

## Part E

# Crimes, Corrections, and Public Safety

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### Criminal Law

#### Code Revision – Criminal Law Article

The new Criminal Law Article, *House Bill 11 (Ch. 26)*, is a product of the continuing nonsubstantive bulk revision of the Annotated Code of Maryland by the Department of Legislative Services. The first revised articles were enacted in 1973 and, to date, 26 other revised articles have become law. The purposes of code revision work are modernization, logical organization, and clarification, not policymaking by way of new law.

Without substantively changing the law, the new Criminal Law Article revises, restates, and recodifies current law relating to substantive crimes. Its provisions are derived primarily from Article 27 - Crimes and Punishments, and includes related provisions from the Agriculture, Commercial Law, Family Law, and other articles of the code.

#### Legislation Associated with Criminal Law Code Revision

*Cross References:* *House Bill 172 (passed)* corrects cross-references throughout the Annotated Code to reflect the structure of *House Bill 11*, the new Criminal Law Article.

*Substantive:* While revising the criminal laws, the Criminal Law Code Revision Committee encountered issues that were not appropriate for inclusion in the code revision bill because they involved substantive changes but needed clarification that revision could not solve. In the revisor's notes to *House Bill 11*, the committee recommended that the General Assembly address these issues in separate pieces of legislation.

Accordingly, *House Bill 193 (Ch. 39)* includes the more modern and comprehensive term “drug paraphernalia” in the new article. The committee recommended adding a reference to “drug paraphernalia” in the appropriate section of the new article and clarifying certain provisions about law enforcement officials and authorized providers possessing drug paraphernalia during the course of their official duties.

It is illegal for an inmate to possess contraband in a correctional institution. Another bill resulting from the work of the Criminal Law Revision Code Committee is *House Bill 196 (Ch. 41)*, which clarifies that an item, material, substance, or other thing need not have any particular value to be considered contraband in a correctional facility.

In *House Bill 197 (Ch. 42)*, the law regarding the making or passing of bad checks to obtain property or services is modernized by amending the definition of “service” to include the use of computers, data processing, or other equipment.

The Criminal Law Code Revision Committee recommended that legislation be introduced to establish separate statutory charging documents for homicide by motor vehicle or vessel while under the influence of alcohol per se, life-threatening injury by motor vehicle or vessel while under the influence of alcohol per se, and reckless endangerment. *House Bill 199 (Ch. 44)* provides for such statutory charging documents and clarifies the meaning of “crime of violence” for purposes of describing conduct that is not reckless endangerment.

*House Bill 200 (passed)* clarifies the scope of the restitution available to State, county, municipal, and bicounty governmental units for responding to a false threat of a destructive device or toxic material. Restitution will be available for actual costs reasonably incurred in the response to a location and the search for and removal of an actual destructive device or device constructed to represent a destructive device.

Other legislation, *House Bill 202 (passed)*, associated with the criminal law code revision project specifies penalties for giving or receiving unauthorized passenger transfer tickets and damaging public wharves or landings. *House Bill 203 (Ch. 45)* clarifies penalties for exhibiting sexual displays to minors or allowing minors to enter a premises where there is a sexual display. In addition, *House Bill 198 (passed)* makes various clarifications to powers and prohibitions for political subdivisions.

## **Terrorism – Maryland Security Protection Act of 2002**

In an effort to prepare a legislative response to terrorism and related topics, the Governor, the Speaker of the House, and the President of the Senate appointed a joint task force, chaired by the Secretary of State Police, to study the State’s laws in this area

and make recommendations for changes. *Senate Bill 639/House Bill 1036 (both passed)* are two of a package of bills recommended by the task force. The bills reflect recommendations made to the task force by State agencies, including the Department of Transportation, the Maryland Aviation Administration, and the Attorney General's Office. For additional discussion of the recommendations of the joint task force, see the subpart "Anti-Terrorism" under Part C - State Government of this *90 Day Report*.

*Senate Bill 639/House Bill 1036* enhance State security in a variety of ways, including: (1) expanding coverage of the Wiretap Act; (2) expanding the powers of nuclear power plant facility security personnel; (3) expanding the territorial limits of the Maryland Transportation Authority police; (4) requiring use of security ID badges in airports; and (5) creating a new crime of knowingly or fraudulently obtaining a commercial driver's license by misrepresentation. The bills are emergency measures that take effect from the date of enactment. The bills' provisions are discussed in further detail below.

### **Wiretap Act**

*Senate Bill 639/House Bill 1036* authorize the use of a "roving" wiretap by providing that an application for authorization to intercept a wire, oral, or electronic communication that is made to a judge need not specify the nature and location of the facilities from which or the place where the communication is to be intercepted if certain requirements are met.

Under the bills, procedures are established for the interception of communications involving a particular individual, instead of a particular communication device, if there is probable cause to believe that the individual's actions involve efforts to thwart the interception of a particular device. This procedure could allow law enforcement to track the illegal activities of criminals who often use and quickly dispose of cell phones in an effort to avoid wiretapping.

References to "mobile telephone or a paging device" in the current law regarding an application for an ex parte court order authorizing the interception of communications are replaced with "communication device." A judge may authorize continued interception where appropriate anywhere within the State, as long as the original interception was within that judge's jurisdiction.

A law enforcement officer may require a service provider to disclose the contents of a wire communication that is in electronic storage under the procedures that currently apply to electronic communications in electronic storage based on the amount of time such communications have been in storage.

*Senate Bill 639/House Bill 1036* alter the definition of "court of competent jurisdiction" to mean "any circuit court having jurisdiction over the crime being

investigated regardless of the location of the instrument or process from which a wire or electronic communication is transmitted or received.” The bills also modify the definitions of “pen register” and “trap and trace device” and orders pertaining to these devices to expand their applicability to include Internet communications. A pen register and trap and trace device do not include any device or process used to obtain the content of a communication. The bills specify that an ex parte order authorizing use of a pen register or trap and trace device, upon its service, applies to any person providing wire or electronic communication service whose assistance may facilitate the execution of the order. The bills alter the requirements of the contents of such an ex parte order in accordance with these other changes.

### **Nuclear Power Plant Facility Security Personnel**

*Senate Bill 639/House Bill 1036* authorize a license holder of a nuclear power plant facility in the State, while under a heightened level of security condition ordered by the federal government, to authorize a security officer to stop and detain, without a warrant, any person who the officer has reasonable grounds to believe is trespassing on posted facility property or who has committed a crime in an area under the control of the license holder. The security officer must notify appropriate law enforcement personnel and either release the person to the detention or custody of a law enforcement officer or release the person if the law enforcement agency will not detain the person.

### **Maryland Transportation Authority Police**

After notice to specified persons within State and local law enforcement, and with approval of the Governor, when the Chairman of the Maryland Transportation Authority (MTA) determines on the basis of specific and articulable facts that the exercise of powers is reasonable to protect against actual or threatened physical injury or damage to State employees or State property or assets, an MTA police officer may exercise police powers on or within 500 feet of property owned, leased, or operated by or under the control of the Department of Transportation. An MTA police officer may also exercise police powers in these areas when ordered to do so by the Governor during a state of emergency.

### **Airports and Identification Badges**

The Maryland Aviation Administration (MAA) is required to adopt rules and regulations requiring the use of security identification badges in airports. Misuse of such badges is subject to a civil penalty not exceeding \$1,000.

## **Outstanding Arrest Warrants**

Federal law enforcement agencies are included in the definition of law enforcement agency relating to outstanding arrest warrants and loss of driving privileges and ability to register vehicles. Under the bills the Motor Vehicle Administration is required to refuse to register or transfer the registration of a motor vehicle owned by an individual named in an outstanding federal arrest warrant.

## **Commercial Driver's License Laws**

*Senate Bill 639/House Bill 1036* add the new crime of knowingly or fraudulently obtaining a commercial driver's license by misrepresentation. A violation is a misdemeanor punishable by up to five years imprisonment or a fine up to \$10,000 or both. Penalties for existing commercial driver's license violations (driving while license is suspended, revoked, etc.) are increased to imprisonment for not more than five years or a fine not exceeding \$10,000 or both, except that the violation of driving without a license in one's possession after being issued a valid license is subject to a maximum six months' imprisonment or a \$1,000 fine or both for a first offense, with increasing penalties for repeat violations.

## **Sexual Offenses**

### **Categories of Child Abuse**

The Department of Public Safety and Correctional Services and the Department of Health and Mental Hygiene appointed a task force during the 2001 interim to address criminal and mental health issues related to sexual offenders. The draft report of the Sex Offender Task Force proposed a series of recommendations to better protect the public from sexual offenders.

Child abuse is currently defined to include both physical and sexual abuse. The task force suggests that combining these two types of abuse into a single category creates several problems, including problems in data collection regarding this offense and problems for the Division of Correction with respect to its obligations in the area of sexual offender registration. The task force has recommended that child abuse be separated into two statutes, one for physical abuse and one for sexual abuse.

*House Bill 1194 (passed)* establishes the crime of sexual abuse of a minor as a separate offense from "child abuse." A parent or other person with permanent or temporary care or custody or responsibility for the supervision of a minor, or a household member or family member, may not cause sexual abuse to the minor. A violator is guilty of a felony and subject to maximum imprisonment of 15 years.

## Continuing Course of Conduct

*House Bill 1302 (passed)* prohibits a person from engaging in three or more acts in a continuing course of unlawful sexual conduct with a victim under 14 years of age and provides that a violation is a felony. In determining whether a continuing course of conduct existed, the trier of fact must determine only that the required number of acts occurred, and need not determine which acts constitute the required number of acts. However, the person may not be additionally charged for a sexual offense involving the same victim in the same proceeding, unless the violation occurred outside the period of the continuing course of conduct.

The bill is in response to a recent Court of Appeals decision in *Cooksey v. State*, 359 Md.1, 752 A.2d 606 (2000), in which the defendant was charged with a single count each of third- and fourth-degree sexual offenses involving several acts with one child under 14 over an extended period of time in a continuing course of conduct. The indictment failed to allege specific dates for each of the alleged offenses. The defendant was also charged with child sexual abuse of the same victim for the same acts in a separate count.

The Court of Appeals held that third- and fourth-degree sexual offenses, as codified in Maryland, are single offenses involving a specific act on each occurrence, rather than crimes of a continuing character that may occur over time. However, the court also found that child sexual abuse could be a crime of continuing nature, not necessarily involving discrete acts each of which must rise to the level of an offense.

## Vulnerable Adults

The 2002 General Assembly passed legislation granting greater protection to vulnerable adults. A vulnerable adult is an adult who lacks the physical or mental capacity to provide for the adult's daily needs.

## Financial Exploitation

*Senate Bill 646/House Bill 559 (both passed)* make it unlawful for a person to knowingly and willfully obtain by deception, intimidation, or undue influence the property of a vulnerable adult with the intent of depriving the adult of the property. A person convicted of this offense is subject to criminal penalties that vary depending on the value of the property taken, is disqualified from inheriting or otherwise benefitting from the property of the vulnerable adult, and is required to make restitution of the property or its value to the adult or the adult's estate.

## **Abuse or Neglect of Vulnerable Adults**

*Senate Bill 516/House Bill 838 (both passed)* prohibit a caregiver, parent, or other person with permanent or temporary care or responsibility for the supervision of a vulnerable adult, or a household or family member, from causing the abuse or neglect of the vulnerable adult that results in death, serious physical injury, or sexual abuse. A person who victimizes a vulnerable adult in this manner is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and is subject to imprisonment not exceeding ten years or a fine not exceeding \$10,000 or both.

The bills also exclude sexual abuse from the existing misdemeanor of abuse or neglect of a vulnerable adult, and it redesignates the misdemeanor as abuse or neglect of a vulnerable adult in the second degree. This misdemeanor is punishable by the existing penalties of imprisonment not exceeding five years or a fine not exceeding \$5,000 or both.

## **Theft and Fraud**

### **Penalties for Felony and Misdemeanor Theft**

*House Bill 177 (passed)* increases from \$1,000 to \$25,000 the maximum fine for persons convicted of felony theft. The bill does not alter the maximum period for imprisonment for such convictions (not exceeding 15 years) or the restitution requirement.

*Senate Bill 436/House Bill 691 (both passed)* increase the penalties for misdemeanor theft for persons with two or more prior theft convictions. For a person who is convicted of theft of property or services with a value of less than \$500, the penalty is increased from a maximum term of 18 months in prison or a fine not exceeding \$500 or both, to a maximum term of five years in prison or a fine not exceeding \$5,000 or both. The convicted person must also restore or pay for the value of the property or services. The bills also provide that a court may not impose these penalties unless the State's Attorney serves notice on the defendant or the defendant's counsel before the acceptance of a plea of guilty or nolo contendere or at least 15 days before trial that: (1) the State will seek the penalties under these provisions; and (2) lists the alleged prior convictions.

### **Identity Theft**

*Senate Bill 559/House Bill 358 (both passed)* significantly expand offenses relating to the fraudulent use of personal identifying information. The bills include knowingly, willfully, and with fraudulent intent possessing (or aiding in possessing) personal identifying information under the prohibition against obtaining personal



identifying information to commit fraud. The bills also establish felony offenses for identity theft fraud involving goods or services, including credit, with a value over \$500, and for committing the offense with intent to manufacture or distribute personal identifying information of another without consent. The bills provide statewide investigative and enforcement authority to any law enforcement agency to pursue violations of the bill if certain notice requirements are met. The bills also grant the District Court concurrent jurisdiction over the felony offenses described in the bills.

The bills also grant law enforcement officers statewide authority to enforce the prohibition against identity theft.

## **New Criminal Provisions**

### **Inmates and Indecent Exposure**

*Senate Bill 429/House Bill 232 (both passed)* prohibit an inmate from lewdly, lasciviously, and indecently exposing private parts of the inmate's body in the presence of a correctional officer or authorized personnel with the intent to annoy, abuse, torment, harass, or embarrass that person. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$1,000 or imprisonment for three years or both.

### **Damage to Agricultural Research Operations**

*House Bill 1012 (passed)* prohibits a person from maliciously damaging or destroying an agricultural research operation or related farm product. A violator is guilty of a misdemeanor, must pay restitution, and is subject to maximum penalties of imprisonment for three years or a fine of \$5,000 or both, and is subject to pay restitution for damaged property.

### **Railroad Trespass**

*Senate Bill 733 (passed)* prohibits a person from riding on the outside or inside of a railroad vehicle, including a flat bed or container, without lawful authorization. A violator is guilty of a misdemeanor and subject to imprisonment not exceeding six months or a fine not exceeding \$1,000 or both. Additionally, the bill provides that, except to cross railroad property at an authorized crossing, a person may not knowingly enter or remain on railroad property without the railroad carrier's consent or other lawful authorization. A violator is guilty of a misdemeanor and subject to imprisonment not exceeding 30 days or a fine not exceeding \$100 or both. The bill also repeals a similar existing misdemeanor.



### **Housing Assistance – Fraud**

*Senate Bill 660/House Bill 1080 (both passed)* establish a misdemeanor offense of knowingly making a false statement of a material fact to influence a housing agency regarding an action affecting housing assistance already provided or an application for housing assistance. A violator is subject to maximum penalties of a fine of \$5,000 or imprisonment for three years or both.

### **Pepper Mace**

*House Bill 1377 (passed)* repeals the current prohibition on a minor possessing pepper mace and states the intent of the General Assembly that a school or board of education may establish policies to limit or prohibit the possession of pepper mace on school property. Another measure, *House Bill 195 (failed)*, would have made a minor's possession of pepper mace, and other weapons, a civil offense rather than a misdemeanor.

## **Criminal Procedure**

### **Sentencing and Confinement**

#### **Diminution Credits and Sentences**

Mandatory supervision is a nondiscretionary release from prison required by law after a criminal offender has served his or her sentence less diminution of confinement credits earned. *Senate Bill 747/House Bill 854 (both passed)* require that if an inmate is sentenced to imprisonment for a violent crime committed while on mandatory supervision, and the mandatory supervision is then revoked, the inmate will automatically lose all credits on the prior sentence. The bills thus abolish the discretion of the parole commission to revoke any or all of the diminution credits previously earned.

The bills also require the Secretary of Public Safety and Correctional Services and the Chairman of the Maryland Parole Commission to establish a workgroup to study and make recommendations on issues relating to diminution credits, sentences, and mandatory supervision. A report from the workgroup is due by December 1, 2002.

#### **Patuxent Institution**

*House Bill 1151 (passed)* expands the scope of purpose for the Patuxent Institution's remedial programs and services for youthful eligible persons, clarifies the institution's role as providing services to mentally ill inmates, and expands the scope of information that is submitted in the director's annual report. The bill also alters certain procedures for the Patuxent Institution to conform to those used for inmates in the

Division of Correction, allows the Secretary of Public Safety and Correctional Services to reassign authority to revoke mandatory supervision release to the Board of Review, requires the Board of Review to review annually an inmate's status in the youth program, and requires the Commissioner of Correction to promptly refer any inmate requested for evaluation by the director of the Patuxent Institution unless the commissioner determines that the referral will constitute a security risk.

## **Electronic Interception of Oral Communications**

*Senate Bill 20/House Bill 180 (both passed)* authorize a law enforcement officer to electronically record an oral communication during a criminal investigation after the law enforcement officer initially detains a vehicle. Current law allows these interceptions for traffic violations, but not other criminal investigations. An oral communication intercepted under these conditions is lawful even if another person becomes a party to the communication after certain information is provided. These bills allow law enforcement officers who have videotape cameras to record the audio as well as the video parts of a stop.

*House Bill 74 (failed)* would have added certain terrorism-related offenses to the list of offenses for which an oral or electronic communication may be intercepted.

*House Bill 407 (failed)* would have required law enforcement officers to videotape questioning and statements by suspects of crimes of violence and victims of child abuse. The bill would have established procedures regarding the videotaping.

However, *Senate Bill 639/House Bill 1036 (both passed)* established several provisions to enhance State security, including "roving wiretaps" for intercepting communications. For discussions of these and other bills related to terrorism, see Part C - State Agencies, Offices, and Officials of this *90 Day Report*.

## **Criminal History Record Information**

Whenever a juvenile is charged as an adult, under *Senate Bill 424/House Bill 943(both passed)*, the Criminal Justice Information System Central Repository may disseminate to the Maryland Justice Analysis Center unique identifiers relating to the juvenile, including name, fingerprint identification numbers, and record or file numbers. A more detailed discussion of these bills can be found under the subpart "Juvenile Law" within this part.

*House Bill 101 (passed)* increases the membership of the Criminal Justice Information Advisory Board from 18 to 22 members by adding members from the State Council on Child Abuse and Neglect, the Department of Health and Mental Hygiene, the Department of Juvenile Justice, and the Motor Vehicle Administration. The board

oversees the Criminal Justice Information System (CJIS), a database containing criminal history record information, and provides advice and recommendations to the Secretary of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals.

Filling in a gap in the law dealing with the expungement of an individual's court and police records, *Senate Bill 114 (passed)* adds the State Prosecutor to the list of law enforcement units required to expunge those records under specified circumstances.

## Criminal History Records Checks

Various statutes of the State require criminal history records checks for licensing or employment purposes. As a condition of performing a national criminal history records check for such a noncriminal justice purpose, each of those statutes must be approved by the Federal Bureau of Investigation. On May 4, 2001, the FBI notified Maryland that several existing statutes relating to the Maryland Racing Commission, handgun permits, private detectives, security guards, and firearms dealers were not in compliance with federal criteria. *House Bill 1272 (passed)* brings those statutes into compliance.

## Pretrial Procedures

Immunity from prosecution for conversion of a leased or rented item that is returned or accounted for within ten days of a written demand for its return is extended only to bona fide residents of Maryland. The Attorney General has found that this exclusive immunity protection for Maryland residents violates both the Equal Protection and Commerce clauses of the U.S. Constitution. *Senate Bill 460/House Bill 666 (both passed)* repeal this immunity limitation, applying the written demand requirement and ten-day grace period to all persons.

*Senate Bill 65 (failed)* would have created a statutory exception to the right to a jury trial for defendants in circuit court charged with constructive criminal contempt for failure to pay child support if the prosecutor recommended a sentence of less than 180 days and the court agreed to that limit.

## Death Penalty

In the case of *Borchardt v. State* (2001), the Maryland Court of Appeals rejected a challenge to the State's death penalty statute. The court held that it was not unconstitutional to use the preponderance of evidence standard as opposed to the higher beyond a reasonable doubt standard when weighing whether the aggravating factors outweigh the mitigating factors in deciding whether to impose a death sentence. In an attempt to raise the standard of proof required for imposing the death penalty when both aggravating and mitigating circumstances exist, *Senate Bill 629/House Bill 972 (both*

*failed*) would have required a court or jury to determine whether the aggravating circumstances outweigh the mitigating circumstances beyond a reasonable doubt.

## **Pretrial Release**

### **Bail Bonds**

*Senate Bill 432/House Bill 792 (both failed)* would have required courts to allow defendants the option to post a bail bond by executing it in the full penalty amount and making a refundable deposit of 10 percent of the bond or, if greater, \$25. Ordinarily, defendants use bail bondsmen who charge 10 percent as a fee. The bill also would have required the courts to notify defendants of their option.

### **Public Defender at Bail Review Hearings**

*Senate Bill 9 (failed)* would have required the Office of the Public Defender to represent indigent defendants at bail review hearings. Currently, the Office of the Public Defender provides this service in some jurisdictions, including Baltimore City and Montgomery County, but not statewide. The office would have needed additional personnel to undertake this additional responsibility on a statewide basis.

## **Revisory Power of Courts**

### **Limitation on Court's Power**

Under the Maryland Rules, a court has the power to revise a sentence if a motion to revise, modify, or reduce a sentence is filed within 90 days after the sentence is imposed. Currently, there is no time limit restricting when the court may exercise this revisory power. Thus, as long as a motion is timely filed, a court may revise a sentence even years after the sentence was imposed.

After 90 days following sentence imposition, a motion may only be filed asking the court to revise the sentence if there is fraud, mistake, or irregularity. Generally, the court may not increase a sentence after the sentence has been imposed.

In the past few years, several attempts have been made to limit the court's revisory power by imposing a time period for the court to exercise the court's revisory power. All of these attempts have failed, as was the case in the 2002 session. *Senate Bill 73/House Bill 160 (both failed)* would have limited a court's power to revise a criminal sentence to a period of one year after the filing of a motion. The bills would have required the court's decision changing an original sentence to be in writing and to include the reasons for the decision and would have required the court to notify all

victims of the crime committed by the defendant prior to altering the sentence. *Senate Bill 334 (failed)* contained similar provisions.

### **Report from Sentencing Policy Commission**

*House Bill 1143 (passed)* requires the State Commission on Criminal Sentencing Policy to include in its annual report: (1) a review of reductions or increases in original sentences that have occurred because of reconsiderations of sentences; and (2) a categorization of information on the number of reconsiderations of sentences by crimes of violence and by judicial circuit.

### **Victims' Rights**

*Senate Bill 468/House Bill 455 (both failed)* would have established the State Office for Victims and Witnesses of Crime to coordinate State functions concerning the rights of and services to victims and witnesses of crimes and delinquent acts.

### **Sexual Offenders - Registration**

#### **Background**

**Federal Law:** During the 2002 session, several bills were introduced to prevent the loss of expected federal fund revenue (in the form of grants from the Edward J. Byrne Memorial State and Local Law Enforcement Assistance Fund) of about \$900,000 annually beginning in fiscal 2003. States that receive federal grants from the Edward J. Byrne Memorial State and Local Law Enforcement Assistance Fund are required to comply with a myriad of federal requirements regarding registration of sexual and other offenders or risk the loss of 10 percent of their annual grants.

Maryland is not in compliance with certain federal guidelines relating to Byrne funding that require State law to:

- broaden the pool of persons who could potentially be designated a sexually violent predator to include first-time sexually violent offenders;
- require all persons to register annually for life if convicted of an aggravated sexual offense including:
  - engaging or attempting to engage in sexual acts involving penetration with victims of any age through the use of force or threat of serious violence; and

- engaging or attempting to engage in sexual acts involving penetration with victims under the age of 12;
- require lifetime registration of a subsequent offender regardless of whether the first offense was committed after registration statutes were enacted and regardless of whether the offense was committed in the same state in which the registrant committed the latest offense; and
- require all persons who are or were required to register every 90 days for life under the laws of another state or jurisdiction to register every 90 days for life upon entering this State.

In addition, the State is not in compliance with the federal Campus Sex Crimes Prevention Act which requires a registrant to notify a supervising authority on registering as a student or beginning employment at an institution of higher education. The supervising authority must notify the campus police agency of the institution of higher education or local police having jurisdiction over the campus of the registrant's status.

**Graves Decision:** Several bills were introduced not only to prevent the loss of expected federal grant funds but also in response to the Maryland Court of Appeals opinion in *Graves v. State*, 364 Md. 329 (2001). In this case, the court held that, because the statutory definition of a "sexually violent offense" does not encompass persons who have been convicted of criminal acts committed in another jurisdiction that would constitute a sexually violent offense in Maryland, offenses committed in another jurisdiction could not be used as a basis for designating a person a sexually violent predator.

### **Subsequent Offender Requirements**

**Senate Bill 52 (passed)** requires all persons who have been convicted of a prior crime as a "child sexual offender," an "offender," or a "sexually violent offender" (as defined) to register for life. The bill also eliminates required registration for a person if the underlying conviction requiring registration is reversed, vacated, or set aside, or if the registrant is pardoned for the underlying conviction.

### Compliance with Federal Law

*Senate Bill 577/House Bill 77 (both passed)* include under the definition of “sexually violent offense” certain crimes that were committed in another state or in a federal, military, or Native American tribal jurisdiction. Among other actions, the bills:

- expand the definition of “sexually violent predator” by eliminating the need for the offense to have been a subsequent offense and including persons who are or were required to register every 90 days for life under the laws of another state or a federal, military, or Native American tribal jurisdiction;
- make the Secretary of Public Safety and Correctional Services the “supervising authority” if a registrant is either a resident or a nonresident convicted in a federal, military, or Native American tribal court and is not under supervision of another supervising authority;
- expand lifetime registration requirements by requiring such registration for all sexually violent offenders and persons convicted of child abuse for commission of a sexual act involving penetration of a child under 12 years old;
- require all persons with a prior conviction for a sexual offense, a child sexual offense, or a sexual violent offense to register for life without regard to whether there was a previous requirement to register;
- require registrants who commence or terminate employment or enrollment at an institution of higher education to either note the enrollment or employment on their registration statement or notify their supervising authority;
- requires the supervising authority to notify campus police or local law enforcement when registrants commence or terminate employment or enrollment at an institution of higher education; and
- makes it a misdemeanor for registrants to knowingly fail to provide certain notices of a change in status.

### Subsequent Sexual Offenders

*House Bill 1147 (passed)* provides that if a person who has a prior conviction from another incident of first or second degree rape or sexual offense is convicted of a subsequent offense of second degree rape or sexual offense, third degree sexual offense, or attempted second degree rape or sexual offense, the person is subject to imprisonment not exceeding life.



*Senate Bill 801 (passed)* makes a person subject to incarceration for life without the possibility of parole if the person is found guilty of rape or sexual offense in the first degree after having been previously convicted of one of the same offenses.

## Reputation and Opinion Evidence

*Senate Bill 212/House Bill 1067 (both failed)* would have expanded the prohibition against introduction of evidence regarding a victim's prior sexual abstinence in a prosecution to include all sexual offenses and child sexual abuse. Current law prohibits this evidence in first and second degree rape and sexual offense cases.

The bills also would have expanded the list of offenses for which: (1) there is a prohibition against introducing evidence regarding a victim's reputation for chastity; and (2) evidence of a specific instance of prior sexual conduct may be admitted upon a finding that the evidence is relevant, material, not overly prejudicial, and meets other specified criteria.

## Juvenile Law

### Juvenile Justice Oversight

In December 1999, five major Department of Juvenile Justice (DJJ) officials, including the Secretary, were removed and replaced with new management. The new management team began the process of addressing concerns about DJJ through the reorganization of departmental units and the identification of specific areas of concern that required immediate action by the department. Some of the more significant initiatives included the implementation of an improved aftercare system, the creation of the Office of Professional Responsibility and Accountability, the drafting of a code of conduct for department staff, and the development of detention standards.

In September 2000, DJJ and the Governor's Office for Children, Youth, and Families established an independent juvenile justice monitor via a memorandum of agreement between the two agencies. *House Bill 971 (passed)* codifies the Office of the Independent Juvenile Justice Monitor and its role to evaluate: (1) the child advocacy grievance process in DJJ operated facilities; (2) DJJ's monitoring process; (3) youth treatment and services; (4) the physical conditions of the facilities; and (5) the adequacy of staffing. Additionally, the bill requires the office to make periodic reports in various findings.

Under its new leadership, DJJ issued the "Maryland Standards for Juvenile Detention Facilities" to provide guidance regarding administration/support services, admission processes, the provision of restorative services, residential operations, architectural design, and program responsibility and accountability. *House Bill 961*

(*passed*) requires DJJ to adopt an employee code of conduct and regulations that provide standards for juvenile detention facilities and nonsecure placement alternatives for committed children. This bill formalizes current DJJ guidelines to ensure that they will be followed regardless of any changes in the top positions of the department.

## **Juveniles Charged as Adults**

*Senate Bill 428/House Bill 974 (both passed)* add a preponderance of the evidence standard to a court's determination of whether transferring jurisdiction from criminal court to juvenile court is in the interest of the child or society. The bills also require a criminal court to make a transfer determination at sentencing for a child charged as an adult if all charges that excluded jurisdiction from the juvenile court do not result in a finding of guilty, and the case was not originally transferred because of specified circumstances.

*Senate Bill 424/House Bill 943 (both passed)* authorize the Criminal Justice Information System Central Repository, when a juvenile has been charged as an adult, to disseminate to the Maryland Justice Analysis Center unique identifiers relating to the child, including name, fingerprint identification numbers, and record or file numbers. The bill prohibits the center from disseminating information received from the Central Repository except where required by State law.

## **Baltimore City Juvenile Justice Center**

The Baltimore City Juvenile Justice Center (BCJJC) is a new facility that is expected to be operational in September 2002. Originally scheduled for completion in August 1999, the opening of the center has been delayed several times. Construction on the 239,000 square-foot complex comprising BCJJC is expected to be completed by the end of fiscal 2002. When fully operational, BCJJC will include an intake unit, DJJ support services, the city's juvenile court, and space for the State's Attorney, Public Defender, DJJ aftercare and probation, and other services necessary to process youth from detention through the judicial system. The center will have 144 detention beds and 13 courtrooms. Approximately 400 to 500 juveniles are processed on a weekly basis by Baltimore City police at the Northern Precinct Station; these juveniles will be processed at BCJJC when it opens. *House Bill 1011 (passed)*, a departmental bill, codifies the BCJJC and operating procedures for processing juveniles through the facility. The bill also requires DJJ to provide medical and mental health assessment services in each of its residential facilities.

## Community Detention

*House Bill 1081 (passed)* establishes “community detention” as a condition of probation or an alternative placement for children alleged or found to be delinquent. Community detention is defined as a program monitored by DJJ in which a delinquent child or child alleged to be delinquent is placed in the home of a parent, guardian, custodian or other fit person, or in shelter care, as a condition of probation or as an alternative to detention.

## Children Awaiting Placement

In recent years, the General Assembly has expressed a concern about the extended periods of time that many adjudicated youths spend in juvenile facilities while awaiting placement into a court-ordered commitment program. In addition to concerns associated with the high costs of stays in secure confinement and overcrowded conditions at juvenile facilities, there is also a concern that juveniles awaiting placement may not be receiving the services that they need. *House Bill 962 (passed)* authorizes a juvenile court to adopt a “treatment service plan” proposed by DJJ when the court has made its disposition on a delinquency or child in need of supervision petition. The bill requires DJJ to ensure implementation of an adopted treatment service plan within 25 days after the disposition.

## Links to Other Child-Related Agencies

*House Bill 959 (passed)* requires the Department of Human Resources (DHR) and DJJ to study the link between the child welfare and juvenile justice systems in the State and develop a plan to address that link. The bill also requires DJJ and DHR to identify the number of children in social services’ custody who were referred to the courts or DJJ for delinquent acts from July 1, 1998, through July 1, 2002. DJJ and DHR are required to report jointly to the General Assembly on or before December 31, 2002, on these issues. *Senate Bill 425 (failed)* would have authorized the sharing of confidential juvenile information among the Department of Juvenile Justice, local departments of social services, local management boards, State and local law enforcement agencies, State’s Attorneys, and State and local school superintendents and their designees.

## Pagers in Baltimore County Schools

*House Bill 1010 (passed)* repeals the prohibition on the possession of portable pagers on public school property in Baltimore County. The bill declares that it is the intent of the General Assembly that the Baltimore County Board of Education work with the Maryland State Department of Education to develop a policy regarding the use of portable pagers and cellular telephones on school property.

## Repeal of Prohibition on Possession of Pepper Mace

*House Bill 1377 (passed)* repeals the current prohibition on a minor possessing pepper mace. It further provides the intent of the General Assembly that schools and school boards may establish policies to limit or prohibit pepper mace on school property.

## Public Safety

### Emergency Management – Response to Terrorism

As part of the recommendations of the joint task force on terrorism appointed by the Governor, the President of the Senate, and the Speaker of the House in the wake of the September 11 terrorism attacks, proposals regarding the preparedness of the State's emergency management system through the expansion of the Governor's emergency powers and the coordination of local emergency management response by a Maryland Emergency Management Assistance Compact were enacted into law. For a more detailed discussion of the recommendations of the joint task force on terrorism that were considered by the General Assembly, see the subpart "Anti-Terrorism" under Part C - State Government of this *90 Day Report*.

### Governor's Emergency Powers

*Senate Bill 235 (passed)/House Bill 303 (Ch. 5)* enable the Governor to assume emergency powers in the event of a threat or occurrence of any enemy attack, act of terrorism, or public health catastrophe. The Governor may assume direct operational control over emergency management whether or not the situation is beyond local control. The Act expands the individuals to whom the Governor may delegate emergency management functions to include individuals employed in the Executive Department or employed as secretaries of principal departments or as heads of independent State agencies.

State and local law enforcement officers and health officers must execute and enforce orders, rules, and regulations issued or adopted by the Governor in response to these emergency situations. The Secretary of Health and Mental Hygiene is granted additional authority to take actions to prevent the spread of diseases that endanger public health.

A person who violates an order, rule, or regulation issued under the emergency management authority of the Governor is guilty of a misdemeanor and is subject to imprisonment for a period not exceeding six months or a fine not exceeding \$1,000 or both. For a willful violation, a person is guilty of a misdemeanor and is subject to imprisonment for a period not exceeding one year or a fine not exceeding \$5,000 or both.

## Maryland Emergency Management Assistance Compact

*Senate Bill 239 (Ch. 2)/House Bill 293 (passed)* establish a Maryland Emergency Management Assistance Compact to provide for mutual assistance in managing an emergency among jurisdictions entering into the compact. It is the intent of the General Assembly that jurisdictions eligible to enter into the compact should adopt it by June 1, 2003. The local jurisdictions eligible to join the compact are the 23 counties, Baltimore City, and Ocean City (those local jurisdictions with local emergency management agencies recognized under federal law).

The stated purpose of the compact is to provide for mutual assistance among party jurisdictions in managing an emergency. The compact must provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment or personnel simulating performance of any aspect of the giving and receiving of aid during emergencies by jurisdictions that are party to the compact.

The senior elected official of each jurisdiction must designate an authorized representative. The authorized representative may request assistance of another party jurisdiction by contacting the authorized representative of that jurisdiction. Requests may be verbal or in writing. Written requests must provide specified information relating to the emergency support function, location, and assistance needed.

Any jurisdiction that is a party to the compact and receives a request for assistance must take actions necessary to provide requested resources but may withhold resources to the extent necessary to provide reasonable protection to its own jurisdiction. The compact provides emergency responders with the same powers, duties, rights, and privileges as personnel of the requesting jurisdiction. These provisions take effect subsequent to a local declaration of a state of emergency by the requesting jurisdiction or upon commencement of exercises, testing, or training for mutual aid, and continue as long as the exercises, training, or testing are in progress, the state of emergency remains in effect, or loaned resources remain in the requesting jurisdiction.

Emergency support functions under the compact include: fire services, law enforcement, emergency medical services, transportation, communications, public works, engineering, building inspection, planning and information assistance, health and medical services, and search and rescue.

This compact does not affect any existing or future supplemental mutual aid compacts among local jurisdictions. While some local jurisdictions in Maryland have some informal and limited agreements, the new compact provides a formalized statewide mechanism for immediate assistance to handle emergency situations.

Intrastate mutual aid agreements exist in 24 states. The new compact is modeled

after the interstate Emergency Management Assistance Compact that has been adopted by 43 states, including Maryland.

## **Public Safety Personnel**

### **Information Management**

*House Bill 1265 (passed)* creates a 19-member State Commission on Public Safety Technology and Critical Infrastructure to: (1) make recommendations relating to the compatibility and interoperability of communication and information management systems maintained by the State and local governments; (2) adopt regulations to ensure such compatibility and interoperability of State public safety systems; and (3) propose legislation for consideration by the General Assembly as necessary to implement the recommendations. For a more detailed discussion of *House Bill 1265*, see the subpart “State Agencies, Offices, and Officials” under Part C - State Government of this *90 Day Report*.

### **Recognition of Public Safety Personnel**

Two House Joint Resolutions were passed during the 2002 session that recognize public safety personnel in Maryland. *House Joint Resolution 8 (passed)* memorializes fallen fire and emergency personnel by requiring that the American flags and the Maryland State flags on all State office buildings be lowered to half-staff in honor of the National Fallen Firefighters Memorial Service in Emmitsburg, Maryland, which is held each year on the first Sunday in October. *House Joint Resolution 15 (passed)* designates May 19, 2002, through June 14, 2002, as Maryland’s “Salute to the Services,” a campaign to encourage tourism businesses across the State by providing special travel-related discounts to military, fire and emergency services, police, and hazardous material safety personnel.

## **Law Enforcement**

### **Prince George’s County – Complaints Against Police – Subpoena Enforcement**

Under legislation recently enacted by the Prince George’s County Council, the Prince George’s County Citizen Complaint Oversight Panel (CCOP) has authority to investigate police misconduct, but CCOP does not have subpoena power. CCOP must request a subpoena from the Prince George’s County Council. *House Bill 642 (passed)* authorizes CCOP to petition a court to issue an order requiring compliance with a subpoena issued for the panel by the county council. A court may hold a person who fails to comply with the subpoena in contempt of court.

### **Exercise of State Police Powers in Baltimore City**

*House Bill 410 (failed)* would have granted the Department of State Police authority to exercise its powers in Baltimore City. Because Baltimore City is considered a municipal corporation and maintains its own police force, the State Police may only act in Baltimore City under limited circumstances such as when in pursuit of an offender, when enforcing certain vehicle laws, or when requested to do so by the chief of police.

### **Private Detectives – Fugitives from Justice**

In response to concerns about media reports of abuses and mistakes by “bounty hunters” who pursue fugitives from justice and may cross state lines and enter homes or premises without search or arrest warrants, *House Bill 575 (passed)* requires bounty hunters who have not been licensed as private detectives to be licensed as such under the State’s licensing provisions and regulations for private detectives. However, the measure does not apply in cases in which the investigation to locate a fugitive is conducted by: (1) a property bail bondsman or a bail bondsman licensed by the Maryland Insurance Commissioner; (2) an individual employed by a property bail bondsman or a licensed bail bondsman for the purpose of locating or apprehending fugitives from justice; or (3) an agent authorized in advance by a property bail bondsman or licensed bail bondsman to apprehend a fugitive from justice.

## **Corrections**

### **Mandatory Supervision Release**

*Senate Bill 747/House Bill 854 (both passed)* provide that an inmate who is convicted and sentenced to imprisonment for a violent crime committed while on mandatory supervision loses all diminution credits awarded before the inmate’s release on mandatory supervision but will earn credits on the new sentence in the same manner as other inmates. The Secretary of Public Safety and Correctional Services and the Chairman of the Maryland Parole Commission are required to establish a workgroup to study and make recommendations on issues relating to diminution credits and mandatory supervision, including whether the restrictions to mandatory supervision provided under these bills should be expanded. A report on the workgroup’s findings and recommendations is due by December 1, 2002.

A more detailed discussion of these bills can be found under “Sentencing and Confinement” in the subpart “Criminal Procedure” within this Part E.

### **Maryland Parole Commission**

*Senate Bill 118 (passed)* alters the powers of the Maryland Parole Commission and the manner in which open parole hearings are conducted. Specifically, the bill requires that when parole hearings for persons convicted of crimes of violence are open



to the public as a result of a request for an open hearing by the victim, the hearing must be conducted by a panel of at least two commissioners.

*Senate Bill 118* clarifies that such an open hearing must occur if a victim of a violent crime makes a written request to the Department of Public Safety and Correctional Services (DPSCS) for notification and maintains a current address on file with DPSCS.

The bill repeals the existing authority of a single commissioner or hearing examiner to conduct open parole hearings and eliminates the requirement that the commission or a panel of commissioners take formal action before closing a parole hearing.

### **Inmate Transfers Between Local Correctional Facilities**

*Senate Bill 11 (passed)* authorizes a county sheriff or the governing body of a county or municipal corporation that operates a local correctional facility to enter into a memorandum of understanding with another sheriff or local government that operates a local correctional facility to transfer inmates from one local facility to another. This bill provides greater flexibility for local jurisdictions to manage inmate populations based on the availability of facility resources in different jurisdictions.

### **DNA Testing of Felons and DNA Evidence Preservation**

*Senate Bill 486/House Bill 1053 (both passed)* expand the list of persons required to submit a DNA sample for the State's DNA repository from persons convicted of specified "qualifying crimes of violence" to persons convicted of a felony and the misdemeanors of fourth degree burglary and breaking and entering of a motor vehicle. The bills also establish a DNA Technology Fund to provide supplemental grants to local and State law enforcement agencies for acquiring DNA technology equipment needed to test DNA samples.

The bills also provide for the preservation of scientific identification evidence containing DNA material collected in certain homicide and serious sexual offense cases for the length of the sentence, including consecutive sentences imposed in connection with the offense, instead of the current three-year preservation requirement.

*Senate Bill 486/House Bill 1053* are contingent on the receipt by the Department of State Police of a binding written award of a grant from a private entity or federal agency by September 1, 2002, of at least \$1.5 million to implement the provisions of the bills from October 1, 2002, to September 30, 2003. If no award is granted by September 1, 2002, the bills are null and void. If they take effect, the bills terminate on September 30, 2003.

