

Part E

Crimes, Corrections, and Public Safety

Criminal Law

Financial Exploitation of the Elderly

Generally, Maryland criminal law does not provide criminal sanctions based on the age of the victim. *Senate Bill 304/House Bill 583 (both passed)* expand the prohibition against financial exploitation of vulnerable adults to include persons who are at least 68 years old. The bills prohibit a person from knowingly and willfully obtaining by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is at least 68 years old, with intent to deprive the individual of the individual's property. The bills are intended to protect seniors that may be vulnerable to exploitation by sales persons, service providers, in-home care providers, or even family and friends because they may be lonely and isolated and may suffer from loss of memory.

A violator is subject to existing penalties applicable when the victim is a vulnerable adult. When the value of the property obtained is \$500 or more, a violator is guilty of a felony and subject to maximum penalties of 15 years imprisonment and/or a \$10,000 fine. When the value of the property is less than \$500, a violator is guilty of a misdemeanor and subject to maximum penalties of 18 months imprisonment and/or a \$500 fine.

Hate Crimes

Maryland's current hate crimes law provides that because of another's race, color, religious beliefs, sexual orientation, or national origin, a person may not take certain actions against another. These actions include commission of a crime; defacement, damage, destruction, or attempted defacement, damage, or destruction of property; or burning or attempting to burn an object on the person's property.

This session, two bills expanded the protected classes under the State's hate crimes law. Under *Senate Bill 151 (passed)*, protected classes will include the homeless and a person's gender. The term "homeless" means lacking a fixed, regular, and adequate nighttime residence or having a primary nighttime residence that is a supervised shelter designed for temporary living

or a place not designed for or ordinarily used by humans as a regular sleeping accommodation. *House Bill 560 (passed)* adds disability as a protected class. Both *Senate Bill 151* and *House Bill 560* also add the attempt to commit a crime motivated by bias as a prohibited offense under the law.

Theft

Under current law, a person convicted of theft of property with a value of \$500 or more is guilty of a felony and subject to maximum penalties of imprisonment for 15 years and/or a \$25,000 fine. A person convicted of theft of property with a value of less than \$500 is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 18 months and/or a \$500 fine. In addition, the sentencing category of petty theft provides for the prosecution of theft where the value of the property or services involved is less than \$100. A violator is guilty of a misdemeanor and subject to maximum penalties of 90 days imprisonment and/or a \$500 fine.

House Bill 66 (passed) increases the maximum property value for misdemeanor theft from \$500 to \$1,000 and creates three tiers of felony theft:

- when the value of the item stolen is between \$1,000 and \$10,000, the maximum penalty is 10 years imprisonment and/or a \$10,000 fine;
- when the value of the item stolen is between \$10,000 and \$100,000, the maximum penalty is 15 years imprisonment and/or a \$15,000 fine; and
- when the value of the item stolen is \$100,000 or more, the maximum penalty is 25 years imprisonment and/or a \$25,000 fine.

Fraudulent Conversion of Rental Property

A person may not fraudulently convert to the person's own use a good or thing of value received under a written contract or written lease entered into for the purpose of renting or leasing things for valuable consideration. A violator is guilty of a misdemeanor and on conviction is subject to maximum penalties of 60 days imprisonment and/or \$1,000 fine.

Senate Bill 192/House Bill 501 (both passed) clarify the language of this prohibition to ensure that it applies to both rent-to-rent and rent-to-own situations. The bills also require that property subject to a fraudulent conversion charge have a value of \$1,500 or more and provide for merger with a theft conviction arising out of the same act or transaction.

Underage Drinking

Resulting from findings by the Task Force to Combat Driving Under the Influence of Drugs and Alcohol, an Administration bill, *House Bill 299 (passed)*, creates a code violation for an individual younger than age 21 who consumes an alcoholic beverage. It also establishes misdemeanor penalties for adults who violate State law by knowingly obtaining or attempting to

obtain an alcoholic beverage or furnishing or allowing consumption of alcohol by an individual younger than 21.

Under *House Bill 299*, an individual younger than 21 may not consume an alcoholic beverage. A violator commits a code violation but may not be stopped on suspicion of the violation unless observed in possession of an alcoholic beverage. The consumption prohibition does not apply if an adult furnishes the alcoholic beverage or allows possession or consumption, the individual and the adult are members of the same immediate family, and the beverage is furnished and consumed within the private residence or area immediately surrounding the residence of the adult. It also does not apply if the consumption occurs during participation in a religious ceremony.

Someone younger than 21 who violates prohibitions against misrepresentation of age, underage possession, or possessing a false ID must be issued a code violation citation. Someone younger than 18 who obtains or attempts to obtain an alcoholic beverage from an alcoholic beverages licensee or a minor who furnishes or facilitates the possession or consumption of an alcoholic beverage by an individual younger than 21 must be issued a citation for a code violation. Prepayment of the fine is not permitted and the accused individual must appear in court.

House Bill 299 makes an adult guilty of a misdemeanor if the adult knowingly obtains or attempts to obtain alcohol for consumption by someone younger than 21 or furnishes or allows possession or consumption of alcohol, as specified, by such an individual. An adult violator is subject to a maximum fine of \$2,500 for a first offense and \$5,000 for a second or subsequent offense. The bill clarifies that these criminal penalties do not alter the current law penalties applicable to alcoholic beverage licensees.

Manufacture of Controlled Dangerous Substances

House Bill 626 (passed) removes the current law prohibition against the manufacture of a controlled dangerous substance from the provision that prohibits distributing and dispensing a controlled dangerous substance and places it with the provision that prohibits the manufacture, distribution, or possession of certain items used to produce controlled dangerous substances. While this is primarily a technical change, the bill also establishes that a violation of the prohibition against manufacturing a controlled dangerous substance or manufacturing, distributing, or possessing items used to produce a controlled dangerous substance is an “underlying crime” for purposes of the criminal gang offenses subtitle.

Possession of Child Pornography

Under current law, a person may not knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation depicting an actual child under age 16 (1) engaged as a subject of sadomasochistic abuse; (2) engaged in sexual conduct; or (3) in a state of sexual excitement. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$2,500 and/or two years imprisonment for a first violation. Second and

subsequent violations are subject to maximum penalties of a fine of \$10,000 and/or five years imprisonment.

Senate Bill 99/House Bill 9 (both passed) increase the penalties for this offense. The maximum imprisonment penalty for a misdemeanor first offense is increased from two years to five years. For a second or subsequent offense, the maximum imprisonment penalty is increased from 5 years to 10 years and the offense becomes a felony. The bill also grants concurrent jurisdiction to the District Court and the circuit courts for possession of child pornography as a second or subsequent offense.

Human Trafficking

Chapters 340 and 341 of 2007 renamed the crime of pandering to human trafficking, and created an enhanced penalty for human trafficking involving a minor. Under the bills, 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. A person who commits human trafficking involving an adult victim is guilty of a misdemeanor and subject to maximum penalties of 10 years imprisonment and/or a fine of \$5,000. *House Bill 542 (Ch. 143)* expands the prohibition by adding the knowing inducement or enticement of another into prostitution and by eliminating the need for persuasion, inducement, or enticement to prostitution to have been made by threat or promise.

Removal of Human Remains

House Bill 482 (passed) modifies current law prohibitions against removing human remains without authority to allow certain family members or designated representatives to arrange for the removal of human or cremated remains from a burial site within a cemetery and reinterment in the same burial site or another burial site within the boundary of the same cemetery. In order of priority, these individuals may authorize the removal of remains: (1) the surviving spouse or domestic partner of the decedent; (2) an adult child; (3) a parent; (4) an adult sibling; (5) a representative acting under signed authorization of the decedent; or (6) an acting guardian at the time of death. A reinterment under the bill may be done without the authorization of the State's Attorney.

Under *House Bill 482*, a person who arranges for reinterment of remains within the same cemetery must, within 30 days after the reinterment, publish a notice of this action in a newspaper of general circulation in the county where the cemetery is located. The notice must include specified information related to the reinterment. Within 45 days after the reinterment, a person who arranges the reinterment must provide a copy of the notice to the Office of Cemetery Oversight. The location of the remains must be entered into the inventory of the local burial sites or, if no inventory exists, into a record or inventory deemed appropriate by the Maryland Historical Trust.

Interfering with Transit Operators and School Bus Drivers

House Bill 631 (passed) prohibits a person from obstructing, hindering, or interfering with a school bus driver while the driver is engaged in the performance of official duties. A violator is guilty of a misdemeanor and subject to maximum penalties of a \$1,000 fine and/or 90 days imprisonment. **House Bill 631** also expands the existing prohibition against obstructing, hindering, or interfering with the operation or operator of a transit vehicle or railroad passenger car to include a station agent, conductor, or station attendant employed by specified entities. Maximum misdemeanor penalties are increased from a \$500 fine to a \$1,000 fine and/or 90 days imprisonment.

Criminal Procedure

Death Penalty

Implementation of the death penalty was effectively halted nationwide when the U.S. Supreme Court agreed to hear the appeal in *Baze v. Rees* (553 U.S. ___, 128 S.Ct. 1520 (2008)). In September 2007, the court granted *certiorari* to consider the constitutionality of the lethal injection process in Kentucky. The case had wide-ranging implications because the Kentucky procedures for lethal injection are substantially similar to the procedures used in many other states, including Maryland. In April 2008, the court affirmed the decision of the Kentucky Supreme Court and ruled that Kentucky's lethal injection protocol did not constitute cruel and unusual punishment. Following the decision in *Baze*, nine states carried out executions during the remainder of 2008.

Prior to developments in the *Baze* case, the ruling of the Maryland Court of Appeals in *Evans v. State*, 395 Md. 256 (2006) halted executions in Maryland. In that case, the court rejected a race-based constitutional challenge, but found that the procedures for lethal injection were implemented without the input required by the Administrative Procedure Act (APA). 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 under the APA; or (2) the General Assembly exempts the protocols from the procedures required by the APA. To date, new regulations to adopt the protocols have not been issued by Department of Public Safety and Correctional Services. As a result, implementation of the death penalty has effectively been halted in Maryland since the ruling in *Evans*. Evans' civil rights claim in the United States District Court of Maryland that the use of lethal injection in Maryland is cruel and unusual punishment because of the combination of chemicals used, the lack of medical expertise of correctional officers who administer the injections and the condition of his veins after years of drug use is pending. That case was put on hold after the Court of Appeals decision halted executions in the State.

Political and social arguments for and against the use of capital punishment have persisted over many years both nationally and in Maryland. Although questions about the use of the death penalty previously focused on the morality of state-sanctioned killing, more attention is

now being paid to the ability of government to administer the system fairly – without racial, geographic, or socioeconomic inequities – and in a way that minimizes the risk of executing innocent persons. Chapters 430 and 431 of 2008 established the Maryland Commission on Capital Punishment to study all aspects of capital punishment as currently and historically administered in the State. The commission held five public hearings during which it heard testimony from judges, law professors, attorneys, and others with expertise in or experience with the death penalty. The commission held five additional meetings to discuss the evidence presented at the hearings. In a 13-9 vote, the commission recommended abolishing capital punishment in Maryland. Among other things, the commission found that:

- racial and geographic disparities exist in how the death penalty is applied;
- death penalty cases are more costly than nondeath penalty cases and take a greater toll on the survivors of murder victims;
- there is no persuasive evidence that the risk of execution is a deterrent to crime; and
- the unavailability of DNA evidence in some cases opens the “real possibility” of wrongly executing an innocent person.

The commission’s minority report cited the reasons below, among other things, as support for retaining the death penalty in Maryland.

- Maryland is more judicious in its application of the death penalty compared to other states and compared to death penalty imposition in the State prior to 1978. The State has an extensive statutory scheme before the death penalty may be imposed, and the death penalty is sought in a low percentage of murder cases.
- Advances in technology, Maryland’s extensive review process, and post-conviction DNA reforms have reduced the chance that an innocent person may be sentenced to death as far as is humanly possible. The slight chance that this may occur does not justify repealing the death penalty.
- The death penalty does have a deterrent effect; it protects future victims and is a deterrent from committing future murders for individuals already serving life sentences. The minority report also indicated that if the death penalty is repealed, it should, at the very least, be retained for cases involving murders of correctional police officers.

As introduced, *Senate Bill 279 (passed)* sought to repeal the death penalty in Maryland. However, the bill was amended to restrict the death penalty to cases in which the State presents the court or jury with (1) biological evidence or DNA evidence that links the defendant with the act of murder; (2) a videotaped, voluntary interrogation and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder. The bill also prohibits a defendant from being sentenced to death if the State relies solely on evidence provided by eyewitnesses.

If the State has already properly filed a notice of intent to seek a death sentence in a case that does not qualify for the death penalty under the bill, that notice must be considered withdrawn and it shall be considered that the State properly filed a notice to seek a sentence of life imprisonment without the possibility of parole.

The bill expresses that it is the intent of the General Assembly that expanded victim services for survivors of homicide victims be funded by savings resulting from the restrictions on the death penalty included in the bill. The bill also requires the Governor's Office of Crime Control and Prevention (GOCCP) to submit a report to the House Judiciary and Senate Judicial Proceedings committees on how these services should be expanded. The report is due November 1, 2009.

Sexual Offenders

SORNA, which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 248-109), calls for conformity by the states with various aspects of sex offender registration provisions, including registration by specified juvenile offenders, specific information to be collected from registrants, verification, duration of registration, access to and sharing of information, retroactive application and penalties for failure to register.

Retroactive Application of Offender Registry

Senate Bill 425 (passed) applies Maryland's offender registry provisions retroactively to include (1) a person convicted on or after July 1, 1997, of an offense committed before that date, for which registration as a sexually violent predator or sexually violent offender is required; and (2) a person convicted on or after October 1, 1995, of an offense committed before that date, for which registration as a child sex offender is required. The bill also requires the Department of Public Safety and Correctional Services to notify individuals required to register under the bill who are not currently in custody or under supervision.

Delinquent Acts as Predicate for Registration

A police record concerning a child is confidential and must be maintained separate from those of adults. Its contents may not be divulged, by subpoena or otherwise, except by court order upon a showing of good cause or as otherwise provided under provisions of the Education Article relating to arrests for reportable offenses.

Senate Bill 218 (passed) requires a person who has been adjudicated delinquent for an act that would constitute first or second degree rape or first or second degree sexual assault if committed by an adult to register with a supervising authority at the time the juvenile court's jurisdiction terminates (usually at age 21), for inclusion on the State's sex offender registry if (1) the person was at least 13 years old at the time the qualifying delinquent act was committed; (2) the State's Attorney or the Department of Juvenile Services requests that the person be required to register; (3) the court determines by clear and convincing evidence after a hearing (90 days prior to the time the juvenile court's jurisdiction is terminated) that the person is at

significant risk of committing a sexually violent offense or an offense for which registration as a child sexual offender is required; and (4) the person is at least 18 years old.

Concurrent Court Jurisdiction – Subsequent Offense of Failure to Register

Senate Bill 989/House Bill 376 (both passed) authorizes concurrent jurisdiction between the District Court and circuit court in a criminal case in which a person is charged with a second or subsequent offense of knowingly failing to register, knowingly failing to furnish required notice, or knowingly providing false information of a material fact to the State's sex offender registry. The second or subsequent offense is a felony subject to maximum penalties of five years imprisonment and/or a \$10,000 fine.

Frequency of Photograph

House Bill 96 (passed) alters the time requirement for an updated photograph to be included in the sexual offender registry for all categories of sexual offenders from once a year to every six months.

Post-conviction

Writ of Actual Innocence

Under The Maryland Rules, a defendant may file a motion for a new trial within 10 days after a verdict. A court may grant the motion if it is in the interest of justice. A court is also authorized under the Maryland Rules to grant a new trial or other appropriate relief if newly discovered evidence exists that could not have been discovered by due diligence in time to move for a new trial within 10 days after the verdict. Motions based on the newly discovered evidence must be filed within one year after the later of the date the court imposed a sentence or received a mandate from one of the State's appellate courts. If the defendant was sentenced to death, however, the defendant may move for a new trial at any time if the newly discovered evidence shows that the defendant is innocent of the capital crime or an aggravating circumstance or other condition of eligibility that was actually found by the court or jury in imposing the death sentence. A defendant may also make a motion at any time if the motion is based on DNA or related evidence that, if proven, exonerates the defendant.

Senate Bill 486 (passed) authorizes a convicted person to file a petition for a writ of actual innocence at any time in the circuit court in the county in which the conviction was imposed if the person claims that there is newly discovered evidence that creates a substantial or significant possibility that the outcome in the case may have been different and the evidence could not have been discovered in time to move for a new trial. The bill also contains procedural requirements for the court and content requirements for the petition.

De Novo Appeals

A defendant convicted in the District Court has the right to appeal the conviction in a circuit court. Most appeals from District Court decisions are tried *de novo*. In *de novo* appeals,

the court hearing the appeal treats the appeal as if the previous trial never took place and conducts an entirely new trial. Under the Maryland Rules, the conviction remains in effect pending the appeal; however, the filing of an appeal ordinarily stays any sentence of imprisonment if a court releases the defendant pending the appeal.

Discretion is left to the trial court (the District Court in the case of an appeal to a circuit court) as to whether to release a convicted defendant pending appeal. The District Court must consider certain factors when making its determination. A defendant who is denied a request for release pending appeal and stay of sentence by the District Court may request that a circuit court review the District Court's decision. In response to a motion, the circuit court may modify the District Court's decision. A defendant may also petition for a writ of *habeas corpus*.

House Bill 569 (passed) alters this process by authorizing a circuit court, in a criminal appeal that is tried *de novo*, to stay a sentence of imprisonment imposed by the District Court and release a defendant pending trial in the circuit court upon the defendant's filing of a notice of appeal to the circuit court.

Violation of Probation

Under current law, if the District Court wishes to charge a person with violation of probation, it must do so within the probationary period. This timeline is different from the one used in the circuit courts, where revocation of probation proceedings may begin at any time, as long as "the State proceeds with reasonable promptness and diligence." *State v. Miller*, 289 Md. 443, 424 A.2d 1109 (1981).

In some instances, defendants alleged to have violated probation could not be brought in for a hearing because there was insufficient time within the probation period for probation agents to submit required documentation to the District Court after learning of alleged violations. In an attempt to address this problem, **Senate Bill 145 (passed)** authorizes the District Court to institute proceedings for violation of probation during the period of probation or within 30 days after the violation, whichever is later. The bill also requires that a violation of probation hearing in District Court be timely and extends the applicability of other provisions relating to termination and violation of probation in District Court to circuit court.

Occupational Licenses or Certificates – Criminal Conviction

House Bill 635 (passed) prohibits a department from denying an occupational license or certificate to an applicant solely on the basis that the applicant has previously been convicted of a crime, other than a crime of violence, unless the department determines that (1) there is a direct relationship between the applicant's previous conviction and the specific occupational license or certificate sought; or (2) the issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. The bill defines "department" as the Maryland Department of Agriculture; the Maryland Department of the Environment; the Department of Health and Mental Hygiene; the Department of Human Resources; the Department of Labor, Licensing, and Regulation; or the Department of Public Safety and Correctional Services, or any unit of one of these agencies. The bill also states that it

is the policy of the State to encourage the employment of nonviolent ex-offenders and remove barriers to their ability to demonstrate fitness for occupational licenses or certifications required by the State.

Drug or Alcohol Abuse – Court-ordered Evaluation and Treatment of Defendant

House Bill 1347 (passed) specifies that for the purpose of commitment of an individual to the Department of Health and Mental Hygiene (DHMH) under the provision of law authorizing substance abuse treatment as an alternative to incarceration, a court may extend probation for one year beyond the usual maximum time period of five years in circuit court or three years in District Court. The extended probation must be under the supervision of the Division of Parole and Probation. The court may extend probation only if the defendant consents in writing and the extension is only for a commitment to DHMH for treatment. The bill also clarifies that a court ordered alcohol or drug abuse evaluation or commitment of a criminal defendant may occur before or after sentencing or before or during a term of probation.

Miscellaneous

Firearm Offenses – Restrictions on Pretrial Release of Repeat Offenders

In general, District Court commissioners have the authority to order the pretrial release of a defendant. However, there are certain offenses for which a defendant is not eligible for pretrial release or for which only a judge, rather than a District Court commissioner, is authorized to grant pretrial release. *Senate Bill 181/House Bill 88 (Chs. 41 and 42)* prohibit a District Court commissioner from authorizing the pretrial release of a defendant charged with one of nine specified firearms offenses if the defendant has been previously convicted of one of those crimes. A judge is authorized to release such a defendant on suitable bail, on any other conditions reasonably assuring that the defendant will not flee or pose a danger to others, or both bail and such other conditions.

The bill also specifies that, under the Maryland Rule governing the review of a commissioner's pretrial release order, when such a defendant is presented to the court, the judge must order a continued detention if the judge determines that bail or other conditions of release would not protect against flight or a danger to others. Under the bill, there is a rebuttable presumption that such a defendant will flee or pose such a danger.

Victims' Rights – Appearance of Victim at Hearing on Motion for Revision, Modification, or Reduction of Sentence

Senate Bill 620 (passed) establishes that if a victim or victim's representative fails to appear at a hearing on a motion for a revision, modification, or reduction of a sentence or disposition in a circuit court or juvenile court, the prosecuting attorney must state on the record that proceeding without the appearance of the victim or representative is justified because (1) the victim or representative was contacted by the prosecuting attorney and waived the right to attend the hearing; (2) efforts were made to contact the victim or representative and to the best knowledge and belief of the prosecuting attorney, the victim or representative cannot be located;

or (3) the victim or representative has not filed a victim notification form. If the court is not satisfied by the statement that proceeding without the appearance of the victim or representative is justified, or if no statement is made, the court may postpone the hearing.

The bill was introduced in response to *Hoile v. State*, 404 Md. 591 (2008) in which the Court of Appeals held that a victim who had submitted a victim notification form but was not notified of the reconsideration hearing in which the defendant's sentence was reduced has no remedy.

Medical Emergency after Alcohol or Drug Ingestion – Mitigating Factor

House Bill 1273 (passed) provides that the act of seeking medial assistance for another person who is experiencing a medical emergency after ingesting alcohol or drugs may be used as a mitigating factor in a criminal prosecution.

Juvenile Law

Juvenile Records

Disclosure

Under current law, a court record pertaining to a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by court order on a showing of good cause. This prohibition does not restrict access to and the use of court records or fingerprints in court proceedings involving the child by personnel of the court, the State's Attorney, counsel for the child, a court-appointed special advocate for the child, or authorized personnel of Department of Juvenile Service (DJS). Subject to certain exceptions, the restriction also does not prohibit access to and confidential use of the court record or fingerprints of a child by DJS or in an investigation and prosecution by a law enforcement agency.

A public agency may not disclose information and records on children, youth, and families served by that agency to other public agencies serving the same youth, children, and families without written consent of an appropriate person of interest or another individual authorized to give consent.

House Bill 1382 (passed) creates two additional exceptions to the general rule of confidentiality of juvenile records. The bill allows access to and confidential use of a juvenile court record by the Department of Human Services for the purpose of claiming federal Title IV-E funds. The department is liable for an unauthorized release of a court record under the bill.

Additionally, the bill authorizes DJS to provide access to and confidential use of a treatment plan of a child by an agency in the District of Columbia or Virginia if the agency (1) performs the same functions in its jurisdiction as the Department of Juvenile Services does in Maryland; (2) has a reciprocity agreement with Maryland; and (3) has custody of the child. A

shared record may only provide information that is relevant to the supervision, care, and treatment of the child. The department is liable for an unauthorized release of a court record and must adopt regulations to implement the bill.

Expungement of Criminal Charges

Currently, a person may file a petition for expungement of a criminal charge transferred to the juvenile court after the date of the decision not to file a delinquency petition or after the decision on the delinquency petition of facts-not-sustained.

The court may grant a petition for expungement to a person when the person becomes 21 years old if a charge transferred to the juvenile court resulted in the adjudication of the person as a delinquent child. A court must grant a petition for expungement of a criminal charge that was transferred to the juvenile court if the charge did not result in the filing of a delinquency petition or the decision on the delinquency petition was that there was a finding of facts-not-sustained.

House Bill 1227 (passed) requires a court to grant a petition for expungement of a criminal charge that was transferred to the juvenile court. The bill repeals current statutory provisions limiting the circumstances under which a person may obtain an expungement of a criminal charge transferred to the juvenile court.

Sexual Offenders

Senate Bill 218 (passed) requires a person who has been adjudicated delinquent for an act that would constitute first or second degree rape or sexual offense to register with a supervising authority at the time the juvenile court's jurisdiction terminates (generally at age 21) for inclusion on the State's sex offender registry if specified conditions are met. For a more detailed discussion of this bill, see the subpart "Criminal Procedure" under this Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

Juvenile Hearings

A juvenile court must conduct all hearings in an informal manner. In any proceeding in which a child is alleged to be in need of supervision or to have committed a delinquent act that would be a misdemeanor if committed by an adult or in a peace order proceeding, the court may exclude the general public from a hearing and admit only the victim and those persons with a direct interest in the proceeding.

Generally, in a proceeding in which a child is alleged to have committed a delinquent act that would be a felony if committed by an adult, the court has to conduct in open court any hearing or proceeding at which the child has a right to appear. The court is permitted, on a showing of good cause, to exclude the general public and admit only the victim and persons with a direct interest in the proceedings and their representatives. Except on a showing of good cause, a court must announce, in open court, adjudications and dispositions for cases in which a child is

alleged to have committed an act which would be a felony if committed by an adult. On a showing of good cause, the court may exclude the general public and admit only the victim and those persons having a direct interest in the proceeding and their representatives.

House Bill 1183 (passed) requires the juvenile court, on petition of the State’s Attorney, to exclude the general public from the testimony of a victim during a hearing or other proceeding in a case in which the victim of an alleged delinquent act is a child, and admit during the testimony only the victim and those persons with a direct interest in the proceeding and their representatives. The court may receive the testimony of the victim in open court on a finding of good cause.

Juvenile Programs

Juvenile Justice Alternative Education Program

The Juvenile Justice Alternative Education Pilot Program was originally established by Chapter 685 of 2001 as a program for public school students who had been suspended, expelled, or identified as candidates for suspension or expulsion. The program was required to (1) provide programs designed to promote self-discipline and reduce disruptive behavior; (2) ensure that students continue to receive appropriate educational and related services during their suspension and expulsion terms; and (3) offer services to facilitate students’ transitions back to schools after they have served their suspension and expulsion terms.

All local school systems currently have a type of alternative education program available to their students who face long-term suspension or expulsion. However, Prince George’s County is the only jurisdiction currently operating a program that originated as a juvenile justice alternative education program.

House Bill 201 (passed) authorizes a juvenile court, in a county that has established a juvenile justice alternative education program, to order a student who is suspended, expelled, or identified as a candidate for suspension or expulsion from school to attend that program. The bill takes effect July 1, 2009, and terminates on June 30, 2012.

Child in Need of Supervision Pilot Programs – Extension

A “child in need of supervision” (CINS) is a child who requires guidance, treatment, or rehabilitation and (1) is required by law to attend school and is habitually truant; (2) is habitually disobedient, ungovernable, and beyond the control of the person having custody of him; (3) departs himself so as to injure or endanger himself or others; or (4) has committed an offense applicable only to children.

Chapter 601 of 2005 required the Secretary of Juvenile Services to establish a Child in Need of Supervision Pilot Program in Baltimore City and Baltimore County. The Governor was required to include \$250,000 annually in the fiscal 2007 through 2010 State budgets. The program must select community-based providers that offer assessment, intervention, and referral services to children in Baltimore City and Baltimore County who are alleged to be in need of

supervision. The designated assessment service providers must be contracted and funded by the local management in Baltimore City and Baltimore County.

A juvenile intake officer who receives a complaint alleging that a child in Baltimore County or Baltimore City is in need of supervision must refer the child and the child's parents to one of the selected providers unless the intake officer concludes that the court has no jurisdiction or that neither an informal adjustment nor judicial action is appropriate. The provider must meet with the child and the child's parents two to six times to discuss the child's school performance, family interactions, peer relationships, and health, including drug and alcohol use. The provider must review all available, relevant records concerning the child, conduct an assessment of the child, and establish a case plan and record for providing services to the child.

An intake officer may not authorize the filing of a delinquency or CINS petition or peace order request or propose an informal adjustment for the child unless the provider has filed a report with the court stating the date of the initial meeting with the child and that all attempts to provide assessment, intervention, and referral services have failed. Any information provided by a child incident to a referral to a selected provider may not be admitted in evidence in any adjudicatory hearing, peace order proceeding, or criminal proceeding against the child.

The pilot program terminates September 30, 2010.

House Bill 788 (passed) extends to June 30, 2013, the termination date of the Child in Need of Supervision Pilot Program in Baltimore City and Baltimore County. The bill requires the Governor to include a general fund appropriation of \$250,000 for the Department of Juvenile Services in fiscal 2011, 2012, and 2013 to continue funding the pilot program. The bill takes effect July 1, 2009.

Truancy

Except as otherwise provided by law, each child who resides in Maryland and is 5 years 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. Each person who has legal custody or care and control of a child who is at least age 5, but younger than age 16, must see that the child attends school or receives instruction. Any person who has legal custody or care and control of a child who is at least 5 years old, but younger than 16 years, who fails to see that the child attends school or receives instruction is guilty of a misdemeanor.

Chapter 551 of 2004 authorized a three-year Truancy Reduction Pilot Program (TRPP) in the juvenile courts in Dorchester, Somerset, Wicomico, and Worcester counties.

Under the program, a school official is authorized to file a civil petition alleging that a child who is required to attend school has failed to do so without lawful excuse. For students under the age of 12 years, prior to participation in TRPP, a criminal charge must be filed against the student's legal custodian and dismissed or placed on the inactive docket prior to participation in TRPP.

In making a disposition on the truancy petition, the court may order the student to (1) attend school; (2) perform community service; (3) attend counseling, including family counseling; (4) attend substance abuse evaluation and treatment; (5) attend mental health evaluation and treatment; or (6) comply with a curfew set by the court. Following the disposition hearing, a hearing is scheduled to review family assessment findings and determine appropriate services. Participants are eligible for graduation from the program when they have remained in the program for 90 days without any unexcused absences.

House Bill 1321 (passed) repeals the termination date for existing Truancy Reduction Pilot Programs and clarifies that provisions of law relating to the programs apply only in a county in which the circuit administrative judge has established a Truancy Reduction Pilot Program and to the extent that funds are provided in the State budget. The bill requires the Chief Judge of the Court of Appeals to submit an annual report to the General Assembly on each program by November 1. The bill takes effect June 1, 2009.

Drivers' License Suspensions

Senate Bill 219 (passed) expands the offenses committed by drivers younger than age 18 for which the Motor Vehicle Administration (MVA) must impose a mandatory drivers' license suspension. Specifically, the bill requires the clerk of the court to report to MVA a child adjudicated delinquent or found to have committed a delinquent act (without an adjudication) for the offenses of (1) failing to remain at the scene of an accident involving bodily injury, death, or property damage; and (2) fleeing and eluding a police officer. On notification, MVA must suspend the license of the child for six months for a first adjudication or finding that the child committed the offenses and for one year for a second or subsequent adjudication or finding. A more detailed discussion of this bill may be found under Part G – Transportation and Motor Vehicles of this *90 Day Report*.

Department of Juvenile Services Employees – Criminal History Records Checks

Within the first month of employment with the department, the Department of Juvenile Services must apply to the Criminal Justice Information System (CJIS) Central Repository for a federal and State criminal history records check for each of its employees. The CJIS Central Repository is required to provide the requested information.

The CJIS Central Repository is established within the Department of Public Safety and Correctional Services to collect, manage, and disseminate Maryland Criminal History Record Information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes.

House Bill 1385 (passed) requires the Department of Juvenile Services to apply for an initial criminal history records check for each of its employees on or before the first day of employment, rather than within the first month. Additionally, the bill requires CJIS to provide to the Department of Juvenile Services and the affected employee a revised printed statement of the

employee's criminal history record information if new information is reported after the date of the initial records check.

Public Safety

Freedom of Association and Assembly

In July 2008, it became publicly known that the Department of State Police (DSP) had engaged in hundreds of hours of covert surveillance of meetings and rallies of anti-death penalty and anti-war groups in 2005 and 2006. Although no indication of any intention to engage in criminal activity by the subjects of the surveillance was discovered, DSP provided reports to databases accessible by local and federal law enforcement agencies.

On July 31, 2008, the Governor appointed former Attorney General Stephen H. Sachs to conduct an independent review of the facts and circumstances surrounding the covert surveillance operation. Mr. Sachs completed his review and submitted a report on September 29, 2008. Based on the recommendations included in the Sachs report, *Senate Bill 266/House Bill 311 (both passed)* establish the responsibilities of law enforcement agencies relating to investigations affecting First Amendment activities and the rights of persons, groups, and organization engaged in First Amendment activities. These activities include constitutionally protected speech or association; or conduct related to freedom of speech, free exercise of religion, freedom of the press, the right to assemble; or the right to petition the government.

The bills prohibit a law enforcement agency from conducting a "covert investigation" of a person, a group, or an organization engaged in First Amendment activities, unless the law enforcement agency's chief or designee makes a written finding in advance, or as soon as is practicable afterwards, that the covert investigation is justified because:

- it is based on a reasonable, articulable suspicion that the person, group, or organization is planning or engaged in criminal activity; and
- a less intrusive method of investigation is not likely to yield satisfactory results.

Under the bills, membership or participation in a group or organization engaged in First Amendment activities does not alone establish reasonable, articulable suspicion of criminal activity.

The bills require that a law enforcement agency conduct all investigations involving First Amendment activities for a legitimate law enforcement objective and, in the process of conducting the investigation, safeguard the constitutional rights and liberties of all persons. A law enforcement agency may not investigate, prosecute, disrupt, interfere with, harass, or discriminate against a person engaged in a First Amendment activity to punish, retaliate against, or prevent or hinder the person from exercising constitutional rights. An investigation involving

First Amendment activities must be terminated when logical leads have been exhausted or no legitimate law enforcement objective justifies the continuance of the investigation.

The bills also direct that information maintained in a criminal intelligence file be evaluated for the reliability of the source of the information and the validity and accuracy of the information. A law enforcement agency must accurately classify intelligence information in its databases to properly reflect the purpose for which the information is collected. When a law enforcement agency lists in a database a specific crime for which an individual, a group, or an organization is under suspicion, the agency must ensure that the classification is accurate based on the information available to the agency at the time.

By January 1, 2010, DSP and all other law enforcement agencies in Maryland covered under the bills must adopt regulations or policies governing the conduct of covert investigations of persons, groups, or organizations engaged in First Amendment activities and the collection, dissemination, retention, database inclusion, purging, and auditing of intelligence information relating to persons, groups, or organizations engaged in First Amendment activities. Also by that date, DSP must report to the Senate Judicial Proceedings Committee and the House Judiciary Committee on the status of matters relating to its Case Explorer database. Finally, DSP must contact all persons who have been described in the Case Explorer database as being suspected of involvement in terrorism, or who have been labeled in that database as a terrorist, but as to whom DSP has no reasonable, articulable suspicion of involvement in terrorism; afford those persons an opportunity to review and obtain copies of the relevant database entries; and subsequently purge those entries.

Law Enforcement and Correctional Officers

SWAT Team Activation and Deployment

In July 2008, members of the Prince George’s County Sheriff’s SWAT team raided the home of the Mayor of the Town of Berwyn Heights in search of a drug-filled package that had been addressed to the residence. Two dogs belonging to the mayor’s family were shot and killed by SWAT team members during the raid. Investigations subsequent to the SWAT team raid indicated that the mayor and his family were victims of a smuggling scheme that used FedEx to ship drugs and that they knew nothing about the box intercepted by police.

In response to that incident and others, *Senate Bill 447/House Bill 1267 (both passed)* require that, beginning January 1, 2010, a “law enforcement agency” that maintains a SWAT team report the following information to the Governor’s Office of Crime Control and Prevention (GOCCP) and the appropriate county or municipal governing body, on a biannual basis:

- the number of times the team was activated and deployed by the law enforcement agency in the previous six months;
- the name of the county and/or municipality and zip code of the location where the team was deployed for each activation;

- the reason for each activation and deployment;
- the legal authority, including type of warrant, if any, for each activation and deployment; and
- the result of each activation and deployment.

A summary of the biannual reports must be prepared each year by GOCCP and submitted to the Governor, the General Assembly, and each law enforcement agency by September 1.

Execution of Warrants

House Bill 1545 (passed) allows the Director of the Division of Parole and Probation (DPP) to authorize parole and probation employees of the division to execute warrants for the arrest of probationers for an alleged violation of probation. DPP is currently authorized to execute warrants only for the retaking of persons for a violation of the terms of a parole or mandatory supervision release. For violation of probation warrants issued by the courts, DPP must rely on local law enforcement units for the execution of the warrant.

Queen Anne's County – Local Detention Center

Under *House Bill 942 (Ch. 158)* the Queen Anne's County Commissioners, by resolution or law, is expressly authorized to allow the warden of the Queen Anne's County Detention Center to continue the management of the detention center. The Warden currently manages the operations of the county detention center under the authority granted by the county commissioners.

Special Police Commissions

House Bill 550 (passed) requires the Secretary of State Police, on completion of an investigation of an applicant for a special police commission, to notify the applicant of the final decision as to whether to recommend to the Governor the denial or the granting of the application. A person aggrieved by a final decision of the Secretary to recommend a denial of an application may take an appeal as a contested case in accordance with provisions of the Administrative Procedure Act governing contested cases. The bill requires the Secretary to include the final disposition of an appeal in recommendations made to the Governor relating to special police commission applications.

Silver Alert Program

Senate Bill 303/House Bill 317 (both passed) create a statewide Silver Alert Program within DSP to provide a system for rapid dissemination of information to assist in locating a missing person. The bill requires DSP to take several specific procedural, training, local assistance, and recruitment actions, as well as to consult with the State Highway Administration and the Maryland State Department of Education, to implement the bill's objectives.

The bill is effective October 1, 2009, if DSP can implement the program with existing budgeted resources. If DSP determines by July 1, 2009, that the department cannot do this, the Department of Legislative Services must be notified of that determination and the provisions of the bill are void.

Public Safety Personnel

Anne Arundel County – Federal Reimbursement for Emergency Medical Services

House Bill 953 (Ch. 159) requires an authorized agreement between the federal government and a fire, rescue, or emergency medical services entity in Anne Arundel County to include a provision that entitles the county entity to obtain reimbursement from the appropriate federal authority for all or part of the cost of providing fire protection on property under U.S. jurisdiction in accordance with federal law. Under current law, this requirement applies statewide, except in Anne Arundel County. The bill eliminates the exemption for Anne Arundel County.

Death Benefits for Emergency Response Team

A hazardous material response team employee of the Maryland Department of the Environment (MDE) is granted the same death benefit (including allowable funeral expenses) that other public safety employees qualify for, in the event they are killed in the line of duty, under *Senate Bill 177/House Bill 787 (both passed)*. The bills define an employee on a hazardous material response team as an individual who is on call 24 hours a day to provide emergency response to a discharge of oil or a release of hazardous material or other emergency response activity.

The Department of Public Safety and Correctional Services (DPSCS) is already required to pay a death benefit to the surviving spouse, child, dependent parent, or estate of each of the following individuals who is killed or dies in the performance of duties: (1) a law enforcement officer; (2) a correctional officer; (3) a volunteer or career firefighter or rescue squad member; (4) a sworn member of the State Fire Marshal's Office; (5) a public safety aviation employee; or (6) a Maryland resident who was a member of the uniform services of the United States serving in the Afghanistan or Iraq conflict. An additional death benefit of \$50,000 must be paid by the Department of Budget and Management (DBM) to the survivors of a public safety employee of the State who is killed in the performance of duties.

MDE must, each year, place sufficient funds in reserve for the payment of one death benefit from a combination of the State Hazardous Substance Control Fund and the Oil Disaster Containment, Cleanup, and Contingency Fund. Upon a qualifying death, MDE must pay DPSCS the amount to cover the benefit.

Medevac Helicopters

The Budget Reconciliation and Financing Act of 2009, *House Bill 101 (passed)*, includes the transfer of the \$51.5 million fund balance from the State Police Helicopter Replacement Fund to the general fund which effectively eliminated the use of the Replacement Fund for the purposes of procuring Medevac helicopters. The \$52.5 million of general obligation bond funds are intended to fund the purchase of three helicopters during fiscal 2010.

Senate Bill 650 (failed) would have required that there be two fleets of helicopters operating in the State, one for emergency medical services and one for law enforcement, homeland security, and search and rescue. The law enforcement fleet would be operated by the State Police, while the emergency medical services fleet would be operated by a private entity based on a contract awarded through the State procurement process.

In a legislative response to a Medevac helicopter crash in September 2008, *House Bill 265 (failed)* would have established a Joint Oversight Committee on Emergency Medical Services to monitor helicopter procurement and other matters dealing with the use of helicopters and would have increased the membership of the State Emergency Medical Services Board by adding a member of the public as well as a director of operations who is a helicopter pilot employed by the DSP Aviation Command.

Report on Strip Searches

House Bill 988 (failed) would have required the Secretary of Public Safety and Correctional Services to report monthly to the Attorney General on strip searches of Department of Public Safety and Correctional Services employees taken to determine the presence of contraband.

Inmates and Prison Release

Task Force on Prisoner Reentry

Senate Bill 908/House Bill 637 (both passed) establish a Task Force on Prisoner Reentry. Consisting of members of the Senate and House of Delegates, other government officials, and members of the public, including individuals who were formerly committed to a State correctional facility, the task force must:

- examine ways to pool resources and funding streams to promote lower recidivism rates for returning offenders and minimize the harmful effects of offenders' time in prison, jail, or a juvenile facility on families and communities of offenders by collecting data and best practices in offender reentry from demonstration grantees and other agencies and organizations;
- analyze the statutory, regulatory, rules-based, and practice-based hurdles to reintegration of adult and juvenile offenders into the community;

- investigate guidelines and criteria to track outcomes of inmate reentry program participation, including program approvals, day-to-day program participation, and program graduation and other types of program completion and noncompletion;
- research longitudinal data tracking of the pre- and post-release impact of reentry programs;
- investigate the number of idle inmates in each State correctional facility; and
- develop a comprehensive strategic reentry plan as specified under the federal Second Chance Act of 2007.

An interim report to the Governor and the General Assembly is required by December 31, 2010, and a final report of findings and recommendations is required by December 31, 2011.

Task Force to Study Prison Violence in Maryland

Chapter 518 of 2007 created the Task Force to Study Prison Violence in Maryland. An interim report was made to the Governor and the General Assembly in December 2007. A final report of findings and recommendations of the task force was due by December 31, 2008, but was not made. The task force terminated on January 31, 2009.

Senate Bill 817 (Ch. 102) reconstitutes the Task Force to Study Prison Violence in Maryland that was created in 2007. The reconstituted body will continue to evaluate available information on (1) the scope, nature, patterns, and causal relationships of violence in the State's prisons; (2) the impact of illegal drugs on violence in the State's prisons; (3) the impact of exposure to lead and other pollutants on violence in the State's prisons; (4) the best practices of other state correctional systems in dealing with prison violence; (5) the impact of contraband on violence in the State's prisons; (6) the role of gang activity on violence in the State's prisons; and (7) other issues that the task force considers relevant.

An interim report to the Governor and the General Assembly is required by December 31, 2009, and a final report of findings and recommendations are required by December 31, 2010.

Violent Offenders

For Division of Correction (DOC) inmates whose terms of confinement include consecutive or concurrent sentences for a crime of violence or a crime involving a controlled dangerous substance, the deduction in the sentence for good conduct is calculated at 5 days per calendar month. For all other inmates the deduction is calculated at 10 days per calendar month. An inmate may also receive deductions calculated at 5 days per calendar month for work tasks and education and 10 days per calendar month for special projects. However, the total deduction may not exceed 20 days per calendar month.

These credits are awarded as they are earned. When an inmate's total number of diminution credits is equal to the remainder of sentence, including consideration for any losses of credits, the inmate is eligible for mandatory supervision release.

Senate Bill 654/House Bill 638 (both passed) specify that an inmate convicted of a violent crime committed on or after October 1, 2009, is not eligible for a mandatory supervision release resulting from earned diminution credits until after the inmate becomes eligible for parole. The bills also require circuit court judges to state in open court, at the time of imposition of sentence for a violent crime (including burglary), the minimum time that must be served for mandatory release eligibility, as well as that for minimum parole eligibility.

Identification Cards for Released Inmates

In a November 24, 2008 *Joint Chairmen's Report on the Provisions of Re-entry Services to Inmates*, the Department of Public Safety and Correctional Services (DPSCS) advised that an important component of inmate release planning is DOC's role in facilitating and expediting the provision of personal identification documents prior to release.

Senate Bill 186 (passed) requires the Commissioner of Correction to issue an identification card to an inmate before being released from confinement in a State correctional facility. The identification card must comply with the requirements for secondary identification for the purpose of an identification card issued by the Motor Vehicle Administration (MVA). The bill is intended to help newly released inmates meet identification requirements of MVA, which have been changed in light of the federal REAL ID Act of 2005. This bill codifies a current practice, including a pilot program operating under a memorandum of understanding between the Division of Correction and MVA.

Mandatory Supervision

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. In Baltimore City, the local correctional facilities are State facilities and operated by DOC. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC.

House Bill 1447 (passed) increases, from 12 to 18 months, the minimum term of confinement that a Division of Correction (DOC) inmate must serve before being granted a conditional mandatory supervision release. This change eliminates the need for mandatory supervision by the Division of Parole and Probation (DPP) for persons sentenced to a term of 18 months or less, upon release from a DOC facility. The requirement does not exist for inmates released from local correctional facilities.

Immigrants and Illegal Aliens

Three public safety bills related to immigrants and illegal aliens in the State did not pass. *Senate Bill 988 (failed)* would have required the Division of Parole and Probation to forward certain information to the U.S. Immigration and Customs Enforcement Agency (ICE) if a presentence investigation report indicated that the individual has an immigration status. *Senate Bill 1000 (failed)* would have required a State law enforcement agency that receives State funds to enroll in the ICE Agency’s Delegation of Authority Program to perform immigration law enforcement functions. Finally, *House Bill 486 (failed)* would have required all local government officials, personnel, and agents to fully comply with and support the enforcement of federal laws prohibiting the entry into or presence or residence in the United States of illegal aliens.

For a detailed discussion of the issuance of driver’s licenses by the Motor Vehicle Administration according to the citizenship or lawful status of the license applicant, see the subpart “Motor Vehicles” within Part G – Transportation of this *90 Day Report*.

Weapons and Ammunition

Electronic Control Devices

Electronic control devices, such as stun guns and devices made by TASER International, Inc., are employed to disrupt the body’s electrical system, and to temporarily incapacitate the person. *Senate Bill 850/House Bill 539 (both passed)* prohibit an electronic control device from being sold and activated unless (1) the device and any cartridge attached to the device each display a serial number; (2) an instructional manual or audio or audio visual instructions are provided to the purchaser; (3) the manufacturer maintains a record of the original owner of the device; and (4) the manufacturer or seller has obtained a State and federal criminal history records check of the original owner. The bills limit use of a device to a person who is at least 18 years old and has never been convicted of a crime of violence.

The illegal possession or use of an electronic control device is a misdemeanor and a violator is subject to maximum penalties of two months imprisonment and/or a \$500 fine. If the violation occurs while the person is committing a separate felony, the violator is guilty of a felony and subject to maximum penalties of three years imprisonment and/or a \$5,000 fine.

Ammunition

House Bill 1042 (failed) would have prohibited a person from possessing ammunition for a firearm if the person previously was convicted of a crime of violence or any of certain drug offenses.

Safety of Buildings and Other Structures

Fire Sprinkler Contractors

House Bill 1532 (passed) removes the exemption by which a subcontractor of a licensee may work as a fire sprinkler contractor without being licensed. The bill requires any person, business, or contractor who provides services as a fire sprinkler contractor in the State to be licensed by the State Fire Marshal.

Elevator Inspections

House Bill 613 (Ch. 145) establishes that State inspectors conduct final inspections of all new elevators prior to initial certification; final inspections of modernized or altered elevators; investigations of accidents and complaints; follow-up inspections to confirm corrective action; comprehensive five-year inspections; and quality control monitoring of inspections conducted by third-party elevator inspectors.

Elevators owned by units of State or local government may be certified either by the State or by their owners. Other elevator owners in the State must hire qualified third-party elevator inspectors to conduct annual safety inspections to ensure that the elevator complies with the State safety code and other regulations adopted by the Commissioner of Labor and Industry.

Except for minor violations that do not affect health or safety, the commissioner must issue a citation to an elevator owner if an elevator has violated the safety code or other regulation within the past six months. The commissioner may establish regulations for the issuance of a warning notice instead of a citation for a *de minimus* violation that has no direct effect on health or safety.

The commissioner may delegate to the Office of Administrative Hearings the authority to hold a hearing and issue a proposed finding of fact, conclusion of law, or a proposed or final order. An administrative law judge's decision becomes a final order of the commissioner unless, within 15 days of the issuance of a proposed decision, the commissioner or owner requests a review of the decision. After review of the proposed order, the commissioner may issue a final administrative order.

Individuals who violate the safety code or an adopted regulation may be fined up to \$5,000 per unit. The amount of the penalty is determined based on the gravity of the violation, the owner's good faith, and the owner's history of violations. Fines may be doubled for willful or habitual violators. If the violation is not corrected within 10 days, the commissioner may impose a civil penalty of up to \$1,000 for each day a violation continues.

Senate Bill 290 (failed) would have exempted certain licensed assisted living programs from the general registration and inspection requirements for installing an elevator but would have authorized the adoption of regulations to enhance the safety of elevator units installed in those programs.