

## **Part E**

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

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#### **Criminal Law**

##### **Identity Theft**

Identity theft is commonly regarded as one of the fastest growing crimes in the United States. In September 2003, the Federal Trade Commission (FTC) released an Identity Theft Survey Report, the results of which indicate that 9.9 million Americans may have been victimized by some form of identity theft in the past year. FTC received 516,740 fraud and identity theft consumer complaints in calendar 2003. It is not unusual for a defendant who has stolen a victim's identity to use the stolen identity in numerous jurisdictions throughout the State. *Senate Bill 257/House Bill 457 (both passed)* provide that a prosecution for the crime of identity fraud may be commenced in any county in which an element of the crime occurred or where the victim resides. The bills also authorize the Attorney General to investigate and prosecute an identity fraud violation.

A number of other bills dealing with the problem of identity theft were introduced but received unfavorable consideration in committee. *Senate Bill 325/House Bill 191 (both failed)* would have established a task force to study identity theft. *Senate Bill 542/House Bill 190 (both failed)* would have allowed a victim of identity theft to seek expungement of any police, court, or other record resulting from the arrest of another person unlawfully using the victim's name or identity and would have authorized a court to order a person found guilty of identity theft to make restitution to the victim for the costs of an expungement proceeding. *House Bill 255 (failed)* would have established an "identity fraud passport" to assist victims of identity theft.

##### **Other Theft and Fraud**

###### **Motor Vehicles**

*Senate Bill 203/House Bill 578 (both passed)* establish that it is not a defense to the crimes of carjacking or armed carjacking that a defendant did not intend to permanently deprive the possessor of the motor vehicle of the motor vehicle.

### **Petty Theft**

*Senate Bill 513/House Bill 926 (both passed)* create a new petty theft sentencing category for existing theft, bad checks, and credit card offenses where the value of the goods, services, and other property involved in the offense is less than \$100. A violator is guilty of a misdemeanor and subject to maximum penalties of 90 days' imprisonment and/or a \$500 fine. This is one of several initiatives that the Maryland Judicial Conference requested be introduced in the 2004 session in an effort to reduce the number of jury trials held in circuit courts. Other bills include *Senate Bill 517/House Bill 745 (both failed)*, which would have divided misdemeanors into Class A and Class B misdemeanors; *Senate Bill 516/House Bill 615 (both failed)*, which would have provided that, in a criminal appeal that is tried de novo, there is no right to a jury trial unless the offense charged is subject to a penalty of imprisonment of more than 90 days, unless there is a constitutional right to a jury trial for the offense; and *Senate Bill 701/House Bill 925 (both failed)*, which would have created a misdemeanor of third degree assault.

### **Government Identification Documents**

*Senate Bill 571 (passed)* prohibits the possession or display with fraudulent intent of a fictitious or fraudulently altered government identification document. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for six months and/or a fine of \$500.

### **Counterfeiting and Possession of Counterfeit Check, Letter of Credit, or Negotiable Instrument**

*Senate Bill 837 (passed)* creates a new misdemeanor and expands the current felony relating to counterfeiting checks and other private instruments and documents.

Under the State's prohibition against counterfeiting private instruments and documents (a felony), this bill adds a check, a letter of credit, a negotiable instrument, and the endorsement or assignment of a check to the list of items a person may not counterfeit. The bill also prohibits a person from knowingly, willfully, and with fraudulent intent possessing a counterfeit of any of the enumerated items in the counterfeiting prohibition. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

A prosecution for counterfeiting or possession of counterfeit documents may be commenced in any county in which an element of the crime occurred, the victim resided, or the victim conducts business (if the victim is not an individual).

### **Criminal Law Revisions**

The Committee to Revise Article 27 is charged with making both substantive and stylistic changes to the State's criminal law. The committee is composed of legislators, judges, lawyers, and a victims' rights representative. As in past sessions, a number of laws were revised at the recommendation of the committee.

### **Resisting Arrest**

The elements of common law prohibitions in Maryland are derived from court decisions. A number of common law offenses currently have no statutory penalty. The committee recommended the codification of the common law offense of resisting arrest. *Senate Bill 355/House Bill 316 (both passed)* prohibit a person from resisting a lawful arrest or interfering with an individual who the person has reason to know is a police officer who is making or attempting to make a lawful arrest or detention of another person. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$5,000.

### **Escape**

The forms of home detention listed in certain provisions of current law do not cover home detention programs administered by counties or other forms of custodial confinement. *House Bill 575 (passed)* modifies the elements for first and second degree escape by transferring current escape offenses involving juvenile facilities, home detention orders, temporary releases from confinement, custodial confinement, and juvenile community detention orders from first degree escape to second degree escape. The bill also prohibits a person from knowingly violating restrictions on movement imposed under certain terms of release, failing to return to a place of confinement under certain circumstances, and tampering with certain monitoring devices.

### **Extortion**

The Committee to Revise Article 27 recommended the revision of the State’s extortion laws to clarify that threats to do “mental” and “economic” injury are also prohibited. *Senate Bill 353/House Bill 634 (both passed)* revise and clarify the extortion laws of the State to include such threats. The bills also create uniform maximum penalties for all three types of extortion (false accusation, verbal threat, and written threat) – 10 years imprisonment and/or a \$10,000 fine.

### **Contradictory Statements – Prosecution and Charging**

The committee recommended that the current charging document for perjury by contradictory statements be revised. Current law requires only that, for charging and for conviction, there be two contradictory statements made under oath or affirmation, without specifying which one is false. It was suggested that this may be insufficient. *Senate Bill 204/House Bill 635 (both passed)* make the following clarifications to the prohibition against perjury:

- a false statement must address a material fact; and

- the false statement must appear in an affidavit required by any State, federal, or local law or issued by any State, federal, or local governmental official with legal authority to require that an affidavit be issued.

The bills also provide that if two contradictory statements are made in different counties, the violation may be prosecuted in either county. In addition, the bills clarify the sample language for indictments, informations, or other charging documents for perjury and add new language for charging documents relating to contradictory statements.

## **The Internet**

### **Spam Deterrence Act**

*Senate Bill 604/House Bill 1320 (both passed)* prohibit a person from knowingly (1) using a protected computer of another to relay or retransmit multiple commercial email messages with the intent to deceive or mislead recipients or an email service provider as to the message's origin; (2) materially falsifying header information in multiple commercial email messages and intentionally initiating the transmission of the messages; (3) registering, using false information, for 15 or more email accounts or online user accounts or two or more domain names and intentionally initiating the transmission of multiple commercial email messages from one or any combination of accounts or domain names; (4) falsely representing the right to use five or more Internet protocol addresses and intentionally initiating the transmission of multiple commercial email messages from the Internet protocol addresses; (5) accessing a protected computer without authorization and intentionally initiating the transmission of multiple email advertisements from or through it; or (6) violating these provisions by providing or selecting email addresses by certain automated means (commonly known as harvesting). The bills also prohibit a person from conspiring to commit such acts.

Violation of these provisions is generally a misdemeanor with maximum penalties ranging from one year's imprisonment and/or a \$5,000 fine to five years' imprisonment and/or a \$10,000 fine. Violation of provisions other than the harvesting provisions in furtherance of a felony or by a person who has previously been convicted of an offense involving the transmission of multiple commercial email messages is a felony subject to maximum penalties of 10 years imprisonment and/or a \$25,000 fine. The Attorney General may enforce criminal provisions of the bill in a circuit court or the District Court.

In addition, the court may direct a person convicted of violating the bills to forfeit to the State (1) any money and other income received as a result of the person's violation and (2) all computer equipment, software, and other personal property used in connection with a violation.

The Attorney General may institute a civil action against a violator to recover for the State a civil penalty of up to (1) \$25,000 per day of the violation or (2) from \$2 to \$8 per commercial email message initiated in violation of the bills. The Attorney General may also seek an injunction to prohibit further violation of the bills. A civil action must be brought within two years after the commission of the violation.

Under the bills, “multiple” means (1) more than 10 commercial email messages during a 24-hour period; (2) more than 100 commercial email messages during a 30-day period; or (3) more than 1,000 commercial email messages during a one-year period. A “protected computer” means a computer used in intrastate or interstate communication.

### **Internet Child Pornography**

*Senate Bill 720/House Bill 1208 (both passed)* require an investigative or law enforcement officer who receives information that an item of alleged child pornography resides on a server or other storage device controlled or owned by an interactive computer Internet service provider (ISP) to contact the ISP and request the voluntary compliance in removing the item within five business days, if practicable. If ISP does not voluntarily remove the item, the officer must apply for a court order.

ISP is authorized to petition the court for relief for cause from the order on grounds relating to the cost or technical feasibility of removal or the inability of ISP to comply without also removing data, images, or information not subject to these provisions. ISP must report the location of an item of child pornography to the State Police, under certain circumstances including that the server or other storage device is located in Maryland.

ISP who knowingly and willfully fails to report the required information, or who willfully does not remove the item in a timely fashion, is guilty of a misdemeanor and subject to a maximum fine of \$5,000 for a first offense, \$20,000 for a second violation, and \$30,000 for each subsequent violation. A violator may be prosecuted, indicted, tried, and convicted in any county in or through which ISP provides Internet access, any communication from ISP traveled, or the communication from ISP originated or was terminated.

These provisions do not impose a duty on ISP to actively monitor its service or to affirmatively seek evidence of child pornography on its service. These provisions do not apply to ISP’s transmission or routing of, or intermediate temporary storage or caching of, an image, information, or data that is otherwise subject to these provisions. ISP may not be held liable for any good faith action taken to comply with these provisions.

### **Use of Interactive Computer Service**

*House Bill 194 (passed)* provides that a person who commits theft by use of an interactive computer service may be prosecuted, indicted, tried, and convicted in any county or state where the victim resides or the electronic communication originated or terminated. “Interactive computer service” is defined as an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet.

### **Unborn Victims of Crime**

On April 1, 2004, President Bush signed legislation that makes it a separate offense to harm an “unborn child” while committing a violent federal crime against a pregnant woman.

Under the Unborn Victims of Violence Act, violence against a pregnant woman is considered two separate crimes, regardless of whether an assailant is aware of the pregnancy. It covers embryos and fetuses from conception.

Several unsuccessful bills were introduced on this subject during the session. The bills that drew the most attention were *Senate Bill 349/House Bill 802 (both failed)*. These bills would have provided that the laws relating to murder, attempted murder, voluntary or involuntary manslaughter, and other specified offenses apply to circumstances where the victim is “an unborn child.” These provisions would not have applied to acts committed by the mother of the unborn child, acts committed during a legal abortion, or acts committed in accordance with specified medical practices.

*House Bill 520 (failed)* would have allowed for the prosecution of murder, manslaughter, or unlawful homicide for an act or omission that occurred while the victim was a viable fetus. *House Bill 1267 (failed)* would have increased the maximum imprisonment penalties for a person convicted of second degree murder, manslaughter, and first and second degree assault when the person knew or had reason to know that the victim was pregnant.

### **Witness Intimidation**

The intimidation of witnesses, including the commission of murder, has been a pervasive problem in Maryland’s criminal justice system. Among other bills introduced on this subject, the Administration offered two initiatives. *Senate Bill 185/House Bill 296 (both failed)* would have expanded, increased the possible seriousness of, and altered the penalties for the crimes of (1) inducing false testimony or avoidance of a subpoena; (2) retaliation for testimony; and (3) intimidating or corrupting a juror. The other initiative, *Senate Bill 181/House Bill 301 (both failed)*, would have expanded the list of aggravating circumstances that a jury must consider during a death penalty sentencing proceeding to include whether the defendant committed murder while committing one of the above listed offenses. For a discussion of other bills addressing the death penalty, see subpart “Criminal Procedure” within this Part E.

### **Sexual Offenses and Protection of Minors**

#### **Fourth Degree Sexual Offense**

*House Bill 1094 (passed)* increases, from one to three years, the maximum incarceration penalty for a person convicted of fourth degree sexual offense if the person was previously convicted of a sexual crime or sexual abuse of a minor.

#### **Spousal Defense**

The Maryland Court of Appeals has held that if the parties are either living together or have not been continuously separated pursuant to a limited divorce, they retain the marital “exemption” applicable to fourth degree sexual offenses; and, if the parties are still living together, the exemption is also retained for rape and third degree sexual offenses, unless committed by actual force.

**House Bill 923** (*passed*) provides that a person may be prosecuted for first degree rape, second degree rape, or third degree sexual offense against the person’s legal spouse if the person in committing the crime uses force or threat of force and the act is without the consent of the spouse.

### **Sexual Solicitation of a Minor**

**Senate Bill 512** (*passed*) prohibits a person (with intent to commit certain sexual offenses) from knowingly “soliciting” a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under provisions relating to second degree rape or second or third degree sexual offense. For purposes of jurisdiction, a violation is considered to be committed in Maryland if the solicitation originated in Maryland or is received in the State. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$25,000.

## **Animal Protection**

### **Dogfighting and Cockfighting**

**Senate Bill 365/House Bill 24** (*both passed*) provide that a person may not knowingly attend, as a spectator, a deliberately conducted event with fowl, cock, or other bird fighting. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 90 days and/or a fine of \$1,000.

The bills provide that a person may not possess, own, sell, transport, or train a dog with the intent to use the dog in a dogfight or knowingly allow premises under his or her control to be used for dogfighting. A violator is guilty of a felony and subject to maximum penalties of imprisonment for three years and/or a fine of \$5,000.

The bills also provide that a person may not possess, with an intent to unlawfully use, an implement of cockfighting or any tool designed to enhance a bird’s fighting ability for use in a deliberate bird fighting event. A person may not arrange or conduct an event where a bird fights with another bird. A person may not possess, own, sell, transport, or train a bird with the intent to use the bird in a cockfight or knowingly allow premises under the person’s control to be used for a bird to fight with another bird. A violator is guilty of a felony and subject to maximum penalties of three years’ imprisonment and/or a fine of \$5,000.

## **Miscellaneous**

### **Youth Gangs**

**House Bill 1285** (*passed*) creates a Task Force to Study Youth Gang Activities with specified responsibilities. The Secretary of Juvenile Services and the State’s Attorney for Prince George’s County are designated as co-chairs. The task force must submit an interim report to the General Assembly by December 1, 2004, and a final report by December 1, 2005.

### **Contaminated Food or Drink**

*House Bill 76 (passed)* prohibits a person from knowingly and willfully causing another person to ingest bodily fluid without consent or by force or threat of force. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$2,500.

### **Impersonating a Law Enforcement Officer**

Under current law, a person who impersonates a police officer is guilty of a misdemeanor and subject to maximum penalties of imprisonment for six months and/or a fine of \$100. *House Bill 313 (passed)* increases the maximum penalties for this offense to imprisonment for two years and/or a fine of \$2,000.

### **Visual and Camera Surveillance**

*House Bill 613 (passed)* increases penalty provisions applicable to current law prohibitions against nonconsensual visual surveillance with prurient interest and deliberate surreptitious observation with a camera at a private residence. The maximum penalties for each offense increase from imprisonment for six months and/or a fine of \$1,000 to imprisonment for one year and/or a fine of \$2,500.

The bill also specifies that the prohibition against deliberate surreptitious observation with a camera at a private residence does not apply to lawful camera surveillance by a licensed private detective or security guard acting within the scope of the person's occupation.

### **Motion Picture Theatres – Prohibition against Audiovisual Recording**

Piracy of motion pictures, especially by means of using camcorders in movie theatres has become a major problem nationwide. Introduced in response to this problem, *House Bill 307 (passed)* prohibits a person from knowingly operating an audiovisual recording function of a device in a motion picture theater, except in the lobby area, without the consent of the owner or lessee of the theater. The bill provides immunity from civil liability to an owner, lessee, agent, or employee of a motion picture theater who detains or causes the arrest of any person if there is probable cause to believe that the person committed a violation of the prohibition against audiovisual recording in the theater.

For a first violation, an offender is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$2,500 for each individual act in violation of the prohibition. For a subsequent violation, an offender is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$10,000 for each individual bill in violation of the prohibition.

## **Litter Control**

*House Bill 1020 (passed)* increases Maryland Litter Control Law monetary penalties in the following manner:

- from \$1,000 to \$1,500 for a person who disposes of litter in an amount not exceeding 100 pounds or 27 cubic feet and not for commercial gain;
- from \$10,000 to \$12,500 for a person who disposes of litter in an amount exceeding 100 pounds or 27 cubic feet, but not exceeding 500 pounds or 216 cubic feet, and not for commercial gain; and
- from \$25,000 to \$30,000 for a person who disposes of litter in an amount exceeding 500 pounds or 216 cubic feet or in any amount for commercial gain.

## **Criminal Procedure**

### **Diversion for Substance Abuse Treatment**

The latest prisoner survey released by the U.S. Department of Justice in July 2003 found that, after two years of slowing prison growth, the nation's incarcerated population rose at three times the rate of the previous year. Budget problems have made paying for the costs of growing prison populations an important issue nationwide. Many states have recently tried to modify their sentencing and release policies, particularly with respect to nonviolent drug offenders, in order to control incarceration costs.

*Senate Bill 194/House Bill 295 (both passed)* are a response to this problem. The bills provide for the evaluation of nonviolent offenders for drug or alcohol dependency and the diversion of such defendants to treatment services rather than incarceration. The bills provide for diversion of inmates by State's Attorneys and the Parole Commission to substance abuse treatment. The bills also provide direct access by courts to substance abuse evaluation, referral, and treatment. Additionally, the bills establish the Maryland Substance Abuse Treatment Fund as a nonlapsing fund to be used for evaluation and treatment of criminal defendants for drug or alcohol abuse problems. Finally, the bills require each county to have a local drug and alcohol abuse council to develop a local plan to meet the county's needs for drug and alcohol abuse evaluation, prevention, and treatment services and to review funding requests for the provision of services.

### **Death Penalty**

The death penalty has been a major issue for several legislative sessions. This session several bills relating to the death penalty were introduced, but all failed. *House Bill 521 (failed)* would have repealed the death penalty and all provisions relating to the death penalty; *Senate Bill 744 (failed)* would have established the Maryland Commission on Capital Punishment; and

*House Bill 118 (failed)* and *House Bill 985 (failed)* would have altered certain procedures related to the investigation and prosecution of capital cases. There were also a number of bills that would have altered the list of aggravating circumstances that trigger eligibility for the death penalty. *Senate Bill 287/House Bill 244 (both failed)* and *House Bill 947 (failed)* would have added the commission of multiple murders in the first degree within a specified time period; *House Bill 248 (failed)* and *Senate Bill 181/House Bill 301 (both failed)* would have added the murder of certain victims and witnesses; and *House Bill 250 (failed)*, *Senate Bill 658 (failed)*, *House Bill 1081 (failed)*, and *House Bill 1231 (failed)* would have added an off-duty law enforcement officer or correctional officer under certain circumstances, a prosecutor, and a person eligible for relief under an existing protective order to the list of people whose murder would be an aggravating factor.

## **Criminal Prosecutions**

Under current law, the State must release a criminal defendant charged with a crime of violence on personal recognizance while the State is appealing a court ruling excluding evidence offered by the State or requiring the return of property seized in violation of the defendant's constitutional rights. This law recently came under scrutiny when two defendants charged with committing a murder in the Annapolis Historic District in September 2002 were released on personal recognizance after their confessions were ruled inadmissible, and the State appealed the rulings. *Senate Bill 490/House Bill 80 (both passed)* address the concerns with current law by authorizing a court to release a defendant charged with a crime of violence on any terms and conditions that the court considers appropriate or to remand the defendant to custody during the prosecution and determination of an appeal by the State.

*Senate Bill 5/House Bill 124 (both passed)* require the Legislative Auditor to report an alleged criminal violation discovered during the course of an audit, review, or investigation to the Attorney General and the appropriate State's Attorney. The bills grant to the Attorney General the powers and duties of a State's Attorney, including the use of grand juries, to investigate and prosecute the alleged violations. The Attorney General and State's Attorney must keep the auditor's report confidential unless a prosecution is initiated.

*Senate Bill 242 (passed)* extends the statute of limitations for a prosecution of a misdemeanor offense under the Insurance Article from one year to three years.

## **Law Enforcement**

### **U.S. Park Police Enforcement Authority**

The U.S. Park Police is a law enforcement organization within the Department of the Interior. It provides law enforcement services within National Park Service areas, including investigating and detaining persons suspected of committing offenses against the United States. Under current law, U.S. Park Police officers do not have authority to enforce Maryland law. Current operating procedures require Park Police officers to hold a suspect during an investigation until a Maryland police officer responds to pursue State charges (including signing

affidavits for search warrants, signing criminal complaints, and effecting arrests) for matters such as auto theft and crimes perpetrated by juvenile offenders. *Senate Bill 139/House Bill 206 (both passed)* authorize U.S. Park Police officers to make arrests, conduct investigations, issue citations, and otherwise enforce the laws of the State within areas of the National Park System.

### **State Fire Marshal’s Authority to Issue Search Warrants**

Police officers may apply for and execute criminal search warrants. The current definition of “police officer” does not include the State Fire Marshal or deputy State fire marshals. Under *House Bill 649 (passed)*, the State Fire Marshal and full-time investigative and inspection assistants in the Office of the State Fire Marshal may apply for and execute search warrants.

### **Issuing Citations for Gambling Offenses in Baltimore City**

When a law enforcement officer makes an arrest, the officer must transport the offender to the police station and fill out the necessary paperwork, which can take the officer off the street for up to two hours. Authorizing an officer to issue a citation rather than making an arrest thus frees up the officer for additional street patrols or other duties. *Senate Bill 425/House Bill 787 (both passed)* authorize police officers only in Baltimore City to issue citations for gambling offenses. A citation must be based on probable cause and contain identifying information, details of the crime, possible penalties, a notice stating that prepayment of a fine is not allowed (so that the individual must appear in court when summoned), and a notice that the court will promptly send the person charged a summons to appear for trial on a given date.

### **Bail**

In November 2003, the Court of Appeals revised the Maryland Rules to provide that if a judicial officer sets bail at \$2,500 or less, the officer must advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10 percent of the full bail amount. *House Bill 1053 (passed)* provides that, notwithstanding any other law or rule to the contrary, if expressly authorized by a court or District Court commissioner, a defendant may post a bail bond by executing it in the full penalty amount and depositing the greater of 10 percent of the penalty amount or \$25 with the clerk of court.

### **Sentencing**

Chapter 648 of 1999 established the Commission on Criminal Sentencing Policy. The commission is responsible for the State’s voluntary criminal sentencing guidelines, including collecting sentencing guidelines worksheets and automating the information; monitoring sentencing practices; and, when necessary, adopting changes to the guidelines. *House Bill 918 (passed)* requires the commission to include an entry location on a sentencing guidelines worksheet for a court in reporting on crimes involving theft or fraud to report the specific dollar amount, when available, of the economic loss to the victim.

*Senate Bill 884/House Bill 1220 (both passed)* repeal a requirement that a new sentence run consecutively to the time to be served on the original term when an individual is convicted of a crime while on parole. A court is required to determine if such a new sentence is to run concurrently or consecutively, as provided under Maryland Rule 4-351(a)(5). Under such circumstances, the bills require that, if a new sentence is to run consecutively, the new sentence must begin (1) if at the time of sentencing, parole is revoked, on expiration of the original confinement term or (2) if parole is not revoked, on the date that the consecutive sentence was imposed. In addition, the bills provide that if such a new sentence is to run consecutively, the reimposition of the original sentence on parole must begin as provided under a specified current law provision governing revocation of parole.

### **Release Dates of Inmates**

Whenever an inmate in a State correctional facility is scheduled to be released on a Sunday or legal holiday, the inmate must be released on the preceding day. However, release services involving transportation, accounting, property management, and bed assignment are available only during regular business hours, Monday through Friday.

Under *Senate Bill 39 (Ch. 15)*, if a release date is a Saturday, Sunday, or legal holiday, an inmate must be released on the first preceding regular business day. The bill also requires the Commissioner of Corrections to adopt regulations establishing an inmate release plan to help identify resources to assist inmates following release, including provision of transportation from the facility.

### **Criminal Injuries Compensation Board**

The Criminal Injuries Compensation Board administers a compensation program for victims of crime, persons who have made efforts to prevent a crime, or the dependent survivors of such persons. Under certain circumstances, a crime victim or a dependent of a crime victim may be compensated for medical expenses, funeral expenses, property damage, disability or dependency claims, other necessary services, and lost wages. It is the board's responsibility to review and evaluate claims for monetary awards. The awards are dispensed from the Criminal Injuries Compensation Fund which obtains its principal source of money from court costs and criminal injuries compensation costs imposed in criminal cases.

A claimant for an award from the fund must file a claim within 180 days after the occurrence of the event on which the claim is based or 180 days after the death of the victim. For good cause, the board may extend the filing time up to two years. In a case of child abuse, a claimant may file a claim up to two years after the claimant knew or should have known of the abuse.

The board must make certain findings before it can make an award; however, the board may make an emergency award of up to \$1,000 to a claimant prior to making a finding in the case if the board finds that an award will likely be made and that the claimant will suffer undue hardship unless immediate payment is made. The board must reduce any award made by the

amount of payments received or to be received as a result of the injury (1) from or on behalf of the offender; (2) from any other public or private source; or (3) as an emergency award.

*Senate Bill 43 (Ch. 16)* exempts the first \$25,000 in life insurance proceeds from the amount of money that must be deducted from a final award made to a claimant from the fund. *Senate Bill 44 (Ch. 17)* increases the maximum amount of an emergency award to \$2,000 and also authorizes the board, on written request and for a compelling reason, to waive the requirement that a claimant repay all or part of an emergency award if it is in excess of the final award or if there is no final award made. Finally, *Senate Bill 652 (passed)* increases the extension period for filing a claim to three years and increases the time for filing a claim relating to child abuse to three years.

## Expungement

A person who has been charged with the commission of a crime may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision under various circumstances listed in statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi* (a decision not to prosecute), stet of charge (a decision to indefinitely postpone prosecution), and gubernatorial pardon. A person is not entitled to expungement if the petition is based on the entry of probation before judgment, a *nolle prosequi*, a stet, or a gubernatorial pardon and the person has subsequently been convicted of a crime or is a defendant in a criminal proceeding. Except in cases of gubernatorial pardon, a person may not expunge records of a conviction.

Several bills in the 2004 session sought to modify expungement procedures to improve the employment and housing prospects of people who have been charged with crimes. Only one passed. *House Bill 624 (passed)* provides that, when all the charges against a defendant are disposed of by acquittal, dismissal, probation before judgment, *nolle prosequi*, or stet, the court must advise the defendant that the defendant may be entitled to expunge the records relating to the charges. (However, failure to do so does not affect the legality of the sentence or disposition of the case.)

*House Bill 142 (failed)* would have allowed a defendant to expunge charges that are currently not expungeable due to a subsequent conviction, if certain conditions were met. *House Bill 332 (failed)* would have allowed a person convicted of a public nuisance crime to subsequently seek expungement of the associated criminal records, while *House Bill 565 (failed)* would have authorized expungement of records for convictions of crimes that are not punishable by a term of imprisonment. Finally, *House Bill 497 (failed)* would have expanded a current prohibition against expungement of records connected with a spousal assault trial.

## Revisory Power of the Court

A court may revise a sentence if a motion is filed within 90 days after its imposition in the District Court if an appeal has not been perfected and, in a circuit court, whether or not an

appeal has been filed. There is no time limit restricting when the court may exercise this power. The court may not increase a sentence after the sentence has been imposed.

Several unsuccessful bills sought to limit the time period during which a court could revise a sentence. *Senate Bill 333/House Bill 812 (both failed)* would have limited this period to one year after the motion was filed, while *House Bill 1234 (failed)* would have set the limit at 15 months after the motion was filed, and *House Bill 464 (failed)* would have set it at five years after the motion was filed.

## Juvenile Law

### Juvenile Services System Reform

#### Background

News reports before the 2004 session highlighted serious and chronic shortcomings within the juvenile justice system. In particular, reports of abusive treatment of youths at the Department of Juvenile Services' (DJS) Charles H. Hickey, Jr. School and Cheltenham Youth Facility and the physical conditions at these facilities repeatedly caught the attention of the Office of the Independent Juvenile Justice Monitor (OIJJM) within the Office for Children, Youth, and Families. OIJJM cited numerous problems – including child abuse, violence, overcrowding, a lack of appropriate services, and understaffing at the institutions.

In his campaign, subsequent speeches, and executive budget for the last two years, the Governor has proposed a number of reforms to the juvenile services system in the State, including:

- an expansion of juvenile drug courts;
- a Maryland State Department of Education (MSDE) takeover of educational services at DJS commitment facilities;
- adoption of transition plans for youths returning to public school from DJS facilities;
- a statewide truancy prevention plan to prevent children from entering the juvenile services system;
- mental health and health care reform;
- prevention of racial injustice and the development of racially neutral screenings and assessments of children in the juvenile services system;

- various management and staffing reforms, including a focus on wraparound services, improvements in information technology, and upgrades to staff training;
- the downsizing of juvenile facilities; and
- a proposal for a secure youth facility for youths facing incarceration in adult facilities.

The fiscal 2004 State budget included a total of \$2 million for a number of the Governor's initiatives, including the expansion of juvenile drug courts, the implementation of management reforms, the addition of new mental health counselors, and the creation of an Office of Minority Justice Services within DJS. The fiscal 2005 State budget includes \$5.2 million for MSDE to assume control of educational services at the Charles H. Hickey, Jr. School, \$3.2 million for higher salaries for DJS direct care workers, \$500,000 for juvenile drug court expansion, \$4.2 million for increased residential per diems, and \$900,000 for two evening reporting centers (Prince George's County and Baltimore City). The budget also includes \$500,000 to develop a Facilities Master Plan (see discussion below).

Even with the increased attention and resources, problems at DJS and at juvenile detention and commitment facilities have continued over the last year. The U.S. Department of Justice is currently investigating conditions at the Charles H. Hickey, Jr. School and the Cheltenham Youth Facility. The investigation, which began in August 2002, is focusing on the physical safety of residents at the facilities, as well as the health and educational services provided at the facilities.

### **Reform Progress Reporting**

In the 2004 session, the General Assembly responded to these serious problems by considering legislation to restructure the juvenile services system and establish smaller, geographically dispersed facilities. *Senate Bill 543 (passed)* is an emergency bill that requires DJS to provide a Facilities Master Plan by January 15, 2006, that implements an ideal service delivery system and addresses identified gaps in service delivery and specific facility needs including renovation and new construction.

The bill sets forth general principles to guide DJS in developing this system. The principles are:

- the safety of the community and the children served is insured, delinquent children are held accountable to victims and communities, and children develop competencies to assist them in becoming successful members of society;
- services are delivered regionally through operational regions;
- detention and committed facilities do not contain more than 48 children;

- detention facilities are geographically, physically, and operationally separate, remote, and distinct from committed facilities; and
- children awaiting a committed placement after disposition are not held in a facility with children awaiting court disposition.

Additionally, DJS, with the assistance and cooperation of MSDE and the Department of Health and Mental Hygiene (DHMH), is required to provide the following reports to the Governor and the General Assembly by December 31, 2004:

- a feasibility study of the maximum utilization of community-based services that will serve as alternatives to secure detention for youths who have historically been placed in secure detention and the development of family-centered aftercare plans;
- a joint recommendation with MSDE on how to provide an equal and adequate education to all youths isolated from customary community educational services;
- a joint assessment with DHMH of the costs and actions necessary to implement the three-year plan for enhanced mental health services;
- an identification and evaluation of appropriate somatic health, mental health, substance abuse, and nutrition services for youths in the juvenile justice system;
- a joint recommendation with DHMH on how to provide appropriate health care to youths in the juvenile justice system;
- a report on efforts to identify and reduce disproportionate minority confinement; and
- a management plan for evaluating staff functions and improving staff recruitment.

By December 31, 2004, the bill requires DJS to adopt regulations for its programs and facilities that are consistent with the existing State standards applied to private child residential programs and facilities.

The bill also limits to three years the term of any contract that DJS may enter into with a private vendor for the operation of the Hickey School. Finally, by July 1, 2007, all residential juvenile facilities must be operated by the department.

### **Educational Programming**

In response to reform initiatives proposed by the Governor, Chapter 53 of 2003 required MSDE to assume control of the educational programming at the Charles H. Hickey, Jr. School on July 1, 2004, contingent on funding in the State budget. As noted, the fiscal 2005 State budget includes funding for the initiative. *House Bill 1139 (passed)* establishes a Juvenile Services Education Program within MSDE that must provide educational services in all residential facilities of DJS by July 1, 2012.

The bill also establishes a Coordinating Council for Juvenile Services Educational Programs to develop, recommend, and approve an educational program for each residential facility. MSDE is required to report to the State Superintendent, the Governor, and the General Assembly on the aggregate educational outcome of the educational program for each residential facility.

### **Step-down Aftercare**

To ease the transition of children from the custody of DJS to their homes and communities, *Senate Bill 767 (passed)* requires DJS to establish a program of “step-down aftercare” for all children discharged from committed DJS residential placements. “Step-down aftercare” is a network of programs providing education, rehabilitation, and treatment.

### **Outcomes Evaluation**

*House Bill 1146 (passed)* requires the Office for Children, Youth, and Families in cooperation with the Department of Human Resources and DJS to plan and determine the costs of implementing a system of outcomes evaluation to measure the effectiveness of programs serving the needs of children in out-of-home placement. By September 1, 2004, the agencies must report jointly to the General Assembly on the plan for the system of outcomes evaluation and the cost of testing and implementing the system.

### **Waiver of Counsel**

*Senate Bill 163/House Bill 511 (both passed)* prohibit a court from accepting a child’s waiver of counsel in a delinquency or child in need of supervision proceeding or a proceeding involving a citation for a violation unless (1) the child is in the presence of counsel and (2) the court determines that the waiver is knowing and voluntary. The court must consider various factors in determining whether the waiver is knowing and voluntary, including whether the child fully comprehends the nature of the allegations and proceedings and that counsel may be of substantial assistance.

## **Truancy Reduction and School Safety**

### **Truancy Reduction Pilot Program**

*House Bill 1443 (passed)* establishes a three-year Truancy Reduction Pilot Program in the juvenile courts in Dorchester, Somerset, Wicomico, and Worcester counties. The Circuit Administration Judge for the First Circuit is authorized to assign petitions alleging truancy and criminal cases against a parent for failure to ensure a child's attendance in school to a truancy docket in the Juvenile Court. The Circuit Administration Judge is required to submit a report evaluating the program to the Governor and the General Assembly by May 31, 2007.

### **Searches of Students on School Trips**

Under current law, a principal, assistant principal, or school security guard of a public school may make a reasonable search of a student on school premises or on a school-sponsored trip. The search must be made in the presence of a third party and the searcher must have a reasonable belief that the student is carrying an item in violation of State law or a county board of education rule or regulation. *House Bill 130 (passed)* specifies that a county board of education may authorize a public school teacher to make a reasonable search of a student on a school sponsored trip. To qualify to conduct a search, the teacher must be designated in writing by the principal and receive training to conduct a search commensurate with the training received by a principal.

### **Escape from Juvenile Facility**

*House Bill 575 (passed)* modifies the elements for first and second degree escape by transferring current escape offenses involving juvenile facilities and juvenile community detention orders from first degree escape to second degree escape. A more detailed discussion of House Bill 575 may be found under the subpart "Criminal Law" of this Part E.

## **Public Safety**

### **Assault Weapons**

In 1994, Congress passed a federal assault weapons ban that prohibits the manufacture, sale, or importation (but not the possession) of specific models of semiautomatic assault weapons or their copies, as well as assault weapons that have a combination of certain military characteristics. The federal ban also restricts the manufacture and sale of ammunition magazines capable of holding more than 10 rounds (prior to the law, many firearms were sold standard with 30 round magazines). The law exempts assault weapons and large capacity magazines that were manufactured prior to the law's enactment on September 13, 1994.

The federal assault weapons ban is set to terminate on September 13, 2004. Congress has not yet acted on proposed legislation to extend the ban.

Maryland prohibited the sale and possession of “assault pistols” (defined as 15 specific semiautomatic pistols or their copies) in 1994. The State also maintains a registration system for the possession of machine guns (fully automatic weapons) in Maryland.

*Senate Bill 288/House Bill 1298 (both failed)* would have designated 45 specified firearms as “assault weapons” and, with certain exceptions, prohibited a person from transporting an assault weapon into the State or possessing, selling, offering to sell, transferring, purchasing, or receiving an assault weapon. A violator would have been guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$5,000.

The bills would have also required the Handgun Roster Board to compile, maintain, and publish a roster of prohibited assault weapons and send copies of the roster to all licensed firearms dealers.

Finally the bills would have prohibited a person from using an assault long gun or copycat weapon in the commission of a felony or crime of violence. A violator would have been guilty of a misdemeanor and, in addition to any other sentence imposed for the felony or crime of violence, subject to a maximum imprisonment penalty of 20 years for a first offense. For each subsequent violation, the person would have been required to be sentenced to a maximum imprisonment of 20 years. The bills would have required sentencing for such offenses to be consecutive rather than concurrent with any other sentence imposed for the felony or crime of violence.

## **Correctional Services**

### **Correctional Standards**

*House Bill 971 (passed)* requires the Maryland Commission on Correctional Standards to send a compliance plan to a State or local correctional facility if the commission determines that a correctional facility is in violation of specified minimum mandatory standards. The commission must reinspect a correctional facility that receives a compliance plan and send a letter of reprimand to the correctional facility if the commission determines that the facility is still in violation of the minimum mandatory standards. If, after the commission has sent a letter of reprimand and reinspected the facility, the facility continues to be in violation of the minimum mandatory standards, the commission must conduct a full standards and performance audit of the facility addressing specified items.

After completing an audit, the commission must send a letter to the correctional facility that includes a copy of the audit findings, the date by which the facility must comply with the audit findings, and other specified information. The commission must also send a copy of the letter and its contents to the executive and legislative body responsible for the correctional facility. Within a reasonable time after the date specified for compliance, the commission must conduct an unannounced inspection to verify that the correctional facility has complied with the audit findings.

If, after performing an unannounced inspection and holding a hearing on the issue, the commission determines that a correctional facility has not complied with the audit findings, the commission must (1) petition a circuit court for a court order requiring the correctional facility to comply with the audit findings or (2) issue an order to cease operation of the correctional facility or any of its components. The commission must provide to a correctional facility reasonable notice of a hearing and may subpoena witnesses.

*Senate Bill 883/House Bill 1368 (both passed)* require the Secretary of Public Safety and Correctional Services to adopt regulations that establish minimum mandatory standards applicable to victim notification and restitution.

### **Advisory Council on Offender Employment Coordination**

*House Bill 1354 (passed)* adds the Secretary of Labor, Licensing, and Regulation to the Advisory Council on Offender Employment Coordination and extends the termination date of the council and the ending date for the terms of council membership from August 31, 2004, to August 31, 2007. The bill also eliminates the position of full-time Executive Director of the Council.

### **Project RESTART**

The Department of Public Safety and Correctional Services (DPSCS) believes that the most effective way to combat high recidivism rates is to increase the amount and quality of the rehabilitative programming available to inmates and detainees. The General Assembly authorized DPSCS to convert up to 50 vacant correctional officer positions and use up to an additional \$1.7 million to implement pilot programs in two separate regions of the State. For a more detailed discussion of this budget initiative, see Part A – Operating Budget of this *90 Day Report*.

### **Local Issues**

*House Bill 382 (passed)* authorizes a court in Howard County, if the sentencing judge is unavailable, to allow an individual to participate in the work release program operated by the Howard County Department of Correction and provides that an individual is ineligible for participation in the work release program if other charges are pending for a crime of violence in any jurisdiction. The bill also provides that an inmate employed in a work release program is not an agent or employee of the court.

*House Bill 729 (passed)* authorizes the Sheriff of Calvert County to establish a pretrial release program that offers alternatives to pretrial detention. The bill authorizes a court to order an individual to participate in the pretrial release program if the individual appears before the court after being charged and detained on bond and meets the program's eligibility requirements. The court may issue such an order at the imposition of bond, on bond review, or at any other time during the individual's pretrial detention.

An individual is eligible for the program if the individual is (1) recommended to the court for placement in the program by the program staff; (2) has no other charges for a felony or a violation of a crime of violence pending in any jurisdiction; and (3) not in detention for or been previously convicted of a crime of violence, any felony, or the crime of escape.

*Senate Bill 67 (passed)* clarifies that a county may apply for State financial assistance for the construction of a new or enlarged existing correctional facility if the anticipated confinement of inmates serving sentences of more than 6 months but not exceeding 12 months would exceed specified capacity. The bill also alters a requirement that the Secretary of Public Safety and Correctional Services annually review growth rates relating to confinement of inmates by requiring a comparison to the number of inmates similarly sentenced before January 1, 1988.

### **Boiler and Pressure Vessel Safety**

*House Bill 534 (passed)* authorizes the Commissioner of Labor and Industry in the Department of Labor, Licensing, and Regulation (DLLR) to set inspection schedules for low-pressure-steam or vapor-heating boilers, hot-water-heating boilers, hot-water-supply boilers, and pressure vessels through regulation instead of statute. The bill also defines “model steam boiler” and exempts such boilers from annual inspections. DLLR must report to various legislative committees by December 1, 2004, on its progress in reducing the number of overdue boiler inspections.

*House Bill 1126 (failed)* would have established a Safety Inspection Fund to provide for a portion of the cost of administering inspections of elevators, escalators, boilers, and pressure vessels. Monies in the fund would have come from inspection fees. The bill also would have made changes related to the inspection process for elevators, escalators, boilers, and pressure vessels. The bill was referred to interim study.

### **Miscellaneous**

#### **Global Positioning Systems**

*Senate Bill 783/House Bill 1242 (both passed)* establish a Task Force to Study Criminal Offender Monitoring by Global Positioning Systems (GPS). The task force will study (1) how the State can utilize GPS technology to monitor individuals who have committed criminal offenses; (2) how law enforcement can benefit from linkage to such technology to solve crimes and streamline workload; (3) the feasibility of implementing a global positioning technology program, including a cost-benefit analysis; and (4) admissibility of evidence issues. The task force must submit an interim report to the Governor and the General Assembly by December 31, 2004, and a final report by December 31, 2005. DPSCS will provide staffing.

#### **Alarm and Security Systems**

*Senate Bill 377 (passed)*, an emergency bill, requires a custodian of a public record to deny inspection of the part of the record that identifies or contains personal information about a person that maintains an alarm or security system. However, the bill requires a custodian to

permit inspection by (1) the person in interest; (2) an alarm or security system company that currently provides alarm or security services to the person in interest; and (3) law enforcement and emergency services personnel.

### **Hazardous Materials**

*House Bill 493 (passed)* requires a facility that stores, dispenses, uses, or handles threshold amounts of hazardous materials (as defined under federal law) to conduct a self-audit of the security of the facility and submit this analysis, along with a \$2,500 fee, to the Maryland Department of the Environment. The first self-audit must be completed by October 1, 2005; it must be updated at least every five years. For a more detailed discussion of this bill, see Part K – Natural Resources, Environment, and Agriculture of this *90 Day Report*.