8 million. Eleven of the 15 projects involve renovations or replacements of existing facilities.

### **Reorganization and Regionalization**

*Senate Bill 359 (passed)* requires DJS to serve children in its system with specific programming that includes ensuring their safety and the safety of the community, holding delinquent children accountable for their actions, assisting in the development of competencies for these children, and delivering services on a regional basis. The bill specifies that at least four operational regions must be established, requires that facilities must be operationally separate from each other, and requires DJS to submit a revised master facilities plan to the Department of Budget and Management by November 1, 2007.

### **Mentoring**

Chapter 307 of 2003 established the Task Force to Study the Mentoring and Monitoring of Children in the Custody of or Under the Supervision of DJS. The task force found that mentoring programs effect positive outcomes for youth, including improvements in academic performance, classroom behavior, and peer relationships. The task force’s final report stated that it was feasible for DJS to implement a statewide mentoring program provided that sufficient funding and administrative support are made available to the program.

*Senate Bill 175 (passed)* establishes the “Maryland Rising” mentoring program for children who have spent at least 30 days in a committed placement. DJS is required to develop a statewide network of groups, including State agencies, that will attempt to recruit a volunteer mentor for each child in the program. Mentors must have frequent contact with the children to whom they are assigned and may provide counseling, tutoring, life skills training, and other support services.

### **Juvenile Justice Monitoring Expansion**

Chapter 12 of 2006 transferred the Juvenile Justice Monitoring Unit from the Governor’s Office of Children to the Office of the Attorney General (OAG). This office investigates and determines whether the needs of the children in facilities owned or operated by DJS are being met, their rights are being upheld, and they are free from abuse.

*Senate Bill 360 (passed)* expands the jurisdiction of the Juvenile Justice Monitoring Unit to include the monitoring of any residential facility licensed by DJS. The bill authorizes the Governor to transfer two regular positions and \$120,000 for those positions from DJS to the monitoring unit, effective October 1, 2007. The bill also authorizes the transfer of one position within the OAG to the monitoring unit. The expansion of the monitoring unit’s jurisdiction takes effect on January 1, 2008, contingent on the transfer of positions and funds.

## **Truancy Reduction**

### **Truancy Reduction Pilot Program**

Chapter 551 of 2004 authorized the establishment of a Truancy Reduction Pilot Program in the juvenile courts in Dorchester, Somerset, Wicomico, and Worcester counties. The pilot program sunsets on June 30, 2007. The laws established a code violation and a civil offense for a child in these counties to fail to attend school without lawful excuse. Except as otherwise provided by law, each child who resides in Maryland and is 5 years old or older and under 16 years, must regularly attend a public school unless the child is otherwise receiving regular, thorough instruction during the school year. Under current law, a child, who is required by law to attend school and is habitually truant, is considered a “child in need of supervision” and is under the jurisdiction of the juvenile court.

A student is habitually truant if the student is unlawfully absent from school more than 20 percent of the school days within any marking period, semester, or year. According to the State Department of Education, 2.37 percent of children, or 20,382 students enrolled in Maryland public schools were habitually truant during the 2005-2006 school year.

*House Bill 1325 (passed)* authorizes the establishment of a Truancy Reduction Pilot Program in the juvenile court in Harford and Prince George’s counties and extends the authorization for existing truancy reduction programs in Dorchester, Somerset, Wicomico, and Worcester counties. The bill takes effect July 1, 2007, and terminates on June 30, 2009. For a further discussion of this bill, see subpart “Education – Primary and Secondary” within Part L – Education of this *90 Day Report*.

### **Prohibition Against Issuance of Learner’s Permit**

*Senate Bill 519/House Bill 571 (both passed)* prohibit the Motor Vehicle Administration from issuing a learner’s instructional permit to an applicant under the age of 16 if the applicant’s school attendance record indicates more than 10 unexcused absences during the prior school semester. For a further discussion of these bills, see the subpart “Education – Primary and Secondary” within Part L – Education and Part G – “Transportation and Motor Vehicles” of this *90 Day Report*.

## **Task Forces**

### **Task Force to Study Group Home Education and Placement Practices**

A September 2000 executive order established the Task Force to Study the Licensing and Monitoring of Community-Based Homes for Children. The task force met from February to September 2001 and held two public hearings for citizens to voice their concerns about group homes. One of the issues addressed by citizens was the adverse impact that group homes have on local schools and community resources. Although the task force acknowledged that this particular recommendation was outside of its charge, the task force suggested in its final report

that further study be conducted to assess the effect that group home placements have on local schools.

*Senate Bill 476 (passed)* establishes a task force to study the current status of group home education and the placement practices of State agencies. The task force must make recommendations for future requirements for the placement of children in programs licensed by the State after considering funding issues, the educational needs of youth served by group homes, and the feasibility and impact of having separate programs and facilities for children placed by different State agencies. An interim report is due from the task force by December 1, 2007, and a final report is due by December 1, 2008. The bill takes effect July 1, 2007 and terminates June 30, 2009.

### **Delinquency Prevention and Diversion Services Task Force**

Chapter 466 of 2006 established the Delinquency Prevention and Diversion Services Task Force. Among its mandates, the task force is required to study, survey, and assess the adequacy, quality, and quantity of delinquency prevention and diversion services currently being provided to juvenile offenders in the State by public and private agencies.

*House Bill 1221 (passed)* extends the termination date of the task force from September 30, 2007, to September 30, 2008. The bill also changes the date for reporting the findings of the task force from July 1, 2007, to July 1, 2008.

### **Interstate Compact on Juveniles**

Chapter 520 of 1966 entered the State of Maryland into the Interstate Compact on Juveniles. The compact guides the return of juveniles to other states when their return is sought and also guides proceedings for return of Maryland residents apprehended in other states. The compact is administered by the Department of Juvenile Services. The Association of Juvenile Compact Administrators estimates that the compact governs 20,000 to 30,000 transfer and supervision cases each year.

*Senate Bill 371 (passed)* replaces the existing Interstate Compact for Juveniles with an updated version of the compact. The revised Interstate Compact is intended to address deficiencies in the original agreement unanticipated when the compact was developed in 1955. Provisions include (1) an independent compact operating authority; (2) an interstate commission with representation from all member states; (3) rule-making and sanctioning authority; (4) an annual assessment for commission operations; (5) uniform data collection and sharing procedures; and (6) conformity with other state compacts governing corrections and placement of children.

The bill provides that the compact will take effect on the later of July 1, 2008, or the date 35 states pass a similar act. As of January 1, 2007, 30 states had enacted the revised Interstate Compact for Juveniles into law; legislation is under active consideration in another six states.

## Public Safety

### Law Enforcement Operating Procedures

#### Race-based Traffic Stops

Since 2001, State law enforcement agencies have held to a policy against race-based traffic stops. The policy prohibits the practice of using an individual's race or ethnicity as the sole justification to initiate a traffic stop, but it does not alter the authority of an officer to make an arrest, conduct a search or seizure, or otherwise fulfill the officer's law enforcement obligations. Under the policy, a law enforcement officer records specified information in connection with each traffic stop, including the driver's gender, race, and ethnicity, to evaluate the manner in which the vehicle laws are being enforced. Each law enforcement agency must compile the data collected by its officers and submit an annual report to the Maryland Justice Analysis Center (MJAC) by March 1 of each year reflecting the prior calendar year. MJAC is required to issue a report to the Governor and the General Assembly by September 1 of each year. *Senate Bill 1027 (passed)* extends the termination date for the collection of traffic stop data from December 31, 2007, to December 31, 2009, and requires a final report on this data by MJAC by August 31, 2010, rather than August 31, 2008.

#### Written Policies for Eyewitness Identification

Ensuring that eyewitness evidence is reliable and not unnecessarily suggestive is essential in preserving a defendant's due process rights. In 1999, the U.S. Department of Justice released a report entitled *Eyewitness Evidence: A Guide for Law Enforcement*, which recommended specific procedures for obtaining reliable eyewitness evidence through line-ups, field identifications, "mug shot" books, and other methods. Since the release of this report, three states have passed eyewitness identification reform laws adopting some or all of these recommendations. With *Senate Bill 157/House Bill 103 (both passed)*, Maryland joins this list of states. The bills require each law enforcement agency in the State to adopt a written policy relating to eyewitness identification by December 1, 2007. The policies must comply with the Department of Justice standards on obtaining accurate eyewitness identification.

#### Forensic Laboratories

*Senate Bill 351/House Bill 879 (both passed)* require the Secretary of Health and Mental Hygiene to license, set standards and requirements for, and inspect forensic laboratories in Maryland. The bills require that regulations contain the standards and requirements to assure that forensic laboratories provide safe, reliable, and accurate services. A more detailed description of this legislation can be found under Part J – *Health Care Facilities and Regulation*.

## **Inmates and Detainees**

### **Task Force to Study Prison Violence**

In an attempt to find ways to stem the tide of inmate-on-inmate and inmate-on-correctional staff assaults, *Senate Bill 69 (passed)* establishes a Task Force to Study Prison Violence in Maryland. The 20-member panel, including State officials, prison reform advocates, criminologists, attorneys, health care experts, as well as two former prisoners, will study such issues as the scope, nature, patterns, and causal relationships of violence in the State's prisons and the impact on violence made by illegal drugs, lead and other pollutants, contraband, and gangs. The task force must submit an interim report to the Governor and the General Assembly by December 31, 2007, and a final report by December 31, 2008.

### **Inmates and Detainees Who Are Pregnant or Have Newborn Children**

*House Bill 1206 (Ch. 91)* allows the Division of Correction (DOC) to grant special leave for an inmate to participate in a residential or nonresidential treatment program, including a program for pregnant women or a program to establish bonding between mother and a newborn child. The bill allows an inmate granted special leave to remain outside of the institution for any period of time consistent with public safety. The bill also adds mental health treatment and participation in a residential program of treatment in the best interest of an inmate's expected or newborn child to the reasons an inmate may be released on parole at any time, if amenable to treatment and not serving a term for criminal offenses including child abuse, sexual abuse of a child, and a crime of violence.

## **Public Safety Personnel**

### **Minimum Age for Correctional Officers**

*House Bill 910 (passed)* provides that the Secretary of Public Safety and Correctional Services must adopt regulations requiring that a correctional officer hired on or after October 1, 2007, by DOC be at least 21 years old. The regulations must exempt an honorably discharged veteran or reserve member of the U.S. Armed Forces from the minimum age requirement.

### **Revocation of Correctional Officer Certification**

*House Bill 1203 (passed)* authorizes the Correctional Training Commission to revoke the certification of a correctional officer in conjunction with disciplinary action taken under Title 11 of the State Personnel and Pensions Article. The Office of Administrative Hearings (OAH) may reinstate the certification with no further examination or condition if OAH rescinds or modifies the disciplinary action. Under Title 11, an appointing authority may take several disciplinary actions against an employee, including giving the employee a written reprimand, directing the forfeiture of up to 15 days of the employee's accrued annual leave, suspending the employee without pay, denying the employee an annual pay increase, demoting the employee, or terminating the employee's employment, with or without prejudice.

### **Public Safety Aviation Employees – Death Benefits**

*Senate Bill 895 (passed)* affords a public safety aviation employee the same death benefit that other public safety employees qualify for in the event they are killed in the performance of duties. A public safety aviation employee includes a pilot and aviation maintenance technician employed by the State. The performance of duties for employees qualifying for this benefit includes actively participating in flight operations as a crew member in a rotary or fixed wing aircraft. The bill also clarifies that death by a heart attack or stroke during flight operations is evidence of dying in the performance of duties and that public safety aviation employees killed in the performance of duties are entitled to the same funeral expenses afforded to other public safety employees under these provisions.

### **State Aid for Police Protection Fund**

Starting in fiscal 2009, annual State funding for the Police Protection Fund will be increased for qualifying municipalities under *Senate Bill 130/House Bill 611 (both passed)*. The bills require that the amount distributed to each qualifying municipality increase from \$1,800 to \$1,950 per full-time sworn police officer. To qualify for grants, a municipality must have a minimum expenditure for police protection of \$5,000 annually and employ at least one qualified full-time police officer or have a minimum expenditure for police protection of \$80,000 annually and employ at least two qualified part-time officers from a county police department or county sheriff's office. For purposes of the police aid formula, Baltimore City is not considered a municipality.

### **Maryland State Firemen's Association – Volunteer Company Assistance Fund**

The Maryland State Firemen's Association (MSFA) may use money annually appropriated to the Volunteer Company Assistance Fund (VCAF) for an expanded array of purposes under *Senate Bill 701/House Bill 1078 (both passed)*. The bills also authorize the fund to provide grants in fiscal 2008 to MSFA for administrative expenses and grants to widows and orphans.

Specifically, the bills allow administrative funds derived from VCAF to be used to:

- formulate, publish, and distribute State and federal standards, laws, guidelines, and recommendations other than the fire laws of Maryland;
- purchase, publish, and distribute material related to emergency services, safety, and fire prevention and sponsor public forums for specified information dissemination;
- maintain and distribute, rather than simply keep, materials related to annual inspections of equipment and facilities;
- through fee and subscription payments and meeting attendance, maintain organization membership for specified purposes;

- provide fuel, insurance, and maintenance for vehicles owned by MSFA for certain uses;
- provide professional services, such as accounting, auditing, and legal consultation, and pay certain operational costs; and
- promote, disseminate, and advocate for specified programs and services.

## **Law Enforcement Agencies – Property Disposal**

### **Local Law Enforcement Agencies**

To free up scarce storage space that is taken up by property that is no longer needed for a prosecution or is otherwise no longer relevant, *Senate Bill 662/House Bill 1067 (both passed)* provide local law enforcement agencies a streamlined procedure for selling off the property. After notice is given to the owner of the property that the law enforcement agency has determined that the property is no longer needed, the owner has up to 30 days to secure its immediate release. If the owner does not claim the property, at any time after the property has been in the possession of the agency for three months, the agency may sell the property at auction by first giving notice of the sale to persons entitled to its possession and to lienholders and publishing a notice of the sale in a newspaper for two successive weeks.

At any time within three years after the date of a sale under these provisions, a person who submits satisfactory proof of the right to possession of the property must be paid, without interest, an amount equal to the amount distributed to a county or municipal general fund as a result of the sale. Personal property that is used as evidence in a criminal prosecution must be retained by the local law enforcement agency in the same manner as other evidence retained by the agency.

### **State Police – Holding Period**

*Senate Bill 974 (passed)* decreases from six to three months the amount of time that unneeded personal property must be in the possession of the Department of State Police before the department may begin proceedings to auction off the property. The bill requires, however, that personal property that is used as evidence in a criminal prosecution be retained by the State Police in the same manner as other evidence retained by the department.

### **Disposal of Handguns Owned by a Law Enforcement Agency**

A law enforcement agency seeking to dispose of a handgun owned by the agency now has the option under *Senate Bill 497 (passed)* to sell, exchange, or transfer the handgun to a federally licensed manufacturer of firearms or ammunition.

## **Fires and Explosives – Local Jurisdictions**

### **Dorchester and Talbot Counties**

Under the National Fire Codes (Automotive and Marine Service Station Code) and the State Fire Prevention Code, a marine motor fuel dispensing facility must have an attendant or supervisor on duty whenever the facility is open for business. The attendant's primary function is to supervise, observe, and control the dispensing of liquids. In 2004, the State Fire Prevention Commission adopted a code provision that allows the operation of unattended self-service stations, subject to the approval of the authority having jurisdiction. However, this provision does not apply to marine service stations. *House Bill 564 (passed)* requires the commission to establish a pilot program to allow the continuous operation of unattended marine vessel motor fuel retail service stations. The pilot program is to be developed in conjunction with the Clean Marina Initiative of the Department of Natural Resources to ensure that the environment remains protected.

### **Prince George's County**

*House Bill 508 (passed)* expands the powers of a Prince George's County fire and explosive investigator. The bill grants an investigator the same authority as the State Fire Marshal or a full-time investigative and inspection assistant of the Office of the State Fire Marshal, including the authority to make a warrantless arrest while operating in or outside of the county under some circumstances. However, the bill also provides that the Prince George's County Fire Chief may limit, in writing, the authority granted to an investigator under this bill. The bill excludes a Prince George's County fire and explosive investigator from the definition of "law enforcement officer" under provisions relating to the Law Enforcement Officers' Bill of Rights, but it includes an investigator in the definition of "police officer" under provisions relating to the Maryland Police Training Commission.

### **Washington County**

*House Bill 726 (passed)* authorizes the commanding officer of a "fire and ambulance company" in Washington County to designate to the county sheriff up to 20 members of that company for appointment as fire police in the county. The actual appointment is made by the Washington County Sheriff from those persons so designated. The powers of an appointee are limited to traffic control and scene safety while functioning at parades, accidents, fires, floods, other emergencies, or public events conducted by a fire or ambulance company or the county sheriff. An appointee may not use a weapon in the performance of duties associated with the appointment. An appointment authorized under this bill terminates if the member ceases to be a member of the fire or ambulance company, and the sheriff may remove an appointee at any time.

## **Assault Weapons**

For the fifth year in a row, a proposed ban on assault weapons was introduced in response to the lifting of a federal assault weapons ban in 2004. The federal ban had prohibited the manufacture, transfer, or possession of 19 specific models of semiautomatic weapons, and their

copies, as well as weapons that have a combination of certain military characteristics. *Senate Bill 43 (failed)* would have designated 45 specified firearms as “assault weapons” and, with certain exceptions, prohibited a person from transporting an assault weapon into the State or possessing, selling, offering to sell, transferring, purchasing, or receiving an assault weapon. In 1994, Maryland prohibited the sale and possession of “assault pistols” (defined as 15 specific semiautomatic pistols or their copies).

Taking a different approach to the assault weapons issue, *House Bill 441 (failed)* would have imposed a tax on the sale of an assault weapon in the State, establishing the rate of the assault weapon tax at 10 percent of the taxable price of the assault weapon. The revenues from the tax would have been distributed to a special fund, with 80 percent of the revenues to be used for education aid and 20 percent to be used for victim services. The Secretary of the State Police would have been required to assess the impact of tax on the sale of assault weapons in the State and report the findings to the Governor and the General Assembly by December 1, 2008.

### **Carbon Monoxide Alarms**

Carbon monoxide is an odorless, tasteless, invisible gas that results from the incomplete combustion of fossil fuels, such as wood and oil. According to the *Journal of the American Medical Association*, carbon monoxide poisoning is the leading cause of accidental poisoning in the United States. *House Bill 401 (passed)* requires that a carbon monoxide alarm be installed within a dwelling that (1) relies on the combustion of a fossil fuel for heat, ventilation, hot water, or clothes dryer operation; and (2) is a newly constructed dwelling for which a building permit is issued on or after January 1, 2008.

The bill requires that an alarm be installed in a central location outside of each sleeping area. However, if there is a centralized alarm system that is capable of emitting a distinct and audible sound to warn all occupants, the owner of a dwelling may install the alarm within 25 feet of any carbon monoxide-producing fixture and equipment. Also a carbon monoxide alarm may be combined with a smoke alarm if the combined device complies with State law and certain industry standards.

