

Part E

Crimes, Corrections, and Public Safety

Criminal Law

Identity Theft

Identity theft is commonly regarded as one of the fastest growing crimes in the United States. Thieves employ a variety of methods, including looking through dumpsters, watching people enter passwords, and “phishing” for personal information over the telephone or via the Internet to siphon off the value of a person’s good name and credit.

According to the Identity Theft Data Clearinghouse, Maryland residents reported 4,848 instances of identity theft in 2005, or 86.6 complaints per 100,000 population, ranking Maryland eleventh in the nation for identity theft. As has been the case for the last several years, the most common type of identity theft was credit card fraud, which comprised 31 percent of all complaints.

Senate Bill 468/House Bill 1217 (both passed) provide that, under certain circumstances, rather than requiring a victim to personally attend a criminal trial as a prosecution witness, an affidavit sworn to by a credit cardholder may be introduced as substantive evidence that the credit card or credit card number was taken, used, or possessed without authorization. The State must provide at least 10 days’ notice to the defendant before a proceeding in which the affidavit is intended to be introduced and relied on as evidence. If the defendant files a written demand at least 5 days before the proceeding, however, the State must require the presence of the victim.

House Bill 1453 (failed) would have prohibited a person from using a web page, electronic mail message, or the Internet, willfully or with actual knowledge or conscious avoidance of actual knowledge, to solicit, request, or otherwise induce another person to provide identifying information by directly or indirectly misrepresenting oneself as a legitimate business, without the authority or consent of the business. Conspiring or attempting to violate these prohibitions would also have been prohibited. Additionally, a person would not be allowed to willfully, or with actual knowledge or conscious avoidance of actual knowledge, possess with intent to fraudulently use identifying information obtained in violation of the bill. In addition to criminal prosecution, the Attorney General or an aggrieved person would have been authorized

to bring an action against a violator to enjoin further violations and recover a fine for each separate violation.

House Bill 1175 (passed) prohibits a person from knowingly selling, issuing, offering for sale, or offering to issue an identification card or document that contains an incorrect name instead of a person's true name, or an incorrect address for a person. Violators are guilty of a misdemeanor and on conviction, subject to the penalty of imprisonment for up to two years and a fine of up to \$2,000.

House Bill 1201 (passed) establishes an "identity theft passport" program that provides a card or certificate issued by the Attorney General verifying the identity of a person who is a victim of identity fraud. A person who is issued an identity theft passport may present the identity theft passport to a law enforcement agency to help prevent arrest or detention for an offense committed by another person using the passport owner's personal identifying information. A passport may also be presented to a creditor to aid in the investigation of a fraudulent account that is opened in the passport owner's name or a fraudulent charge that is made against an account held by the passport owner.

House Bill 1101 (failed) would have required a law enforcement agency to notify the Motor Vehicle Administration (MVA) in the event of an investigation of possible identity theft in which the victim's driver's license is alleged to have been stolen. The bill would have required the MVA to keep a record of the notification and make information about the driver's license number and the possible identity theft available to a law enforcement officer who is making a check of the driver's license number during a traffic stop.

Drug Manufacturing – Restitution for Clean-up Costs

Methamphetamine, which is a highly addictive and dangerous stimulant, can be produced almost anywhere – from abandoned buildings in rural areas to apartments and even cars in more populated areas. Over the counter cold medicines containing pseudoephedrine are "cooked" with reagents such as iodine and solvents such as paint thinner to make the synthetic drug. Relatively simple and inexpensive to manufacture, the production of methamphetamine can be extremely hazardous. While 80 percent of methamphetamine manufactured in the U.S. is produced in sophisticated super labs, makeshift "mom and pop" labs make smaller quantities under conditions that often result in toxic explosions, fires, hazardous waste dumping, and child endangerment. **House Bill 474 (passed)** provides that in addition to any other legally authorized penalty, a person convicted of an offense, or found to have committed a delinquent act, under various prohibitions relating to controlled dangerous substances may be ordered by the court to pay restitution for actual costs reasonably incurred in cleaning up or remediating laboratories or other facilities operated for the illegal manufacture of a controlled dangerous substance. If the person convicted or found to have committed a delinquent act is a minor, the court may order the minor, the minor's parent, or both to pay the restitution.

Assault Against Correctional Officers

House Bill 214 (passed) defines State and local correctional officers as law enforcement officers for purposes of the current law prohibiting assaults on a law enforcement officer. A person who assaults a correctional officer is guilty of a felony and subject to maximum penalties of imprisonment for ten years and a fine of \$5,000.

Funeral Disruption

Several states and local jurisdictions have introduced or enacted criminal prohibitions in response to recent organized protests at funeral services. *House Bill 850 (passed)* makes it a misdemeanor to knowingly obstruct, hinder, impede, or block another person's entry to or exit from a funeral service, address speech to a person attending such a gathering that is likely to produce or incite an imminent breach of the peace, or engage in picketing activity within 100 feet of a service that is targeted at one or more of the persons attending. A person who violates the provisions of this bill is subject to imprisonment for a maximum of 90 days and a fine of up to \$1,000.

Protection of Animals

Infliction of Pain

A person can only be prosecuted for inflicting unnecessary suffering or pain on an animal or causing, procuring, or authorizing another person to do so if the person was the owner or had custody of the animal. However, *House Bill 11 (passed)* extends the prohibition to any person regardless of their status or relation to the animal. However, the bill specifies that the prohibition on inflicting unnecessary suffering or pain on an animal does not apply to lawful hunting or trapping.

Wild Animals

According to the Humane Society of the United States, various wild animals, including nonhuman primates, tigers, and lions, are readily available from breeders and dealers, through the Internet and mail-order catalogs. Local animal control authorities in Maryland have been called to deal with a variety of wild animals in recent years. *House Bill 704 (passed)* specifically adds a prohibition against the possession or breeding of live foxes, skunks, raccoons, bears, alligators, crocodiles, wild cats, or poisonous snakes to the current prohibition on selling, trading, bartering, or exchanging these animals. Caimans, wild or hybrids of wild and domesticated dogs, certain hybrid cats, and nonhuman primates, including a lemur, monkey, chimpanzee, gorilla, orangutan, marmoset, loris, or tamarin, are now also specifically prohibited from being sold, traded, transferred, possessed, bred, or exchanged. Certain licensed individuals and facilities, animal sanctuaries, persons traveling through Maryland, and persons with certain disabilities are exempted from the law. The bill also provides procedures for seizures of prohibited animals.

Sexual Contact with Students

In Maryland, there is no general prohibition against consensual sex with any person 16 years of age or older. *House Bill 353 (passed)* provides that if a “person in a position of authority” engages in a sexual act, sexual contact, or vaginal intercourse with a minor (i.e., someone under the age of 18) who, at the time of the act, contact, or intercourse, is a student enrolled at a school where the person is employed, the person is guilty of a fourth degree sexual offense, unless the actions constitute a certain other offense. A violator is subject to maximum penalties of imprisonment for one year and a fine of \$1,000.

Privacy

House Bill 60 (passed) prohibits a person from conducting with prurient intent, or procuring another person to conduct, visual surveillance of the private area of an individual by use of a camera without consent under circumstances in which a reasonable person would believe that the private area would not be visible to the public, regardless of whether that person is in a public or private place. The “private area of an individual” means the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of an individual. A violator is subject to maximum penalties of imprisonment for one year and a fine of \$2,500.

Criminal Procedure

Criminal Defendants

Competency Procedures

According to the Mental Hygiene Administration (MHA), 100 people being held in MHA facilities are not able to stand trial and doctors have determined that 12 of the detainees are not likely to become competent to stand trial. The Developmental Disabilities Administration (DDA) estimates that 35 individuals being held in its facility are not able to stand trial. This population is not an annual occurrence but has instead accumulated over time.

In August 2004, the Maryland Disability Law Center filed a law suit in the Circuit Court for Baltimore City on behalf of five individuals who were found incompetent to stand trial and committed to Department of Health and Mental Hygiene (DHMH) facilities for treatment to restore competency, alleging that the commitment of defendants found incompetent to stand trial violated the defendants’ rights under Article 24 of the Maryland Declaration of Rights because it:

- allows people to be institutionalized who are charged with a criminal offense, but who are never going to be restored to competency to stand trial;
- allows for the commitment of people for treatment to restore competency to stand trial on misdemeanor charges beyond the maximum penalty that could have been received if convicted of the charges; and

- fails to provide for review by the courts.

Senate Bill 807/House Bill 795 (both passed) make several changes to the law regarding incompetency of defendants to stand trial. Changes include:

- extending the availability of incompetency determinations to violation of probation proceedings;
- allowing the court to reconsider the incompetency of a defendant at any time before final judgment;
- providing for regular judicial reviews of incompetent to stand trial commitments and a procedure, should commitment be terminated, for the individual to be either civilly admitted to a State psychiatric facility or returned to a State residential center under DDA; and
- requiring the dismissal of charges, under specified circumstances, if the defendant remains incompetent to stand trial.

Drug Treatment

During the 2005 interim, the House Special Committee on Drug and Alcohol Abuse heard testimony from Maryland judges concerned that the residential treatment program for defendants with an alcohol or drug dependency established under § 8-507 of the Health-General Article was not working because of the length of time it takes for a defendant to be placed in treatment. That wait can be as long as 12 to 18 months. The judges said they are frustrated because, for so many of the defendants they see in court, the defendants' addiction caused the criminal behavior. According to the judges, treatment is cost effective, but a wait of 12 to 18 months to get a placement is unworkable. Instead, the defendant is detained in a correctional facility for the length of the sentence without getting into a treatment program.

Senate Bill 591/House Bill 656 (both passed) repeal a requirement that only a defendant in a criminal case who has an alcohol or drug dependency and for whom no sentence of incarceration is in effect, and for whom no detainer has been lodged, can be committed to DHMH for treatment. Instead, a court may not order the defendant be delivered for treatment until any detainer based on an untried indictment, information, warrant, or complaint for the defendant has been removed and any sentence of incarceration for the defendant is no longer in effect. The bill also allows a court to lift a sentence of incarceration in a criminal case over which a court has jurisdiction in order to commit a defendant to drug treatment.

Immediately after receiving an order to treat a defendant, DHMH must order a report of all pending cases, warrants, and detainers for the defendant and forward a copy of the report to the court, the defendant, and the defendant's last attorney of record.

Exemption from Supervision of Probation Fees

Legislation adopted in 1991 mandated the imposition of monthly supervision fees for offenders supervised by the Division of Parole and Probation (DPP). Until 2005, the monthly fees of \$40 for parolees and mandatory supervision releasees and \$25 for probationers had remained unchanged since their inception. In 2005, the supervision fee charged to probationers increased to \$40 per month for five years, making the monthly fee consistent for all supervisees. The supervision fees collected are paid into the general fund.

Legislation in 2005 required a new monthly program fee of \$45 for all supervisees placed in the Drinking Driver Monitor Program (DDMP), for fiscal 2006 through 2010 only, in addition to the \$40 DPP monthly supervision fee that all probationers pay, with the aim of making the program fully fee-supported. The DDMP program fees are paid into the Drinking Driver Monitor Program Fund. The Governor was encouraged, with budget bill language, to provide a deficiency appropriation if the revenues generated from the new fee were not adequate to cover operating expenses. Statute does not permit the court to exempt individuals from paying this program fee.

House Bill 514 (passed) authorizes a court to grant an exemption to the monthly probation supervision fee of \$40 on a supervisee for fiscal 2006 through 2010 and clarifies that the fee remains at \$40 during that period. The bill also allows a court to exempt a supervisee in DDMP from paying the monthly program fee of \$45.

Child Abuse

The laws of the State outline enhanced penalties for persons who are convicted multiple times of specifically defined crimes of violence. The enhanced penalties include increased mandatory minimum jail terms and ineligibility for parole. A parent or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor commits first degree child abuse if the person abuses the minor in a way that causes the death of the minor or causes severe physical injury to the minor. A person who is convicted of first degree child abuse may be sentenced to imprisonment for up to 25 years or for up to 30 years if the minor is killed as a result of the abuse. *Senate Bill 509/House Bill 59 (both passed)* add first degree child abuse to a list of offenses that subject a person to enhanced penalties for the commission of a crime of violence.

Victims' Rights

Restitution

The Committee to Revise Article 27 was appointed in 1991 by the Speaker and the President and was charged with making both substantive and stylistic changes to the State's criminal law. The committee is composed of legislators, judges, lawyers representing both defendants and the State, and a victims' rights representative. During the 2006 legislative session, the committee proposed two bills that dealt with restitution.

A person who suffers personal injury or property damage directly resulting from a crime or delinquent act, or the person's representative in the event of the person's death, is entitled to restitution to cover the person's actual expenses, including loss of earnings. The court may also order restitution to be paid to cover expenses of DHMH or another governmental unit that are incurred in connection with the crime. If a crime is committed by a juvenile, the court may order the child or the child's parents to pay the restitution.

In 2005, the Maryland Court of Appeals decided the case of *Pete v. State*, 384 Md. 47. The offenses committed by the defendant in that case were not directly covered by the existing restitution statutes, but the judge ordered restitution anyway as a condition of probation. The Court of Appeals held that the restitution order was an illegal sentence. *Senate Bill 289/House Bill 377 (both passed)* specify that the statutes dealing with restitution do not limit the authority of a court to order a defendant, or a child found to have committed a delinquent act, to make restitution or to perform services as a means of restitution. Also, the bills specify that any order of restitution made by a court is governed by Title 11, Subtitle 6 of the Criminal Procedure Article.

Senate Bill 291/House Bill 378 (both passed) expand the list of persons to whom restitution can be granted in the case of certain offenses involving destructive devices or toxic materials to include a multicounty agency, a county board of education, or a public authority. The bills also allow a court to order restitution to be paid to any person for whom restitution is authorized by law or a person who has provided to or for a victim goods, property, or services for which restitution is authorized in a particular statute.

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 various expenses, including medical expenses, funeral expenses, and disability or dependency claims. The board reviews and evaluates claims for monetary awards and the awards are dispensed from the Criminal Injuries Compensation Fund which obtains money primarily from court costs and criminal injuries compensation costs imposed in criminal cases.

The board often receives claims past the filing deadline and generally accepts them under its authority to extend the deadline for good cause. While a claim is being processed, health care providers can begin collection procedures for unpaid bills. As a result, crime victims can find themselves being pursued by the providers and debt collection agencies even though the bills will eventually be paid by the board. *Senate Bill 115 (Ch. 69)* extends the time period for filing a claim with the board from 180 days to three years. Also, the Act prohibits debt collection relating to health care while a claimant is waiting for a decision of the board and requires a court to stay all proceedings in an action related to health care provided to a claimant until the court receives notice of a final decision of the board relating to the claim.

Wiretapping and Electronic Surveillance

It is generally unlawful to intercept an oral, wire, or electronic communication without the consent of all parties to the communication. However, an investigative or law enforcement officer acting in a criminal investigation, or any other person acting at the prior direction and under the supervision of an investigative or law enforcement officer, may intercept communications in order to provide evidence of the commission of certain crimes. Also, the Attorney General, State Prosecutor, or a State's Attorney may apply for authorization to intercept communications in order to provide evidence of certain crimes.

The authority of an investigative or law enforcement officer acting in a criminal investigation to intercept a wire, oral, or electronic communication is expanded by *House Bill 183 (passed)* to include communications intended to provide evidence of the sexual abuse of a child. The bill also expands the list of offenses for which the Attorney General, State Prosecutor, or State's Attorney may apply for an order authorizing the interception of communications to include communications that may provide evidence of rape, sexual offense in the first or second degree, child abuse in the first or second degree, insurance fraud, and sexual abuse of a minor.

Process Against Limited Liability Companies

Senate Bill 736/House Bill 708 (both passed) add limited liability companies (LLCs) to provisions of law that govern (1) service of process on a corporation when a criminal charging document is filed; and (2) failure of the corporation to appear in court in response to service of process. The Act includes limited liability partnerships and limited liability limited partnerships in the definition of LLCs.

Sexual Offenders

If a person is convicted of a sexual offense or certain other crimes in the State, the person is required to register with the State sexual offender registry on their release from prison or release from the court if the person does not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register in the State, as well as some offenders who are not required to register in their home state but who committed a crime that would have required registration if committed in Maryland. Recent high profile crimes across the country have generated significant interest in sexual offender registries because they have involved registered sex offenders who have failed to update their addresses and who have gone on to commit further sexual offenses.

Senate Bill 1/House Bill 4 (both failed) attempted to extensively revise provisions of law relating to sexual offenders, including treatment, supervision, registration, community notification, and penalties. For a further discussion of these bills, see the subpart "Public Safety" within this part of this *90 Day Report*.

Expungement of Police and Court Records

The number of individuals arrested in Baltimore City and released without being charged with the commission of a crime generated interest this session. In an attempt to address this issue, a number of bills concerning the expungement of police and court records were introduced during the 2006 session.

An individual who wishes to have a court or police record expunged must petition the appropriate court or law enforcement unit for expungement. Individuals are not entitled to expungement; it is within the discretion of the court or law enforcement unit to grant the expungement. Certain fees may also apply. All of the expungement bills introduced during the 2006 session made expungements automatic and free of charge for various populations.

- ***Senate Bill 847 (failed)*** would have required the automatic expungement of police and/or court records for individuals released from the Central Booking and Intake Facility (CBIF) in Baltimore City without being charged with the commission of a crime, and individuals charged with the commission of a crime whose cases resulted in *nolle prosequi* without service in Baltimore City District Court.
- ***Senate Bill 598/House Bill 64 (both failed)*** would have required the automatic expungement of police records for any individual arrested, detained, or confined by a law enforcement unit in the State and then released without being charged with the commission of a crime.
- ***Senate Bill 244/House Bill 438 (both failed)*** would have required the automatic expungement of police records for any individual arrested, detained, or confined at CBIF and then released without being charged with the commission of a crime.
- ***House Bill 1363 (failed)*** would have required the automatic expungement of police and/or court records for individuals arrested, detained, or confined by a law enforcement unit in the State and then released without being charged with the commission of a crime; and individuals charged with a crime whose charges resulted in acquittal, dismissal of charges, probation before judgment, *nolle prosequi*, stet, or gubernatorial pardon. The bill would have also required, after the occurrence of specified triggering events, the expungement of records relating to criminal charges transferred to juvenile court.

Recordation of Criminal Interrogations

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court held that a criminal defendant must be advised of specific rights before answering any questions designed to elicit an incriminating response, or the answers would be inadmissible in a subsequent court proceeding. These rights are (1) the right to remain silent; (2) anything the individual says may be used against the individual in a court of law; (3) the right to an attorney and the right to have the attorney present during interrogation; and (4) the right to have an attorney appointed for the individual if the individual is unable to afford one.

Recording the *Miranda* warnings at the start of an interrogation could reduce subsequent challenges based on a defendant's allegation that law enforcement failed to properly advise of these rights. The practice could also help resolve questions as to what was said and done over the course of an interrogation.

Alaska, District of Columbia, Illinois, Massachusetts, Minnesota, New Jersey, New Mexico, and Texas have mandatory recording of confessions. The Alaska and Minnesota supreme courts have informed law enforcement officials in those states that they must record interviews of suspects in detention whenever feasible, or risk the statements being ruled inadmissible in court. Legislation concerning the mandatory electronic recording of interrogations was introduced in 20 states and the District of Columbia in 2005.

House Bill 29 (failed) would have required a "custodial interrogation" in cases involving a capital offense that occurs at a "place of detention" to be electronically recorded, unless there is a lack of proper equipment or time is of the essence.

House Bill 414 (failed) would have established that in a prosecution for a crime of violence, an oral, written, or sign language statement made by a defendant during a custodial interrogation is presumed inadmissible as evidence against the defendant unless an electronic recording meeting specified standards is made of the entire custodial interrogation.

Witness intimidation continues to be an impediment to the effective prosecution of violent crimes, especially in jurisdictions where witnesses are reluctant to testify for fear of their lives. **House Bill 1485/Senate Bill 969 (both failed)** would have authorized a State's Attorney to make an electronic video and audio recording of the questioning of a witness to a homicide. The recording is admissible as evidence against a defendant accused of homicide, if the witness is unavailable to testify at trial due to the witness's death, incapacity, or absence, and certain other conditions are met.

Access to Electronic Court Records

The Judiciary provides Internet access to case records via its Public Data Warehouse. In general, information in paper records can be accessed electronically through this system. These records are also accessible at the courthouses where they are stored.

On March 7, 2006, the Court of Appeals adopted amendments to Maryland Rule 16-1002(f) and adopted Maryland Rule 16-1008(a)(3)(b), effective July 1, 2006. The new rule provides that excerpt for identifying information relating to law enforcement officers, other public officials acting in their official capacity, and expert witnesses, a custodian must prevent remote access to the address, telephone number, date of birth, email address, and place of employment of a victim or nonparty witness in a (1) criminal action; (2) juvenile delinquency action; (3) domestic violence case; or (4) a peace order proceeding.

House Bill 323 (failed), as amended, would have required a custodian of court records to prevent remote access to electronic court records of the name and identity of any victim, victim representative, or witness in instances where identifying information may not be distributed

under Maryland Rule 16-1008(a)(3)(b). The bill contained exceptions for remote access to (1) electronic court records by judicial officers or employees in the performance of their official duties; or (2) a case record in electronic form by an attorney of record in the action.

Juvenile Law

Department of Juvenile Services

Background

The Department of Juvenile Services Reform Act of 2005 (House Bill 979 of 2005) (*Ch. 11*) established a Joint Oversight Committee on the Department of Juvenile Services (DJS). The bill requires the committee to review all DJS reports, its operations, and monitor progress made by DJS in developing and implementing the facilities master plan required by Chapter 431 of 2004. The legislation was vetoed by the Governor following the 2005 session as duplicative of functions performed by standing committees. However, the General Assembly overrode the veto during the 2006 regular session.

After the gubernatorial veto, the House Appropriations Committee and the House Judiciary Committee formed an interim Juvenile Services Workgroup to study issues such as the closing of the Hickey School, implementation of the facilities master plan, mental health services for youth under DJS jurisdiction, and commitment options for youth with special needs.

The DJS facilities master plan was submitted to the General Assembly in January 2006. The plan calls for the construction of four youth centers, the replacement of four detention centers, and the renovation of other facilities in the State. The plan is based on a new regional structure that separates the State into four areas: Baltimore City and Baltimore County, Southern Maryland, Western Maryland, and the Eastern Shore. Each region would have a shelter care facility, detention facility, and committed facility so juveniles can be closer to their homes and families.

House Bill 1417 (failed) would have reorganized the State into six DJS regions by separating Baltimore City from Baltimore County, putting Baltimore County in a region with Harford County and Carroll County, and creating a new region of Anne Arundel County, Howard County, and Montgomery County.

Comprehensive Juvenile Justice Three-year Plan

Every three years the Secretary of DJS submits a Comprehensive Juvenile Justice three-year plan that includes an inventory of all residential and day treatment programs and establishes priorities for the services necessary for juveniles under its care. The law requires the plan to be revised yearly. *House Bill 273 (Ch. 86)* changes the time frame for the revision from a calendar year cycle to a fiscal year cycle. The law requires the Secretary to submit the revised plan to the Governor and General Assembly by February 1 of each year.

Juvenile Justice Monitoring Unit in Office of Attorney General

House Bill 1342 of 2005 (*Ch.12*) transferred the duties of the Office of the Independent Juvenile Justice Monitor in the Office for Children, Youth, and Families to the Juvenile Justice Monitoring Unit in the Office of the Attorney General. The responsibilities of the monitoring unit include evaluating, at each DJS facility, the child advocacy grievance process, the department's monitoring process, the treatment of and services to youth, the facility's physical conditions, and the adequacy of staffing.

House Bill 1342 was vetoed by the Governor after the 2005 session. The Governor's veto message indicated concern that there was a conflict with locating the monitoring unit in the Office of the Attorney General when that office has the constitutional duty to represent DJS. The General Assembly overrode the veto during the 2006 regular session.

At-risk Youth Prevention and Diversion Programs

Youth Service Bureaus – Predelinquent Diversion Services

Senate Bill 468 of 2005 (*Ch.7*) required DJS to promote predelinquent programs including greater utilization of Youth Service Bureaus (YSB). The Governor's veto message on Senate Bill 468 expressed a concern that the legislation placed a sole focus on YSBs to the detriment of similar effective programs operating locally through service providers other than YSBs. The General Assembly overrode the veto during the 2006 regular session.

Advisory Council to Children's Cabinet

Senate Bill 882/House Bill 870 (both passed) establish an Advisory Council to the Children's Cabinet. The purpose of the council is to make recommendations to the Children's Cabinet on methods for meeting the policy and program goals of the State including (1) building capacity to serve youth in their communities and at home; (2) reducing reliance on institutions as the primary mode of intervention for at-risk youth offenders; (3) promoting positive outcomes for youth; (4) funding practices that prevent juvenile crime and delinquency; and (5) reducing disproportionate minority confinement.

The bills state that it is the General Assembly's intent that the Governor includes at least \$10 million in the fiscal 2008 budget and annually thereafter to fund at-risk youth prevention and diversion programs. Federal funds, general funds, or private resources may be used to meet this funding requirement.

Delinquency Prevention and Diversion Services Task Force

House Bill 686 (passed) establishes a Delinquency Prevention and Diversion Services Task Force. The task force is required to (1) study, survey, and assess the adequacy, quality, and quantity of delinquency prevention and diversion services currently being provided to juvenile offenders in the State by public and private agencies; (2) review delinquency prevention and diversion services that target youth who are processed by DJS at intake but not adjudicated

delinquent or committed to a juvenile facility; (3) conduct hearings and gather information and suggestions from targeted juveniles, schools, DJS, and other service providers; (4) identify and document the current availability of delinquency prevention and diversion services in the State; (5) identify best practice and successful models for delinquency prevention and diversion programs in the State and in other states; (6) assess and evaluate the adequacy of current juvenile services; (7) identify the impact and consequences of gaps in juvenile services; (8) report findings and recommend delinquency and diversion services improvement; and (9) develop criteria for requests for proposals and the awarding of grants to establish juvenile delinquency prevention and diversion programs. A report on the recommendations of the task force is due July 1, 2007.

Extension of Informal Adjustment Period for Substance Abuse Treatment

House Bill 653 (passed) extends the 90-day time limitation for an informal adjustment process concerning a child who is the subject of a complaint filed with a DJS intake officer if the intake officer determines that additional time is necessary for the youth to complete a substance abuse treatment program. The informal adjustment process is comprised of counseling and supervision by a DJS case manager of a child in the child's home without referring the case to a State's Attorney for a delinquency proceeding. DJS reported that 2,714 youth (average daily caseload) received informal adjustment in 2005.

Juvenile Competency Services

Prior to 2005, Maryland law contained no clear procedures for handling a child who was alleged to have committed a delinquent offense and was incompetent to proceed in court. Chapter 580 of 2005 instituted procedural measures for juvenile courts confronted with children incompetent to face adjudication but did not address services for a child who is found to be incompetent.

Senate Bill 808/House Bill 1257 (both passed) make several changes to the juvenile competency statutes. The changes include authorizing a juvenile court to order the Department of Health and Mental Hygiene (DHMH) or a qualified expert (a licensed psychiatrist or psychologist) to conduct competency evaluations to determine whether a child is competent to proceed at a hearing.

Based on the competency evaluation and the competency hearing determination, the court is authorized to (1) either order DHMH to provide competency attainment services for the child in the least restrictive environment; (2) order the Developmental Disabilities Administration to evaluate the child to determine if the child is eligible for services; (3) dismiss the delinquency petition; or (4) order the child returned to DJS to continue the delinquency proceedings.

The Secretaries of DHMH, the Department of Human Resources, and DJS, along with the State Superintendent of schools, are required to jointly adopt regulations to carry out the provisions of the legislation.

Victims Rights

Senate Bill 508/House Bill 1161 (both passed) grant the victim of a delinquent act that would have been a crime of violence if committed by an adult the right to file for leave to appeal to the Court of Special Appeals from a court order that denies or fails to consider certain statutory rights. These rights are (1) the right to notice of a hearing to transfer a case to the juvenile court; (2) the right to attend proceedings; (3) the right to a notice of court proceedings; (4) the right to be present at trial; (5) the right to submit a victim impact statement; (6) the right to address the court at sentencing or disposition; and (7) the presumptive right to restitution.

Senate Bill 291/House Bill 378 (both passed) revise some of the State's restitution laws. A juvenile who is adjudicated delinquent for certain offenses related to destructive devices, toxic materials, or spreading false information or rumors about destructive materials or toxic materials may be ordered to pay restitution to a governmental unit for actual costs incurred because of a search for, removal of, or damages caused by the destructive devices or toxic materials.

Access to Children's Records – Baltimore City Health Department

House Bill 900 of 2005 (*Ch. 10*) was vetoed by the Governor during the 2005 interim. House Bill 900 provided for disclosure to the Baltimore City Health Department of certain confidential records concerning (1) a child to whom the Baltimore City Health Department provides treatment or care, for a purpose relevant to the provision of treatment or care; and (2) a child victim of a crime of violence who resides in Baltimore City for the purpose of developing appropriate programs and policies aimed at reducing violence against children in Baltimore City. The Governor's veto message indicated a concern that the bill was overly broad and eroded confidentiality protection of children's records. The General Assembly overrode the veto during the 2006 regular session.

Public Safety

Sexual Offenders

Across the country, cases in which registered sex offenders have failed to update their addresses and have gone on to commit heinous sexual crimes have prompted lawmakers in several states to examine the ways of accounting for these offenders. In 2005, there were two notorious cases of child abduction, molestation, and murder by previously convicted child sex offenders – one in Idaho and the other in Florida.

With the added backdrop that the U. S. Congress will consider the Children's Safety Act of 2005 (HR 3132) during 2006, a total of 54 bills were introduced in the subject area of sexual offenses, including major initiatives that originated in the Governor's Office and the Office of the Attorney General. Although the bills on this subject varied in content, including provisions for stiffer sentencing and the potential civil commitment of sexual predators, *Senate Bill*

1/House Bill 4 (both failed) emerged as omnibus bills incorporating features of several of the introductions. The primary focus of the omnibus bills was toward extended supervision of offenders, using tools such as GPS tracking, and changes in notification and registration requirements for the State's sex offender registry.

In addition, the hiring policies of private schools came under increased scrutiny in May 2005 when a teacher at a private Baltimore City school was charged with raping a 13-year-old girl and sexually assaulting two other teenage girls. Newspaper reports at the time indicated that the principal believed the teacher was not a risk to students. Although a nonpublic school must conduct a national and State criminal history records check for each of its employees, it was not prohibited from hiring an individual with a criminal record. A public school is barred from hiring an individual convicted of a violent or sexual offense. *Senate Bill 111 (passed)* prohibits a nonpublic elementary or secondary school from knowingly hiring or retaining an individual who has been convicted of a violent or sexual offense for a job that involves working with students or access to students. The Maryland State Department of Education must revoke the approval of a school that violates the prohibition. The Act takes effect July 1, 2006.

Law Enforcement

Arrest Quotas

Senate Bill 462/House Bill 13 (both passed) prohibit a law enforcement agency from establishing a formal or informal quota for the law enforcement agency or its law enforcement officers, or using the number of arrests made or citations issued by a law enforcement officer as the sole or primary criterion for promotion, demotion, dismissal, or transfer of the officer. The bill does not preclude a law enforcement agency from using arrest or citation data as management tools or in evaluating performance, or for other technical purposes.

Protective Body Armor Fund – Administration

House Bill 325 (passed) transfers administration of the Protective Body Armor Fund from the Department of State Police to the Governor's Office of Crime Control and Prevention (GOCCP). This change codifies current practice reflecting the provisions of a memorandum of understanding in fiscal 2005 between the Department of State Police and GOCCP that effectuated the actual transfer.

State Aid for Police Protection Fund

Senate Bill 642/House Bill 1115 (both passed) alter the calculation of the State Aid for Police Protection Fund by increasing State funding to subdivisions bordering the District of Columbia by an amount equal to \$0.50 for each person living in Maryland within one mile of the border between Maryland and the District of Columbia. Based on the population of Maryland residents living within one mile of the State border with the District of Columbia, State aid to Montgomery and Prince George's counties would increase by approximately \$83,300 in fiscal 2008 through 2011.

Law Enforcement Officers' Bill of Rights

The Law Enforcement Officers' Bill of Rights (LEOBR) provides that a police department that has collective bargaining may negotiate an alternative method of forming a hearing board through collective bargaining. LEOBR also provides that a decision of a hearing board is final if a police agency or its superior governmental authority has agreed with a recognized or certified exclusive collective bargaining representative that the decision is final. These provisions were prohibited from being the subject of binding arbitration. *Senate Bill 420 (passed)* alters LEOBR by repealing the general prohibitions against the use of binding arbitration as in the formation of alternative hearing board or after a finding of guilt in a disciplinary hearing. The Act provides that those circumstances are subject to arbitration, if authorized by local law. Only the following jurisdictions currently authorize binding arbitration: Anne Arundel County, Baltimore County, Montgomery County, Prince George's County, and Ocean City.

Race-based Traffic Stops

In 2001, Chapter 343 required the State's law enforcement agencies to adopt a policy against race-based traffic stops that is to be used as a management tool to promote nondiscriminatory law enforcement. The policy must also be used in the training and counseling of officers. The Act requires law enforcement officers to record specified information in connection with each traffic stop, including the driver's race and ethnicity, to evaluate the manner in which the vehicle laws are being enforced. Each law enforcement agency must compile the data collected by its officers and submit an annual report to the Maryland Justice Analysis Center (MJAC) by March 1 of each year reflecting the prior calendar year. MJAC is charged with analyzing the data based on a methodology developed in consultation with the Police Training Commission. By September 1 of each year, MJAC must issue a report to the Governor and the General Assembly as well as to each law enforcement agency.

Senate Bill 288 (Ch. 25) extends the termination date for the collection of traffic stop data from December 31, 2006, to December 31, 2007, and requires a final report on this data by MJAC by August 31, 2008, rather than August 31, 2007. The termination date of Chapter 343 of 2001 is extended to August 31, 2008, from August 31, 2007.

Baltimore City Community College Police Force

House Bill 1669/Senate Bill 819 (both passed) grants the status of police officer and law enforcement officer to members of the police force of the Baltimore City Community College (BCCC), making them subject to LEOBR and eligible for certification as police officers by the Police Training Commission. The BCCC board of trustees is allowed to adopt standards, qualifications, and prerequisites for BCCC police officers in consultation with the Secretary of State Police and the Maryland Police Training Commission. To the extent practicable, those standards should be similar to those of the State Police. The BCCC board of trustees is also authorized to adopt regulations governing the operation and conduct of BCCC police officers.

Corrections

Correctional Officers – Salary Increases/New Positions

The fiscal 2007 State budget includes \$32.2 million for correctional officer salary increases and approximately \$5.4 million for 160 new correctional officer positions. The budget also includes a \$9 million deficiency appropriation to make the correctional officer salary increases effective April 12, 2006. The increase would raise the starting salary for correctional officers to \$33,413 and would provide, on average, a 9.8 percent salary increase for all correctional officers. The 160 new correctional officers will be distributed across the custody facilities, and were requested and approved based on a newly calculated relief factor. The relief factor determines how many actual positions are required to properly staff a post, and includes considerations for shifts, weekends, holidays, leave, and training.

Mutual Aid Agreements

House Bill 475 (Ch. 91) authorizes written mutual aid agreements among local and State correctional units in Maryland to supply temporary services to alleviate emergency situations at correctional facilities. The term “correctional unit” includes the Department of Public Safety and Correctional Services (DPSCS), the Department of Juvenile Services (DJS), and a unit of local government operating a correctional facility or a county detention center. The Act establishes the rights, liabilities, and duties of the parties to a mutual aid agreement.

Fire and Rescue

Water from Private Sources

If no public water source is available to a fire company to supply water to extinguish a fire or mitigate an emergency, *Senate Bill 562 (Ch. 53)* stipulates that the fire company may enter private property in order to obtain water from a private source, such as a privately owned pond, lake, river, stream, canal, cistern, or swimming pool.

Tuition Assistance Program

The Maryland Higher Education Commission awards tuition reimbursements to approximately 150 firefighters and rescue workers annually. Charles W. Riley, P.P. was the Chairperson Emeritus of the Maryland State Firemen’s Association. He died in 2005. *Senate Bill 440/House Bill 581 (both passed)* rename the tuition assistance program for firemen and rescue squad members as the Charles W. Riley Fire and Emergency Medical Services Tuition Reimbursement Program.

Volunteer Company Assistance Fund

Provisions governing which conditions apply to grants and which apply to loans issued from the Volunteer Company Assistance Fund were altered. Specifically, *House Bill 1515 (passed)* provides that a volunteer company is not required to provide a security interest or

financial statements when applying for grant awards, but is only required to do so for loans. The Act also specifies that grants may only be issued if a volunteer company is unable to provide adequate services due to an unforeseen event or lack of financial resources. Additionally, the period by which a volunteer company may appeal a decision of the Maryland Fireman's Association is extended. Finally, the Act also provides that it is the intent of the General Assembly that the Governor include an annual appropriation for the fund in the State budget.

House Bill 1668 (passed) creates the State Police Helicopter Replacement Fund (SPHRF) and requires that a \$7.50 surcharge be assessed for every motor vehicle conviction for which points may be assessed. After paying the District Court for its first year startup costs, half the collected surcharges must be allocated to SPHRF and half allocated to the Volunteer Company Assistance Fund (VCAF). When the amount credited to VCAF reaches \$20 million, all surcharges must be allocated to the State Police Helicopter Replacement Fund.

Under the Act, special fund revenues have been estimated to increase by \$2.4 million in fiscal 2007. Out-years assume a stable caseload. Expenditures of \$328,900 in fiscal 2007 only for computer modifications at the District Court would be reimbursed from the surcharges. If significantly more motorists elect to stand trial rather than prepay penalties, there is potential for a minimal general fund expenditure increase for additional staff and resources for the District Court. However, there is also potential for significant savings in future years if the Department of State Police needs to purchase less auxiliary equipment as a result of the Act. These provisions are prospectively applied and do not apply to any violation committed before the October 1, 2006, effective date.

Public Safety Employees

Death Benefit

It has been State policy to maintain the death benefit paid by the Department of Public Safety and Correctional Services (DPSCS) to the survivors of certain public safety personnel who are killed or who die in the line of duty at 50 percent of the equivalent federal benefit or higher. The federal benefit was recently increased from \$100,000 to \$250,000. **Senate Bill 388/ House Bill 1722 (both passed)** is an emergency enactment that increases, from \$50,000 to \$125,000, the death benefit that must be paid by DPSCS to the surviving spouse, child, dependent parent, or estate of each of the following individuals who is killed or dies in the performance of duties on or after January 1, 2006: (1) a law enforcement officer; (2) a correctional officer; (3) a volunteer or career firefighter or rescue squad member; or (4) a sworn member of the office of State Fire Marshal. The Act also provides that, beginning in fiscal 2009, the death benefit provided in the prior fiscal year must be adjusted by any change in the calendar year preceding the fiscal year in the Consumer Price Index.

Employment Protection

There are 245 Maryland Defense Force (MDF) members. The Military Department advises that MDF members are not afforded any employment protection when recalled to active duty service. MDF would be called upon during the State's response to natural or manmade

disasters and this void in protection may result in members being forced to restrict their availability to State service as a result of their civilian employment. MDF consists of personnel with medical and legal expertise and clergy who provide “surge” capacity during emergency responses. *House Bill 292 (Ch. 88)* extends the protections of the Soldiers’ and Sailors’ Civil Relief Act of 1940 and the Uniformed Services Employment and Reemployment Rights Act to members of MDF who may be called to active duty.

Emergency Management

Human Service Facilities – Evacuation Plans

Effective June 1, 2006, a “human service facility” is required under the provisions of *House Bill 770 (passed)* to develop an emergency plan that includes procedures that will be followed before, during, and after an emergency to address (1) the evacuation, transportation, or shelter-in-place of individuals served at the facility; (2) the notification to families, staff, and licensing authorities regarding the action that will be taken concerning the safety and well-being of individuals served at the facility; (3) staff coverage, organization, and assignment of responsibilities; and (4) the continuity of operations. The required regulations under these provisions must include guidelines for the creation of an executive summary of the evacuation procedures of a human service facility that must be provided to the family member of a resident or the family member of a patient of a human service facility on request. In addition, the Department of Health and Mental Hygiene must consult with the providers of licensed community mental health residential programs following the adoption of regulations to implement this Act in order to evaluate whether its provisions should apply to licensed community mental health residential programs.

In addition, these provisions require the Secretary of Health and Mental Hygiene to coordinate with the health occupations boards to develop a process to license, certify, or credential both licensed and out-of-state health care practitioners who may be needed to respond to a catastrophic health emergency. The Act also includes this process as a training program that may be instituted by the Governor in the event of an emergency.

Health Care Providers – Responders in Emergencies

Senate Bill 32 (passed) requires the Secretary of Health and Mental Hygiene to coordinate with the health occupations boards to develop a process to license, certify, or credential both licensed and out-of-state health care practitioners who may be needed to respond to a catastrophic health emergency. The Act also includes this process as a training program that may be instituted by the Governor in the event of an emergency.

Miscellaneous

Missing Persons

Chapter 528 of 2004 established a Task Force on Missing Vulnerable Adults to, in part, investigate integration with AMBER Alert in Maryland and the broadcast media in locating

missing vulnerable adults. Arising from the recommendations of the final report of the task force, *House Bill 1172 (passed)* prohibits a law enforcement agency from establishing a mandatory waiting period before taking a missing person report. A law enforcement agency must make every effort to inform the general public and the family of a missing person that the agency does not impose a mandatory waiting period before taking a missing person report.

Under the provisions of the Act, a law enforcement agency must, without delay, accept a report of a missing person provided in person, and may accept a report of a missing person by phone or other electronic means if that form of reporting is consistent with the policy of the agency, and the reporting person completes the report in person as soon as possible.

By October 1, 2008, all law enforcement agencies in the State must begin using a uniform report form developed by the Police Training Commission when taking a missing person report. The Police Training Commission is required to develop, with the cooperation of the office of the Chief Medical Examiner and the FBI, a uniform missing person report form to be available for use by each law enforcement agency of the State by October 1, 2008.

The Office of the Chief Medical Examiner is required to maintain files of DNA samples and photographs of unidentified human remains. The cremation of human remains is subject to current law provisions governing required authorization and identification. The Act also authorizes a person to delegate authority for final disposition of a body for cremation by electronic communication, rather than by telegram.

Elevator Safety

Senate Bill 104 (Ch. 39) removes the requirement that the Department of Labor, Licensing, and Regulation (DLLR) annually inspect and certify all elevator units. DLLR may determine, by regulation, the required inspection and certification intervals. The interval timing must protect the public safety, taking into consideration the design, type, age, and operating characteristics of the unit.

DLLR may prohibit use of an elevator unit if, based on inspection, the unit violates safety standards or there is a substantial probability that death or serious harm could result from its continued use. Specified notices must be issued by DLLR and posted on the unit. An action may be brought in circuit court to modify or vacate the decision to prohibit use on the ground that it is unlawful or unreasonable. These provisions are effective July 1, 2006.