

## **Part E**

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

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#### **Criminal Law**

##### **Stalking**

Stalking is a prohibited act and means a malicious course of conduct that includes approaching or pursuing another with the intent to place that individual in reasonable fear of serious bodily injury or death, or that a third person likely will suffer serious bodily injury or death. *Senate Bill 352/House Bill 593 (both passed)* expand the elements of the crime of stalking beyond requiring the intent of placing a victim in fear to include reasonable knowledge that one's actions would place the victim in fear. The bills redefine stalking to mean a malicious course of conduct that includes approaching or pursuing another where the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear of serious bodily injury, assault, rape or sexual offense (including attempted acts), false imprisonment, or death, or that a third person likely will suffer any of these acts. The bills exempt conduct performed to ensure compliance with a court order or carry out a lawful commercial purpose, or otherwise authorized by local, State, or federal law. Maximum misdemeanor penalties of five years imprisonment or a \$5,000 fine, or both, are unchanged.

##### **Visual Surveillance**

*House Bill 544 (passed)* expands a prohibition against a person from conducting (or procuring another person to conduct), with prurient intent, visual surveillance of an individual in a private place without consent by redefining the term "private place" to mean a room in which a person can reasonably be expected to fully or partially disrobe and has a reasonable expectation of privacy, including a tanning room, dressing room, bedroom, or restroom. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for six months and/or a fine of \$1,000.

##### **Child Abuse**

*Senate Bill 133/House Bill 588 (both passed)* establish the crimes of child abuse in the first and second degrees and increase the maximum term of imprisonment for a person who

causes sexual abuse to a minor. The bills also add a definition of severe physical injury for the purpose of the crime of child abuse in the first degree.

The bills prohibit a parent or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor from causing abuse resulting in severe physical injury or death to the minor. Severe physical injury means a brain injury or bleeding within the skull, starvation, or physical injury that creates a substantial risk of death or causes permanent or protracted serious disfigurement or loss or impairment of the function of any bodily member or organ. A person who violates this provision is guilty of the felony of child abuse in the first degree and on conviction is subject to imprisonment not exceeding 25 years or, if the violation results in the death of the victim, imprisonment not exceeding 30 years. A person who violates the child abuse laws after being convicted of a prior violation of the same provisions is guilty of a felony and is subject to imprisonment for up to 25 years. If the violation results in the death of the victim, the violator is subject to imprisonment for up to 30 years.

The bills establish that the existing crime of child abuse is child abuse in the second degree, subject to a maximum term of imprisonment of 15 years for abuse that does not result in the death of the victim.

*Senate Bill 195 (failed)* would have made it a misdemeanor to willfully and knowingly fail to provide an oral report of suspected child abuse or neglect within 24 hours of discovery to proper authorities. The bill would have applied to health practitioners, police officers, educators, or human services workers, acting in a professional capacity, who have reason to believe a child may have been subject to abuse or neglect.

## **Hate Crimes**

*House Bill 322 (failed)* would have expanded the basis for which an individual is prohibited from committing crimes against a person or group based on the victim's race, color, religious beliefs, or national origin to include hate crimes against a person based on the person's sexual orientation.

## **Drug Crimes**

### **Medical Marijuana**

The subject of marijuana use for medical reasons drew a great deal of attention during the 2003 session. *House Bill 702 (passed)*, as introduced, establishes a medical marijuana program in the State Board of Physician Quality Assurance for patients with debilitating medical conditions to apply for certification that would exempt the patient from criminal prosecution for the medical use of limited amounts of marijuana. The bill also provides protection from criminal prosecution for the patient's primary caregiver for actions taken to allow the patient's medical use of marijuana.

Despite the growing popularity of medical marijuana laws in various states (nine states have state-sanctioned medical marijuana programs, with a total of 23 states having some legal

recognition of medical marijuana), possession or prescribing of marijuana remains illegal under federal law, with no mitigation of that illegality through the use of marijuana for medicinal purposes.

In partial recognition of both the illegality of marijuana and the value of marijuana for medical purposes, the General Assembly amended *House Bill 702* to maintain possession of marijuana as a crime, but to limit punishment if the possession is for medical use.

*House Bill 702* authorizes a defendant in a prosecution for the use or possession of marijuana or marijuana-related drug paraphernalia to introduce evidence of medical necessity as a mitigating factor for sentencing. The court is required to consider the evidence as a mitigating factor, and if the court finds that the person possessed or used marijuana or the paraphernalia because of medical necessity, the court may not impose a criminal penalty on the misdemeanor conviction beyond a fine not exceeding \$100.

### **Altering Drug Test Results**

Fashioned after similar laws in North Carolina and South Carolina, *Senate Bill 513 (passed)* prohibits a person, with intent to defraud or alter the outcome of a drug or alcohol screening test, from altering a “bodily fluid” sample, substituting a bodily fluid sample with that of another person or animal, or possessing or using a “bodily fluid adulterant.” The bill also prohibits a person, with a similar intent, from selling, distributing, offering to sell or distribute, or transporting into the State, bodily fluids or bodily fluid adulterants. A violator is guilty of a misdemeanor and for a first offense, is subject to maximum penalties of imprisonment for one year or a fine of \$1,000, or both. For each subsequent offense, a violator is subject to maximum penalties of imprisonment for three years or a fine of \$5,000, or both.

### **Tobacco Candy**

*House Bill 32 (passed)* prohibits the distribution of candy-like products that contain tobacco to minors by including candy-like products that contain tobacco in the definition of “tobacco product.” State law had defined a tobacco product as a substance containing tobacco, including cigarettes, cigars, smoking tobacco, snuff, and smokeless tobacco.

## **Counterfeiting and Fraud**

### **Manufacturing Counterfeit U.S. Currency**

The U.S. Secret Service is the federal law enforcement agency charged with the prevention of counterfeit U.S. currency. Federal law prohibits a person from falsely making, forging, counterfeiting, or altering any obligation or security of the United States with the intent to defraud. Federal law also prohibits dealing in counterfeit U.S. obligations or currencies, possessing the distinctive paper used to make U.S. currency, or possessing any printing plates or other implements that could be used to make counterfeit U.S. currency.

According to the U.S. Secret Service, technological advances in computers, printers, and scanners have facilitated the growth in counterfeited currency. For example, currency manufacturing is easier to do with the advent of personal computers and scanners. Over the last five years, the Secret Service has recovered \$3.2 million in counterfeit currency in Maryland. About \$1.8 million of that currency was produced on computers. Although counterfeiting is generally regarded as a federal offense, the U.S. Secret Service reports that counterfeit prosecutions are also brought through state and local law enforcement systems.

Existing Maryland law only prohibits the possession and passing of counterfeit currency. *Senate Bill 8/House Bill 202 (both passed)* close the gap in State law by prohibiting a person, with intent to defraud, from manufacturing or counterfeiting U.S. currency, or from making, scanning, or possessing an analog, digital, or electronic image of U.S. currency. A violation is a felony subject to a maximum penalty of ten years imprisonment or a fine not exceeding \$10,000 or both. The bills also grant the District Court of Maryland concurrent jurisdiction with the circuit courts over these felony offenses.

### **Increased Penalties for Identity Fraud**

Identity theft is commonly regarded as one of the fastest growing crimes in the United States. All 50 states and the District of Columbia have provisions related to identity theft. Nine states have separate misdemeanor and felony categories for identity theft crimes, while five states, including Maryland, have graduated penalty provisions for identity fraud or theft, depending on the seriousness of the crime.

*Senate Bill 135/House Bill 598 (both passed)* increase the maximum fine from \$5,000 to \$25,000 when the identity theft fraud involves goods or services, including credit, with a value over \$500. The bills similarly increase the maximum fine for the felony of intentionally manufacturing or distributing personal identifying information without consent.

### **Cockfighting and Dogfighting**

*House Bill 624 (failed)* would have provided that a person may not knowingly attend, as a spectator, a deliberately conducted event with fowl, cock, or other bird fighting. A violator would have been guilty of a misdemeanor and subject to imprisonment for up to 90 days or a maximum fine of \$1,000, or both. The bill also would have prohibited a person from possessing an implement of dogfighting or cockfighting or from possessing, owning, selling, transporting, or training a dog, fowl, cock, or bird for the purpose of fighting or knowingly allowing premises under the person's control to be used for dog or bird fighting. A violation would have been a felony subject to three years imprisonment or a maximum fine of \$5,000, or both.

### **Failure to Pay for Motor Fuel**

*Senate Bill 282/House Bill 49 (both passed)* establish administrative penalties, in addition to criminal sanctions, for a person who fails to pay for motor fuel after dispensing it into a vehicle. The bills authorize, for a first offense and require for a subsequent offense, the suspension of the offender's driver's license by the Motor Vehicle Administration for up to 30

days. For a more detailed discussion of *Senate Bill 282/House Bill 49*, see the subpart “Motor Vehicles” under Part G – Transportation and Motor Vehicles of this *90 Day Report*.

## Internet Crimes

Various bills dealing with crimes committed over the Internet were introduced in the 2003 session but none of them passed.

*Senate Bill 409/House Bill 540 (both failed)* would have established a crime of using the computer, Internet, or other electronic communication to communicate with a minor for the purpose of engaging in sexually explicit conversation to seduce or entice the minor to engage in unlawful sexual conduct. *House Bill 661 (failed)* would have provided a procedure for obtaining an Internet service provider’s voluntary compliance in removing an item of child pornography from the server or for obtaining a court order for the removal. An Internet service provider who knowingly failed to report information concerning the location of child pornography on the provider’s server would have been guilty of a misdemeanor under certain circumstances and subject to certain penalties.

Finally, *House Bill 730 (failed)* would have established the crime of using an Internet auction listing service with the intent to defraud an individual of property, services, or anything of value.

## Antiterrorism

The few bills that directly addressed lingering concerns relating to terrorism all failed. *House Bill 643 (failed)* would have created new crimes that specifically prohibited terrorism, threatened terrorism, and harboring terrorists (including a conspiracy to commit any of those offenses). The bill would have also added those offenses under the definition of “crime of violence” in the general sentencing provisions of the Criminal Law Article.

*House Bill 796 (failed)* would have required owners, lessees, and operators of facilities where hazardous material is stored, dispensed, used, or handled to maintain, store, and handle all hazardous material in a reasonably secure and prudent manner in order to prevent exposure or other danger, and to analyze and implement safety measures at least every three years in consultation with the Maryland Emergency Management Agency and with the appropriate local organizations for emergency management. The State Police would have been responsible for implementation and enforcement, as well as approval of a set of standards for compliance.

*House Bill 539 (failed)* would have expanded the scope of the felony of manufacturing, possessing, transporting, or placing a device representing a destructive device with the intent to terrorize by including the manufacture, possession, transport, or placement of a substance resembling a toxic material with the intent to terrorize.

## Criminal Procedure

### Death Penalty

#### Moratorium/Repeal

Since 1978, when the death penalty was reinstated in Maryland, there have been four major studies involving the imposition of the death penalty in Maryland, with some focus on the issues of racial disparity. Most recently, in 2000, former Governor Glendening authorized \$225,000 for an empirical study of racial disparity and fairness issues by the Criminology Department at the University of Maryland, College Park and issued a moratorium on the use of the death penalty until completion of the study. However, the moratorium effectively expired upon the inauguration of Governor Robert Ehrlich on January 15, 2003.

In January 2003, the study by the University of Maryland, *An Empirical Analysis of Maryland's Death Sentencing System With Respect To The Influence Of Race and Legal Jurisdiction*, was released. The study pointed out large differences in how different jurisdictions process death penalty cases in Maryland and that the State's attorneys, who are responsible for prosecution of capital crimes, have wide discretion to determine whether or not to process a death-eligible homicide as a capital crime.

The study concluded that, by itself, the offender's race did not play any clear role in the processing of death penalty cases at any of the stages. However, geography and the race of the victim did have an impact in the administration of death penalty cases. The study concluded that the probability of a death sentence in Baltimore County is 26 times higher than the probability of a death sentence in Baltimore City. An offender is 14 times more likely to receive a death sentence in Baltimore County than in Montgomery County and seven times more likely to receive a death sentence than a defendant in Prince George's County. The study found that black offenders who kill whites are twice as likely to get a death sentence as whites who kill whites. Black offenders who kill whites are four times more likely to get a death sentence than blacks who kill black victims.

Since the death penalty was reinstated in 1978, there have been 52 persons sentenced to death (representing the imposition of 78 death sentences). To date, three persons have been executed, all in the 1990s. There are currently 12 inmates on death row in Maryland. Eight are black and four are white. Nine of the 12 come from Baltimore County.

A number of bills relating to the death penalty were introduced this session, but all failed.

*Senate Bill 12/House Bill 16 (both failed)* would have prohibited the execution of any individual who has been sentenced to death and would have prohibited judges from issuing a warrant of execution. The General Assembly would have been required to review the University of Maryland Department of Criminology's report, make legislative recommendations, and annually review the progress of implementation of the recommendations. The bill also expressed the intent of the General Assembly that, once any recommendations have been fully implemented, the death penalty moratorium be repealed.

*Senate Bill 544 (failed)* would have repealed the death penalty and all provisions relating to the death penalty, including provisions relating to administration of the death penalty and provisions relating to proceedings after death sentences have been imposed. A person found guilty of murder in the first degree would have been sentenced to imprisonment for life or imprisonment for life without the possibility of parole. The bill would also have provided that an inmate who was sentenced to death before the bill's October 1, 2003, effective date, and who had not been executed, could not be executed and would be considered as having received a sentence of life imprisonment without the possibility of parole.

### **Proportionality**

*Senate Bill 350 (failed)* would have required the Court of Appeals, as part of its review of a death sentence on the record, to determine whether the imposition of the death sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. Additionally, the Court of Appeals would have had to include in its decision a reference to the similar cases that it considered.

### **Death Eligibility Factors**

In October 2002, the Washington metropolitan area was terrorized by random sniper shootings that took the lives of ten people and seriously injured three others. Six of the victims were killed in Montgomery County and one was a resident of the District of Columbia. Three other victims were killed in northern Virginia. Two suspects, John Allen Muhammad and Lee Boyd Malvo, were arrested near Frederick, Maryland. The investigative task force was led out of Montgomery County, but required the cooperative efforts of law enforcement from all jurisdictions, including the federal government. Given that most of the victims were residents of Maryland and killed in Montgomery County, the Montgomery County State's Attorney believed that the suspects should first be tried in Maryland courts. However, the federal government took custody of the suspects and determined that prosecutors from Virginia should be the first to try the suspects. U.S. Attorney General John Ashcroft indicated that one factor in determining the first jurisdiction for trial was where prosecutors could most likely win a death penalty verdict, especially against Lee Boyd Malvo, who was a juvenile at the time of his arrest.

Unlike Virginia, both Maryland and the federal government prohibit the execution of anyone under the age of 18 and the District of Columbia does not impose the death penalty. Another factor that led the federal government to choose Virginia for the first prosecution of the suspects is that Virginia law permits the sniper suspects to be tried under an antiterrorism statute, which authorizes the death penalty without having to prove who actually pulled the trigger in the crimes. Furthermore, Maryland requires that prosecutors prove one of ten aggravating factors beyond a reasonable doubt; and that either there are no mitigating circumstances, or the aggravating factors outweigh any mitigating circumstances by a preponderance of the evidence, before the death penalty may be imposed. Whether certain aggravating factors applied in these cases was unclear. Several bills were introduced as a result of this situation. All failed, however.



**House Bill 835 (failed)** would have added, as an aggravating circumstance that a jury must consider during a death penalty sentencing proceeding, the commission of three or more murders in the first degree within a four-year period, without any requirement to show that the murders arose out of the same incident. **Senate Bill 378/House Bill 789 (both failed)** would have similarly added the commission of more than one murder in the first degree within a three-year period to the list of aggravating circumstances for death penalty eligibility.

**House Bill 225 (failed)** would have altered one of the aggravating circumstances from specifying that the first degree murder victim was an abducted child under the age of 12 to be that the victim was any child under the age of 12, whether or not the child was abducted.

**Senate Bill 172 (failed)** would have required the State to seek a death sentence in every prosecution for murder in the first degree that meets statutory requirements for death penalty-eligible cases, unless the victim's family indicated in writing that the family did not want the State to seek the death penalty.

**House Bill 74 (failed)** would have provided that the murder of an officer while not on duty, but in retaliation for actions the officer took while on duty, is an aggravating circumstance in consideration of a death penalty sentence.

Finally, **Senate Bill 572 (failed)** would have removed as an aggravating circumstance, a murder committed during the perpetration of or attempt to perpetrate specified felonies.

**Standard of Proof:** In the sentencing phase of a capital case, the court or jury must first determine beyond a reasonable doubt whether any aggravating circumstances exist. If the court or jury finds that one or more aggravating circumstances exist, it then must determine by a preponderance of the evidence whether any mitigating circumstances exist. If the court or jury finds that one or more mitigating circumstances exist, it must then determine by a preponderance of the evidence whether the aggravating circumstances outweigh the mitigating circumstances. Recent State case law (*Borchardt v. State*, 367 Md. 91 (2001), *cert. denied*, 122 S.Ct. 2308 (2002)) reaffirmed that Maryland's statute governing the sentencing phase of a capital case – and specifically the preponderance of the evidence standard in determining whether aggravating circumstances outweigh mitigating circumstances – is constitutionally sound.

**Senate Bill 53 (failed)** would have raised the standard of proof from a preponderance of the evidence to beyond a reasonable doubt for determining whether aggravating circumstances outweigh mitigating circumstances in the sentencing phase of a capital case.

## **Sexual Offenders**

### **Registration**

**House Bill 12 (passed)** requires a sexual offender registrant who is granted a legal change of name by a court to send written notice to the Department of Public Safety and Correctional Services (DPSCS) within seven days after the change is granted and requires the department to give notice of the change of name to specified entities. The bill clarifies that a



sexual offender registration statement must include the registrant’s full name, including any suffix, and “any other name by which the registrant has been legally known.” The bill subjects violators to current law maximum misdemeanor penalties of incarceration for three years and/or a fine of \$5,000.

*Senate Bill 242/House Bill 129 (both failed)* would have altered the definition of child sexual offender under the State’s sexual offender registration provisions to include a person who commits rape or first, second, third, or fourth degree sexual offense involving a child under the age of 16, rather than under the age of 15.

Because current law does not provide for registration of nonresident individuals who are in Maryland for purposes other than employment or school enrollment, *House Bill 423 (failed)* would have provided for a “transient” status of a registrant and would have added several new provisions regarding release, registration of employment address, and annual photographing of certain sexual offenders. The bill would have also consolidated all periodic registrations with local law enforcement, rather than with the sexual offender registration unit.

## Reputation and Opinion Evidence

Laws known as “rape shield laws” exist in all 50 states to limit the evidentiary use of a victim’s prior sexual history as a way of undermining the victim’s credibility. Most states’ laws allow the court to admit such evidence where the prior sexual history is deemed by the court to be relevant. *Senate Bill 453/House Bill 196 (both passed)* prohibit the introduction of evidence relating to a victim’s reputation for chastity or abstinence, and opinion evidence relating to a victim’s chastity or abstinence, in a prosecution for any rape, other sexual offense, correctional sexual offense, sodomy, incest, sexual abuse of a minor or vulnerable adult, or unnatural or perverted sexual practice. The bills also expand the list of offenses, to cover all of the preceding, for which 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.

## Sentencing and Confinement

### Conditions of Probation

Chapter 356 of 2001 expanded statewide the authority of the courts to impose “custodial confinement” as a condition of a suspended sentence, probation before judgment, or probation following judgment. Any time served by an individual in custodial confinement must be credited against any sentence of incarceration imposed by the court if the individual violates a term or condition of probation. Chapter 356 defined custodial confinement as home detention, certain correctional options programs, or inpatient drug or alcohol treatment. The definition specifically excluded imprisonment. However, it clarified that in certain counties, the court may impose a sentence of imprisonment as a condition of probation.

*Senate Bill 428 (passed)* and *House Bill 834 (passed)* authorize courts throughout the State to impose custodial confinement or imprisonment as a condition of probation before or after judgment and authorize a court to order confinement in any care or custody as may be

deemed proper, regardless of the age of the defendant, in provisions relating to suspension of sentence. In addition, *House Bill 204 (passed)* authorizes a court in Howard County to impose a sentence of imprisonment as a condition of probation after judgment, and *Senate Bill 28/House Bill 463 (both passed)* authorize a court in Prince George's County to impose a sentence of imprisonment as a condition of probation before judgment.

*House Bill 233 (passed)* authorizes a court to extend a convicted person's probation for an additional three years in the District Court or five years in a circuit court for the purpose of making restitution and allows such probation to be supervised or unsupervised.

### **Consecutive Sentences**

*Senate Bill 364/House Bill 707 (both failed)* would have provided that a new sentence for a crime committed while on parole that runs consecutive to the original term must be in accordance with certain current provisions that require the consecutive sentence to begin: (1) on the expiration of the original term of confinement, if parole is revoked at the time of sentencing; or (2) on the date that the consecutive sentence was imposed, if the parole is not revoked.

### **Diminution Credits**

Diminution credits are awarded to an inmate at intake, subject to the inmate's future good behavior, calculated based upon how many credits could be earned for serving out a full term. One diminution credit is equal to one day of confinement. The total deduction may not exceed 20 days per calendar month. The use of diminution credits to reduce an inmate's term of incarceration is a means of recognizing an inmate's good behavior. If an inmate violates a rule of discipline, however, diminution credits may be revoked. For those inmates whose terms of confinement include consecutive or concurrent sentences for a crime of violence or a crime involving a controlled dangerous substance as defined in the law, the deduction in the sentence for good conduct is calculated at five days per calendar month. When an inmate's total number of diminution credits is equal to the remainder of sentence, including consideration for any losses of credits, the inmate is eligible for mandatory supervision release.

*House Bill 110 (failed)* would have increased, from five credits per month to ten credits per month, the number of diminution credits for good conduct that an inmate with a term of confinement that includes a sentence for a crime of manufacturing, distributing, dispensing, or possessing with intent to distribute a controlled dangerous substance is entitled to receive.

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 diminution credits on the prior sentence. The legislation abolished the discretion of the Parole Commission to revoke any or all of the diminution credits previously earned. *Senate Bill 365/House Bill 706 (both passed)* broaden the prohibition against awarding previously earned diminution credits to an inmate whose mandatory supervision release is revoked for the commission of a violent crime while on release by prohibiting the application of any diminution credits that may have previously been earned by the inmate prior to his or her release, regardless of whether the crime was violent or not.

## Victim's Rights

The State Victims of Crime Fund is used to pay for carrying out guidelines for the treatment of and assistance for victims and witnesses of crimes and delinquent acts, and any laws enacted to benefit victims and witnesses of crimes and delinquent acts. *Senate Bill 366/House Bill 705 (both passed)* expand the number and types of crimes subject to restitution, and treatment requirements under the State Board of Victim Services by expanding the definition of “crime” to apply to any crime contained in the Annotated Code (beyond specifically enumerated crimes), except for nonjailable motor vehicle offenses.

Leave taken by parents to care for a child crime victim under the Family and Medical Leave Act is often unpaid. *Senate Bill 186 (Ch. 16)* allows a parent or guardian of a child crime victim sharing residence to be eligible for an award from the Criminal Injuries Compensation Fund of up to 30 days of lost earnings resulting from having to provide care to the child victim. In addition, the bill allows a crime victim who suffers catastrophic injury resulting in permanent, total disability to be awarded an additional \$25,000 above the current \$25,000 limit.

## Revisory Power of Courts

Under the Maryland Rules, a court has revisory power and control over a sentence upon a motion filed within 90 days after its imposition. Thereafter, the court has revisory power and control over the sentence in case of fraud, mistake, or irregularity, or as otherwise provided in the Maryland Rules. There is no time limit restricting when the court may exercise its revisory power. Generally, the court may not increase a sentence after the sentence has been imposed.

In the past several years, many attempts have been made to limit the court's revisory power; all attempts have failed, as was the case in the 2003 session. *Senate Bill 411 (failed)* would have authorized a criminal defendant to file a motion to revise, modify, or reduce a sentence within 90 days after the sentence is imposed, would have limited a court's revisory power to a period of one year after the filing of such a motion, and would have allowed such a motion to be filed at any time in a case involving an illegal sentence, fraud, mistake, or an irregularity. *House Bill 842 (failed)* and *House Bill 602 (failed)* were similar, with the notable exception that *House Bill 602* would have limited a court's revisory power to a period of 15 months.

## Concurrent Jurisdiction of Trial Courts

With certain exceptions, the District Court does not have jurisdiction to try a criminal case charging the commission of a felony. Felony cases are generally within the jurisdiction of the circuit courts. Current exceptions include such felonies as theft, counterfeiting, writing bad checks, insurance fraud, identity fraud, and cruelty to animals.

With certain exceptions, the District Court has exclusive original jurisdiction in a criminal case in which a person at least 18 years of age or a corporation is charged with

commission of a common law or statutory misdemeanor, regardless of the amount of money or value of the property involved.

*Senate Bill 400 (passed)* provides concurrent jurisdiction between the District Court and circuit court for any forgery, counterfeiting, or certain credit card offenses. *Senate Bill 118/House Bill 862 (both passed)* also provide concurrent jurisdiction in cases involving counterfeit orders for money or goods. Counterfeiting orders for money or goods is a felony.

### **State's Right of Appeal**

*Senate Bill 407/House Bill 333 (both passed)* provide that the State may appeal from a final judgment in a criminal case if the State alleges that the trial judge imposed or modified a sentence in violation of the Maryland Rules. The provisions apply to any appeal pending or filed by the State on or after the October 1, 2003, effective date. These bills are in response to a recent Maryland Court of Special Appeals decision, *Maryland v. Warfield*, 148 Md. App. 178 (2002), which held that an appeal could not be based on a violation of the Maryland Rules, since under statute, the only basis for an appeal is that the trial judge failed to impose the sentence specified by the Maryland Annotated Code.

### **Statute of Limitations**

The Comptroller's Office advised that the one-year statute of limitations for prosecuting offenses with respect to the sales and use tax and the admissions and amusement tax does not allow sufficient time to uncover and investigate alleged offenses. As a result, many offenses are not prosecuted because they are barred by statute. *House Bill 214 (passed)* extends the limitations period for prosecution of misdemeanor offenses related to the sales and use tax and the admissions and amusement tax from one year to three years.

### **Criminal Records**

#### **Fingerprinting**

*Senate Bill 154 (passed)* requires the fingerprinting of a defendant who receives probation before judgment, for inclusion in State criminal history records. The bill also alters the membership of an advisory board dealing with criminal records information.

#### **Expungement**

*House Bill 116 (passed)* repeals the five-year waiting period before a person convicted of a single, nonviolent criminal act, who is granted a full and unconditional pardon by the Governor, may file a petition seeking to have any relevant police, court, or other record expunged.

## Juvenile Law

### Department of Juvenile Services

The new Administration supports a “child-first culture”, often referred to as a “wraparound” or “holistic” approach to the services provided in the juvenile justice system. Symbolically, the Administration sought to change the name of the current Department of Juvenile Justice (DJJ) to the Department of Juvenile Services as an expression of this continuum of care approach. *House Bill 860 (passed)* renames the Department of Juvenile Justice to be the Department of Juvenile Services. The title of the Secretary of Juvenile Justice is also changed accordingly, as are the name of State boards and programs that use Juvenile Justice in their titles.

The most significant proposed budgetary enhancement was \$7.5 million budgeted in the Maryland State Department of Education to allow the department to take over the education function at the Charles Hickey School. The Hickey school is a State-owned privately operated committed facility. The quality of the education offered at the Hickey school by the private vendor was questioned in a recently released audit. Funding for the State Department of Education take over was cut due to budget constraints, with the exception of \$1 million to be transferred to the Department of Juvenile Justice in order to fully fund educational services at Hickey in fiscal 2004. *House Bill 860* also transfers the educational program at the Charles H. Hickey, Jr. School from the department to the State Department of Education, effective July 1, 2004, contingent on funds being included in the fiscal 2005 budget.

An additional \$3.5 million was provided in the Department of Juvenile Justice’s budget allowance for a variety of initiatives. The General Assembly retained most of the funding for the expansion of mental health counselors (the mental health needs of youth in the juvenile justice system being a longstanding concern) as well as to expand the existing network of juvenile drug courts. Funding for an Office of Disproportionate Minority Confinement was reduced in half based on the implementation of reform efforts in this area by the prior administration. Finally, funding for management reforms was reduced although still allowing for the enhancement of the research and evaluation function. One of the criticisms of DJJ in the past several years has been the paucity of data upon which to evaluate the efficacy of the department’s programs.

### Juvenile Detention

There is no statutory limit on the length of time that a child may be kept in a juvenile detention facility while awaiting placement. However, by statute, detention is defined as the temporary care of a child who requires secure custody while awaiting disposition. In recent years, the General Assembly has expressed concern about the extended periods of time that many adjudicated youths spend in juvenile facilities while awaiting placements into court-ordered commitment programs. In addition to the problem of overcrowded conditions at juvenile facilities, there is a concern that juveniles awaiting placement may not receive rehabilitative services they need.

**Senate Bill 722 (passed)** provides that if a child remains in a facility used for detention for the specific act for which the child has been adjudicated delinquent for more than 25 days after the court has made a disposition on a petition, the Department of Juvenile Justice shall (1) submit a report to the court explaining the reasons for continued detention; and (2) every 25 days thereafter, submit another report to the court explaining the reasons for continued detention.

### **Juvenile Counselors**

**House Bill 523 (passed)** requires a juvenile counselor to visit a child committed to an individual or to a public or private agency or institution at the child's location of placement at least once every month, if the placement is in this State. The bill also authorizes the court to order the counselor to visit the child more frequently if the court deems it to be in the child's best interests.

### **Treatment Service Plans**

Treatment service plans are prepared by DJJ and propose specific assistance, guidance, treatment, and rehabilitation services for children. A juvenile court may adopt a treatment service plan proposed by DJJ when the court makes its disposition in a delinquency or child in need of supervision matter. If a treatment service plan is adopted, DJJ must ensure that implementation of the plan occurs within 25 days after the disposition and must certify whether implementation of the plan has occurred. If the plan is not implemented by DJJ within 25 days, the court must schedule a disposition review hearing, during which the court may revise the previous disposition and treatment service plan. **House Bill 821 (passed)** requires the juvenile counselor to meet with the child and the child's parent, guardian, or legal custodian to discuss the child's treatment service plan. If the parent, guardian, or legal custodian refuses or is unable to meet with the counselor, that fact must be noted on the plan. The bill also enumerates what the plan must include. At a minimum, a plan must state the recommended level of supervision for the child, the specific goals for the child and family to meet, a statement of any condition in the family that must change in order to alleviate any risks to the child, a statement of the services to be provided to the child and family, and any other information that the department feels necessary to make a disposition consistent with the child's best interests and protection of the public interest.

### **Task Forces**

Two task forces concerning juveniles were established in the 2003 session. The Department of Juvenile Services will staff each task force. Each task force is required to submit its report by October 1, 2004.

**House Bill 817 (passed)** establishes a Task Force to Study Alternative Living Arrangements for Children in Out-of-home Placement. This 15-member task force will study the feasibility of alternative living arrangements that involve wilderness-related experiences or activities related to the Chesapeake Bay. The task force will recommend special instructional curricula for the children in coordination with the State Department of Education and will make



recommendations regarding the need for appropriate medical and mental health services and drug and alcohol abuse services in the alternative living arrangements.

Recently the University of Maryland evaluated community-based mentoring programs and found some encouraging results. The study found that among mentored teenagers, drug use, truancy, and minor violent behaviors were significantly reduced. *House Bill 541 (passed)* establishes a Task Force to Study the Mentoring and Monitoring of Children in the Custody of or Under the Supervision of the Department of Juvenile Services. The 13-member task force is charged with making recommendations regarding the feasibility of implementing volunteer mentoring programs and intensive monitoring and support programs.

### **Summer Opportunity Pilot Program**

*House Bill 536 (passed)* expands the Summer Opportunity Pilot Program in the department and extends the sunset on the program until May 31, 2008. The Governor is authorized to include funds in the State budget to establish and maintain the program. In addition, the limit of three participating counties is repealed. The purpose of the program is to develop and implement educational curriculum and activities in the summer months for the enrichment of children under the supervision of the Department of Juvenile Services.

### **Possession of Portable Pagers on School Property**

Chapter 592 of 1989 made the possession of portable pagers on school property a crime. The dominant perception at that time linked portable pagers with drug trafficking. Now, almost 15 years later, pagers and cellular phones are commonly used for legitimate activities and are no longer perceived as items used only by drug dealers. Seven jurisdictions in the State still prohibit the possession of portable pagers on public school property. They are Baltimore City and Caroline, Dorchester, Somerset, Talbot, Wicomico, and Worcester counties. *Senate Bill 466/House Bill 868 (both passed)* repeal the prohibition in these counties. The bills also declare the intent of the General Assembly that local education agencies develop their own policies regarding the use of portable pagers and cellular phones on public school property.

## **Public Safety**

### **Code Revision – Public Safety Article**

The new Public Safety Article, *Senate Bill 1 (Ch. 5)*, is a product of the continuing nonsubstantive bulk revision of the Annotated Code of Maryland by the Department of Legislative Services. Without substantively changing the law, the new Public Safety Article revises, restates, and recodifies the State laws that relate to public safety, including the statutes that pertain to the Department of State Police; law enforcement and law enforcement funds; regulated firearms; the State Fire Prevention Commission and the State Fire Marshal; fire, rescue, and emergency medical services entities and fire and rescue funds; fire protection and prevention; fireworks and sparklers; explosives; building and material codes and other safety codes; the militia; and emergency management. *Senate Bill 192 (Ch. 17)* corrects cross-

references throughout the Annotated Code to reflect the new Public Safety Article enacted under *Senate Bill 1*.

### **Wireless Enhanced 911 Service**

The Department of Public Safety and Correctional Services (DPSCS) has previously estimated the cost for statewide wireless enhanced 911 service implementation at about \$38 million over three years – including normal upgrades and upgrades needed to increase location technology to integrate the State’s 24 public safety answering points with available mapping systems.

In most counties, local revenues from the local assessment (currently capped at 50 cents) cover only about one-third of costs. The balance is covered by local general funds. The Emergency Number Systems Board currently assumes the costs associated with independent audits of county 911 revenues and expenditures. There are approximately 4 million wireline telephone numbers in the State and about 2.3 million wireless numbers (cell phones).

*Senate Bill 549/House Bill 780 (both passed)* require the establishment of “wireless enhanced 911 service” in the State, also known as Phase II.

Under the bills, the Emergency Number Systems Board is required to establish, with input from local jurisdictions, guidelines and a plan for the deployment of wireless enhanced 911 service by July 1, 2004. The bills increase the State accessible service subscriber fee from 10 cents per month to 25 cents per month and increase the maximum additional monthly charge that may be assessed by a county from 50 cents to 75 cents. The board must adopt procedures for auditing surcharge collection and remittance by commercial mobile radio service (CMRS) providers. On request of a CMRS provider, the information that such a provider reports to the board is required to be confidential, privileged, and proprietary.

A county may only use trust fund money to supplement county spending levels for 911 maintenance or operations and may not use trust fund money to supplant such spending. DPSCS is required to provide staff support for the board to handle the increased duties relating to wireless enhanced 911, which must be funded from the 911 Trust Fund as an administrative cost.

For a county without an operational Phase II wireless enhanced 911 system within the time frames established, the board must adopt procedures, to take effect on or after January 1, 2006, to assure that:

- the money collected from the additional charge and distributed to the county shall be expended during the county’s fiscal year as follows: (1) for a 911 system in a county or a multicounty area with a population of 100,000 individuals or less, a maximum of 85 percent may be spent for personnel costs; and (2) for a 911 system in a county or multicounty area with a population of over 100,000 individuals, a maximum of 70 percent may be spent for personnel costs (a county with an operational Phase II wireless enhanced 911 system is exempt); and

- the total amount collected from the 911 fee and the additional charge shall be expended only for the installation, enhancement, maintenance, and operation of a county or multicounty system.

The bills also increase, from 13 to 15, the membership of the board by reducing the members of the board representing the public from three to two and adding one representative of a county with a population of 200,000 or more, one representative of a county with a population of less than 200,000, and one representative of the Maryland Chapter of the National Emergency Numbers Association. The bills provide that the terms of the new board members representing counties must expire in 2007.

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

*Senate Bill 363/House Bill 575 (both passed)* extend certain DNA collection provisions that were enacted under Chapter 465 of 2002. The bills require the collection of DNA from persons convicted of a felony or certain burglary misdemeanors, the continuation of a DNA technology fund, and the continued preservation of DNA evidence for postconviction review for the length of the sentence imposed.

The bills provide that if adequate funds for the collection of DNA samples are appropriated in the State budget, an individual convicted of a felony or certain burglary misdemeanors shall submit to the collection of a DNA sample upon intake for imprisonment or as a condition of probation.

In addition, the bills alter provisions of law relating to postconviction review of DNA evidence. A court must order DNA testing if the court finds that: (1) a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing; and (2) the requested DNA test employs a method of testing generally accepted within the relevant scientific community.

If the court orders DNA testing, it may issue orders it considers appropriate, including designation of any of the following: (1) the specific evidence to be tested; (2) the method of testing to be used; (3) preservation of some of the sample for replicate testing and analysis; (4) the laboratory where the testing is to be performed; and (5) the release of biological evidence by a third party. If the parties cannot agree on a laboratory, the court may approve testing at any laboratory accredited by the American Society of Crime Laboratory Directors, the Laboratory Accreditation Board, or the National Forensic Science Technology Center.

If a person files a written objection to the State's notice that it intends to dispose of scientific identification evidence, the court must hold a hearing on the proposed disposition. If, at the close of the hearing, the court determines by a preponderance of the evidence that the evidence has no significant value for forensic science analysis, it may order the evidence returned to the rightful owner, destroyed, or disposed of as otherwise provided by law. If the evidence is of such size, bulk, or physical character that it cannot practicably be retained by a

law enforcement agency, the court may order its destruction or release, after affording the adverse party a reasonable opportunity to obtain representative samples.

The bills also require the Director of the State Police Crime Laboratory to provide for liaison with the FBI and other criminal justice agencies relating to the State's participation in DNA databases.

The bills require the State to preserve scientific identification evidence containing DNA material collected in certain cases for the period of the original sentence for the offense for which the evidence was secured.

## **Firearms and Related Offenses**

### **Project Exile**

Project Exile is a program established in Richmond, Virginia to more effectively prosecute firearms possession offenses. The project combined aggressive prosecution with long mandatory sentences in federal prisons for the use and possession of firearms in the commission of crime or by persons previously convicted of various crimes. *Senate Bill 389/House Bill 858 (both failed)* were Administration bills, modeled partly after Project Exile, that would have altered prohibitions, penalties, and bail review provisions governing the possession and use of firearms in Maryland. The bills would have:

- prohibited a judicial review panel from decreasing a mandatory minimum sentence imposed for crimes involving firearms;
- prohibited a District Court Commissioner from releasing pretrial persons charged with serious gun crimes and allow a judge to order pretrial release only if satisfied the person will not be a danger;
- made it a felony with a mandatory minimum penalty to possess with criminal intent or use a firearm on school property;
- established a mandatory minimum penalty of five years for use of any firearm, not just a handgun, during the commission of a felony or violent crime;
- broadened the definition of crime of violence to include conspiracies to commit a crime of violence;
- prohibited persons with prior crime of violence and felony drug convictions, including out-of-state convictions, from possessing any firearm, not just a regulated firearm, and allowed a court to impose a sentence up to 20 years for this offense, in addition to the mandatory five-year term that the law currently provides; and
- prohibited persons with any other prior felony conviction from possessing any firearm and provide for a sentence of not less than two years and not more than ten years.

In addition, *Senate Bill 280/House Bill 127 (both failed)* were also identified as Project Exile bills and would have altered prohibitions, penalties, and bail review provisions governing the possession and use of handguns in the State.

Even though no Project Exile legislation passed, it should be noted that in February 2003, the U.S. Attorney for Maryland, Thomas M. DiBiagio, announced an agreement to launch a Virginia-style Project Exile gun prosecution program in Baltimore City and Prince George's County, the two jurisdictions with the highest murder rates in the State.

### **Other Firearms Initiatives**

Various other bills dealing with handguns, regulated firearms, assault weapons, and ballistic fingerprinting all failed. *Senate Bill 494 (failed)* and *House Bill 844 (failed)* would have banned the possession, sale, purchase, or transport of assault weapons in the State. *Senate Bill 528/House Bill 836 (both failed)* would have required the owner of a regulated firearm to report the loss or theft of the firearm to the State Police within 48 hours after becoming aware of the loss or theft. *House Bill 744 (failed)* would have authorized a law enforcement agency of a county or municipal corporation to allow a current or retired law enforcement officer to keep or acquire the handgun assigned to the officer if the officer reimburses the agency for the replacement value of the gun. Finally, *Senate Bill 208 (failed)* would have applied all current handgun ballistic fingerprinting requirements, now applicable to firearm manufacturers and dealers, to all firearms.

### **Fire and Explosives**

#### **State Fire Marshal – Explosives Licenses – Criminal History Records Checks**

The State Fire Marshal has been conducting criminal history records checks of applicants for explosives licenses via the use of the National Crime Information Center (NCIC), a computerized database operated by the FBI. It contains data from the issuance of warrants and is not fingerprint-based. The State Fire Marshal has been advised that federal law prohibits the use of NCIC for nonlaw enforcement purposes. In order for the FBI to conduct a fingerprint-based national criminal history records check, the state making the request must have the requirement and authority for that records check in statute.

To remedy this situation, *House Bill 193 (passed)* requires an applicant for an explosives license or a blaster's permit to submit to the State Fire Marshal with the application two sets of fingerprints of each applicant and each officer, agent, or employee of the applicant who will be handling explosives. The State Fire Marshal is then required to apply for a fingerprint-based State and federal criminal history records check of the applicant, officer, agent, or employee who will be handling explosives.

#### **State Fire Marshal – Volunteer Fire Companies**

The Maryland Emergency Medical System Operations Fund (MEMSOF) was created by legislation adopted by the 1992 General Assembly. The source of revenue for MEMSOF is an

\$11 surcharge on motor vehicle registrations for certain classes of vehicles. The surcharge was increased from \$8 to \$11 through enactment of Chapter 33 of 2001. Interest earned annually on the fund balance is credited to the fund.

The Budget Reconciliation and Financing Act of 2003, *House Bill 935 (passed)*, authorizes the transfer of \$5 million for fiscal 2004 from MEMSOF to the Low Interest Revolving Loan Account (LIRLA). If the authorized transfer is not made for fiscal 2004, the Governor is required to include a special fund appropriation in the fiscal 2005 annual budget bill that would transfer \$5 million from MEMSOF to LIRLA.

For fiscal 2004 only, \$403,744 of funds in MEMSOF will be transferred to the Emergency Assistance Trust Account. The General Assembly reduced \$403,744 in general funds for the trust account in the fiscal 2004 budget bill. The trust account provides grants or loans to purchase fire equipment by volunteer fire companies.

### **Montgomery County Fire and Explosive Investigators**

*House Bill 900 (passed)* extends the warrantless arrest power currently available to Prince George's County fire investigators to Montgomery County fire and explosive investigators.

### **Maryland Parole Commission**

*Senate Bill 507/House Bill 1156 (both passed)* increase the membership of the Maryland Parole Commission from eight to ten members.

### **Sheriffs**

#### **Washington County**

*House Bill 693 (Ch. 47)* requires the Sheriff of Washington County to establish and administer a pretrial release program and a work release program, in addition to the county's current home detention program. The sheriff is required to adopt necessary regulations for program implementation. A court is authorized, at the time of sentencing, or at any time during incarceration, to place eligible inmates into each program. An inmate is eligible to participate if the inmate is recommended for the program by the court, and has not been incarcerated for or been previously convicted of a crime of violence, or has been found guilty of child abuse or escape.

The sheriff is authorized to collect a fee from each participating inmate or waive or reduce the fee. The maximum number of inmates who may participate in each program may be determined by the sheriff. A violation of any terms or conditions of any program subjects the violator to applicable criminal penalties for escape and any disciplinary actions allowed by law.



### **Disposal of Property**

*Senate Bill 131/House Bill 181 (both passed)* provide that, after abandoned or recovered property has been in the possession of a county sheriff for a period of 90 days, notice of the sale of the property must be given by registered or certified mail to those persons entitled to its possession and to those lienholders whose names and addresses can be ascertained through due diligence. The minimum time period that sheriffs must possess lawfully confiscated property before they can sell or dispose of the property remains at one year.

### **Homeland Security – Protection of Building Records**

Generally a custodian of a public record must permit inspection of the record at a reasonable time. However, unless otherwise provided, if a custodian believes that inspection of a part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of that part of the record under specified circumstances.

*Senate Bill 733/House Bill 1082 (both passed)* are emergency bills that expand the circumstances under which a custodian may deny inspection of public records relating to public security to include records of public facilities and privately owned or operated buildings, structures, or facilities. The bills prohibit a custodian from denying inspection of a public record of a privately owned or operated building, structure, or facility that has been subjected to a catastrophic event, including a fire, explosion, or natural disaster. The bills also prohibit denying inspection of a public record relating to an inspection of or a citation issued concerning a privately owned or operated building, structure, or facility.

