

Part E

Crimes, Corrections, and Public Safety

Criminal Law

Crimes Involving Firearms

Restrictions against Use and Possession of Firearms

The use and possession of firearms and handguns are regulated by the State. A regulated firearm is any handgun or any of the 45 assault weapons identified in State law. Under current law, use of an antique firearm or a handgun in a crime of violence or felony is subject to a nonsuspendable, nonparolable mandatory minimum sentence of five years. Also under current law, a person may not possess a regulated firearm in the State if the person was previously convicted of a crime of violence or a violation of specified controlled dangerous substances offenses. The penalty for this offense is a nonsuspendable five-year sentence.

Senate Bill 174/House Bill 241 (both passed) expand the prohibition and restrictions against use and possession of firearms. The bills expand the scope of the crime of using an antique firearm or handgun in the commission of a crime of violence or any felony to include “firearm.” “Firearm” is defined to include a weapon, whether loaded or unloaded and a rifle or a shotgun. This change closes a loophole that has prevented courts from penalizing those who carry out crimes with rifles or shotguns as severely as those who use handguns. *Senate Bill 174/House Bill 241* also extend the maximum sentence to 15 years for a person previously convicted of a crime of violence or a specified controlled dangerous substance offense who later is apprehended in possession of a rifle or shotgun.

The bills bring State law closer to federal law which prohibits the possession of any firearm or ammunition by a person convicted in any court of a crime punishable by imprisonment for a term exceeding one year. For a more detailed discussion of this issue, see the subpart “Public Safety” within this Part E of this *90 Day Report*.

Drug Crimes

Distribution of Salvia to Individuals under 21 – Increased Penalties

Salvia is the common name used for *Salvia divinorum* or *Salvinorum A*, an herb plant native to Mexico. According to the U.S. Drug Enforcement Administration, its leaves may cause a variety of hallucinogenic effects when ingested or smoked. Salvia is sold on the Internet and in college-area paraphernalia shops. Chapters 200 and 201 of 2010 prohibited the distribution of Salvia to, or possession of Salvia by, an individual under the age of 21.

House Bill 1327 (passed) increases the maximum penalties for distribution of Salvia to an individual under the age of 21 from (1) \$300 to \$1,000 for a first violation; (2) \$1,000 to \$2,000 for a second violation within two years of the first violation; and (3) \$3,000 to \$6,000 for a third or subsequent violation occurring within two years of the preceding violation.

Medical Marijuana

Under current law, an individual charged with possession or use of marijuana may introduce evidence related to medical necessity. If the person is convicted and the court finds there was medical necessity, the maximum punishment is limited to a fine of \$100.

Senate Bill 308 (passed) establishes medical necessity as an affirmative defense in a prosecution for the possession and use of marijuana and paraphernalia related to marijuana. For a more detailed discussion of this issue, see the subpart “Public Health” within Part J – Health and Human Services of this *90 Day Report*.

Crimes Involving Protected Speech and Harassment

Picketing at a Military Funeral

In 2006, Marine Lance Corporal Matthew Snyder of Westminster died in Iraq. Members of a Kansas church, the Westboro Baptist Church, picketed outside of his military funeral at St. John’s Catholic Church in Westminster. This group has mounted anti-gay protests at military funerals for several years based on their belief that military deaths in Iraq and Afghanistan are the result of the nation’s tolerance of homosexuality. The soldier’s father sued the church and its members for their actions and was awarded a multimillion dollar verdict by the trial court. A federal appeals court threw out the verdict, stating that the U.S. Constitution shielded the members of the church from tort liability. On March 2, 2011, the U.S. Supreme Court, by a vote of eight to one, upheld the appeals court decision stating that the words and actions of the protesters fall under the purview of constitutionally protected free speech. *Snyder v. Phelps*, 562 U.S. ____ (2011). In the majority opinion, Chief Justice Roberts noted that the picketing is protected free speech when the disputed words “address matters of public import on public property” and when the protest is conducted “in a peaceful manner, in full compliance with the guidance of local officials.” *Snyder* at 14 and 15 (slip opinion).

Chapter 357 of 2006, enacted after Lance Corporal Snyder’s funeral, put in place several restrictions on protests and related activities at a funeral, memorial service, burial, or funeral procession. The law provides a person may not engage in picketing activity within 100 feet of a funeral, burial, memorial service, or funeral procession that is targeted at one or more persons attending the solemn event. A person may not (1) knowingly obstruct, hinder, impede, or block another person’s entry to or exit from a funeral, burial, memorial service, or funeral procession; or (2) address speech to a person attending the solemn event that is likely to incite or produce an imminent breach of the peace. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 90 days and/or a \$1,000 fine.

Senate Bill 977 (passed), introduced in the Maryland Senate the week after the U.S. Supreme Court decision in *Snyder*, increases the distance within which a person is prohibited from engaging in picketing activities at a funeral, burial, memorial service or funeral procession from 100 feet to 500 feet.

Harassment

A person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other (1) with the intent to harass, alarm, or annoy the other; (2) after receiving a reasonable warning or request to stop made by or on behalf of the other; and (3) without a legal purpose. The prohibition does not apply to a peaceable activity intended to express a political view or provide information to others. A violator is guilty of a misdemeanor and subject to maximum penalties of 90 days imprisonment and/or a \$500 fine.

House Bill 510 (passed) increases maximum penalties for a second or subsequent conviction to 180 days imprisonment and/or a \$1,000 fine. The bill maintains the current penalties for the first offense of harassment.

Crime of Child Neglect

Senate Bill 178/House Bill 162 (both passed) create a new misdemeanor crime of child neglect. A parent, family member, household member, or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor may not neglect the minor. For a more detailed discussion of this issue, see the subpart “Family Law” within Part F – Courts and Civil Proceedings of this *90 Day Report*.

Crimes Involving Vehicles

Manslaughter by Vehicle or Vessel – Criminal Negligence

House Bill 363 (passed) creates a new misdemeanor crime of criminally negligent manslaughter by vehicle or vessel. For a more detailed discussion of this issue, see the subpart “Motor Vehicles” within Part G – Transportation and Motor Vehicles of this *90 Day Report*.

Crimes Involving Fraud

Assuming the Identity of a Fictitious Person

In 2008, the Court of Appeals held that the prohibition on the assumption of the identity of another in the State's identity fraud law is ambiguous as to whether the phrase "identity of another" includes the assumption of a "fictitious identity." *Ishola v. State*, 404 Md. 155 (2008). The Court held that the defendant, Mr. Ishola, could not be convicted under the statute because an examination of the legislative history, case law, statutory purpose, title and relation to other laws showed that the legislature intended for "another" to be an actual person. *Senate Bill 500/ House Bill 408 (Chs. 70 and 71)* clarify the law by providing that a person may not knowingly and willfully assume the identity of another, including a fictitious person, to avoid prosecution for a crime, to avoid payment of a debt or other legal obligation, or with fraudulent intent to obtain a benefit.

Counterfeiting – Venue

Under current law, the prosecution of a crime involving counterfeiting a private instrument or document may be commenced in any county in which (1) an element of the crime occurred; (2) the victim resides; or (3) the victim conducts business, if the victim is not an individual. *Senate Bill 511 (Ch. 73)* adds as an additional venue for such a prosecution the county in which an alleged counterfeit deed or other instrument is recorded in county land records, filed with the clerk of the circuit court, or filed with the register of wills.

Sexual Crimes

Statute of Limitations for Nonconsensual Sexual Contact with Minor

Under current law, the crime of fourth degree sexual offense prohibits a person from engaging in nonconsensual sexual contact with another person. The law also prohibits a person from engaging in a sexual act or vaginal intercourse with a victim who is 14 or 15 years old if the defendant is at least 4 years older than the victim. If convicted, the defendant is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000.

In general, a prosecution for a misdemeanor has a one year statute of limitations. *House Bill 724 (passed)* increases the statute of limitations applicable to the prohibition against nonconsensual sexual contact with another person to three years, if the victim was a minor at the time of the crime. This length of time is the same statute of limitations as for the crime of a "person in position of authority" engaging in a sexual act or vaginal intercourse with a minor who, at the time of the act, is a student enrolled at a school where the person is employed.

Definitions

In general, crimes involving a "sexual act" carry more severe penalties than crimes involving "sexual contact." Under current law, the term "sexual contact" means an intentional

touching of the genital or another intimate area of a victim’s body for sexual arousal or gratification, or for the abuse of either party. It includes penetration of the genital or intimate area of a victim by certain parts of an actor’s body but not including by the actor’s genitals, mouth, or tongue. *Senate Bill 204/House Bill 1128 (both passed)* change the definitions of both terms by adding “part of an individual’s body” to the definition of “sexual act” and removing that phrase from the definition of “sexual contact.” In this way, the bills expand the definition of “sexual act” to include certain acts currently defined as “sexual contact.”

Criminal Procedure

Sex Offenders

House Bill 1020 (passed) alters provisions of law related to the registration of sex offenders, including juvenile sex offenders. For a discussion of this bill, see the subpart “Public Safety” within this Part E of the *90 Day Report*.

Death Penalty

Persons charged with first degree murder, if found guilty, are subject to penalties of life imprisonment, life imprisonment without parole, or death. During the 2009 session, the General Assembly passed legislation altering the application of the death penalty in Maryland. Chapter 186 of 2009 restricted death penalty eligibility only to cases in which the State presents the court or jury with (1) biological or DNA evidence that links the defendant with the act of murder; (2) a videotaped, voluntary interrogation and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder. A defendant may not be sentenced to death if the State relies solely on evidence provided by eyewitnesses in the case.

Senate Bill 837/House Bill 1075 (both failed) would have repealed the death penalty and all provisions relating to it, including those relating to its administration and post death sentencing proceedings. The bills would have required a person found guilty of murder in the first degree to be sentenced to imprisonment for life or imprisonment for life without the possibility of parole. The bills also specified that if the State has already properly filed a notice of intent to seek a death sentence, that notice must be considered withdrawn. In such instance, the State must also be considered to have properly filed notice to seek a sentence of life imprisonment without the possibility of parole.

Pretrial and Trial Matters

Wiretapping

Except as otherwise provided in statute, it is unlawful for a person to (1) willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication; (2) willfully disclose, or endeavor to disclose, to any other person the

contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; and (3) willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

However, it is lawful for law enforcement officers and persons acting with the prior direction and under the supervision of law enforcement officials to intercept communications as part of a criminal investigation to provide evidence of the commission of several specified crimes. The exception applies so long as the interceptor is a party to the communication or one of the parties to the communication has given prior consent to the interception.

The Attorney General, State Prosecutor, or any State's Attorney may apply to a judge to grant an order authorizing interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of specified crimes. However, no application or order is required if the interception is lawful under the general wiretap provisions.

Senate Bill 299/House Bill 345 (Chs. 54 and 55) add human trafficking to the list of crimes for which evidence may be gathered during a criminal investigation through the interception of oral, wire, or electronic communications. The Acts also add human trafficking to the list of crimes for which a judge may grant an order authorizing the interception of wire, oral, or electronic communications.

Bail Bonds

Bail is intended to ensure the presence of the defendant in court, not as punishment. If there is a concern that the defendant will fail to appear in court, but otherwise does not appear to pose a significant threat to the public, the defendant may be required to post a bail bond rather than be released on recognizance. If a defendant fails to appear in court as required, the court will order the forfeiture of the bond and issue a warrant for the defendant's arrest. If the defendant or surety can show that there were reasonable grounds for the failure to appear, a judge may strike the forfeiture in whole or in part. Where a surety executed the bond with the defendant, the surety has 90 days to satisfy the bond by either producing the defendant or by paying the penalty amount of the bond. The court may extend this period to 180 days for good cause shown.

House Bill 682 (passed) specifies requirements for the return of a forfeited bond or collateral to a surety under certain circumstances. In effect, a bail bondsman must pay the penalty amount of the bond into the court within the 90 or 180 day period to be entitled to a 10-year period within which the forfeiture of bail or collateral may be stricken out upon apprehension of the defendant.

Post-conviction Matters

Animal Cruelty – Probation

Several states have statutes regarding future ownership of animals by individuals convicted of animal cruelty. The statutes range from outright bans on future ownership to authorization for a court to ban future ownership for a certain amount of time. *Senate Bill 115/House Bill 227 (Chs. 26 and 27)* authorize a court, as a condition of probation for animal abuse, neglect, or cruelty, to prohibit a defendant from owning, possessing, or residing with an animal.

Parole Approval for Inmates Sentenced to Life Imprisonment

A person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years considering allowances for diminution credits. A person sentenced to life imprisonment for first degree murder as a result of a proceeding for the death penalty or life without the possibility of parole is not eligible for parole consideration until that person has served 25 years considering allowances for diminution credits. An inmate sentenced to life imprisonment without the possibility of parole is not eligible for parole consideration and may not be granted parole at any time during the inmate's sentence. If eligible for parole, an inmate serving a life term may only be paroled with the approval of the Governor.

According to the Maryland Parole Commission, since 1995, although commutations of sentences have been made by the Governor, no inmate serving a term of life imprisonment has been paroled outright.

House Bill 302 (passed) specifies that, if the Maryland Parole Commission or the Patuxent Institution's Board of Review decides to grant parole to an inmate sentenced to life imprisonment who has served 25 years without application of diminution of confinement credits, the decision must be transmitted to the Governor, who may disapprove the decision in writing within 180 days. However, if the Governor does not disapprove the decision within that timeframe, the decision to grant parole becomes effective. For individuals whose parole recommendation is pending approval by the Governor on October 1, 2011, and who have served 25 years without consideration for diminution credits, the Governor has 180 days after that date to disapprove the recommendation or the parole becomes effective.

Parole Violations

Senate Bill 801/House Bill 919 (both passed) require the Department of Public Safety and Correctional Services (DPSCS) to develop, by October 1, 2012, a pilot program in two counties that creates a system of graduated administrative sanctions for violations of conditions of parole by releasees from the Division of Correction. Beginning in 2013, by October 1 of each year, DPSCS must report to the General Assembly on the status of the pilot program, the percentage of departmental programs that use evidence-based practices, and the number of individuals incarcerated for technical violations and new offenses while on parole. The bills take effect October 1, 2011, and terminate September 30, 2015.

Revocation of Parole

Under current law, an order of parole is revoked, the inmate must serve the remainder of the sentence originally imposed unless the commissioner hearing the parole revocation, in the commissioner's discretion, grants credit for time between release on parole and revocation of parole. An inmate may not receive credit for time between release on parole and revocation of parole if (1) the inmate was serving a sentence for a violent crime when parole was revoked; and (2) the parole was revoked due to a finding that the inmate committed a violent crime while on parole.

House Bill 1174 (passed) repeals the general requirement that an inmate whose parole is revoked serve the remainder of his/her imposed sentence. Instead, the bill authorizes the parole commissioner who conducted the hearing on the revocation to require the inmate to serve any unserved portion of the sentence originally imposed on the inmate. The bill takes effect on October 1, 2011, and terminates on June 30, 2014. DPSCS must submit a report by October 1, 2013, on the number of inmates whose sentences of imprisonment following a revocation of parole were reduced as a result of the bill and the recidivism rate for inmates released following revocation of parole as a result of the bill.

Victims' Rights

Human Trafficking

The U.S. Department of State has estimated that approximately 600,000 to 800,000 victims are trafficked annually across international borders worldwide and approximately half of these victims are minors. According to the 2005 report, 80% of internationally trafficked victims are female and 70% are trafficked into the sex industry.

Chapters 340 and 341 of 2007 renamed the crime of pandering to human trafficking. Under the human trafficking law, a range of activities related to taking or causing a person to be taken to a place for prostitution or persuading another to be taken to a place for prostitution are prohibited.

Senate Bill 327 (passed) authorizes a person convicted of prostitution to file a motion to vacate the judgment if, when the person committed the act of prostitution, the person was acting under duress caused by an act of another committed in violation of the prohibition against human trafficking. Among other requirements, the motion to vacate the judgment must be signed and consented to by the State's Attorney and describe the evidence and provide copies of any documents showing that the defendant is entitled to relief. The court is required to hold a hearing on the motion unless the motion fails to assert grounds on which relief may be granted. In ruling on the motion, the court may vacate the conviction, modify the sentence, or grant a new trial.

Enforcement

Article 47 of the Maryland Declaration of Rights grants victims of crime in cases originating in a circuit court “...the right to be informed of the rights established in this Article and, upon request and if practicable, to be notified of, to attend, and to be heard at a criminal justice proceeding...” However, Article 47 also notes that any rights afforded victims of crime under the Declaration of Rights do not authorize victims to take any action to stay a criminal proceeding.

House Bill 801 (passed) requires a court to ensure that a victim of crime is afforded all of the rights provided to these victims under the law. Under the measure, a victim who alleges that the victim’s right to restitution was not considered or was improperly denied may file a motion requesting relief within 30 days of the denial or alleged failure to consider. If the court finds that the victim’s right to restitution was not considered or was improperly denied, the court may enter a judgment of restitution.

Office of the Public Defender

The Office of the Public Defender (OPD) determines eligibility for services by evaluating the financial ability of the applicant to pay for a competent private attorney and all other necessary expenses of representation. Financial ability is determined by a number of factors, including the individual’s assets, income, the nature of the offense, and the length and complexity of the proceedings. OPD is required to investigate the financial status of an applicant when the circumstances merit.

The District Court, a circuit court, or the Court of Special Appeals may appoint an attorney to represent an indigent individual if (1) there is a conflict in legal representation in a matter involving multiple defendants, and one of the defendants is represented by or through OPD; or (2) OPD declines to provide representation to an indigent individual entitled to representation.

In *Workman v. State*, 413 Md. 475 (2010), the Maryland Court of Appeals held that a trial court has the authority to appoint an OPD attorney to represent an indigent individual if (1) OPD erroneously declines to represent a criminal defendant due to a failure to properly consider the statutorily mandated criteria for determining indigency; and (2) a court finds, upon its subsequent mandatory independent review, that the individual qualifies for OPD representation. According to the Court, the only exception to this authority is when an actual and unwaived or unwaivable conflict of interest would result from the appointment.

Senate Bill 515 (passed) specifies that an individual whose assets and net annual income are less than 100% of the federal poverty guidelines may be determined eligible for services from OPD without an assessment. The bill also clarifies that when OPD declines representation, the court has the authority to appoint outside counsel, rather than OPD.

Criminal Justice System Central Repository

The Criminal Justice Information System (CJIS) Central Repository at the Department of Public Safety and Correctional Services collects, manages, and disseminates Maryland criminal history record information for criminal justice and noncriminal justice purposes. Reporting information to the CJIS Central Repository is a routine procedure for State and local law enforcement agencies.

Senate Bill 66 (Ch. 17) eliminates a requirement that the release of a person after arrest without the filing of a charge must be reported to the CJIS Central Repository. Chapter 63 of 2007 rendered the reportable event that is the subject of this bill obsolete. That law provided that a person who is arrested or confined by a law enforcement unit on or after October 1, 2007, and then is released without being charged with the commission of a crime is entitled to the automatic expungement of all police records, including photographs and fingerprints, relating to the matter and is not required to pay any fee or costs in connection with the expungement.

Juvenile Law

Juvenile Records

In general, a court record or police record concerning a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by court order.

Access by the Division of Pretrial Detention and Services

Individuals arrested and processed in Baltimore City are in the custody of the Division of Pretrial Detention and Services (DPDS), which is a State-operated function for the city. DPDS includes the Pretrial Release Services Program in Baltimore City, which makes recommendations to the court concerning an individual's fitness for home detention or other types of pretrial release and supervises defendants who have been released to the community to await trial. Since DPDS does not currently have access to the juvenile records of these individuals, the information being presented to the court is limited.

House Bill 133 (Ch. 102) establishes an additional exception to existing statutory provisions maintaining the confidentiality of juvenile records by authorizing DPDS to access juvenile court records if (1) the individual who is the subject of the court record is charged as an adult with an offense; (2) the access to and use of the court record is strictly limited for the purpose of determining the defendant's eligibility for pretrial release; and (3) the court record concerns an adjudication of delinquency that occurred within three years of the date the individual is charged as an adult.

Disclosure between Departments of Education and Juvenile Services

Chapter 535 of 2004 established a Juvenile Services Education Program within the Maryland State Department of Education (MSDE) and required that the program provide

educational services in all residential facilities of the Department of Juvenile Services (DJS) by July 1, 2012. The Budget Reconciliation and Financing Act of 2009 (Chapter 487) extended the time period to July 1, 2014. As of July 1, 2010, MSDE had assumed control of six educational programs. *Senate Bill 62 (Ch. 16)* authorizes MSDE and DJS, when necessary to ensure the appropriate delivery of services for juveniles in the Juvenile Services Education Program who receive MSDE educational services in a DJS facility, to share the juveniles' education records.

Pilot Programs

Certain previously established pilot programs dealing with juveniles were extended or expanded by the General Assembly.

Truancy Reduction

Truancy courts are problem-solving courts in which cases are heard on a special docket by the same judge each month. The courts hold regular hearings in each case to review a child's progress toward full attendance and to address the causes of the child's truancy. Chapter 551 of 2004 authorized a three-year Truancy Reduction Pilot Program (TRPP) in the juvenile courts in Dorchester, Somerset, Wicomico, and Worcester counties. Chapter 648 of 2007 extended the term of TRPP and authorized the establishment of TRPP in the juvenile courts of Harford and Prince George's counties. Chapter 718 of 2009 repealed the termination date of TRPP, establishing permanent truancy courts in Dorchester, Harford, Prince George's, Wicomico, and Worcester counties. *Senate Bill 278/House Bill 49 (Chs. 48 and 49)* authorize the establishment of a TRPP in the juvenile court in Talbot County.

House Bill 1141 (passed) repeals a requirement that a criminal compulsory school attendance violation charge be filed against a person with legal custody or care and control of a child and dismissed or steted before a child younger than age 12 is eligible to participate in a TRPP.

Child in Need of Supervision

Chapter 601 of 2005 required the Secretary of Juvenile Services to establish a Child in Need of Supervision (CINS) Pilot Program in Baltimore City and Baltimore County. A "child in need of supervision" is a child who requires guidance, treatment, or rehabilitation and (1) is required by law to attend school and is habitually truant; (2) is habitually disobedient, ungovernable, and beyond the control of the person having custody of him; (3) departs himself so as to injure or endanger himself or others; or (4) has committed an offense applicable only to children. Within 25 days of receiving a complaint alleging that a child is in need of supervision, a juvenile intake officer may (1) authorize the filing of a petition or a peace order request, or both; (2) propose an informal adjustment of the matter; or (3) refuse authorization to file a petition or peace order or both. An intake officer is not required to provide for an assessment and the delivery of services before authorizing action on a complaint.

House Bill 1190 (passed) expands the CINS Pilot Program to include Cecil, Montgomery, and Prince George's counties. The bill authorizes the Governor to include a

general fund appropriation of \$250,000 for DJS in fiscal 2013 to expand the pilot program to these counties. The provision expanding the pilot program takes effect on July 1, 2012.

Reports to General Assembly

The General Assembly passed legislation requiring DJS to provide reports on two issues of concern.

Recidivism Rates

Senate Bill 200 (passed) requires the Secretary of Juvenile Services to report to the General Assembly by January 1 of each year on the recidivism rates of children committed to DJS for placement in residential care. The report must include (1) recidivism rates for all children committed to DJS for placement in residential care; (2) recidivism rates by region for all children committed to DJS for placement in residential care; (3) recidivism rates for each residential care program; (4) data from the prior three fiscal years; and (5) recidivism rates calculated for one-year and three-year timeframes.

Services and Programs for Females

According to its fiscal 2010 *Annual Statistical Report*, DJS handled 11,056 intake cases involving females in fiscal 2010, compared to 29,722 cases involving males. An evaluation of Gender Responsive Services conducted by DJS in 2007 yielded several recommendations, including (1) the creation of a Trauma Informed Care treatment model for female youth in State-operated residential care; (2) the creation of a gender responsive certification training program for all staff and vendors working with female youth in both residential and community settings; and (3) the establishment of gender responsive community based programming in every region. *Senate Bill 787/House Bill 511 (both passed)* require DJS to submit a report to the General Assembly by December 1, 2011, regarding the manner in which DJS will use existing resources to ensure that females receive services substantially equivalent to those offered to males in fiscal 2013 and subsequent years. The report must include statewide and regional information on the utilization of (1) prevention and diversion services; (2) alternatives to detention, including day and evening reporting and shelter care; (3) the continuum of services for those committed to DJS for probation or residential treatment, including evidence-based programs; and (4) educational and vocational training services.

Public Safety

Firearms

Removal or Alteration of Identification Mark

House Bill 519 (passed) specifies that it is a misdemeanor to knowingly violate the State's restrictions on the removal or alteration of an identification mark or number on a firearm. A violator is subject to maximum penalties of imprisonment for five years or a fine of \$10,000.

The bill also repeals the prohibition against the possession of ammunition solely designed for a regulated firearm by a person under 21 years of age. A regulated firearm is any handgun or any of the 45 assault weapons or copies identified in the Public Safety Article.

Use and Possession of Firearms in Crimes

Senate Bill 174/House Bill 241 (both passed) expand prohibitions against the use and possession of handguns and concealable antique firearms in the commission of certain crimes of violence or felonies to include the use of any firearm, whether loaded or unloaded. These bills establish a statutory maximum penalty of 15 years for possession of a regulated firearm by a person previously convicted of certain crimes of violence or drug-related crimes.

However, if at the time of the commission of the offense, more than five years has elapsed since the person completed serving the sentence for the most recent conviction of certain offenses, including all imprisonment, mandatory supervision, probation, and parole, the imposition of the mandatory minimum sentence is within the discretion of the court. Additionally, the mandatory minimum may not be imposed unless the State’s Attorney notifies the person in writing at least 30 days before trial of the State’s intention to seek the mandatory minimum sentence.

The bills also remove certain provisions, including the offense of making a false prescription for a controlled dangerous substance, from the list of predicate offenses that make a defendant subject to the penalty provisions that the bills establish.

Sex Offenders

Statute of Limitations

Senate Bill 196/House Bill 724 (both passed) increase the statute of limitations from one year to three years for the initiation of a prosecution for the fourth degree sex offense involving nonconsensual sexual contact, if the victim was a minor at the time of the offense. “Sexual contact” means an intentional touching of the victim’s or actor’s genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party. A fourth degree sexual offense is punishable by imprisonment not exceeding one year or a fine not exceeding \$1,000 or both. For more detailed discussion of this issue, see the subpart “Criminal Law” within this Part E of this *90 Day Report*.

Sex Offender Registry

House Bill 1020 (passed) clarifies that a person convicted of sexual solicitation of a minor, under circumstances where the solicitation was directed at a law enforcement officer posing as a minor, must register with the State’s sex offender registry.

The bill makes the retroactive application of sex offender registration requirements apply to a person who is convicted of a felony, rather than any crime, on or after October 1, 2010, and who has a prior conviction for an offense for which sex offender registration is required as well

as a person convicted on or after October 1, 2010, of sexual solicitation of a minor, regardless of whether the victim was a minor.

The bill also increases, from 13 to 14 years of age, the age for inclusion on the registry of juvenile sex offenders, and limits the delinquent acts for which juvenile registration is required to acts, if committed by an adult would constitute:

- a second degree sexual offense if a person had engaged in a sexual act with another by force, or the threat of force without consent or if the victim is a mentally defective, mentally incapacitated, or physically helpless individual (rather than any second degree sexual offense); or
- a third degree sexual offense involving the nonconsensual sexual contact with another and (1) employing or displaying a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon; (2) suffocating, strangling, disfiguring, or inflicting serious physical injury on the victim or another in the course of committing the crime; (3) threatening, or placing the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; (4) being aided and abetted by another; or (5) with a victim that is a mentally defective, mentally incapacitated, or physically helpless individual (rather than the third and fourth degree violations currently enumerated).

A juvenile registrant must appear in person at a location designated by the Department of Juvenile Services (DJS) every three months to (1) update and verify the information included in the registry; and (2) allow DJS to take a digital image of the juvenile registrant.

The bill may prevent the loss of \$540,000 in federal Byrne Justice Assistance Grant funds beginning in fiscal 2013.

Personnel Issues

Law Enforcement Officers' Bill of Rights

The protections afforded by the Law Enforcement Officers' Bill of Rights (LEOBR) is extended to members of the Internal Investigation Unit of the Department of Public Safety and Correctional Services under *Senate Bill 218 (passed)*.

LEOBR was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. The Internal Investigation Unit is the twenty-fourth police agency, including State and local, to which LEOBR is applicable.

Warrant Apprehension Unit

House Bill 899 (passed) places the Warrant Apprehension Unit within the Department of Public Safety and Correctional Service's Division of Parole and Probation. It also grants

employees of the unit the powers of police and peace officers and classifies them as police officers and law enforcement officers, thus bringing them under the protection of LEOBR and making them subject to the certification standards of the Police Training Commission.

The Warrant Apprehension Unit executes warrants for the arrest of probationers for whom a warrant is issued for an alleged violation of probation; obtains and executes search warrants authorized by statute; and arrests offenders in the program as authorized by statute.

St. Mary’s County Correctional Officers

Under *House Bill 522 (Ch. 128)*, St. Mary’s County correctional officers are afforded the same rights relating to the employment, investigation, and discipline that Cecil County correctional officers enjoy under the Cecil County Correctional Officers’ Bill of Rights.

Collective Bargaining Rights

Senate Bill 699 (failed) would have granted collective bargaining rights, covering wages, hours, and working conditions, to State law enforcement noncommissioned officers who are represented by an exclusive employee representative.

Procedures and Reports

Race-based Traffic Stops

In 2001, law enforcement agencies in the State were required to collect certain data about traffic stops and to adopt a policy against traffic stops that were race-based. This requirement lapsed in 2010, but *Senate Bill 14/House Bill 130 (both passed)* revive the requirement. The bills require law enforcement agencies to adopt policies against such stops to be used as management tools to promote nondiscriminatory law enforcement. The policies must also be used in the training and counseling of officers.

The traffic stop information must include the driver’s race and ethnicity, to evaluate the manner in which the vehicle laws are being enforced. A “traffic stop” does not include (1) a checkpoint or roadblock stop; (2) a stop for public safety purposes arising from a traffic accident or emergency situation; (3) a stop based on the use of radar, laser, or VASCAR technology; or (4) a stop based on license plate reader technology.

The bills specify the information that must be reported about each traffic stop, including the alleged traffic violation that led to the stop, whether a search was conducted, whether property was seized in the course of the search, and whether a warning, repair order, or citation was issued as a result of the stop.

The Police Training Commission, in consultation with the Maryland Statistical Analysis Center (MSAC), must develop a model policy against race-based traffic stops that a law enforcement agency can use in developing its own policy. In addition, the commission is required to develop a model format for the efficient recording of the data for use by a law

enforcement agency and guidelines that each law enforcement agency may use in data evaluation.

By September 1 of each year, MSAC must issue a report to the Governor and the General Assembly as well as to each law enforcement agency. Reports of noncompliance by law enforcement agencies are required to be made by the training commission and MSAC to the Governor and the Legislative Policy Committee.

The provisions of the bills described above terminate on June 30, 2014. Beginning on July 1, 2014, a law enforcement agency simply will be required to adopt a policy against race-based traffic stops that is to be used as a management tool to promote nondiscriminatory law enforcement and in the training and counseling of its officers.

Use of Electronic Control Devices

Stun guns and other portable electronic devices that can injure, immobilize, or inflict pain on an individual are sometimes used by police and correctional officers to temporarily incapacitate an individual. Various news accounts have questioned the relative safety of any electronic weapon in light of deaths occurring after use of an electronic control device. *Senate Bill 652/House Bill 507 (Chs. 78 and 79)* require a law enforcement agency that issues electronic control devices to its law enforcement officers to annually report on the use of the devices to the Governor and the local governing body of the jurisdiction served by the agency. The Governor's Office of Crime Control and Prevention must annually issue a report that analyzes and summarizes the reports of the law enforcement agencies. The bills requirements end after September 30, 2016.

Military Department

House Bill 1193 (Ch. 158) requires the Maryland Military Department, rather than the Department of Budget and Management, to receive and review information about grants and loans made by the Maryland State Firemen's Association to volunteer fire, rescue, and ambulance companies for the purchase, replacement, or improvement of firefighting and rescue equipment or facilities.

Inmates and Parole/Probation Supervision Fee

Legislation adopted in 1991 mandated the imposition of monthly supervision fees for offenders supervised by the Division of Parole and Probation. Until 2005, the monthly fees of \$40 for parolees and mandatory supervision releases and \$25 for probationers had remained unchanged since their inception. Chapter 444 of 2005 (Budget Reconciliation and Financing Act of 2005) increased the supervision fee charged to probationers 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. Probationers under supervision before 2005, continue to pay the \$25 monthly fee. *Senate Bill 362/House Bill 749 (both passed)* require the Department of Public Safety and Correctional Services and the appropriate local detention center to notify the individual both orally and in writing about how to apply for an exemption from the required

monthly supervision fee and the criteria used in determining whether to grant an exemption. **House Bill 72 (passed)** – Budget Reconciliation and Financing Act of 2011 – increases monthly supervision fees for probationers from \$25 to \$50.

Pre-parole Investigation

House Bill 794 (passed) requires the Division of Parole and Probation to complete and deliver a pre-parole investigation of an inmate in a local correctional facility to the Maryland Parole Commission within 60 days after commitment to enable the Commission to determine the advisability of granting parole.

The division conducts pre-parole investigations for local detention center detainees on the request of the Maryland Parole Commission.

Building and Safety Practices

Building Design

House Bill 630 (Ch. 135) requires the Department of Housing and Community Development (DHCD) to encourage the construction of new residential structures that are high-performance homes. A high-performance home is a new residential structure that meets or exceeds the current Silver rating of the International Code Council's 700 national Green Building Standards or the Silver rating of the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) for Homes Rating System.

Effective March 1, 2012, **House Bill 972 (passed)** authorizes DHCD to adopt by regulation the International Green Construction Code. The bill also authorizes local governments to adopt the code if the department does not do so. Local governments may adopt amendments to the code.

The International Green Construction Code is being developed by the International Code Council, in conjunction with the American Institute of Architects; ASTM International; the American Society of Heating, Refrigerating, and Air-Conditioning Engineers; the U.S. Green Building Council; and the Illuminating Engineering Society. The code, expected to be completed in 2012, will address green building design for new and existing commercial buildings.

Mobility Impaired Individuals in High-rise Buildings

Many elderly residents who use an assistive walking device or service animal live on the upper floors of high-rise buildings. If a fire occurs, they would be dependent on descending many flights of steps or jumping from windows. **House Bill 621 (passed)** requires the owner of a residential high-rise with rental units to provide reasonable written notice to all residents of the residential high-rise building of the right of a resident who is mobility impaired to request a rental unit on the first five floors of the building if one should become available.

Smoke Detectors

House Bill 849 (Ch. 143) clarifies that a person may sell or install smoke detectors, smoke alarms and specialized smoke alarms for the deaf and hard of hearing only in accordance with the State Fire Prevention Code. The bill also repeals a requirement that each manufacturer that commercially sells or offers for sale a smoke detection system obtain approval of each model of smoke detector from the State Fire Marshal. The current State Fire Prevention Code, which adopts the model codes and standards of the National Fire Protection Association, approves only those devices that are tested and listed to meet the appropriate national consensus standards. The State Fire Marshal requires that these devices be tested and listed by an approved testing laboratory.

Boiler and Pressure Vessels

House Bill 943 (passed) requires the Commissioner of Labor and Industry to adopt regulations containing insurance requirements that an authorized boiler and pressure vessel inspection agency must satisfy before their employees are allowed to act as boiler and pressure vessel inspectors.

Sprinkler Systems

Senate Bill 948 (Ch. 93) specifies that an automatic sprinkler system is not required in a one- or two-family dwelling constructed as an industrialized building in Harford County if the date of the application for a building permit, or date that the manufacturer affixed the required insignia, was before January 1, 2011.

Miscellaneous

Task Force to Study High School Dropout Rates in Criminal Justice System

An average of more than 9,000 students per year dropped out of Maryland public high schools from the 1999-2000 school year to the 2009-2010 school year. *Senate Bill 755 (passed)* creates a Task Force to Study High School Dropout Rates of Persons in the Criminal Justice System to study both the high school dropout statistics of people who have been incarcerated, arrested, or otherwise processed through the criminal justice system, as well as the fiscal impact on the criminal justice system of people who have dropped out of high school.

The task force must also obtain statistical data and make recommendations regarding how individuals can be kept in high school until graduation, the availability of continuing education options for individuals who have not received a high school diploma while incarcerated, and how individuals can be informed of alternative high school education or work-related programs.

Staffing is provided by the Governor's Office of Crime Control and Prevention and the task force must report its findings and recommendations to the Governor and the General Assembly by December 31, 2012. The bill takes effect June 1, 2011, and terminates May 31, 2013.

Prohibiting Inmates Access to Personal Information

A performance audit report by the Office of Legislative Audits on the Medical Care Programs Administration of the Department of Health and Mental Hygiene found that the Administration used inmates for data entry of sensitive claims information, including Social Security numbers, and did not ensure that employees of a data entry contractor had criminal background checks as required by the contract. *House Bill 752 (passed)* prohibits programs conducted by Maryland Correctional Enterprises, which is the prison industry component of the Division of Correction, from allowing an inmate to have access to personal information of another. “Personal information” is defined as an individual’s (1) Social Security number; or (2) credit card or financial information.

Emergency Medical Services Providers

Unless the officer is dispatched as an EMS provider, *House Bill 215 (Ch. 113)* authorizes a law enforcement officer who has completed an approved course to provide emergency medical care without a license or certificate issued by the Maryland Institute for Emergency Medical Services Systems.

The bill also alters the nomenclature for licensure and certification levels to reflect national EMS standards: “first responder” is changed to “emergency medical responder”; “emergency medical technician – basic (EMT-basic)” is shortened to “EMT”; and “EMT-paramedic” is shortened to “paramedic.” Two other existing levels – “cardiac rescue technician” and “emergency medical dispatchers” – remain unchanged.

