

## **Part E**

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

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#### **Criminal Law**

##### **Identity Fraud**

Arising out of the recommendations of the Task Force to Study Identity Theft, which was created in 2005 (and extended in 2007), *Senate Bill 60/House Bill 1113 (both passed)* increase the maximum imprisonment penalty for felony identity fraud from 5 to 15 years. The bills also establish that it is a crime for a person to intentionally, willfully, and without authorization copy, attempt to copy, possess, or attempt to possess the contents of all or part of a computer database that was unlawfully accessed. A violator is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

The measures also authorize, in a criminal case or juvenile proceeding involving identity fraud, the introduction of the affidavit of a lawful credit cardholder as substantive evidence that the credit card or credit card number of the credit cardholder was taken, used, or possessed without the authorization of the credit cardholder.

In addition, under *Senate Bill 60/House Bill 1113*, a person is prohibited from using a “re-encoder” or “skimming device” to access, read, or scan personal identifying information or a payment device number. The bills prohibit a person from knowingly, willfully possessing, with fraudulent intent, such a device for the unauthorized use, sale, or transfer of personal identifying information or a payment device number and applies the penalties for identity fraud violations to these offenses.

##### **Furnishing Alcohol to a Minor – Penalties**

According to testimony presented in 2008 legislative hearings, underage drinking cost the citizens of Maryland \$1.2 billion in 2005. These costs include medical care, work loss, and pain and suffering associated with the multiple problems resulting from the use of alcohol by youth. This translates to a cost of \$2,292 per year for each youth in the State.

Under current law, it is a civil offense for a person to furnish an alcoholic beverage for consumption to a minor. Maximum penalties are a fine of \$1,000 for a first violation and a fine of \$1,500 for a subsequent violation. If the person furnishing the alcoholic beverage and the person consuming the alcoholic beverage are members of the same immediate family and if the alcoholic beverage is furnished and consumed in a private residence, they are exempt from this prohibition. Also exempt from this prohibition are participants in a religious ceremony.

*Senate Bill 166/House Bill 76 (both passed)* increase the maximum penalty for furnishing or allowing underage consumption or possession of alcohol from \$1,000 to \$2,500 for a first offense and, for a subsequent violation, from \$1,500 to \$5,000.

### **Dogfighting and Cockfighting**

According to the Humane Society of the United States, in 19 states, being a spectator at a dogfight is a felony. In 27 states, including Maryland and the District of Columbia, being a spectator at a dogfight is a misdemeanor. In 27 states, including Maryland, being a spectator at a cockfight is a misdemeanor, while in 13 states being a spectator at a cockfight is a felony.

*Senate Bill 44/House Bill 719 (both passed)* increase the maximum penalties for knowingly attending a deliberately conducted dogfight or cockfight as a spectator from imprisonment for 90 days and/or a fine of \$1,000 to imprisonment for one year and/or a fine of \$2,500.

### **Sex Crimes**

The rule of lenity requires that in a criminal case in which statutory interpretation is ambiguous, doubts are to be resolved in favor of the defendant. *Senate Bill 16 (passed)* clarifies that an adult who has been convicted for a second time of first degree rape or first degree sexual offense involving a victim under age 13 is subject to the 25-year mandatory minimum sentence provided for each offense.

A discussion of legislation addressing sexual offender registration provisions may be found in the Criminal Procedure subpart under this Part E – Crimes, Corrections, and Public Safety of this *90 Day Report*.

### **Crimes Against a Law Enforcement Officer**

Under current law, a person may not intentionally cause physical injury to another if the person knows or has reason to know that the other is a law enforcement officer engaged in the performance of the officer's official duties. "Physical injury" means any impairment of physical condition, excluding minor injuries. A violator is guilty of the felony of second degree assault and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$5,000.

Under these provisions, the term “law enforcement officer” is defined as an individual who, in an official capacity, is legally authorized to make arrests and is a correctional officer or a member of a State or local police force that includes the State Police, a State agency police force, a county, municipal, or bicounty police department, or college police force. *Senate Bill 294/House Bill 348 (both passed)* expand this definition by adding members of the Washington Metropolitan Area Transit Authority (WMATA) Metro Transit Police.

### **Altering Drug or Alcohol Screening Tests**

Synthetic urine is a product advertised on the Internet to “assist people who are subject to urine drug tests or who do not have the necessary time to complete their personal detoxifying program.” According to one Internet site, the product may not be sold or shipped anywhere it is prohibited by law.

Maryland law currently prohibits a person, with the intent to defraud or alter the outcome of a drug or alcohol screening test, from altering a “bodily fluid” sample, substituting a bodily fluid sample with that of another person or animal, or possessing, using, selling, or transporting into the State a “bodily fluid adulterant.” *House Bill 1171 (passed)* clarifies these provisions by including synthetic urine or any substance intended to substitute for a sample of bodily fluid under the definition of “bodily fluid adulterant.”

### **Theft Sting Operations**

A person may not possess stolen personal property knowing that it has been stolen, or believing that it probably has been stolen, if the person intends to or acts in such a way as to deprive the owner of the property. *Senate Bill 387/House Bill 282 (both passed)* would allow for law enforcement “sting operations” against theft rings by providing that, in a prosecution for theft by possessing stolen property, it is not a defense that the property was provided by law enforcement as part of an investigation, if the property was described to the defendant as being obtained through the commission of theft.

### **Unauthorized Removal of Property**

*House Bill 1265 (passed)* repeals the requirement that a person enter or be on the premises of another for a conviction of the crime of taking and carrying away property from the premises or out of the custody or use of the other without permission. This action eliminates an element of this crime, which appears to have been unintentionally added under a nonsubstantive recodification of the offense in 2002.

### **Forgery of Signature and Counterfeit Documents**

As recommended by the Committee to Revise Article 27 of the Annotated Code of Maryland – Crimes and Punishments, *Senate Bill 250 (Ch. 29)/House Bill 550 (Ch. 30)* remove the element of “intent to defraud another” from the offense of counterfeiting, causing to be

counterfeited, or willingly aiding in the counterfeiting of a commission, patent, or pardon. These Acts also add orders for release or other court documents to this expanded offense. In addition, a person is prohibited from writing, signing, or possessing a counterfeit (1) commission, patent, pardon, order for release, or other court document; or (2) warrant, certificate, or other public security from which money may be drawn from the State treasury. A violator is guilty of a felony and is subject to a penalty of imprisonment for at least 2 years and up to 10 years.

Under the Acts, a person is also prohibited from (1) forging, falsifying, or counterfeiting the signature of a judge, court officer, or court employee of the State; or (2) using a document with the forged, falsified, or counterfeit signatures of these individuals while knowing that the signature is forged, falsified, or counterfeit. A violator is guilty of a misdemeanor and is subject to a maximum penalty of five years imprisonment and/or a \$10,000 fine.

### **Cemetery Destruction**

*House Bill 353 (passed)* requires a person who violates a provision of law that prohibits the destruction of funerary objects to pay for the restoration of any damaged or defaced property in a cemetery to the property's owner or the cemetery's owner.

### **Criminal Gangs**

Chapter 496 of 2007, the Maryland Gang Prosecution Act of 2007, created new offenses regarding criminal gangs. Chapter 496 prohibits a person from participating in a criminal gang knowing that the members of the gang engage in an ongoing pattern of criminal gang activity and prohibits the knowing or willful directing or participating in the commission of an underlying crime committed for the benefit of, at the direction of, or in association with a criminal gang. In addition, Chapter 496 authorized the Attorney General to aid in investigations and prosecutions at the request of a State's Attorney for a county. It also required the Attorney General and the Maryland State's Attorneys Association to report to the General Assembly, by January 1, 2008, on their recommendations for more legislation to assist in the prosecution of gang activity. Several bills were introduced in the 2008 session based on those recommendations. All failed.

*Senate Bill 636/House Bill 1308 (both failed)* would have altered the definition of a "criminal gang" by repealing the requirement that a group of three or more persons whose members meet additional criteria must have an ongoing association in order to be defined as a criminal gang. *Senate Bill 637/House Bill 1321 (both failed)* would have required that any sentence imposed for a violation of the prohibition against participation in a criminal gang be separate from and consecutive to a sentence for any crime establishing a violation. *Senate Bill 640/House Bill 1307 (both failed)* would have expanded the crimes that are considered "underlying crimes" for purposes of the prohibition against participating in a gang offense to include misdemeanor assault, malicious destruction of property, pandering, receiving earnings of a prostitute, and betting, wagering, or gambling. *Senate Bill 634/House Bill 1322 (both failed)* would have established that the juvenile court does not have jurisdiction over a child at least

16 years old who is alleged to have committed a violation of specified gang-related crimes. *Senate Bill 633 (failed)* and *Senate Bill 641 (failed)* would have addressed the forfeiture of property used in criminal gang activities and other prohibitions and penalties related to financial transactions made in connection with criminal gang activities.

## **Criminal Procedure**

### **Death Penalty**

Implementation of the death penalty has been effectively halted nationwide by the Supreme Court's decision in September 2007 to consider the constitutionality of the lethal injection process in Kentucky. Oral arguments in *Baze v. Rees* (No. 07-5439) were heard in January 2008. The case has wide ranging implications because the Kentucky procedures for lethal injection are substantially similar to the procedures used in many other states, including Maryland.

Prior to the developments in the *Baze* case, the Maryland Court of Appeals ruling in *Evans v. State*, 395 Md. 256 (2006) halted executions in Maryland. In that case, the court rejected a race-based constitutional challenge, but found that the procedures for lethal injection were implemented without the input required by the Administrative Procedures Act (APA). The court held that the Division of Correction (DOC) protocols directing the administration of lethal injection are ineffective until either (1) the protocols are adopted as regulations according to the APA; or (2) the General Assembly statutorily exempts the protocols from the requirements of the APA. In effect, the decision placed a moratorium on the imposition of the death penalty pending action by DOC or the General Assembly.

*Senate Bill 614/House Bill 1111 (both passed)* establish a 22-member Maryland Commission on Capital Punishment (MCCP) to study all aspects of capital punishment as currently and historically administered in the State. The bills specify the commission's membership and provide for the Governor to appoint certain members reflecting the broad diversity of views on capital punishment and the racial, ethnic, gender, and geographic diversity of the State. MCCP must make a final report and if applicable, a minority report, on its findings and recommendations to the General Assembly by December 15, 2008. MCCP recommendations are to address the application and administration of the death penalty in the State so that they are free from bias and error and achieve fairness and accuracy. The recommendations must also address racial, jurisdictional, and socioeconomic disparities, the risk of innocent people being executed, a comparison of the effects of court cases involving capital punishment and life imprisonment, and the impact of DNA evidence in capital cases.

*Senate Bill 645/House Bill 1328 (both failed)* would have repealed the death penalty and all provisions relating to it. A person found guilty of murder in the first degree would be sentenced to imprisonment for life or imprisonment for life without the possibility of parole. The bills also would have provided that an inmate who had been sentenced to death before the bills' October 1, 2008 effective date and who had not been executed, may not be executed and would

be considered as having received a sentence of life imprisonment without the possibility of parole.

*House Bill 1250 (failed)* would have exempted from the requirements of the APA the protocols of the Department of Public Safety and Correctional Services governing the administration of the death penalty, including any execution operations manual. As a practical matter, this bill would have ended Maryland's moratorium on the death penalty.

### **Custodial Interrogation**

Interest in recorded interrogations has increased since the 2002 release of the five teenagers convicted of the 1989 rape and near-murder of the "Central Park Jogger" on the basis of their nonvideotaped interrogations, but videotaped confessions. They were ordered released after another person confessed to having committed the crime, acting alone, and DNA evidence failed to link the teenagers to the attack.

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, Illinois, Maine, Minnesota, New Hampshire, New Jersey, New Mexico, Wisconsin, and the District of Columbia 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. Also, approximately 500 local jurisdictions have voluntarily adopted recording policies. Legislation concerning the mandatory electronic recording of interrogations was introduced in 23 states in 2007, and at least 4 states to date in 2008.

*Senate Bill 76/House Bill 6 (both passed)* declare that it is the public policy of the State that (1) a law enforcement unit that regularly utilizes one or more interrogation rooms capable of creating audiovisual recordings of custodial interrogations shall make reasonable efforts to create an audiovisual recording of a custodial interrogation of a criminal suspect in connection with a case involving murder, rape, sexual offense in the first degree, or sexual offense in the second degree, whenever possible; and (2) a law enforcement unit that does not regularly utilize one or more interrogation rooms capable of creating audiovisual recordings of custodial interrogations shall make reasonable efforts to create an audio recording of a custodial interrogation of a criminal suspect in connection with a case involving murder, rape, sexual offense in the first degree, or sexual offense in the second degree, wherever possible.

Under the bills, an audio or audiovisual recording made by a law enforcement unit of a custodial interrogation of a criminal suspect is exempt from the Maryland Wiretapping and Electronic Surveillance Act. The bills also require the Governor's Office of Crime Control and Prevention (GOCCP) to annually report to the General Assembly on the progress of jurisdictions in establishing interrogation rooms capable of making audiovisual recordings and to give such reports at Statestat meetings. GOCCP must also work with State and local law enforcement

agencies to secure all funding available for law enforcement improvement and to develop a program to assist local and State law enforcement agencies to fund the establishment and operation of interrogation rooms capable of creating audiovisual recordings of custodial interrogations.

### **Nuisance Crimes – Expungement**

Expungement means the removal of a police or court record from public inspection by obliteration or by removing the record to a separate secure area to which people without a legitimate reason are denied access. A person who is charged with an offense may file a petition for expungement if the person is acquitted or the charge is dismissed, if the court sets the charge or enters a probation before judgment or *nolle prosequi*, or if an assault charge is compromised or the case is transferred to the juvenile court. The law also authorizes a person who is convicted of a nonviolent offense and granted a gubernatorial pardon to file a petition for expungement. In addition, Chapter 63 of 2007 provided for automatic expungement of records relating to arrests that do not result in the filing of a charge.

*Senate Bill 695/House Bill 685 (both passed)* authorize a person convicted of certain State or local public nuisance crimes, including urination in a public place, panhandling, loitering, and vagrancy, to seek expungement of the associated criminal records. The petition may not be filed within three years after the conviction or satisfactory completion of the sentence, whichever is later. If two or more charges arise from the same incident or set of facts, a person is not entitled to petition for the expungement of one charge or conviction if the other charge would not be expungeable. In addition, a person is not entitled to expungement if, since the time of the conviction of the nuisance crime for which expungement is sought, the person has been convicted of another crime other than a minor traffic violation, or is a defendant in a pending criminal proceeding.

### **Sexual Offenders**

Following several high-profile sexual assault cases, far-reaching State and federal legislation has been enacted to more strongly punish and more closely monitor sex offenders. The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 248-109), calls for conformity by the states with various aspects of sex offender registration provisions, including registration by specified juvenile offenders, specific information to be collected from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. The U.S. Attorney General is required by the Act to issue guidelines and regulations to interpret and implement the legislation. Proposed guidelines were published on May 30, 2007. The period for public comment on the proposed guidelines ended on August 1, 2007. Final guidelines have not yet been published. Under SORNA, July 27, 2009 is the deadline for substantial implementation of SORNA's requirements for all registration jurisdictions.

The General Assembly considered several bills relating to sex offender registration in 2008. *Senate Bill 56/House Bill 18 (both passed)* require that, in addition to any aliases, the registration statement of a person required to register with the State's sexual offender registry include the registrant's former names, electronic mail addresses, computer log-in or screen names or identities, instant-messaging identities, and electronic chat room identities used by the registrant. The bills also add (1) a copy of the registrant's valid driver's license or identification card; and (2) the license plate number and description of any vehicle owned or regularly operated by the registrant as items that must be included in a registration statement.

*Senate Bill 629/House Bill 761 (both failed)* would have applied the State's sex offender registry provisions retroactively to include a person convicted on or after October 1, 1995, of certain sexual offenses committed before that date.

The Department of Public Safety and Correctional Services (DPSCS) submitted two departmental bills relating to sex offender registration. *House Bill 1538 (failed)* would have made changes to notification and registration provisions so as to conform to the SORNA. DPSCS also sent the provisions of this bill to the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking of the U.S. Department of Justice ("SMART Office") for a ruling as to compliance with SORNA. As the 2008 session was ending, the SMART Office advised DPSCS that these proposed changes would not have put Maryland in compliance with the proposed regulations/guidelines.

The other departmental submission, *House Bill 1450 (failed)*, would have made substantive and organizational changes to provisions governing the extended supervision of some sexual offenders (as provided under Chapter 4 of the 2006 special session) and provided for the registration of homeless sexual offenders.

## **Sentencing for Drug Convictions**

Maryland law requires judges to sentence certain repeat offenders convicted of drug-related crimes to serve nonsuspendable and nonparolable mandatory minimum terms. In the 2007 session, House Bill 992 sought to address the issue of parole eligibility of second time drug offenders. The Governor vetoed the bill but expressed support for drug offenders receiving addiction treatment services. *Senate Bill 552/House Bill 845 (both failed)* would have (1) separated the prohibition against manufacturing a controlled dangerous substance; (2) made all subsequent offenders eligible for drug treatment; (3) established a new misdemeanor maximum penalty sentence of imprisonment of 90 days and or a fine of \$500 for possession of a small amount of a drug (equal to or less than one-tenth of a gram); and (4) established a new misdemeanor maximum penalty sentence of imprisonment for five years and/or a fine of \$25,000 for distributing a small amount of a drug (as specified depending on the drug). A person previously convicted of drug possession or of a crime of violence within the preceding three years, or who sold drugs to a minor would not have been eligible for the new misdemeanor penalty for distribution.

## **Eligibility for Parole – Medical Parole**

DPSCS currently participates in an early release program for inmates with serious irreversible terminal illness who no longer present a risk to public safety. Under this nonstatutory medical parole program, the Division of Correction recommends inmates with terminal conditions to the Maryland Parole Commission for evaluation. In pretrial facilities, offenders who have not yet been adjudicated and who are terminally ill with less than six months to live may receive compassionate releases.

*House Bill 883 (passed)* establishes medical parole as a form of release from incarceration in a State or local correctional facility for incapacitated inmates who are serving a sentence with the possibility of parole and, as a result of a medical or mental health condition, disease, or syndrome, pose no danger to public safety. The bill provides a procedure for the commission to initiate consideration of the appropriateness of granting a medical parole and obtain information relevant for its consideration.

The commission is required to consider specified information and to notify victims, allowing them an opportunity to be heard, before granting the inmate a medical parole release. The commission may impose conditions on a medical parolee, and, if a parolee’s incapacitation ends, may reincarcerate the parolee. The Governor must approve a medical parole for a person serving a life sentence.

## **Office of the State Prosecutor – Subpoena Authority**

The Office of the State Prosecutor, an independent agency within the Executive Branch, investigates and prosecutes a variety of criminal offenses by public officials. *House Bill 424 (passed)* authorizes the State Prosecutor, in order to further an ongoing criminal investigation under the State Prosecutor’s jurisdiction, to issue a subpoena to produce telephone, business, governmental, or corporate records or documents.

## **Admissibility of Evidence – Intercepted Electronic Communications**

*Senate Bill 271/House Bill 869 (both passed)* add “electronic communications” to the existing prohibition on the admissibility of intercepted oral and wire communications that were obtained in violation of the Maryland Wiretapping and Electronic Surveillance Act. The bills also add “electronic communications” to the exception that allows for the admissibility of any oral or wire communication intercepted in another state or U.S. territory, in accordance with the laws of that jurisdiction, that would have been in violation of this State’s Act if (1) at least one of the parties to the communication was outside the State during the communication; (2) the interception was not made as part of or in furtherance of an investigation conducted by or on behalf of law enforcement officials in this State; and (3) all parties to the communication were co-conspirators in a crime of violence as defined by Maryland statute.

The bills also repeal the exclusion of the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit from the definition of “electronic communication.”

### **Criminal Procedure Article – Code Revision Additions**

*Senate Bill 37 (Ch. 15)* revises, restates, and recodifies the laws that relate to the Office of the State Prosecutor, the Office of the State’s Attorney in each county, and the Office of the Public Defender by adding new Titles 14, 15, and 16, respectively, to the Criminal Procedure Article. The three titles derive primarily from Article 10 – Legal Officials, Article 27A – Public Defender, and Title 9, Subtitle 12 of the State Government Article – Office of the State Prosecutor.

The provisions applicable to the Office of the State Prosecutor include laws concerning the establishment of the office, the eligibility of individuals to be nominated and appointed to be the State Prosecutor, the State Prosecutor Selection and Disabilities Commission, the filling of vacancies in the office, the general powers and duties of the State Prosecutor, and the budget and staff of the office.

The provisions applicable to the Office of the State’s Attorney include laws concerning the duties of the State’s Attorney, the State’s Attorneys’ Coordination Council and the Office of the State’s Attorneys’ Coordinator, and the salary, expenses, staffing, and other matters regarding the State’s Attorneys for each county.

The provisions applicable to the Office of the Public Defender include laws concerning the establishment of the office and its personnel, representation of indigent individuals, representation in federal court, and the duties and powers of the Public Defender.

A companion bill, *Senate Bill 10 (Ch. 13)*, corrects specified cross references to new Title 14 and Title 15 that revise provisions relating to the Office of the State’s Attorney and the Office of the Public Defender, respectively. *House Bill 1186 (passed)* repeals obsolete provisions of the Annotated Code related to duties of the State’s Attorney in specified counties that the State’s Attorney no longer performs.

## **Juvenile Law**

### **Access to and Release of Confidential Information**

The confidentiality of police and court records concerning children, is generally protected by law and regulation. In the 2008 session, the General Assembly took steps to provide limited access to and release of these records in specific situations.

### **Escapes from Detention Centers**

A police record concerning a child is confidential and must be maintained separate from those of adults. The contents of the record may only be divulged (1) by order of the court; (2) for purposes of notifying a local school superintendent of an arrest; (3) to the Department of Juvenile Services (DJS) or law enforcement for purposes of investigation or prosecution; (4) to the Maryland Division of Parole and Probation, Maryland Parole Commission, or Maryland Division of Correction for purposes of carrying out their statutory duties; (5) for purposes of notification of a victim of a proceeding involving a juvenile defendant or respondent; or (6) for criminal justice research purposes.

*House Bill 882 (passed)* provides an exception to the general prohibition against disclosure of a juvenile police record by authorizing a law enforcement agency to release to the public a photograph and information identifying a child who has escaped from a juvenile detention center or a secure residential facility for purposes of facilitating apprehension of the child and ensuring public safety.

### **Arrests for Reportable Offenses**

When a student who is enrolled in a public school is arrested for committing a violent crime or for any of various gang-, weapons-, or drug-related offenses, the law enforcement agency making the arrest must notify either the student's principal or the local superintendent of schools of the student arrest. The State's Attorney must notify the local superintendent of disposition of the case. Information concerning the arrest and disposition of the case is considered confidential and may not be made part of the student's permanent school record. However, it may be shared as a confidential file with another public school in which the student enrolls or transfers information obtained by a local superintendent is to be used to provide appropriate educational programming to the student and to maintain a safe and secure school environment.

*Senate Bill 238/House Bill 75 (both passed)* were prompted by an incident that occurred in a private school in Carroll County, Maryland. The principal of Faith Christian School in Westminster unknowingly enrolled a student in the school who had previously committed a sexual assault. Because law enforcement and the public schools that the student previously attended were prohibited from notifying a private school of the student's arrest and subsequent disposition, the safety of the students at Faith Christian School was compromised. Accordingly, *Senate Bill 238/House Bill 75* apply the laws relating to the notification to school officials of the arrest of the student for certain reportable offenses to private schools.

### **Access by the Baltimore City Health Department**

Chapter 10 of 2006 established the authority of the Baltimore City Health Department to access the court, Social Services, juvenile justice, and police records of children who are victims of violence or who are under the health department's care. For records concerning victims of violence, the purpose of the disclosure must be the development of appropriate programs and policies to reduce violence against Baltimore City children. All information must be kept

confidential and the health department must report on the purposes for which the records were used. The health department is liable for the unauthorized release of any information provided under the bill's provisions. This authority terminates on September 30, 2008.

*Senate Bill 607/House Bill 768 (both passed)* extended the termination date to September 30, 2011, for the provisions enacted by Chapter 10 of 2006. Additionally, the bills authorize the Baltimore City Health Department to access the court, social services, juvenile justice, and police records of a child if the record concerns a child convicted of a crime or adjudicated delinquent for an Act that caused a death or near fatality. This provision also terminates on September 30, 2011.

## **Juvenile Programs**

### **Youth Welfare Funds**

A July 2007 legislative audit found that DJS had recorded fiscal 2006 telephone and vending machine commissions of \$186,000 as special funds in violation of General Accounting Division (GAD) requirements. According to the *Accounting Procedures Manual* developed by GAD, all such commissions are considered general funds unless the Board of Public Works determines otherwise. As DJS was not able to document board approval to account for these commissions as special funds, the audit determined that DJS had lacked the authority to carry these funds over to the next fiscal year.

DJS advised that telephone and vending machine commissions had been historically recorded as special funds, with proceeds used for recreational and other programs. The proposed fiscal 2009 State budget reflects these commissions as special funds. *House Bill 706 (passed)* establishes a special, nonlapsing youth welfare fund in each facility of DJS. Each youth welfare fund consists of monies derived from commissary profits, telephone and vending commissions, and money received from other sources. These funds are authorized for use in purchasing goods and services that benefit the youth in the facility. The bill takes effect June 1, 2008.

### **Repeal of Private Residential Rehabilitative Institutions**

Chapter 419 of 2005 defines a "private residential rehabilitation institution" as a private, nonprofit facility serving 150 or more youth that provides academic, athletic, and workforce development to court-adjudicated children. To qualify as this type of institution, the program must have been approved to operate by October 1, 2005.

Only one program, Bowling Brook Preparatory School in Carroll County, however, met the definition of a private residential rehabilitative institution, – and in March 2007, the facility closed. *House Bill 651 (passed)* repeals the authorization for and operating requirements of a private rehabilitative institution.

## Public Safety

### Use of DNA

According to the National Conference of State Legislatures, all states require certain sex offenders to provide a DNA sample to authorities, and 44 states require that all convicted felons provide a DNA sample. Seeking to make further use of DNA samples, *Senate Bill 211 (passed)*, requires a DNA sample to be collected from an individual who is charged with a crime of violence or felony burglary or an attempt to commit those crimes. State law defines a “crime of violence” to include several specific crimes, including abduction, arson, kidnapping, manslaughter, murder, rape, carjacking, first or second degree sexual offense, various types of assault, and attempts to commit the above crimes.

The bill takes effect January 1, 2009, and the requirement to collect DNA samples terminates December 31, 2013. On or before January 15, 2009, the Office of the Public Defender and the Governor’s Office of Crime Control and Prevention (GOCCP) are required to jointly report on barriers to postconviction review of claims of factual innocence, particularly those based on DNA evidence.

The bill contains requirements designed to safeguard against the misuse of DNA samples and sets forth requirements for the proper collection, testing, storage, and disposal, when applicable, of DNA samples. For example, the bill prohibits a DNA sample collected from an individual charged with a crime of violence or felony burglary to be tested or placed in the statewide DNA database system prior to the first scheduled arraignment date, unless the individual consents to or requests testing prior to the arraignment for the purpose of having it checked against a sample that has been processed from the crime scene or the hospital.

Additionally, the bill requires a court to order a DNA database search if the court finds during a postconviction hearing that a reasonable probability exists that a search has the potential to provide exculpatory evidence relating to a postconviction claim. If the search results are favorable to a petitioner, the court is required to order a new trial if there is a substantial possibility that the petitioner would not otherwise have been convicted or may order a new trial in the interest of justice.

The bill provides for the automatic expungement of a DNA record and destruction of a DNA sample within 60 days if the criminal action does not result in a conviction, is finally reversed or vacated and no new trial is permitted, or results in the granting of an unconditional pardon. A DNA sample or DNA record may not be automatically destroyed or expunged if the criminal action is placed on the *stet* docket or the individual receives probation before judgment.

Moreover, an individual may request a court to have a DNA record or profile expunged from the statewide database. On receipt of a court order of expungement, the director of the crime laboratory shall purge any DNA record, DNA sample, or other identifiable information covered by the order from the statewide DNA database and the statewide DNA repository.

To further guard against the improper use of DNA information, the bill prohibits the testing of a DNA sample if the information does not relate to the identification of an individual. The bill also prohibits the use of a DNA sample or record that is required to be destroyed or expunged from being used in a subsequent civil or criminal proceeding. Disclosure of DNA information to unauthorized persons or obtaining DNA information without authorization are misdemeanor offenses, punishable by maximum penalties of five years incarceration and/or a \$5,000 fine.

Beginning April 1, 2010, the State Police must annually report on the status of the statewide DNA database system, including expenses, human resource costs, a statistical analysis of the racial demographics of individuals charged with a covered offense, and a detailed analysis of the investigations aided by DNA profiles. Beginning January 31, 2010, local law enforcement agencies must annually report to the State Police with information needed for the statewide report.

The fiscal 2009 budget provides \$1.4 million to the State Police for additional DNA sample collections.

## **Industrialized Buildings**

An industrialized building, formerly known as a “factory-built building,” is a building assembly or system of building subassemblies manufactured in its entirety, or in substantial part, off-site and transported to a site for installation or erection with or without other specified components, as a finished building or as part of a finished building that comprises two or more industrialized building units. Included within the definition are electrical, plumbing, heating, ventilating, insulation, and other service systems of the building assembly or system of building subassemblies if the service systems are installed at the off-site manufacture or assembly point. An industrialized building does not include open frame construction that can be completely inspected on-site or a manufactured home.

*House Bill 1476 (passed)* creates an additional exception to the definition of “industrialized building” for purposes of certification by the Department of Housing and Community Development (DHCD) by exempting any building that is 8 feet or less in width and 40 feet or less in length, and that is used for business purposes, mobile offices, or storage, and is not open to the general public. A manufacturer of an exempted building may elect to have DHCD certify the building in order to provide an insignia. The bill’s provisions are effective June 1, 2008.

## **Boilers and Pressure Buildings**

*Senate Bill 840/House Bill 1274 (both passed)* authorize inspection of an exhibition or antique boiler or pressure vessel by a private inspector, if the inspector is certified by the American Society for Nondestructive Testing and commissioned by the National Board of Boiler and Pressure Vessel Inspectors. If the private inspector finds that the unit meets all applicable

requirements, the chief boiler inspector must issue a certificate to the owner that authorizes use of the unit in an exhibit or show for noncommercial purposes. Under *House Bill 407 (failed)* the Commissioner of Labor and Industry would have been authorized to commission special inspectors employed by certain authorized inspection agencies to make certificate inspections.

### **Elevator Safety**

*House Bill 63 (passed)* establishes an Elevator Safety Review Board Fund to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the board. A more detailed discussion of this bill may be found under Part H – Business and Economic Issues of this *90 Day Report*.

### **Law Enforcement and Correctional Officers**

*House Bill 263 (passed)* changes the chairmanship of the Police Training Commission from the Deputy Secretary of Public Safety and Correctional Services (or representative) to the Secretary of State Police. The bill also specifies that the Secretary of Public Safety and Correctional Services serves on the commission, rather than the deputy secretary.

Law enforcement officers who are charged with a felony may be subject to an emergency suspension without pay until a hearing is held. *House Bill 1370 (failed)* would have allowed the Board of Public Works to grant lost wages and attorney's fees under certain circumstances to a State law enforcement employee suspended without pay who applies for such payment or reimbursement, less any amount for lost wages due to unrelated administrative suspension or disciplinary action.

A correctional officer employed in any unit of the Division of Correction must be at least 21 years old. This age requirement is extended by *House Bill 765 (passed)* to correctional officers hired on or after October 1, 2008, in the Patuxent Institution or any unit of the Division of Pretrial Detention and Services, which is responsible for processing and managing the care, custody, and control of Baltimore City arrestees and inmates, primarily at the Baltimore City Detention Center.

The Department of General Services (DGS) Division of Facilities Security offers 24-hour law enforcement and security for the Annapolis and Baltimore State office complexes. *House Bill 1550 (passed)*, an emergency bill, alters provisions relating to the DGS jurisdiction, authority, and responsibilities in Annapolis and Baltimore City. A more detailed discussion of this bill may be found under Part C – State Government of this *90 Day Report*.

### **Other Public Safety Personnel**

Established in 1979, the Emergency Numbers Systems Board coordinates installation and enhancement of county 9-1-1 emergency telephone number services systems. The board issues guidelines and determines review procedures to approve or disapprove county plans for these

systems and sets criteria for reimbursing counties from the original 9-1-1 Trust Fund and from ongoing funds and provides for audit of trust fund accounts.

The membership of the Emergency Number Systems Board increases to 17 members under *Senate Bill 178 (passed)*. The two additional members are a second representative of emergency management services in the State and a representative of the geographical information systems in the State.

Since January 1, 1984, any Cecil County volunteer firefighter who accumulates enough points to qualify and certify for 25 years of service credit and who fails to remain active or otherwise serve in a volunteer fire company is eligible to begin receiving benefits at age 60. Monthly benefits paid from the county's Volunteer Length of Service Award Program fund are \$300 for 25 years of service and \$6 for each additional year of service credit. *House Bill 1495 (passed)* lowers the age, from 60 to 55, at which a Cecil County volunteer firefighter with 25 years of service credit can begin receiving retirement benefits. The bill takes effect July 1, 2008.

*House Bill 1245 (passed)* creates a Bill of Rights relating to the employment, investigation, and discipline of correctional officers in Cecil County. The bill's provisions are similar to the provisions of the Law Enforcement Officers' Bill of Rights, enacted in 1974 to guarantee police officers of specified State and local agencies certain procedural safeguards in any investigation that could lead to disciplinary action.

## **Inmates**

Local correctional facilities are responsible for all inmate costs during the first 90 days of incarceration, after which the State shares the per diem facility costs. The State is also required to pay for medical expenses that exceed \$25,000 per inmate per fiscal year for all inmates confined in a local correctional facility, regardless of whether the inmate has been sentenced. In fiscal 2006, the State paid approximately \$665,000 toward these medical expenses.

*House Bill 359 (passed)* limits liability for payment to a health care provider for any health care service provided to a local correctional facility inmate outside the facility to the lesser of (1) the actual amount billed by the health care provider; or (2) the Medicaid rate. Counties may exempt themselves from these provisions by filing a specified written declaration that may be withdrawn at any time. "Health care providers" do not include hospitals regulated by the Health Services Cost Review Commission. For federally qualified health centers, the "Medicaid rate" is the amount that would be paid by Medicaid using a specified federal payment methodology.

Maryland Correctional Enterprises (MCE), the prison industries program of Maryland, provides work and job training in fields ranging from data entry to furniture restoration for inmates incarcerated in Division of Correction facilities. MCE is funded by sales revenues from the goods it produces and the services it supplies to local, State, and federal agencies. These goods and services are also available for purchase by charitable, civic, educational, fraternal, or religious organizations.

**House Bill 744** (*passed*) allows MCE to develop training programs to provide construction and construction-related services for State correctional facilities. The training programs are to be developed in consultation with the Maryland and District of Columbia Building Trades Councils. **Senate Bill 145** (*failed*) would have removed a longstanding ban against the sale of goods and services to the private sector and to an individual employed by the State.

### **Governor’s Office of Crime Control and Prevention**

Financial grants are made to the counties and qualifying municipal corporations for the exclusive purpose of providing adequate police protection, including a municipal sworn police officer allocation. They are provided under a State Aid for Police Protection Fund, which was established in 1967, and is commonly known as the police aid formula.

There are 156 municipalities in Maryland. Baltimore and Howard counties are the only counties in Maryland that do not have municipalities. The Governor’s fiscal 2009 budget reflects a total of \$66.4 million in general funds to cover the annual police aid formula, for 111 grants to counties and municipalities. Administration of the fund has been done by the Department of State Police.

The Governor’s Office of Crime Control and Prevention (GOCCP) is responsible for the development and revision of the Maryland Crime Control and Prevention Strategy. The office administers numerous federal and State grant programs and serves as a clearinghouse for information, research, and analysis relating to crime control and prevention policy. One of its identified key goals involves the administration of funds to State and local law enforcement and criminal justice agencies to improve the delivery of services.

Effective July 1, 2008, **House Bill 707** (*passed*) transfers the administration of the State Aid for Police Protection Fund from the Department of State Police to GOCCP.

In addition, **House Bill 705** (*passed*) transfers the administration of the School Bus Safety Enforcement Fund from the Department of State Police to GOCCP. The fund is a special, nonlapsing fund that assists law enforcement agencies in addressing the problem of drivers illegally failing to stop for school vehicles.

### **Monitoring High Risk Adult and Juvenile Offenders**

The fiscal 2009 budget includes \$3.1 million to help fill parole and probation agent vacancies and to enhance the implementation of the statewide Violence Prevention Initiative. This initiative is a statewide program to identify adult offenders, whose risk factors and criminal histories indicate a propensity for violence. These offenders are then provided with enhanced supervision. Referral into the program is based on factors such as age, number of prior arrests, and gang affiliation. There are currently 1,219 such cases which have been identified for participation in the program. Of that number, 957 are in Baltimore City. The additional funds

will provide more intensive supervision through the enhanced use of Global Position Satellite monitoring and lower caseload ratios.

The 2009 budget also provides just over \$700,000 for the Department of Juvenile Services to use Global Positioning System equipment to track up to 200 youth who, in the opinion of the department, are at-risk of committing or becoming victims of violent crime.