

## **Part E**

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

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#### **Criminal Law**

#### **Maryland Gang Prosecution Act of 2010**

The proliferation of gangs and their migration from urban communities to suburban and rural locations, which began more than two decades ago, is a significant problem in most areas of the country, including Maryland. It is estimated that there are over 600 active gangs in the State with over 11,000 members. In addition to traditional street gang activity, the Department of Public Safety and Correctional Services has identified approximately 4,000 inmates as participating in over 260 different gangs inside its correctional facilities.

*Senate Bill 517 (passed)* is intended to strengthen the prosecution of gangs in the State. The bill modifies the definition of “criminal gang” by repealing the requirement that an association of three or more persons whose members meet certain criteria be ongoing and by repealing “an identifying sign, symbol, name, leader, or purpose” as common factors and substituting “an overt or covert organizational or command structure.” The bill adds the following offenses to the list of underlying crimes that serve to prove criminal gang activity: (1) misdemeanor second-degree assault; (2) wearing, carrying, or transporting a handgun; (3) misdemeanor inducing false testimony or avoidance of a subpoena; (4) misdemeanor retaliation for testimony; (5) misdemeanor intimidation or corruption of a juror; (6) human trafficking; (7) receiving the earnings of a prostitute; and (8) operation of a brothel.

Other provisions require a sentence for subsequent gang participation offenses or gang participation offenses that result in the death of a victim to run consecutively to any sentence for an underlying crime on which the conviction was based. Additionally, *Senate Bill 517* makes organizing, supervising, financing, or managing a criminal gang a felony. A violator is subject to imprisonment for up to 20 years and/or a fine of up to \$100,000. A sentence must run consecutively to a sentence for any crime based on the act establishing a violation.

## Drug Crimes

### Distribution to or Possession of Salvia by a Minor

Salvia is the common name for *Salvia divinorum* or *Salvinorum A*, an herbaceous plant native to Mexico. According to the U.S. Drug Enforcement Administration, it is usually sold as dried leaves in various degrees of potency and can cause a variety of hallucinogenic effects.

According to news accounts, Salvia has proliferated on the Internet and at college-area paraphernalia shops. The increased availability of the substance and its physical effects have motivated at least 18 states to enact laws to regulate or restrict the availability, possession, or sale of Salvia. In Maryland, Ocean City banned Salvia products in August 2009 in response to extensive availability of the substance in boardwalk shops and numerous reports of police officers having to restrain individuals under the influence of Salvia. Worcester County enacted a countywide ban effective September 2009.

*Senate Bill 17/House Bill 1145 (both passed)* prohibit the distribution of Salvia to, or possession of Salvia by, an individual under age 21. In a prosecution for a violation of distribution of Salvia to an individual under age 21, it is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification that positively identified the purchaser or recipient as at least 21 years of age. A violator is guilty of a misdemeanor and subject to a maximum \$300 fine for a first violation. For a second violation occurring within two years after the first violation, the maximum fine is \$1,000. For each subsequent violation occurring within two years after the preceding violation, the maximum fine is \$3,000.

A violation of the prohibition against a person under the age of 21 possessing Salvia is a code violation, subjecting an adult violator to the issuance of a citation and a maximum \$500 fine for a first violation and \$1,000 for a second or subsequent violation. A minor who violates the prohibition against possession of Salvia is subject to juvenile court procedures and dispositions, including referral to substance abuse education or rehabilitation. *Senate Bill 17/House Bill 1145* take effect June 1, 2010.

### Effect of Previous Conspiracy and Out-of-state Convictions

*House Bill 517* amends the third-strike mandatory minimum 25-year sentence for specified drug-related offenses by adding as another qualifying offense, a minimum 180-day confinement based on a conviction for a prior drug conspiracy or for a similar offense under the laws of another state or federal law. *House Bill 517* responds to a ruling by the Court of Special Appeals in *Harris v. State*, 169 Md. App. 98 (2006), in which the court vacated and remanded for re-sentencing the lower court's 25-year mandatory sentence because the appellant had not served more than 180 days in confinement for a qualifying offense under the third-time offender statute. The time the appellant had served for conspiracy to distribute cocaine did not count since that offense was not specified as a qualifying offense under the third-time offender statute.

## **Human Trafficking**

*Senate Bill 261/House Bill 283 (both passed)* extend the application of the human trafficking statute by subjecting individuals who knowingly aid, abet, or conspire in the violation of human trafficking laws or knowingly benefit financially from ventures or activities in violation of State human trafficking laws to the same penalties imposed on a person who violated the applicable statute.

The bills change from a misdemeanor to a felony the current prohibition on knowingly taking or detaining another with the intent to use force, threat, coercion, or fraud to compel the other to marry the person or a third person or perform certain sexual acts. *Senate Bill 261/House Bill 283* expand the current prohibition on human trafficking to include prohibitions on forced participation in a “sexually explicit performance” and interference with the possession of a passport, immigration document, or government identification document of another while violating or attempting to violate State human trafficking laws. “Sexually explicit performance” is defined as a public or private, live, photographed, recorded, or videotaped act or show in which the performer is wholly or partially nude, and which is intended to sexually arouse or appeal to the prurient interest of patrons or viewers.

## **Crimes Involving Children**

### **Increased Penalties for Sexual Assaults on Children**

Under current law, a 5-year mandatory minimum, nonsuspendable, nonparolable sentence is required for a defendant over the age of 18 years who is convicted of second degree rape or second degree sexual offense involving a victim under age 13. *Senate Bill 622/House Bill 254 (both passed)* increase the penalties in these cases. The mandatory minimum sentence is increased from 5 years to 15 years imprisonment and the maximum term of imprisonment is increased from 20 years to imprisonment for life.

### **Depiction of Child in Pornographic Material**

*House Bill 1053 (passed)* expands the State’s prohibition against child pornography by prohibiting a person from knowingly promoting, advertising, soliciting, distributing, or possessing with the intent to distribute any matter, visual representation, or performance in a manner that reflects the belief, or that is intended to cause another to believe, that the representation depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct. According to authorities, this provision is needed because it is often difficult to prove that pornography on the Internet involves real children.

### **Penalties for Trespass and Wanton Trespass on Posted Property**

*Senate Bill 670/House Bill 818 (passed)* increase the maximum misdemeanor penalties applicable to the crimes of trespass on posted property and wanton trespass on private property. For each crime, which has a current law maximum penalty of 90 days imprisonment and a

\$500 fine or both, the bill retains the current law penalty as applicable to a first offense. For a second crime that occurs within two years of the first offense, a violator is subject to maximum penalties of six months imprisonment or a \$1,000 fine or both. Subsequent offenses occurring within two years of the previous offense subject a violator to maximum penalties of a one-year imprisonment or a \$2,500 fine or both.

### **Assault on Probation or Parole Agent**

A person may not intentionally cause physical injury to another if the person knows or has reason to know that the other is a law enforcement officer, including a correctional officer, engaged in the performance of the officer's official duties. A violator is guilty of the felony of second degree assault and subject to maximum penalties of imprisonment for 10 years and a fine of \$5,000 or both. *Senate Bill 255/House Bill 365 (both passed)* expand the scope of this crime to include parole and probation agents engaged in official duties.

### **Escape from Private Secure Juvenile Facility**

The Department of Juvenile Services (DJS) reports that in fiscal 2009, there were 12 escapes from secure facilities operated by DJS. A person may not escape from (1) a detention center for juveniles; (2) certain facilities for juveniles operated by DJS and specified in statute; or (3) a place identified in a juvenile community detention order, and in the course of the escape commit an assault. A violator is guilty of the felony of escape in the first degree and subject to maximum penalties of a fine of \$20,000 and/or 10 years imprisonment.

A person may not escape from (1) unless otherwise punishable as escape in the first degree, a detention center for juveniles or certain facilities for juveniles operated by DJS and specified in statute; (2) a place identified in a home detention order or agreement; or (3) a place identified in a juvenile community detention order. A violator is guilty of the misdemeanor of escape in the second degree and subject to maximum penalties of a fine of \$5,000 and/or three years imprisonment.

*House Bill 75 (Ch. 123)* expands the elements of the crime of escape in the first degree and escape in the second degree to include a prohibition against escape from a privately operated, hardware secure facility for juveniles committed to DJS. A "hardware secure facility" means a facility that is securely locked or fenced to prevent escape. While DJS reports that it does not currently contract with any vendor to operate a hardware secure facility, *House Bill 75* ensures that if it enters into such a contract in the future, a person who escapes from a privately operated facility will be subject to the same penalties as a person who escapes from a DJS-operated facility.

### **Exception to Prohibition on Carrying a Firearm**

A regulated firearm is any handgun or any of the 45 assault weapons (or copies) identified in the Code. Among other restrictions, a person may not possess a regulated firearm in

the State if the person was convicted of a crime of violence or a violation of specified drug crimes.

When issuing a temporary or final protective order in family situations, the court may order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the protective order.

*Senate Bill 22/House Bill 905 (both passed)* establish an exception to the prohibition against wearing, carrying, or transporting a handgun or other firearm by a person who is carrying a court order to surrender the weapon if (1) the firearm is unloaded; (2) the person has notified a law enforcement unit that the person is transporting the firearm to the unit in accordance with the court order; and (3) the person is transporting the firearm directly to the unit. The bills make the same exception in the other statutes addressing possession of firearms.

### **Unauthorized Access to Computers for Sabotage**

The security of the nation's power grid and public utilities has been a growing concern since the attacks on September 11, 2001. During the past decade, public utility companies have implemented remotely controlled operations in an effort to streamline operations and cut costs. While the added convenience and cost savings that result from these systems have obvious benefits, the wireless Internet connections on which they rely make these companies more vulnerable to cyber attacks. According to recent news reports, utility companies will spend more than \$21 billion on cyber security over the next five years.

*House Bill 778 (passed)* prohibits a person from intentionally and willfully gaining unauthorized access to computer services with the intent to interrupt or impair the functioning of the State government; a service, device, or system related to the production, transmission, delivery, or storage of electricity or natural gas in the State that is owned, operated, or controlled by a person other than a public service company; or a service provided in the State by a public service company. If the violation causes a loss of \$50,000 or more, the crime is a felony punishable by imprisonment for up to 10 years and a fine of up to \$25,000 or both. If the loss is less than \$50,000, the crime is a misdemeanor and punishable by imprisonment for up to five years and a fine of up to \$25,000 or both.

## **Criminal Procedure**

### **Sexual Offenders**

The federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), requires conformity by the states with various aspects of sex offender registration provisions, including registration of specified juvenile offenders, collection of specific information from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. Failure to comply with SORNA puts a state at risk to lose 10% of Byrne Justice Assistance

grants, which all states use to pay for such things as drug task forces, anti-gang units, police overtime, and other law enforcement activities.

### **Notification, Registration, and Penalties**

*Senate Bill 854/House Bill 936 (both passed)* substantially revise Maryland's sex offender registration law in an effort to comply with SORNA and increase penalties for certain sex offenses committed against minors. Among their provisions, the bills:

- replace references to the four existing categories of sexual offenders with the three tiers of categorization under SORNA;
- specify that a Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life;
- require a sex offender to register in each county where the sex offender habitually lives and define the term "habitually lives" to include any place where a person visits for longer than five hours per visit more than five times within a 30-day period;
- require a sex offender who is homeless to register in person within a specified period of time with the local law enforcement unit in the county where the registrant habitually lives and to reregister weekly while habitually living in the county;
- generally narrow all registration, changes of information, and notification deadlines to three days;
- require new in-person reporting requirements relating to institutions of higher education;
- require local law enforcement notifications for any registrant when a change of residence occurs;
- require new notifications and timeframes relating to a change of name, leaving the United States for residence or work in a foreign country, or a temporary residency and require new notifications by local law enforcement units to the Department of Public Safety and Correctional Services (DPSCS) of such changes;
- add information that must be included in a registration statement, such as a copy of the registrant's passport or immigration papers, Social Security number (and purported Social Security numbers), locations where all vehicles are kept, and landline and cell telephone numbers;
- require DPSCS to post on the Internet certain identifying information about each registrant, including the registrant's name and crime;

- prohibit registration information provided to the public by DPSCS from including certain personal information including the sexual offender’s Social Security number, driver’s license number, and certain medical information;
- require a registrant who establishes a new electronic mail address or other online identity to provide written notice of the new online identity to the sexual offender registry;
- provide for the retroactivity of certain provisions of the Act;
- establish a listing of juvenile sex offenders that is maintained by DPSCS and is accessible only by law enforcement personnel for law enforcement purposes; and
- increase the maximum and mandatory minimum penalties for a person convicted of rape in the second degree of a child under the age of 13 years, or sexual offense in the second degree against a child under the age of 13 years, to life imprisonment and 15 years, respectively.

### **Sexual Offender Advisory Board**

Chapter 4 of the 2006 special session created a Sexual Offender Advisory Board, with specified reporting requirements, to review technology for the tracking of offenders; review the effectiveness of the State’s laws concerning sex offenders; review the laws of other jurisdictions regarding sex offenders; review practices and procedures of the Parole Commission and the Division of Parole and Probation regarding supervision and monitoring of sex offenders; review developments in the treatment and assessment of sex offenders; and develop standards for conditions of extended sex offender parole supervision based on current and evolving best practices in the field of sex offender management.

*Senate Bill 856/House Bill 931 (both passed)* alter the composition of the Sexual Offender Advisory Board by adding specified government officials and other members with expertise in sexual abuse and related crimes. The bills expand the duties of the board to include developing criteria for measuring a person’s risk of reoffending, studying the issue of civil commitment of sexual offenders, and considering ways to increase cooperation among states with regard to sexual offender registration and monitoring.

### **Restrictions on Pretrial Release and Inclusion on RAP Sheet**

*House Bill 1046 (passed)* prohibits a District Court Commissioner from authorizing the pretrial release of a defendant who is a registered sex offender. 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. A State record of arrest and prosecution (a “RAP” sheet) that is accessible to judicial officers making pretrial release determinations must prominently indicate, when applicable, that the subject of the report is a registered sex offender or subject to a term of lifetime sexual offender supervision.

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. There is a rebuttable presumption that such a defendant will flee or pose such a danger. The bill makes the imposition of lifetime sexual offender supervision a reportable offense to the Criminal Justice Information System Central Repository.

### **Violation of Pretrial or Posttrial Release No Contact Order**

*House Bill 60 (passed)* creates a new crime that prohibits a person charged with committing a sexual crime against a minor from violating a condition of pretrial or posttrial release prohibiting the person from contacting the victim. The bill authorizes a police officer to arrest a person without a warrant if the police officer has probable cause to believe that the person has violated a condition of pretrial or posttrial release as prohibited under the Act. A violator is guilty of a misdemeanor and subject to imprisonment not exceeding 90 days.

### **Lifetime Supervision**

For a discussion of *Senate Bill 280/House Bill 473 (both passed)* which provides for the lifetime supervision of certain sex offenders, see the subpart "Public Safety" within this Part of this *90 Day Report*.

### **Death Penalty**

Persons charged with first degree murder, if found guilty, are subject to penalties of life imprisonment, life imprisonment without parole, or death. Pursuant to Chapter 186 of 2009, the death penalty may only be imposed in 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. A defendant is prohibited from being sentenced to death if the State relies solely on evidence provided by eyewitnesses in its case.

*Senate Bill 404 (failed)* sought to extend eligibility for the death penalty to cases in which the State presents the court or jury with fingerprint evidence or photographic evidence that conclusively links a defendant convicted of first degree murder to the murder. In addition, the bill sought to require that biological or DNA evidence and allowable video evidence presented by the State in a death penalty case conclusively link the defendant to the murder.

### **Post-conviction Matters**

#### **Writ of Actual Innocence**

Pursuant to legislation enacted in 2009, a convicted person may file a petition for a writ of actual innocence 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 petition must be in writing and may be filed at any time. A court is required to hold a hearing on the petition if the petition meets specified content requirements and contains a request for a hearing. A court may dismiss a petition without a hearing if the petitioner fails to state a claim or assert grounds on which relief may be granted. The petitioner has the burden of proof in a proceeding on a writ of actual innocence, and courts have the option of setting aside the verdict, resentencing the petitioner, granting a new trial, or correcting the petitioner's sentence. The court must state the reasons for its ruling on the record.

*Senate Bill 135/House Bill 128 (both passed)* limit the availability of a petition for a writ of actual innocence to a person who was charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime. The bills also (1) require a petitioner to notify the State in writing of the filing of a petition; (2) authorize the State to file a response to a petition within 90 days of receiving notice or under a set time period ordered by the court; (3) specify that a victim or the victim's representative must be notified of and has a right to attend a hearing on the petition; and (4) clarify that a court may only dismiss a petition without holding a required hearing if the court finds that the petition fails to assert grounds on which relief may be granted.

### **Expiration of Sentences**

Sentencing is the judgment imposing punishment that is formally pronounced by the court on a defendant after the defendant's conviction in a criminal proceeding. Statutory provisions often specify a maximum sentence but not a minimum sentence. *Senate Bill 109 (passed)/House Bill 1023 (Ch. 165)* repeal obsolete statutory provisions enacted in the 1800s requiring a court to sentence a defendant for a period of imprisonment that will expire between April 1 and August 31 if the court considers it expedient and authorizing a court to reduce a defendant's sentence to no less than 18 months imprisonment if the punishment required for the crime is at least two years imprisonment.

### **Victims' Rights**

#### **Criminal Injuries Compensation Board**

The Criminal Injuries Compensation Board (CICB) in the Department of Public Safety and Correctional Services provides financial assistance for innocent victims of crime. The board may compensate victims who suffer physical or psychological injury for their medical expenses and loss of earnings. *Senate Bill 442/House Bill 138 (Chs. 69 and 70)* subject a claim filed with the CICB to review under applicable provisions of the Administrative Procedure Act. If a claimant requests a hearing after the board has issued proposed findings of fact, conclusions of law, or orders, the board must hold a hearing in accordance with the Administrative Procedure Act before issuing final findings of fact, conclusions of law, or orders.

## Office of the Public Defender

### Eligibility for Services

The Office of the Public Defender (OPD) provides legal representation services to persons charged with criminal offenses who cannot afford to hire private attorneys. OPD determines eligibility for services by evaluating the financial ability of the applicant to pay for a competent private attorney and all other necessary expenses of representation. Financial ability is determined by a number of factors, including the individual's assets, income, the nature of the offense, and the length and complexity of the proceedings.

OPD is required to investigate the financial status of an applicant when the circumstances merit. OPD may require an applicant to execute and deliver written requests or authorizations that are necessary under law to provide OPD with access to confidential records of public or private sources to determine eligibility. OPD, on request, may obtain information without charge from a public record office or other unit of the State or local government.

State law specifies that tax information, including the amount of income disclosed in a tax return, may be disclosed to an employee or officer of the State who, by reason of the employment or office, has the right to the information. However, federal law generally prohibits the disclosure of tax information. Although there are exceptions for the disclosure of tax information to state agencies, the exception is limited to those agencies charged with state tax administration. *House Bill 121 (passed)* authorizes OPD to submit requests to the Department of Labor, Licensing, and Regulation (DLLR) and the Comptroller's Office for information regarding the employment status and income of individuals applying for the services of OPD. Each request must be accompanied by a signed authorization in a form acceptable to the responding agency. DLLR and the Comptroller's Office are required to comply with the requests.

### Board of Trustees

The Public Defender is the head of OPD and is appointed by and serves at the pleasure of the Board of Trustees of the Office of the Public Defender. The board is composed of three members who are appointed by the Governor and serve three-year terms. Each member must be a resident of the State, and two must be active attorneys admitted to practice before the Maryland Court of Appeals. Maryland's current Public Defender was appointed after the board voted in August 2009 to remove his predecessor from office.

*Senate Bill 97/House Bill 122 (both passed)* repeal the requirement that the Public Defender serve at the pleasure of the Board of Trustees of the Office of the Public Defender and instead authorize the Board of Trustees, by a vote of at least seven members, to remove the Public Defender from office only for (1) misconduct in office; (2) persistent failure to perform official duties; or (3) conduct prejudicial to the proper administration of justice.

The bills also make several changes to the composition and appointment of members of the Board of Trustees of the Public Defender. Under the bills, the board consists of 13 members.

Eleven members are appointed by the Governor with the advice and consent of the Senate. The 11 members must include a representative from each judicial circuit of the State. The President of the Senate and the Speaker of the House of Delegates must each appoint 1 member to the board. Each member of the board must be an active attorney admitted to practice before the Court of Appeals of the State and must (1) have significant experience in criminal defense or other matters related to the board's work; or (2) have demonstrated a strong commitment to quality representation of indigent defendants. The Attorney General, the State Prosecutor, and State's Attorneys are prohibited from serving on the board, as are current members or employees of the Judicial Branch or a law enforcement agency in the State. Board members serve three-year terms and may be reappointed. Members continue to serve until a qualified successor is appointed. The initial members of the board must be appointed by December 31, 2010. A board member serving on the bill's effective date (June 1, 2010) must continue to serve until a successor is appointed and qualifies.

The bills clarify that the Public Defender serves for a term of six years. The Public Defender serving on June 1, 2010, may continue to serve for six years and may be reappointed after the expiration of his/her term.

## **Identity Fraud**

### **Uniform Reporting Form**

It is against State law to commit identity fraud, including possessing or obtaining any individual's personal identifying information without the consent of that individual under specified circumstances or knowingly and willfully assuming the identity of another under specified circumstances. *Senate Bill 815/House Bill 785 (both passed)* requires the Police Training Commission to develop a uniform identity fraud reporting form that (1) makes transmitted data available on or before October 1, 2011, for use by each law enforcement agency of State and local government; and (2) may authorize the data to be transmitted to the Consumer Sentinel program in the Federal Trade Commission. The form must be developed with the cooperation of the Office of the Attorney General, the Governor's Office of Crime Control and Prevention, and the Federal Trade Commission.

## **Juvenile Law**

### **Lead Testing**

According to the federal Centers for Disease Control and Prevention (CDC), adverse health effects exist in children with blood lead levels less than 10 micrograms per deciliter. Lead poisoning has various side effects, including learning disabilities and behavioral problems. According to the most recent data available, the number of children with elevated blood lead levels has been decreasing at both the State and national level. At the State level, out of the 106,452 children up to 72 months of age tested for lead in 2008, 713 (0.7%) were found to have blood lead levels greater than 10 micrograms per deciliter. This compares with 23.9% in 1993,

the first year in which this data was tracked, and is the sixteenth straight year in which the rate has dropped. According to the Maryland Department of the Environment, lead paint dust from deteriorated lead paint or home renovation is the major source of exposure for children in Maryland.

*House Bill 1011 (passed)* authorizes the juvenile court, after a delinquency petition has been filed but before adjudication, to order the child to undergo blood lead level testing. Before trial, a court exercising criminal jurisdiction in a case involving a child may also order the child to undergo blood lead level testing. The results of the test must be provided to the child, the child's parent or guardian, the child's attorney, and the State's Attorney.

## **Juvenile Facilities**

### **48-Bed Committed Facilities**

The Department of Juvenile Services (DJS) must serve children in the juvenile services system with programming that:

- ensures the safety of the community and the children served;
- holds delinquent children accountable to victims and communities;
- assists children to develop competencies to become successful members of society;
- delivers services on a regional basis through at least four operational regions;
- ensures that a committed facility owned by DJS serves no more than 48 children at one time; and
- uses detention and committed facilities that are operationally separate from each other and that do not share common program space, including dining halls and educational or recreational facilities.

DJS operates facilities to diagnose, care for, train, educate, and properly rehabilitate children who need services. DJS is also authorized to contract with private providers to place children in other facilities that meet State licensing criteria. While State-owned committed facilities are required by law to serve no more than 48 children at one time, no such restriction on capacity currently exists for private committed facilities licensed by DJS. "Committed facilities" provide for the diagnosis, care, training, education, and rehabilitation of children in DJS custody.

*Senate Bill 330/House Bill 173 (both passed)* requires DJS to ensure that each committed facility licensed by DJS serves no more than 48 children at one time, unless the Secretary of DJS finds good cause for a facility to serve more than 48 children at one time.

## Escape

*House Bill 75 (passed)* alters the elements of the crime of escape in the first degree and escape in the second degree to include a prohibition against escape from a privately operated, hardware secure facility for juveniles committed to DJS. A “hardware secure facility” is defined as a facility that is securely locked or fenced to prevent escape. The bill also excludes a “hardware secure facility” from the statutory definition of a place of confinement. For further discussion of *House Bill 75*, see the subpart “Criminal Law” within this Part of this *90 Day Report*.

## Public Safety

### Sex Offender Legislation

On Christmas Day, 2009 – less than three weeks before the 2010 session began – the body of an 11-year-old girl was found in a wooded area of Wicomico County near the Maryland-Delaware line. Police determined that the girl had been abducted, sexually assaulted, and murdered. A registered sex offender in Maryland and Delaware has been charged with committing the crime. Spurred on by this case, legislators introduced a total of 84 bills regarding sexual offenses. Although the bills varied in content, the following significant bills emerged.

### Lifetime Supervision

A law passed in the 2006 special session provided for extended supervision of sexual offenders by requiring specified sexual offenders to have a term of extended sexual offender parole supervision for a minimum of three years to a maximum of life, with the ability to petition for discharge after that minimum period. Strengthening that law and addressing unintentional operational difficulties that have arisen since the 2006 law was enacted, *Senate Bill 280/House Bill 473 (both passed)* require the lifetime supervision of the following sexual offenders for a crime committed on or after October 1, 2010:

- a sexually violent predator;
- a person convicted of first or second degree rape, first degree sexual offense, or certain circumstances of second degree sexual offense;
- a person convicted of attempted first or second degree rape, first degree sexual offense, or the same form of second degree sexual offense cited above;
- sexual abuse of a minor if the violation involved penetration of a child under the age of 12;
- a person required to register with the person’s supervising authority because the person was at least 13 years old but not more than 18 years old at the time of the act; or

- a person convicted more than once arising out of separate incidents of a crime that requires registration.

For a person who is required to register because the person was at least 13 years old but not more than 18 years old at the time of the act, the term of lifetime sexual offender supervision begins when the person's obligation to register in juvenile court begins and expires when the person's obligation to register expires, unless the juvenile court finds after a hearing that there is a compelling reason for the supervision to continue and orders the supervision to continue for a specified time.

The bills authorize a court to sentence a person convicted of a certain third degree sex offense to lifetime supervision and require a risk assessment before that sentence is imposed. The bills also eliminate the role of the Maryland Parole Commission to administer or enter agreements for extended parole supervision of sexual offenders and deletes reference to an "extended parole supervision offender." Also eliminated is extended supervision for a period less than life.

The bills prohibit a person subject to lifetime supervision from knowingly or willfully violating the conditions of the supervision, with the following penalties:

- for a first offense, the person is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$5,000; for a second or subsequent offense, the person is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$10,000;
- a person imprisoned for a violation of lifetime supervision is not entitled to diminution credits and continues to be subject to lifetime supervision upon release until discharge from supervision, as specified. A court may remand the person to a correctional facility pending the hearing or a determination on a charge of violation of a condition of lifetime sexual offender supervision.

The sentencing court shall hear and adjudicate a petition for discharge from lifetime sexual offender supervision. The court may not deny a petition for discharge without a hearing. Further, the court may not discharge a person unless the court makes a finding on the record that the petitioner is no longer a danger to others. The judge who originally imposed the lifetime sexual offender supervision shall hear the petition. If the judge has been removed from office, has died or resigned, or is otherwise incapacitated, another judge may act in the matter.

The sentencing court or juvenile court must impose special conditions of lifetime sexual offender supervision at the time of sentencing or imposition of the registration requirement in juvenile court and advise the person of the length, conditions, and consecutive nature of that supervision. Before imposing the special conditions, the court must order a presentence investigation. The bills delineate allowable special conditions, including global positioning satellite (GPS) tracking or equivalent technology and required participation in a sexual offender treatment program. The sentencing court may adjust the special conditions of such lifetime supervision in consultation with the person's sexual offender management team.

The Department of Public Safety and Correctional Services (DPSCS) is required to adopt regulations necessary to carry out the duties of DPSCS relating to lifetime offender supervision.

Finally, the bills require notice to victims or a victim’s representative of hearings relating to lifetime sexual offender supervision.

### **Advisory Board**

*Senate Bill 856/House Bill 931 (both passed)* alter the composition of the Sexual Offender Advisory Board by adding specified members with expertise in sexual abuse and related crimes and expand the duties of the board. For a more detailed discussion of these bills, see the subpart “Criminal Procedure” within this Part of this *90 Day Report*.

### **Notification and Registration**

*Senate Bill 854/House Bill 936 (both passed)* substantially revise Maryland sex offender registration law and increase penalties for certain sex offenses committed against minors. Among their provisions, the bills replace reference to the four existing categories of sexual offenders with the three tiers of categorization under the federal Adam Walsh Child Protection and Safety Act and increase the number of years for which sex offenders must register. The bills also increase the maximum and mandatory minimum penalties for a person convicted of rape in the second degree of a child under the age of 13 years, or sexual offense in the second degree against a child under the age of 13 years, to life imprisonment and 15 years, respectively. For a more detailed discussion of these bills, see the subpart “Criminal Procedure” within this Part of this *90 Day Report*.

### **Diminution Credits**

*House Bill 289 (passed)* prohibits the earning of diminution credits to reduce the term of confinement of an inmate who is serving a sentence in a State or local correctional facility for committing first or second degree rape or first or second degree sexual offense against a victim under 16 years of age. The bill, however, may not be construed to require an inmate to serve a longer sentence than is authorized by the statute under which the inmate was convicted.

Another bill dealing with diminution credits, *House Bill 599 (passed)* prohibits the earning of diminution credits in a State or local correctional facility to reduce the term of confinement of an inmate who is serving a sentence for committing third degree sexual offense against a child under the age of 16 after being previously convicted of committing a third degree sexual offense against a child under the age of 16.

### **Pretrial and Posttrial Release**

*House Bill 1046 (passed)* prohibits a District Court Commissioner from authorizing the pretrial release of a defendant who is a registered sex offender. For a more detailed discussion of this bill, see the subpart “Criminal Procedure” within this Part of this *90 Day Report*.

*House Bill 60 (passed)* prohibits a person charged with committing a sexual crime against a minor from violating a condition of pretrial or posttrial release that prohibits the person from contacting the victim. For a more detailed discussion of this bill, see the subpart “Criminal Procedure” within this Part of this *90 Day Report*.

### **Prosecutions**

*Senate Bill 261 (passed)* expands the prohibition on human trafficking to include forced participation in a “sexually explicit performance.” For a more detailed discussion of this issue, see the subpart “Criminal Law” within this Part of this *90 Day Report*.

## **Police and Corrections Personnel**

### **Blue Alert Program**

*House Bill 1473 (passed)* requires the Department of State Police (DSP) to establish a Blue Alert Program to provide a system for rapid dissemination of information to assist in locating and apprehending a “missing offender” who is suspected of killing or seriously injuring a law enforcement officer. DSP is required to adopt guidelines and develop procedures for issuing a Blue Alert. DSP must also provide training and assistance to local law enforcement agencies and recruit broadcasters, local volunteer groups, and other members of the public for assistance in a Blue Alert.

### **Polygraph Examinations**

An individual may be required to pass a polygraph examination before being appointed to serve as a correctional officer in a State correctional facility under *House Bill 1402 (passed)*. The bill authorizes the Division of Correction (DOC) to require the examination.

### **Police Training Commission**

The Police Training Commission operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. *Senate Bill 820/House Bill 779 (Chs. 107 and 108)* require the Commission to expand the curriculum and the minimum courses of study of police training conducted by police training schools to include special training on, attention to, and the study of the exploitation of children; the contact with and treatment of victims of crimes and delinquent acts; the notices, services, support, and rights under State law available to victims and victims’ representatives; and notification of the rights of victims of identity fraud under federal law.

### **Unsubstantiated Complaints**

*Senate Bill 629/House Bill 120 (Chs. 87 and 88)* specify that, under the Law Enforcement Officers’ Bill of Rights, evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if (1) the investigation

resulted in an exoneration of the officer or an unsustainable or unfounded finding; or (2) the hearing board acquitted the officer, dismissed the action, or made a not guilty finding.

### **State Correctional Officers’ Bill of Rights**

*Senate Bill 887 (passed)* establishes exclusive procedures for the investigation and discipline for alleged misconduct of a State employed correctional officer working in a State correctional facility and establishes new timeframes relating to interrogations and appeals. Under the bill, investigations of alleged misconduct may be carried out by the appointing authority as well as the Internal Investigations Unit of the Division of Correction. The bill requires all correctional officer disciplinary cases to be decided by an internal hearing board or under grievance provisions of the State Personnel and Pensions Article.

The bill’s provisions supersede any inconsistent provisions of any other State law that conflicts with its provisions to the extent of the conflict. These provisions do not limit the appointing authority to regulate the competent and efficient operation and management of a State correctional facility by any reasonable means including transfer and reassignment of employees if that action is not punitive in nature and the appointing authority determines it to be in the best interests of the internal management of the correctional facility.

### **Fire and Rescue**

#### **Volunteer Company Assistance Fund**

*House Bill 1555 (passed)* is an emergency bill that allows money from the Senator William H. Amoss Fire, Rescue, and Ambulance Fund or the Volunteer Company Assistance Fund (VCAF) to be distributed to include fire, rescue, and ambulance companies located outside of Maryland if they have been members of the Maryland State Firemen’s Association for at least the past 10 years and have a first due response area in Maryland. The bill will affect two fire companies serving Caroline and Wicomico counties: The Delmar Volunteer Fire Company and the Marydel Volunteer Fire Company.

### **Emergency Management**

#### **Membership of EMS Board and Advisory Council**

Under *Senate Bill 1086/House Bill 497 (both passed)*, the membership of the statewide Emergency Medical Services (EMS) Advisory Council is raised from 29 to 31. Added members are to be a helicopter pilot and a member of the general public. Among its powers and duties, the EMS Board develops and adopts an Emergency Medical System plan to ensure effective coordination and evaluation of emergency medical services delivered in Maryland.

#### **Flag Benefit for Family of EMS Provider**

Maryland’s Secretary of State is required to issue a State flag to the family of a firefighter, police officer, member of the military, or sworn member of the office of State Fire

Marshal who is killed in the performance of duty. Under *Senate Bill 305 (passed)*, the family of a professional or volunteer emergency medical services provider who is killed in the performance of duty will also be issued a State flag.

### **Hazardous Material Response Team**

*Senate Bill 247/House Bill 516 (Chs. 50 and 51)* provide an employee of a hazardous material response team of a local government agency with the same death benefit and funeral benefit that other public safety employees qualify for in the event they are killed in the line of duty. The benefits are applicable to the extent that the local government employer maintains sufficient funds in reserve for the payment of one death benefit and one reasonable funeral benefit. A local government is not required to place such funds in reserve each year. However, upon a qualifying death with sufficient funds in reserve, the local government must pay the Department of Public Safety and Correctional Services (DPSCS) the amount to cover the benefit.

### **Safety of Buildings and Other Structures**

#### **Boilers and Pressure Vessels**

*House Bill 85 (passed)* specifies that owners of uninsured boilers and pressure vessels must contract for required inspections with an authorized third-party inspector, the Chief Boiler Inspector, or another State inspector. It specifies the types of inspections reserved for the State's Chief Boiler Inspector and deputy inspectors, establishes qualifications for special inspectors, and adjusts the fee structure for State inspections to reflect these changes.

#### **Accessibility Standards**

*House Bill 757 (failed)* would have required a structure of three or fewer dwelling units, for which a building permit is issued on or after October 1, 2013, to contain at least one entrance that meets accessibility standards specified in the bill.

#### **Elevators in Assisted Living Programs**

Under *Senate Bill 265 (passed)*, the Commissioner of Labor and Industry may adopt specified regulations to authorize and regulate the installation and inspection of noncommercial elevator units in assisted living programs with five or fewer beds that are licensed by the Department of Health and Mental Hygiene. There are currently 1,377 assisted living facilities in the State, of which 718 have five or fewer beds.

#### **Electrical Installations**

*House Bill 87 (passed)* requires certification by the State Fire Marshal of nongovernmental electrical inspectors in the State for the inspection of electrical installations for conformity with the National Electrical Code or any adopted local code or amendments. The bill repeals all prior statutory provisions relating to the regulation of nongovernmental electrical inspectors.

The requirements of *House Bill 87* do not apply to (1) public utilities, their affiliated companies, and electrical appliances and devices used in their work; (2) the inspection or certification of an electrical installation by a unit of a county government authorized to conduct electrical inspections; or (3) an electrical installation of the State or federal government during an emergency if it is necessary for the public welfare as a result of the emergency.

## **Weapons and Ammunition**

Nearly three dozen bills were introduced regarding firearms and ammunition. Among them were:

### **Firearms Applications**

*House Bill 119 (Ch. 130)* allows the transfer of a firearms application by a licensee or a law enforcement agency to the Secretary of State Police by electronic means approved by the Secretary, in addition to FAX machine or certified mail.

*Senate Bill 167 (failed)* would have required additional recordkeeping and reporting requirements for State-regulated firearm dealer licensees. The bill would have required that a licensed dealer keep records of all receipts, sales, and other dispositions of firearms affected in connection with the dealer's business. Under the bill, the Secretary of State Police or the Secretary's designee would have been required to disapprove an application for a State-regulated firearms dealer's license if it is determined that the applicant intends that a person not qualified for a license or whose license has been revoked or suspended will participate in the management or operation of the business or hold an interest in the business.

Other failed bills include *Senate Bill 645/House Bill 820 (both failed)* that would have established new requirements for the sale or transfer of firearms, and new recordkeeping and reporting requirements for State-regulated firearm dealer licensees; *House Bill 1328 (failed)* that would have made it a misdemeanor to knowingly violate the State's restrictions on the possession of a regulated firearm by a person under 21 years old or the State's restrictions on the removal or alteration of an identification mark or number on a firearm; and *Senate Bill 563/House Bill 354 (both failed)* that would have prohibited a person from possessing ammunition for a firearm if the person was previously convicted of a crime of violence or specified controlled dangerous substances (CDS) violations.

## **Inmates**

### **Individuals with Mental Illness**

*Senate Bill 761/House Bill 1335 (both passed)* require the managing official at a local correctional facility to provide an inmate who is diagnosed with a mental illness access to a 30-day supply of medication for his or her mental illness when the inmate is released. Part of the supply may be provided by prescription if the inmate is provided sufficient medication on release to remain medication-compliant until the prescription can be filled. The requirement only applies to an inmate who has been incarcerated in a local correctional facility for at least 60 days,

and only if a treating physician determines that the possession of medication will be in the best interest of the inmate.

*Senate Bill 86 (failed)* would have authorized the Department of Public Safety and Correctional Services to issue nonnarcotic medications and prescriptions to inmates awaiting release and limited the liability of medical personnel who provided the prescriptions.