# Report on House Bill 11

# The Correctional Services Article

For presentation

to the

Maryland General Assembly

Department of Legislative Services

Annapolis, Maryland

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# Correctional Services Article Review Committee

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# Contents


Membership Roster iii

Chapter 1. Introduction 1

Overview of House Bill 11 1

Purpose and Scope of Code Revision 1

Chapter 2. Preparation of the Correctional Services Article 3

Chapter 3. Structure of the Correctional Services Article 5

Organization 5

Language 5

Form 5

Revisor's Notes 6

Chapter 4. General Aspects of the Correctional Services Article 7

Chapter 5. Discussion of Titles 1 through 11 of the Correctional Services Article 9

Title 1. Definitions; General Provisions 9

Subtitle 1. Definitions 9

Subtitle 2. Verification 9

Title 2. Department of Public Safety and Correctional Services 9

Subtitle 1. Department Established 9

Subtitle 2. Units in the Department 10

Title 3. Division of Correction 10

Subtitle 1. Definitions 10

Subtitle 2. Powers and Personnel 10

Subtitle 3. Prerelease Unit for Women 11

Subtitle 4. Home Detention Program 12

Subtitle 5. State Use Industries 13

Subtitle 6. Inmates -- Case Records; Disciplinary Action; Property; Financial Accounts 14

Subtitle 7. Diminution Credits 15

Subtitle 8. Leave 16

Subtitle 9. Death Penalty Procedures 17

Title 4. Patuxent Institution 18

Subtitle 1. Definitions 19

Subtitle 2. General Provisions 19

Subtitle 3. Remediation Programs 20

Subtitle 4. Youth Program 20

Title 5. Division of Pretrial Detention and Services 20

Subtitle 1. Definitions 20

Subtitle 2. Division of Pretrial Detention and Services 21

Subtitle 3. Pretrial Release Services Program 21

Subtitle 4. Baltimore City Detention Center 21

Title 6. Parole and Probation 21

Subtitle 1. Division of Parole and Probation 22

Subtitle 2. Uniform Act for Out-of-State Parolee Supervision 23

Title 7. Parole, Release on Mandatory Supervision, and Executive Clemency 23

Subtitle 1. Definitions; General Provisions 23

Subtitle 2. Maryland Parole Commission 23

Subtitle 3. Eligibility for Parole; Parole Hearings 24

Subtitle 4. Revocation of Parole; Modification of Parole; Conviction of Crime Committed While on Parole 26

Subtitle 5. Mandatory Supervision 26

Subtitle 6. Commutation of Sentence; Pardon 27

Subtitle 7. Payment of Restitution and Fees 27

Subtitle 8. Victims' Rights; Notice to Sentencing Judge 27

Title 8. State and Local Correctional System - Generally 29

Subtitle 1. Standards for Correctional Facilities 29

Subtitle 2. Correctional Training Commission 30

Subtitle 3. Law Enforcement and Correctional Training Fund 31

Subtitle 4. Interstate Agreement on Detainers and Related Matters 31

Subtitle 5. Intrastate Detainers 31

Subtitle 6. Interstate Corrections Compact 32

Subtitle 7. Community Service Programs 32

Subtitle 8. Prohibited Acts 32

Title 9. State and Local Correctional System - Inmates 34

Subtitle 1. Sentences - Generally 34

Subtitle 2. Sentences - Consecutive and Concurrent 34

Subtitle 3. Transfers 35

Subtitle 4. State Reimbursement of Local Correctional Facilities 35

Subtitle 5. Inmate Work Force 36

Subtitle 6. Miscellaneous 38

Title 10. State Correctional Facilities 39

Subtitle 1. Construction of Facilities 39

Subtitle 2. Inmate Grievance Office 40

Subtitle 3. Sundry Claims Board 41

Subtitle 4. Citizens' Advisory Committee 41

Subtitle 5. Inmate Welfare Funds 42

Subtitle 6. Correctional Facilities Operated by Other States 42

Title 11. Local Correctional Facilities 42

Subtitle 1. Establishment of Local Correctional Facilities 42

Subtitle 2. Safety, Health, and Welfare of Inmates 43

Subtitle 3. Community Adult Rehabilitation Centers 44

Subtitle 4. Correctional Farms 46

Subtitle 5. Diminution Credits 46

Subtitle 6. Alternatives to Incarceration 47

Subtitle 7. Individual County Provisions 48

Subtitle 8. Miscellaneous 50

# Chapter 1. Introduction

## A. Overview of House Bill 11

House Bill 11 creates the Correctional Services Article, which contains 11 titles that revise the law relating to the State and local correctional systems. The Correctional Services Article replaces all of Article 31B of the Code and parts of Articles 1, 25, 27, 41, 78A, 87, and 88B of the Code. The effective date for House Bill 11 is October 1, 1999.

## B. Purpose and Scope of Code Revision

The proposed Correctional Services Article is a product of the continuing revision of the Annotated Code of Maryland by the staff of the Office of Policy Analysis of the Department of Legislative Services. The first revised articles were enacted in 1973 and, to date, the following 24 revised articles have become law: Agriculture, Business Occupations and Professions, Business Regulation, Commercial Law, Corporations and Associations, Courts and Judicial Proceedings, Education, Environment (enacted as the Health - Environmental Article), Estates and Trusts, Family Law, Financial Institutions, Health - General, Health Occupations, Insurance, Labor and Employment, Natural Resources, Public Utility Companies, Real Property, State Finance and Procurement, State Government, State Personnel and Pensions, Tax - General, Tax - Property, and Transportation.

Each revised article is a formal bulk revision that, as mandated by guidelines established in 1970, includes improved organization, elimination of obsolete or unconstitutional provisions, resolution of inconsistencies and conflicts in the law, correction of unintended gaps or omissions in the law, deletion of repetitive or otherwise superfluous language, and general improvement of language and expression. See § 2-1238(7) of the State Government Article. Every reasonable effort is made to ensure that the end product conforms as nearly as possible to the original intent of the General Assembly.

Although the basic thrust of code revision is modernization and clarification, there are instances where the work must touch on the substance of the law. These instances are highlighted in Revisor's Notes. Also, there are fundamental policy issues that sometimes arise during the revision process. Resolution of a policy problem is outside of the purview of code revision and, accordingly, policy issues are brought to the attention of the General Assembly through Revisor's Notes for possible action. For both of these categories, the significant issues encountered in preparing the Correctional Services Article are noted in Chapter 5 of this report.

The general rule of construction that courts apply to a bulk revision was stated in Leach v. Humphrey, 200 Md. 410, 417 (1952):

> "It is true that a codification of previously enacted legislation, eliminating repealed laws and systematically arranging the laws by subject matter, becomes an official Code when adopted by the Legislature, and, since it constitutes the latest expression of the legislative will, it controls over all previous expressions on the subject, if the Legislature so provides. However, the principal function of a Code is to reorganize the statutes and state them in simpler form. Consequently any changes made in them by a Code are presumed to be for the purpose of clarity rather than change of meaning. Therefore, even a change in the phraseology of a statute by a codification thereof will not ordinarily modify the law, unless the change is so radical and material that the intention of the Legislature to modify the law appears unmistakably from the language of the Code."

See also In re Special Investigation No. 236, 295 Md. 573, 576-77 (1983); Duffy v. Conaway, 295 Md. 242, 257-58 (1983); Office & Professional Employees Internal Union, Local 2 (AFL-CIO) v. Mass Transit Administration, 295 Md. 88, 99-100 (1982); In re John H., 293 Md. 295, 300-02 (1982); Hoffman v. Key Federal Savings and Loan Association, 286 Md. 28, 43 (1979); Collier v. Connolley, 285 Md. 123, 131 (1978); State v. Ensor and Compton, 277 Md. 529, 541-42 (1976); Bureau of Mines v. George's Creek Coal and Land Co., 272 Md. 143, 154-55 (1974); Baltimore Tank Lines v. Public Service Commission, 215 Md. 125, 127-28 (1957); Welsh v. Kuntz, 196 Md. 86, 96-97 (1950); and Crow v. Hubard, 62 Md. 560, 563-64 (1884).

# Chapter 2. Preparation of the Correctional Services Article

For more than 12 years, the Commission to Revise the Annotated Code of Maryland supervised the preparation of revised articles. In 1985, the Legislative Policy Committee established the Code Revision Committee (formerly the Article Selection Committee) to replace the Commission. The Code Revision Committee recommends a schedule for production of revised articles and provides for article review committees to review proposed drafts prepared by the staff of the Office of PolicyAnalysis. Each article review committee is comprised of experts both in the area of law being revised and in legislative drafting.

The Correctional Services Article Review Committee is chaired by the Honorable Alan M. Wilner, a judge on the Court of Appeals. The other members of the Article Review Committee are: (1) John F. Breads, Esquire, Senior Assistant County Attorney, Anne Arundel County Office of Law; (2) Cathy Brice Hirsch, Esquire, Staff Attorney, Court of Special Appeals; (3) Frances E. Kessler, Esquire, Staff Attorney, United States District Court for the District of Maryland; and (4) Richard B. Rosenblatt, Esquire, Assistant Attorney General, Department of Public Safety and Correctional Services.

Each title of the proposed Correctional Services Article was prepared by the staff of the Office of Policy Analysis for review by the Article Review Committee. In earlier revised articles, a small, specialized component of the former Department of Legislative Reference had responsibility for all aspects of the revision. However, as a result of efforts to improve efficiency in the code revision process, most attorneys in the Office of Policy Analysis participated in the initial drafting of the Correctional Services Article. Jeffery Meyers had continuing responsibility as an editor in the revision. Kathleen M. Boucher, Esquire, is the Article Supervisor.

The Correctional Services Article Review Committee received help from many other people, including the following list of designated consultants: (1) Norman Handwerger, Esquire, Assistant Public Defender; (2) Nancy Forster, Esquire, Assistant Public Defender; (3) Donald Jones, Executive Director, Maryland Commission on Correctional Standards; (4) R. Wayne Knowles, Regional Administrator, Division of Parole and Probation; (5) Stephen Z. Meehan, Deputy Principal Counsel, Prisoners' Rights Information System of Maryland; (6) Judge Joseph P. McCurdy, Jr., Circuit Court for Baltimore City; (7) Esther Scaljon, Assistant Commissioner, Division of Correction; (8) Patricia Ray, Administrator, Maryland Parole Commission; (9) Rebecca Gowen, Administrator for Policy Management, Division of Information Technology and Communications; (10) Barry Stanton, Director, Prince George's County Department of Corrections; and (11) Judith Sachwald, Director of Legislative Affairs, Department of Public Safety and Correctional Services.

These individuals made significant contributions to the proposed article by reviewing drafts, participating in committee meetings, and providing the Article Review Committee and its staff with information and advice about administrative practices. Space does not permit listing the names of all the other people who provided assistance, but the Article Review Committee and its staff are deeply indebted to these individuals.

# Chapter 3. Structure of the Correctional Services Article

## A. Organization

The proposed Correctional Services Article is a formal bulk revision of statutes governing correctional services in the State, conforming to the organization, form, and numbering system used in previously revised articles. The new article will be a separate, unnumbered volume and will be cited by reference to the "Correctional Services Article." See Art. 1, § 25.

The Correctional Services Article will consist of the following 11 titles:

| | |
|---|---|
| Title 1. | Definitions; General Provisions. |
| Title 2. | Department of Public Safety and Correctional Services. |
| Title 3. | Division of Correction. |
| Title 4. | Patuxent Institution. |
| Title 5. | Division of Pretrial Detention and Services. |
| Title 6. | Parole and Probation. |
| Title 7. | Parole, Release on Mandatory Supervision, and Executive Clemency. |
| Title 8. | State and Local Correctional System - Generally. |
| Title 9. | State and Local Correctional System - Inmates. |
| Title 10. | State Correctional Facilities. |
| Title 11. | Local Correctional Facilities. |

## B. Language

A precept of the revision process since 1973 has been that, once something is said, it should be said in the same way every time. This precept reduces the ambiguity that results from variations in provisions intended to be substantively identical. To that end, the language of the proposed Correctional Services Article has been conformed not only among its own parts but, also, to that of other revised articles to the extent possible.

## C. Form

In House Bill 11, the statutory text of the proposed article is printed in all capital letters as though the language is entirely new. However, in many instances, the difference between the current and revised law is merely stylistic.

## D. Revisor's Notes

Revisor's Notes provide a link between the current and revised law by explaining, in detail, their relationship. Each section or, in some instances, each subsection of the proposed article is followed by a Revisor's Note that identifies the current law that the revised section or subsection will replace. Revisor's Notes also explain all significant changes made in the revision process.

Although Revisor's Notes are not part of the law, they serve an important function in preserving the intent and substance of the current law. As indicated by the Maryland Court of Appeals, "[i]t is a well-settled practice of this court to refer to the Revisor's Notes when searching for legislative intent of an enactment." Dean v. Pindner, 312 Md. 154, 163 (1988). Moreover, the court has stated that "[t]he notes or reports of a revisor or revision commission are entitled to considerable weight in ascertaining legislative intent." Office & Professional Employees International Union, Local 2 (AFL-CIO) v. Mass Transit Administration, 295 Md. 88, 101 (1982). Similarly, in Davidson v. Koerber, 454 F. Supp. 1256, 1260 (D. Md. 1978), the court opined that "[a]lthough the Revisor's Notes are not law ... they are strong and persuasive evidence of the legislative intent." See also Briggs v. State, 289 Md. 23, 30-31 (1980); and Allers v. Tittsworth, 269 Md. 677, 683 (1973).

Because of their importance, Revisor's Notes are printed in the Annotated Code of Maryland. Accordingly, they are drafted as if the proposed article had been enacted, with the current law being referred to as the "former" law. To preserve the legislative history of the proposed article, the Revisor's Notes that appear in the first reading copy of House Bill 11 will be retained, except for minor changes, in the published version of the revised article. Before the article is published in the Annotated Code, additional technical changes may be made and "Special Revisor's Notes" will be added to explain the effect of other laws enacted in 1999 that amend House Bill 11.

# Chapter 4. General Aspects of the Correctional Services Article

Certain terminology is used consistently throughout the proposed Correctional Services Article. As in other revised articles, the term "unit" is substituted for references in current law to "department," "agency," "board," and "commission," except when a specific entity or type of entity is intended. The term "unit" is used in the revised article as a general term for a governmental entity because "unit" is broad enough to include all such entities.

The word "regulations" is substituted for references to "rules and regulations" in the context of units in the executive branch to distinguish, to the extent possible, between regulations of executive units and rules of legislative and judicial units and to establish consistency in the use of these words. The singular verb "adopt" is used in relation to regulations and other verbs, such as "prescribe" and "promulgate," are deleted. This usage is consistent with Title 10, Subtitle 1 of the State Government Article.

The word "law" is used in the proposed article as a substitute for current phrases such as "law or regulation" because the broad reference to a "law" includes a "regulation" adopted under the authority of a law. See, e.g., Maryland Port Administration v. Brawner Contracting Co., 303 Md. 44, 60 (1985).

References to correctional facilities "in" the Division of Correction are substituted for current references to correctional facilities "under the jurisdiction of," "under the control of," or "under" the Division of Correction. Any correctional facility that is under the jurisdiction or control of the Division of Correction is "in" the Division of Correction.

References to a "term of imprisonment" are used in the proposed article to refer to a penalty that is imposed on an individual as a part of a sentence after the individual has been convicted of a crime. In this way the proposed article is consistent with most penalty provisions in Art. 27 (Crimes and Punishments), which typically impose a "term of imprisonment" rather than a "term of confinement." However, references to a "term of confinement" are used throughout the proposed article to refer to an individual's complete obligation of confinement in a correctional facility (i.e., all sentences combined minus any applicable diminution credits).

The terms "confined" and "confinement" are substituted for current references such as "incarcerated," "incarceration," "detained," "detention," "imprisoned," and "imprisonment" when referring to an inmate who is being held in a correctional facility. The

term "crime" is substituted for current references to an "offense" when referring to offenses that are misdemeanors or felonies under State or federal law.

References to "compensation" are substituted in the proposed article for references in current law to "salary" when referring to remuneration that is provided to an individual in the State budget. The term "compensation" is substituted for the term "salary" to include nonsalary benefits that are provided in the State budget (e.g., retirement and health care benefits). These substitutions do not make substantive changes in law because the references to "compensation" are always restricted by the phrase "as provided in the State budget."

# Chapter 5. Discussion of Titles 1 through 11 of the Correctional Services Article

## A. Title 1. Definitions; General Provisions

This title contains definitions and general provisions that apply to the entire article.

### Subtitle 1. Definitions

Subtitle 1 contains definitions that are now standard in revised articles such as "county," which is defined to include Baltimore City, "person," and "state." It also provides definitions of other terms that are used throughout the proposed article, including "Commissioner of Correction," "correctional facility," "Department," "Division of Correction," "Division of Parole and Probation," "inmate," "local correctional facility," "managing official," "Secretary," and "State correctional facility."

### Subtitle 2. Verification

For consistency with other revised articles, the requirement that a document be "verified" is substituted throughout the proposed article for current requirements that a document be "signed and sworn to" or be "sworn to". See generally CA § 1-301(a)(4) and (b)(2), 1-302, 2-513(b), 4-404(b), 5-309(b)(2), and 6-416(b), EN §§ 1-201, 5-513, 14-118, and 15-523(a), FI § 1-202, HG § 1-201, HO § 1-201, and IN 8-438(b). The meaning of the requirement that a document be "verified" is set forth in § 1-201 of the proposed article.

## B. Title 2. Department of Public Safety and Correctional Services

This title contains provisions that relate to the establishment, powers, and duties of the Department of Public Safety and Correctional Services.

### Subtitle 1. Department Established

This subtitle establishes the Department of Public Safety and Correctional Services and the powers and duties of the Secretary, Deputy Secretaries, and other departmental staff. The Secretary's responsibilities in the areas of public safety and crime prevention, as set forth in § 7-102(c) of the proposed article, overlap with similar responsibilities of the Department of State Police and the State militia. Under Art. 88B, § 3, the Department of State Police has "the general duty to safeguard the lives and safety of all persons within the State, to protect property, and ... [s]pecifically ... to preserve the public peace; to detect and prevent the

commission of crime; to enforce the laws and ordinances of the State and local subdivisions; [and] to apprehend and arrest criminals and those who violate or are lawfully accused of violating such laws and ordinances ... ." Under Art. 65, § 8, the State militia, when on active duty "shall be vested, in enforcing the laws of this State, with all the authority of peace or police officers." The General Assembly may wish to clarify that the Secretary does not have exclusive responsibilities in the areas of public safety and crime prevention.

In § 2-102(d) of this subtitle, the reference to the Secretary's "compensation" is substituted for the former reference to the Secretary's "salary" for accuracy and consistency throughout this article. See General Revisor's Note to the article. Under current law, some secretaries of other principal departments of State government are entitled to "salaries." See, e.g., AG § 2-102(b), BR § 2-102(d), EN §1-402(c), HG § 2-102(c), SF §§ 3-202(e) and 4-202(d), and TR § 2-102(b)(3). The General Assembly may wish to amend these statutory provisions to substitute references to "compensation" for the current references to "salary."

### Subtitle 2. Units in the Department

This subtitle lists 13 separate units of State government that are in the Department of Public Safety and Correctional Services.

## C. Title 3. Division of Correction

Title 3 includes provisions that relate to the establishment, powers, duties, personnel, and units of the Division of Correction.

### Subtitle 1. Definitions

Subtitle 1 contains definitions that are applicable throughout this title.

### Subtitle 2. Powers and Personnel

Subtitle 2 establishes the Division of Correction and the powers and duties of the Commissioner of Correction, the Deputy Commissioner of Correction, wardens, and administrators.

The source law for this subtitle includes a number of provisions that refer to the former "Department of Correctional Services". The revision makes a number of changes to the source law to reflect that the Department of Correctional Services was reorganized as the Division of Correction in 1970. See Ch. 401, Acts of 1970. First, references to the "Division of Correction" or the "Division" are substituted for obsolete references the "Department of Correctional Services" or the "Department". Second, current Art. 27, § 667, which specifies that the Division of Correction has "the powers, duties, responsibilities, and functions

provided in this subtitle and elsewhere ... for the Department of Correctional Services" is deleted as obsolete. Finally, the third and fourth sentences of current Art. 41, § 4-105(a), which provide that the Division of Correction shall have the powers, duties, responsibilities, obligations, and functions of the Department of Correctional Services, are transferred to the Session Laws to avoid any inadvertent substantive effect that their repeal might have.

## Subtitle 3. Prerelease Unit for Women

Subtitle 3 authorizes the Division of Correction to operate a Prerelease Unit for Women and establishes the powers and duties of the Commissioner of Correction with regard to this unit.

Typically, statutory language that creates a governmental unit simply states that there is such a unit. However, § 3-301 of this subtitle retains language from current Art. 27, § 678C(a) that authorizes, but does not require, the Commissioner of Correction to operate the Prerelease Unit for Women. This discretionary language conflicts with language that is used elsewhere in this subtitle that assumes that the Prerelease Unit for Women will, in fact, exist. For example, current Art. 27, § 678C(c)(2), which is revised in § 3-303 of this subtitle, requires the Commissioner of Correction to develop comprehensive rehabilitative prerelease services and to make these services available to inmates in the Prerelease Unit for Women. The General Assembly may wish to clarify whether it is mandatory or discretionary for the Commissioner of Correction to operate the Prerelease Unit for Women.

Section 3-305(c) of this subtitle provides that an inmate who escapes while on leave is subject to the penalties established under Art. 27, § 139. This section is one of many provisions in the article that relates to inmates who escape while legitimately outside the physical confines of a correctional facility (e.g., while on work release, home detention, pretrial release, weekend leave, compassionate leave, family leave, etc.). See, e.g., §§ 3-409(c), 3-807(i), 3-808(d), 3-811(c), 9-520(b), 9-602(e), 11-319(a)(5), 11-702(b)(8), 11-703(d)(5)(iii) and (f)(4), 11-705(h), 11-706(b)(8), 11-708(b)(8)(ii), 11-711(h)(2), 11-712(c)(6)(ii), 11-714(c)(6), 11-715(g)(2), 11-716(h)(2), 11-717(f)(2), 11-723(b)(8), and 11-724(h)(2). Many of these provisions apply only in one particular county or to a limited category of conduct (e.g., failure to comply with the terms of an authorization for work release). Also, there is a lack of uniformity in the language of these provisions. Some provisions specifically state that certain conduct is "a violation of" Art. 27, § 139, see, e.g., §§ 3-808(d), 3-811(c), 11-706(b)(8), 11-708(b)(8)(ii), 11-711(h)(2), 11-712(c)(6)(ii), 11-714(c)(6), 11-715(g)(2), 11-716(h)(2), 11-717(f)(2), and 11-724(h)(2), while others simply state that certain conduct is "subject to the penalties established under" Art. 27, §139, see, e.g., §§ 11-319(a)(5) and 11-705(h). Some provisions state that certain conduct is a misdemeanor, but that the conduct is nevertheless punishable under Art. 27, § 139 (which establishes penalties for felony escape). See, e.g., §§ 3-807(i) and 11-703(f)(4). Some provisions state that a "willful" act is an element of the crime of escape. See, e.g., §§ 3-409(c) and 11-703(d)(5)(iii). Some provisions state that an inmate who violates a term

or condition of home detention is guilty of a misdemeanor but make no reference to "escape" or Art. 27, § 139. See, e.g., §§ 11-702(b)(8) and 11-723(b)(8). In light of the patchwork nature of these provisions and the many inconsistencies in statutory language, the General Assembly may wish to examine all of them and determine whether to establish a uniform, statewide policy in this area.

## Subtitle 4. Home Detention Program

Subtitle 4 authorizes the Commissioner of Correction to establish a home detention program under which an inmate in the custody of the Commissioner may live in a private dwelling that the Commissioner or Commissioner's designee approves.

Current Art. 27, 689A(e)(3), which is revised in § 3-405(3) of this subtitle, provides that an inmate may be placed in the home detention program only after the inmate has served any statutorily imposed minimum sentence, less the allowances for diminution of the inmate's term of confinement provided under Art. 27, § 638C and current Art. 27, § 700 (revised in Subtitle 7 of this title). The General Assembly may wish to revise § 3-405(3) to include a reference to allowances for diminution of the inmate's term of confinement provided under Title 11, Subtitle 5 of the article (current Art. 27, § 704A), which establishes rules governing diminution of confinement for inmates in local correctional facilities.

Section 3-409 of the this subtitle is one of many provisions in the article that relates to inmates who escape while legitimately outside the confines of a correctional facility (e.g., while on work release, home detention, pretrial release, weekend leave, compassionate leave, family leave, etc.). For a discussion of the Article Review Committee's perspective on these provisions, see the discussion set forth above in this report relating to § 3-305(c).

There is an inconsistency between the use of the terms "dwelling" and "premises" in § 3-415 of this subtitle. Under § 3-415(a), the Commissioner of Correction or Commissioner's designee may apply for a search warrant to enter the "approved dwelling" of an inmate. Section 3-415(b) requires an applicant to describe the "premises" to be searched. Under § 3-415(c), a judge is authorized to issue a search warrant when obtaining consent to enter the "premises" may jeopardize an attempt to take custody of the inmate. Section 3-415(d) requires a search warrant to specify the location of the "premises" to be searched. It is unclear whether the General Assembly intended that the words "dwelling" and "premises," as used in these provisions, be synonymous or, alternatively, whether the General Assembly intended that the word "premises" have a broader meaning. If these words were intended to be synonymous, the General Assembly may wish to amend § 3-415 to use either "dwelling" or "premises" throughout the entire section. If these words were not intended to be synonymous, the General Assembly may wish to expressly define them. See also § 6-109 and accompanying Revisor's Note.

## Subtitle 5. State Use Industries

This subtitle establishes a State Use Industries Program in the Division of Correction and sets forth rules governing staff, funding, records, reports, audits, standards, and sales. This subtitle also creates a State Use Industries Advisory Committee.

Section 3-502(1) of this subtitle provides that the purpose of the subtitle is to establish a State Use Industries Program that is "financially self-supporting, generates revenue for its operations and capital investments, and reimburses the Division at a reasonable rate for services exchanged between the Division and State Use Industries." The meaning of the reference to services "exchanged between" the Division of Correction and State Use Industries, is unclear. In current practice, State Use Industries reimburses the Division of Correction for services that are provided by the Division to State Use Industries (e.g., overhead expenses). The Division of Correction does not reimburse State Use Industries for services provided by State Use Industries to the Division of Correction (e.g., training and supervising inmates). The General Assembly may wish to amend § 3-502(1) to reflect current practice, i.e., to provide that State Use Industries shall reimburse the Division of Correction for services that are provided by the Division to State Use Industries. Alternatively, the General Assembly may wish to amend § 3-502(1) to define "reasonable rate" to include consideration of services provided by State Use Industries to the Division of Correction.

The first clause of § 3-506(c) of this subtitle is apparently obsolete. None of the office secretaries or office clerks currently employed by State Use Industries are "special appointments." According to the General Manager of State Use Industries and the Department of Public Safety and Correctional Services, it is unlikely that office secretaries or office clerks would ever be special appointments. If this clause has any meaning, it would be to allow the Secretary to designate the position identification number (PIN) of a particular office clerk or office secretary as a special appointment. If this is not what the General Assembly intended, the General Assembly may wish to repeal the clause "[u]nless the employee is a special appointment" in § 3-506(c).

Section 3-521 of this subtitle requires the Advisory Committee to advise State Use Industries, make recommendations to State Use Industries, and review various aspects of the operations of State Use Industries. However, § 3-513(b) of this subtitle, which sets forth a list of individuals with whom the Commissioner of Correction and General Manager are required to consult, does not include the members of the Advisory Committee. The General Assembly may wish to amend § 3-513(b) to include the Advisory Committee.

Section 3-514(b) of this subtitle requires the Commissioner of Correction and the General Manager jointly to adopt regulations. The Article Review Committee believes that the General Manager's role is more properly to "recommend" the adoption of regulations. The General Assembly may wish to amend § 3-514(b) to require that the General Manager recommend proposed regulations to the Commissioner of Correction and that the Commissioner of Correction adopt regulations.

The language of § 3-515(b)(1) of this subtitle, which requires "the contracting unit to inform each unit of State government for which it procures goods or services within 60 days after the award of a contract," does not reflect current practice. Currently, State Use Industries contracts with the Department of General Services to supply certain products at particular prices. There is no "award of a contract" by the Department of General Services in the sense that State agencies are obligated to buy any products. The Department of General Services distributes a catalogue to other State agencies that lists particular products available from State Use Industries at particular prices. Again, there is no "contract" in the sense that State agencies are obligated to buy any products. The General Assembly may wish to amend § 3-515(b)(1) to reflect current practice.

## Subtitle 6. Inmates -- Case Records; Disciplinary Action; Property; Financial Accounts

This subtitle requires the Division of Correction to assemble and maintain inmate records and establishes rules governing the disclosure of these records. This subtitle also requires correctional facilities in the Division of Correction to maintain reserve financial accounts and spending financial accounts for all inmates and establishes rules governing the handling of an inmate's personal property.

Section 3-602(b)(7)(i) of this subtitle allows disclosure of an inmate's case record to an employee of the Patuxent Institution only after the Division of Correction has received a written request for disclosure. The General Assembly may wish to amend this provision to allow disclosure of a case record to an employee of the Patuxent Institution without a written request.

Section 3-602(b)(7)(i) of this subtitle also allows disclosure of a case record, on written request, to an employee of a federal or local "law enforcement" unit if disclosure is in furtherance of the employee's lawful duties. Section 3-602(b)(7)(i) is silent as to disclosure to an employee of a federal or local "correctional" unit. The General Assembly may wish to amend § 3-602(b)(7)(i) to allow disclosure to an employee of a federal or local correctional unit if disclosure is in furtherance of the employee's lawful duties. Compare § 4-209(e)(6); see also § 3-606 and accompanying Revisor's Note.

Section 3-606 of this subtitle requires the Division of Correction to provide a copy of a case record to the managing official of a correctional facility in another state but is silent as to whether the Division of Correction has the duty to provide a case record to the managing official of a federal or local correctional facility. The General Assembly may wish to impose a duty on the Division of Correction to provide a case record, on request, to the managing official of a federal or local correctional facility. See also, § 3-602(b)(7)(i) and accompanying Revisor's Note.

Under § 3-607(b) of this subtitle, the Division of Correction is required to provide, on or before the 28th day of each month, certain information pertaining to inmates whose sentences expire the following month to the superintendent or other officer in charge of police in the municipal corporation or county from which the inmate was committed. However, in practice, the information that the Division of Correction is required to provide to the specified police officers under § 3-607(b) is made available electronically to municipal corporations and counties through the Criminal Justice Information System (CJIS) after an inmate is released. Any authorized user of CJIS can access the referenced information. The General Assembly may wish to amend § 3-607(b) to reflect current practice.

The current reference in Art. 27, § 697 to the "city" from which the inmate was committed is deleted in § 3-607(b)(3) of this subtitle because the longstanding practice of the Division of Correction is to interpret the reference to "city" to mean "Baltimore City," which is included as a "county" under § 1-101 of the article. However, the Article Review Committee calls this deletion to the attention of the General Assembly because the word "city" arguably could refer to the various municipal corporations of the State.

## Subtitle 7. Diminution Credits

This subtitle establishes rules governing the award of diminution credits to inmates in the Division of Correction.

Under § 3-704(a) of this subtitle, an inmate is entitled to a deduction from the inmate's term of confinement for future good conduct. Section 3-704(b) requires that the deduction be calculated at the rate of 10 days for each calendar month from the first day of commitment to the custody of the Commissioner through the last day of the inmate's "maximum " term of confinement. The reference to a "maximum" term of confinement in § 3-704(b) does not appear to add anything to the meaning of "term of confinement" as defined in § 3-701 of this subtitle. The General Assembly may wish to delete the word "maximum."

## Subtitle 8. Leave

This subtitle establishes rules governing work release, extended work release, compassionate leave, special leave, and family leave for inmates in the Division of Correction.

Section 3-801(d)(3)(i) of this subtitle requires the Commissioner of Correction or the Commissioner's designee to adopt a work-release plan for an inmate that contains terms and conditions that are "necessary and proper." The reference to conditions that are "necessary and proper" gives rise to two concerns. First, who makes the determination as to what is "necessary and proper?" Second, are the terms "necessary" and "proper" redundant? The General Assembly may wish to amend § 3-801(d)(3)(i) to clarify who makes the determination as to what is necessary and proper and to repeal the reference to either "necessary" or "proper."

Sections 3-804 and 3-807(e) of this subtitle establish rules governing the distribution of an inmate's work release earnings. There are significant inconsistencies throughout the proposed article in provisions governing the distribution of an inmate's earnings in different contexts. See, e.g., §§ 9-504(d), 9-512(b), 11-319(b), 11-407(b), 11-604, 11-703(d)(4), 11-704(d), 11-705(i), 11-706(b)(5), 11-708(b)(7), 11-711(g), 11-712(c)(5), 11-714(c)(4), 11-715(e), 11-716(g), 11-717(e), 11-718(e), 11-719(b), 11-722(b), 11-724(g), and 11-725(b). The General Assembly may wish to examine all of the relevant provisions and determine whether they should be changed to reflect a more consistent policy in this area.

Under §3-804(b)(iv) of this subtitle, the Division of Correction is required to deduct from an inmate's work release earnings any amount that the inmate is "legally obligated" to pay to support the inmate's dependents. The meaning of the reference to support for dependents that the inmate is "legally obligated" to pay is unclear. Specifically, it is unclear whether this provision applies only to support payments that are required by a "court order" or whether it applies to any payments that an inmate is obligated to pay, e.g., merely by virtue of being a parent. The General Assembly may wish to clarify the meaning of this provision.

Under § 3-804(b)(2)(i) of this subtitle, the Division of Correction is required to credit any balance that remains from an inmate's work release earnings after required deductions have been made to the "inmate's account." It is unclear whether the reference to an inmate's "account" is to an inmate's "reserve financial account," which is paid to the inmate on final release from the Division of Correction, or to an inmate's "spending financial account," which is available to the inmate during the inmate's term of confinement. See § 3-610. The General Assembly may wish to clarify the meaning of this provision.

Section 3-804(b)(3) of this subtitle requires that any amount that the Division of Correction deducts from an inmate's work release earnings for support of the inmate's

dependents be paid to the inmate's dependents through the "local social services administration" in the county in which the dependents reside. The reference to the "local social services administration" is unclear because many counties do not have a unit with that name. The General Assembly may wish to amend § 3-804(b)(3) to require that payments be made through the "appropriate local agency." It is also unclear how § 3-804(b)(3) should be applied when an inmate's dependents reside outside Maryland. The General Assembly may wish to clarify how the Division of Correction should handle payments to out-of-State dependents.

Section 3-807 of this subtitle authorizes the Division of Correction to establish an extended work release program. Since the Division of Correction has never established an extended work-release program, the General Assembly may wish to repeal this section.

Section 3-807(i)(2) of this subtitle provides that an inmate who willfully violates the terms of an authorization for extended work release is guilty of a misdemeanor that is punishable under Art. 27, § 139. However, under Art. 27, § 139, a person who escapes from a correctional facility is guilty of a felony. The General Assembly may wish to amend § 3-807(i)(2) to make it consistent with Art. 27, § 139, i.e., to provide that a violation of the terms of an authorization for extended work release is a felony.

Sections 3-807(i)(2), 3-808(d), and 3-811(c) of this subtitle are three of the many provisions in the article that relate to inmates who escape while legitimately outside the confines of a correctional facility (e.g., while on work release, home detention, pretrial release, weekend leave, compassionate leave, family leave, etc.). For a more detailed discussion of the Article Review Committee's perspective on these provisions, see the discussion set forth above in this report relating to § 3-305(c).

Section 3-811(a) of this subtitle authorizes the Commissioner of Correction to grant family leave to an inmate to visit the inmate's family if the inmate is classified to be in "minimum security status." When this provision was originally enacted, "minimum security status" was the lowest inmate classification status. Today, "prerelease status" is the lowest inmate classification status and the Division of Correction currently grants family leave only to those inmates who are on prerelease status. The General Assembly may wish to amend § 3-811(a) to reflect current practice.

## Subtitle 9. Death Penalty Procedures

This subtitle establishes rules governing the implementation of the death penalty, including rules relating to the custody of an inmate after sentence, warrants of execution, incompetent inmates, and the administering of a lethal injection.

Section 3-901(a) of this subtitle is obsolete. This provision requires that an individual be taken into custody by the sheriff after being sentenced to death. However, in practice, the individual is held only briefly by the sheriff and is taken into custody by the Division of Correction promptly after sentencing. There is no express authority in current law for the Division of Correction to hold an individual pending execution of the death sentence. The absence of such express authority gives rise to a number of issues, including: (1) whether the sheriff or the Division of Correction has legal custody of the individual after the individual is delivered to the Division of Correction; and (2) whether the Division of Correction has authority to hold an individual in custody after the expiration of a warrant of execution or during the stay of a warrant of execution. To address these issues, the Article Review Committee believes that § 3-901(a) should be amended to require that a court, after sentencing an individual to death, commit the individual to the custody of the Commissioner of Correction pending execution of the death sentence. See, e.g., § 9-103(a) (which provides that, in noncapital cases, individuals are sentenced to the jurisdiction of the Division of Correction and committed to the custody of the Commissioner of Correction). The Article Review Committee also believes that § 3-901(b) of this subtitle, which establishes duties of the sheriff while an individual is in custody of the sheriff, should be repealed as obsolete.

The meaning of § 3-901(b)(2) of this subtitle is unclear. The part of current Art. 27, § 74 that is revised in § 3-901(b)(2) requires a sheriff to keep an inmate in solitary confinement "as hereinafter provided when said felon is in the penitentiary." However, there are no provisions in the Death Penalty subheading of current Art. 27 ( i.e., §§ 71 through 79) that require an inmate to be kept in solitary confinement while in the penitentiary. Therefore, § 3-901(b)(2) does not appear to impose any duty on the sheriff. If the General Assembly does not repeal § 3-901(b)(2) for the reasons discussed in the previous paragraph of this report, the General Assembly may wish to repeal § 3-901(b)(2) as meaningless.

Section 3-901(c) of this subtitle would be obsolete if the General Assembly, as discussed in the previous two paragraphs of this report, amends § 3-901(a) to require that a court commit an individual who is sentenced to death to the custody of the Commissioner of Correction pending execution of the death sentence and repeals § 3-901(b) as obsolete.

The reference to "the sheriff of a county in which an inmate was indicted" in § 3-903(a)(2) of this subtitle is obsolete. In practice, only the Commissioner of Correction has custody of an inmate who is under a sentence of death. See §3-901 and accompanying Revisor's Note. The General Assembly may wish to repeal § 3-903(a) and substitute references to "the Commissioner" for the current references to "the official who has custody of the inmate" throughout § 3-903.

## D. Title 4. Patuxent Institution

Title 4 contains provisions that relate to the establishment, powers, duties, personnel, and programs of the Patuxent Institution.

## Subtitle 1. Definitions

This subtitle provides definitions that apply throughout Title 4.

## Subtitle 2. General Provisions

This subtitle establishes the Patuxent Institution, the Board of Review, and the Citizens Advisory Board and sets forth the powers and duties of each of these entities.

The requirement in § 4-205(d)(2)(i) of this subtitle that actions of the Board of Review require approval of "a majority of the members" could mean four members, if the "majority" is of a quorum, or five members, if the "majority" is of the authorized membership of the Board of Review. The General Assembly may wish to substitute a specific number for the reference to "a majority of the members" in § 4-205(d)(2)(i).

Section 4-209(e)(6) of this subtitle allows the Patuxent Institution to disclose an inmate's record to a state or federal correctional official or probation officer. The General Assembly may wish to expand the scope of this provision to allow the same type of disclosure to a local correctional official or probation officer. This change would be consistent with § 4-209(e)(5), which allows the Patuxent Institution to disclose an inmate's record to a federal, state, or local law enforcement officer under certain circumstances.

Section 4-210(b) of this subtitle provides that "[t]he Director or the Director's designee may not be held liable for authorizing in good faith medically necessary treatment." The meaning of this provision is unclear in light of § 12-105 of the State Government Article and § 5-522(b) of the Courts Article, which grant immunity from liability to State personnel. Under these sections, State personnel are immune from suit in State courts and from liability in tort for a tortious act or omission that is within the scope of the public duties of the State personnel and is made without malice or gross negligence. It is unclear whether § 4-210(b) establishes any additional protection against liability for the Director or the Director's designee. The General Assembly may wish to examine this issue. See also § 5-406(b).

Section 4-212 of this subtitle allows the Director of the Patuxent Institution to seek grants and loans from "any unit of government" to be used "in the establishment, maintenance, or programs" of the Patuxent Institution. The General Assembly may wish to amend this section to allow the Director to seek grants and loans from private entities as well as units of government. Since the Patuxent Institution is already established, the General Assembly may also wish to clarify or delete the reference to the Director's authority to seek grants or loans to be used "in the establishment" of the Patuxent Institution.

Section 4-213 of this subtitle provides that the Patuxent Institution shall be considered a correctional facility within the Division of Correction for the purpose of funding educational programs under Title 22, Subtitle 1 of the Education Article. The General Assembly may wish to transfer this provision to § 22-104 of the Education Article.

### Subtitle 3. Remediation Programs

This subtitle establishes eligibility requirements for the "eligible person" program at the Patuxent Institution and sets forth requirements relating to work release, parole, and inmate transfers.

The requirement in § 4-305(d)(2) of this subtitle that the Board of Review establish regulations governing the manner in which a victim shall present oral testimony at a parole hearing is inconsistent with § 4-208 of this title, which requires the Secretary to adopt regulations to carry out this title, including regulations that govern parole from the Patuxent Institution. The General Assembly may wish to clarify whether the Secretary or the Board of Review has responsibility for adopting regulations governing the manner in which a victim shall present oral testimony at a parole hearing.

Section 4-306(b)(2) of this subtitle refers to an inmate's release "on expiration of sentence." In light of § 4-308 of this subtitle, which provides that inmates of the Patuxent Institution are entitled to earn diminution credits, it would be more appropriate to refer to release "on expiration of sentence or under mandatory supervision, as defined in § 7-101 of this article". See, e.g., § 4-304(a).

### Subtitle 4. Youth Program

This subtitle establishes the Youth Program, the powers and duties of the Director of the Patuxent Institute in relation to the Youth Program, and eligibility requirements for the Youth Program.

## E. Title 5. Division of Pretrial Detention and Services

This title establishes the Division of Pretrial Detention and Services, the Pretrial Release Services Program, and the Baltimore City Detention Center.

### Subtitle 1. Definitions

This subtitle provides definitions that apply throughout this title.

## Subtitle 2. Division of Pretrial Detention and Services

This subtitle contains provisions relating to the establishment of the Division of Pretrial Detention and Services and the powers and duties of the Commissioner and Deputy Commissioner of Pretrial Detention and Services.

## Subtitle 3. Pretrial Release Services Program

This subtitle contains provisions relating to the establishment of the Pretrial Release Services Program and the powers and duties of the Director and Deputy Director of the Pretrial Release Services Program.

## Subtitle 4. Baltimore City Detention Center

This subtitle contains provisions relating to the establishment of the Baltimore City Detention Center and the powers and duties of the warden and assistant wardens.

Under § 5-406(a) of this subtitle, the warden or warden's designee may authorize medical treatment of a juvenile inmate when a parent, guardian, or person in loco parentis is not available on a timely basis to give authorization. This provision is inconsistent with §§ 4-210 and 9-606 of the article, which provide that the managing official of a local correctional facility, a correctional facility in the Division of Correction, or the Patuxent Institution may authorize treatment for a juvenile inmate only "[o]n the recommendation of a health care provider." The General Assembly may wish to amend § 5-406(a) to include a similar requirement.

Section 5-406(b) of this subtitle provides that "[t]he warden or the warden's designee may not be held liable for authorizing medical treatment ... in good faith." The meaning of this provision is unclear in light of § 12-105 of the State Government Article and § 5-522(b) of the Courts Article, which grant immunity from liability to State personnel. Under these sections, State personnel are immune from suit in State courts and from liability in tort for a tortious act or omission that is within the scope of the public duties of the State personnel and is made without malice or gross negligence. It is unclear whether § 5-406(b) establishes any additional protection against liability for the warden or the warden's designee. The General Assembly may wish to examine this issue. See also § 4-210(b).

## Title 6. Parole and Probation

This title establishes the Division of Parole and Probation and sets forth the provisions of the Uniform Act for Out-of-State Parolee Supervision.

## Subtitle 1. Division of Parole and Probation

This subtitle contains provisions that relate to the establishment, powers, duties, programs, and personnel of the Division of Parole and Probation.

The meaning of the first clause of § 6-108(f)(1) of this subtitle, which requires that the Division of Parole and Probation "determin[e] the amount of reasonable payments necessary to satisfy court ordered restitution, fines, court costs, and other fees that are legally collectible," is unclear for several reasons. First, there is uncertainty regarding the meaning of the reference to court ordered restitution, fines, court costs, and other fees that are "legally collectible." What types of restitution, costs, and fees fall into the category of "legally collectible?" Does the term "legally collectible" refer only to restitution, costs, and fees that the Division of Parole and Probation is authorized to collect? See generally Art. 27, §§ 641B and 807 and § 7-702 of the article. Does the reference to fees that are "legally collectible" include court ordered payments for the support of dependents under § 6-108(e)(2)? Second, there is uncertainty as to how the requirement that the Division of Parole and Probation "determin[e] the amount of reasonable payments ... that are legally collectible" relates to the requirement in the second clause of § 6-108(f)(1) that the Division of Parole and Probation collect a fee for electronic monitoring and the requirement in § 6-108(f)(2) of this section that the Division of Parole and Probation exempt offenders from the electronic monitoring fee under certain circumstances. The Article Review Committee has interpreted source law to require that the Division of Parole and Probation take into account the amount that it determines to be "reasonable payments necessary to satisfy court ordered restitution, fines, court costs, and other fees that are legally collectible" when establishing the amount of the electronic monitoring fee. However, in light of the ambiguities in source law, the General Assembly may wish to examine the first clause of § 6-108(f)(1) and clarify its meaning.

There is an inconsistency between the use of the terms "dwelling" and "premises" in § 6-109 of this subtitle. Under § 6-109(a), the Director of the Division of Parole and Probation may apply for a search warrant to enter the "approved dwelling" of an inmate. Section § 6-109(b) requires the applicant to describe the "premises" to be searched. Section 6-109(c) allows a judge to issue a search warrant when obtaining consent to enter the "premises" may jeopardize an attempt to take custody of the inmate. Section 6-109(d) requires a search warrant that is issued under this section to specify the location of the "premises" to be searched. It is unclear whether the General Assembly intended the words "dwelling" and "premises," as used in these provisions, to be synonymous or, alternatively, whether the General Assembly intended the word "premises" to have a broader meaning. If these words were intended to be synonymous, the General Assembly may wish to amend § 6-109 to use either "dwelling" or "premises" throughout the entire section. If these words were not intended to by synonymous, the General Assembly may wish to expressly define them. See also § 3-415.

The meaning of § 6-110 of this subtitle is unclear for several reasons. First, there is uncertainty as to what types of employees constitute "parole agents" because this term is not defined in this subtitle. There is also uncertainty as to how a parole agent becomes "duly qualified" because there is no indication in current Art. 41, § 4-606 as to the meaning of this term. Finally, there is uncertainty about the meaning of "visitorial powers". In other contexts, similar terms have been interpreted in an extremely broad manner. See, e.g., Wilson v. Board of Education, 234 Md. 561, 565 (1963) (stating that the State Board of Education has "a visitatorial power of the most comprehensive character"). The General Assembly may wish to clarify the meaning of this section. See also § 7-205(c).

The list of individuals who may, on request, obtain a copy of a presentence investigation report under subsection § 6-112(a)(3) of this subtitle includes "the defendant's attorney," but does not include "the defendant." The General Assembly may wish to consider whether "the defendant," as a matter of due process, should be added to this list.

### Subtitle 2. Uniform Act for Out-of-State Parolee Supervision

This subtitle sets forth the provisions of the Uniform Act for Out-of-State Parolee Supervision.

## G. Title 7. Parole, Release on Mandatory Supervision, and Executive Clemency

This title contains provisions that relate to the Maryland Parole Commission, release of inmates on mandatory supervision, and the Governor's power to pardon and commute sentences.

### Subtitle 1. Definitions; General Provisions

This subtitle provides definitions that apply throughout this title. It also contains a provision that makes this title inapplicable to inmates who are confined at the Patuxent Institution as "eligible persons" or for examination to determine if they are "eligible persons" and juveniles who are committed to the Department of Juvenile Justice.

### Subtitle 2. Maryland Parole Commission

This subtitle contains provisions that relate to the establishment, powers, and duties of the Maryland Parole Commission.

The meaning of the reference to "cases of parole suspension" in § 7-205(a)(7) of this subtitle is unclear. The Maryland Parole Commission does not hold hearings for "parole suspension." The General Assembly may wish to delete the reference to "cases of parole suspension" in § 7-205(a)(7) to reflect current practice.

The meaning of "visitorial powers" in § 7-205(c) of this subtitle is unclear. In other contexts, similar terms have been interpreted in an extremely broad manner. See, e.g., Wilson v. Board of Education, 234 Md. 561, 565 (1963) (stating that the State Board of Education has "a visitatorial power of the most comprehensive character"). The General Assembly may wish to clarify the meaning of § 7-205(c). See also § 6-110.

The meaning of the reference to a fine of "not less than $25" in subsection § 7-205(e)(1) of this subtitle, which is derived from current Art. 41, § 4-606, is unclear in light of Art. 27, § 643, which allows a court to impose "a lesser penalty of the same character." The General Assembly may wish to clarify whether § 7-205(e)(1) was intended to create a mandatory minimum penalty of $25. The Article Review Committee was unable to resolve this question with any certainty because the applicability of Art. 27, § 643 to current Art. 41, § 4-606 is unclear. In State v. Fisher, 204 Md. 307, 315 (1953), Robertson v. Warden, 212 Md. 646, 648 (in dicta)(1956), Woodfork v. State, 3 Md. App. 622, 624-625 (1967), and Dodson v. State, 14 Md. App. 483, 485-486 (1971), the courts held that Art. 27, § 643 is controlling only with regard to statutory penalty provisions that existed at the time of its adoption in 1906, but that it might also be given effect as to subsequently enacted laws "by construction." The original version of current Art. 41, § 4-606 was enacted in 1914. See Ch. 500, Acts of 1914. Accordingly, under the above cases, Art. 27, § 643 is not applicable to current Art. 41, § 4-606 unless it is given effect "by construction." However, the relevancy of those decisions to this issue is unclear because Art. 27, § 643 was repealed and reenacted three times after the last of those cases was decided in 1971. In 1972, Art. 27, § 643 was made applicable to the newly formed District Court. See Ch. 181, Acts of 1972. In 1982, the obsolete reference to the "Criminal Court of Baltimore" was deleted from Art. 27, § 643. See Ch. 820, Acts of 1982. In the 1988 Corrective Bill, the reference to the imposition of a "lesser" penalty was substituted for the former reference to the imposition of a "less" penalty. See Ch. 6, Acts of 1988. In sum, if the General Assembly intends for § 7-205(e)(1) to create a mandatory minimum penalty of $25, it may wish to amend this provision to expressly state that "notwithstanding Article 27, § 643 of the Code, it is mandatory on the court to impose a penalty of no less than $25" and that "the mandatory minimum penalty of $25 may not be suspended." See also § 8-808(b).

## Subtitle 3. Eligibility for Parole; Parole Hearings

This subtitle establishes parole eligibility requirements and procedures for parole hearings.

Section 7-301(a) of this subtitle requires the Maryland Parole Commission to request that the Division of Parole and Probation make an investigation that will enable the Maryland Parole Commission to determine the advisability of granting parole to an inmate. This requirement does not reflect current practice. The Division of Parole and Probation currently conducts pre-parole investigations for inmates in local correctional facilities and submits the results of these investigations to the Maryland Parole Commission. However, the Division of Correction currently prepares pre-parole reports on the progress of inmates in correctional facilities in the Division of Correction and submits these reports to the Maryland Parole Commission. The General Assembly may wish to amend § 7-301(a) to reflect current practice.

In § 7-301(c)(1)(i) of this subtitle, the reference to an inmate who has served "the greater of ... one-half of the inmate's aggregate sentence for violent crimes ... or ... one-fourth of the inmate's total aggregate sentence" is substituted for the current reference in Art. 41, § 4-516(c)(1)(i) to an inmate who has served "one-half of the term or consecutive terms" for clarity. The meaning of the reference to "one-half of the term or consecutive terms" is ambiguous in situations involving inmates who are serving at least one sentence for a violent crime and at least one sentence for a nonviolent crime. The Article Review Committee applied the rule of lenity to current Art. 41, § 4-516(c)(1)(i) to determine its meaning in such situations and has revised § 7-301(c)(1)(i) to reflect the application of that rule. See generally Maryland House of Corrections v. Fields, 348 Md. 245, 267 (1997). Correspondingly, in § 7-301(c)(1)(ii) of this subtitle, the reference to "one-half of the inmate's aggregate sentence for violent crimes ... [or] one-fourth of the inmate's total aggregate sentence" has been substituted for the current reference in Art. 41, § 4-516(c)(1)(ii) to "one-half of the aggregate terms sentenced."

Section 7-301(c) of this subtitle applies only to an inmate who has been sentenced to the Division of Correction after being convicted of a violent crime. It does not apply to an inmate who is sentenced to a local correctional facility after being convicted of a violent crime. The General Assembly may wish to amend § 7-301(c) to make it applicable to these types of inmates.

The reference in § 7-304(a)(1) of this subtitle to a "request for notification under § 7-801(b)(1)(ii) of this title" is unclear. There is uncertainty as to whether this means a generic "request for notification" or, alternatively, a specific "request for notification of a parole hearing." The General Assembly may wish to clarify this issue. For a more detailed discussion of this issue, see the discussion set forth below in this report regarding § 7-801(b)(1)(ii) of this title.

The meaning of the references to "formal action" in § 7-304(b) and (d)(3) and (4) of this subtitle are unclear. The General Assembly may wish to clarify the meaning of this term.

Section 7-306(c) of this subtitle requires a hearing examiner to determine whether an inmate is suitable for parole in accordance with the "standards" specified in § 7-305 of this subtitle. Similarly, § 7-307(b)(1)(i) and (2) of this subtitle require a Maryland Parole Commission panel to determine whether an inmate is suitable for parole in accordance with the "standards" specified in § 7-305 of this subtitle. The references to "standards" in §§ 7-306(c) and 7-307(b)(1)(i) and (2) are inconsistent with the language of § 7-305, which identifies certain factors and information that must be considered when determining whether an inmate is suitable for parole. The specified factors and information cannot be accurately described as "standards." The General Assembly may wish to address this inconsistency by deleting the reference to "standards" in §§ 7-306(c) and 7-307(b)(1)(i) and (2) and substituting references to "factors and other information."

## Subtitle 4. Revocation of Parole; Modification of Parole; Conviction of Crime Committed While on Parole

This subtitle contains provisions relating to the grounds, conditions, and procedures for revocation or modification of parole.

Section 7-401(b)(1) of this subtitle provides that an individual is entitled to be represented at a parole revocation hearing by counsel of the individual's choice or "counsel provided by the Public Defender's Office." The reference to the Public Defender's Office is inconsistent with Art. 27A, which requires that the Public Defender's Office provide representation only to "eligible" individuals. The General Assembly may wish to amend § 7-401(b)(1) to provide that an individual is entitled to be represented at a parole revocation hearing by counsel of the individual's choice or, "if eligible," by the Public Defender's Office.

## Subtitle 5. Mandatory Supervision

This subtitle contains provisions that relate to eligibility requirements for mandatory supervision, revocation of mandatory supervision, and the powers and duties of the Division of Correction and the Division of Parole and Probation with regard to mandatory supervision.

Section 7-504(b) of this subtitle seems to establish a prohibition against awarding an inmate diminution credits on any sentence after mandatory supervision has been revoked. The Article Review Committee assumes that § 7-504(b) was intended to apply only to the sentence or sentences for which the inmate was awarded diminution credits prior to release on mandatory supervision and not to a new sentence for a crime committed while the inmate was on mandatory supervision. The General Assembly may wish to amend § 7-504(b) to state expressly that an inmate may not be awarded any diminution credits "on the sentence or sentences for which the individual was awarded diminution credits prior to release on mandatory supervision." The General Assembly may also wish to clarify how good conduct

credits should be calculated for a new sentence for a crime committed while an inmate was on mandatory supervision, depending on whether all or part of the new sentence runs concurrent with or consecutive to the sentence or sentences for which the inmate was awarded diminution credits before release on mandatory supervision.

There is a reference to a "crime of violence as defined in Article 27, § 643B of the Code" in the introductory language of § 7-505(b) of this subtitle. This reference is narrower in scope than the references to a "violent crime" in other provisions of this title. The term "violent crime" is defined in § 7-101 of this title to mean "a crime of violence as defined in Article 27, § 643B of the Code" or "burglary in the first, second, or third degree." The General Assembly may wish to substitute the defined term "violent crime" for the reference to "a crime of violence as defined in Article 27, § 643B of the Code" in the introductory language of § 7-505(b) of this section.

The meaning of the reference to a "request for notification under § 7-801(b)(1)(ii) of this title" in the introductory language of § 7-505(b) of this subtitle is unclear. There is uncertainty as to whether this means a generic "request for notification," a specific "request for notification of a parole hearing," or a specific "request for notification of a violation of mandatory supervision." The General Assembly may wish to clarify this issue. For a more detailed discussion of this issue, see the discussion set forth below in this report relating to § 7-801(b)(1)(ii) of this title.

## Subtitle 6. Commutation of Sentence; Pardon

This subtitle contains provisions that relate to the Governor's power to pardon and commute sentences.

## Subtitle 7. Payment of Restitution and Fees

This subtitle contains provisions that relate to an individual's obligation to make restitution payments while on parole or after the Governor has pardoned the individual or commuted the individual's sentence. This subtitle also contains provisions that authorize the Division of Parole and Probation to impose a supervision fee on a parolee.

## Subtitle 8. Victims' Rights; Notice to Sentencing Judge

This subtitle contains provisions that relate to a victim's right to receive notice of a parole hearing, a pre-determined parole release agreement, a parole violation, a commutation, a pardon, or a remission of sentence and to participate in deliberations at each of these stages.

The reference to a "request ... for notification" in § 7-801(b)(1)(ii) of this subtitle seems to be a reference to a request for notification "of a parole hearing." However,

§ 7-801(b)(1)(ii) is cited as a cross-reference in §§ 7-304(a)(1), 7-505(b), and 7-804 of this title. These three provisions establish, respectively, that a "request for notification under § 7-801(b)(1)(ii) of this [sub]title" is a condition precedent to holding an open parole hearing (§ 7-304(a)(1)), notifying a victim of an alleged violation of mandatory supervision, a violation of mandatory supervision, or any punishment imposed for a violation of mandatory supervision (§ 7-505(b)), and notifying a victim of an alleged violation of parole, a violation of parole, and any punishment imposed for a violation of parole (§ 7-804). If § 7-801(b)(1)(ii) requires a request for notification "of a parole hearing," then these three provisions also require a victim to file a request for notification "of a parole hearing" as a condition precedent to receiving notice in each of the specified circumstances. The General Assembly may wish to address this inconsistency by amending § 7-801(b)(1)(ii) so as to require a request for notification "of a parole hearing" and amending §§ 7-304(a)(1), 7-505(b), and 7-804 to require, respectively, a request for notification "of a parole hearing", a request for notification "of a violation of mandatory supervision", and a request for notification "of a violation of parole." Alternatively, the General Assembly may wish to address this inconsistency by amending §§ 7-304(a)(1), 7-505(b), and 7-804 so that they each refer to a generic "request for notification." See, e.g., § 7-805(b) (which requires a victim to file a "request ... for notification" as a condition precedent to receiving notice of a commutation of sentence, pardon, or remission of sentence).

Section 7-801(c)(1) of this subtitle applies only to a "victim of a violent crime." In contrast, the other provisions of § 7-801 apply to any "victim." The term "victim" is defined broadly in § 7-801(a) of this subtitle. For consistency, the General Assembly may wish to delete the reference to a victim "of a violent crime" in § 7-801(c)(1).

The meaning of the reference in § 7-801(d)(1)(ii) of this subtitle to a victim's right to request that an inmate be prohibited from having any contact with the victim as a condition of "work release, or other administrative release" is unclear. The Maryland Parole Commission has no authority to impose a condition on work release or other administrative release. The General Assembly may wish to delete the reference to "work release, or other administrative release" from § 7-801(d)(1)(ii). Correspondingly, the General Assembly may also wish to amend the appropriate provisions of this article (i.e., those that relate to inmates of State and local correctional facilities who are granted work release and other types of administrative release) to authorize a victim to request that an inmate be prohibited from having contact with the victim as a condition of work release or administrative release.

The meaning of the reference to a "request for notification under § 7-801(b)(1)(ii) of this subtitle" in the introductory language of §§ 7-804 and 7-805 of this subtitle is unclear. There is uncertainty as to whether this means a generic "request for notification," a specific "request for notification of a parole hearing", or a specific "request for notification of a parole violation." The General Assembly may wish to clarify this issue. For a more detailed discussion of this issue, see the discussion set forth above in this report relating to § 7-801(b)(1)(ii) of this subtitle.

## H. Title 8. State and Local Correctional System - Generally

This title contains provisions that are applicable to both State and local correctional facilities, including provisions that relate to standards for correctional facilities, correctional training, interstate and intrastate detainers, community service programs, and prohibited acts.

### Subtitle 1. Standards for Correctional Facilities

This subtitle contains provisions that relate to the establishment, powers, and duties of the Maryland Commission on Correctional Standards.

Current Art. 27, § 704(a) and current Art. 41, § 4-401(b)(8) are inconsistent regarding the issue of whether the Secretary is required to adopt "approved standards." The language of current Art. 27, § 704(a), which provides that the Secretary "shall" adopt approved standards and that such standards "shall include the items enumerated in" current Art. 41, § 4-401(b)(8), suggests that the Secretary is required to adopt approved standards. In contrast, the language of current Art. 41, § 4-401(b)(8) suggests that the Secretary has discretionary authority to adopt approved standards. Current Art. 41, § 4-401(b)(8) defines "approved standards" to mean policies and procedures "in areas such as personnel, training, administration, management, planning and coordination, research and evaluation, physical plant, special management inmates, rules and discipline, mail and visiting, reception and orientation, inmate property control, inmate work programs, education and vocational training, library services, religious services, recreational activities, counseling, release preparation and volunteers." The reference in current Art. 41, § 4-401(b)(8) to policies and procedures in "areas such as" the various enumerated areas implies that the Secretary has discretionary authority to adopt approved standards. Section 8-103(b) of this subtitle has been drafted to reflect the mandatory nature of current Art. 27, § 704(a) rather than the discretionary nature of current Art. 41, § 4-401(b)(8). The General Assembly may wish to make it discretionary for the Secretary to adopt approved standards. In any event, the General Assembly should know that the Secretary has never adopted approved standards.

The meaning of § 8-109(a) of this subtitle, which establishes that a majority "of the members of the Commission" is a quorum, is unclear. There is uncertainty as to whether this means a majority of the authorized membership of the Maryland Commission on Correctional Standards or a majority of the members then serving on the Maryland Commission on Correctional Standards. The General Assembly may wish to clarify the meaning of this provision.

The last clause of current Art. 41, § 4-401(c)(8), which is revised in § 8-110(b) of this subtitle, is ambiguous as to whether it applies to any county or municipal corporation that operates a correctional facility or, alternatively, to any county or municipal corporation that

has a State or local correctional facility located within its territorial boundaries. This issue is relevant because no municipality currently operates a correctional facility but some municipalities do have State or local correctional facilities (or both) located within their territorial boundaries. The General Assembly may wish to resolve this ambiguity.

Section 8-113(a)(1) of this subtitle requires the Maryland Commission on Correctional Standards to establish and implement a process to inspect State and local correctional facilities to determine and "certify" compliance with applicable standards. The General Assembly may wish to know that the Maryland Commission on Correctional Standards does not interpret this provision to require the issuance of a "certificate" of compliance. In practice, the Maryland Commission on Correctional Standards has implemented this provision by issuing a letter that simply acknowledges compliance or noncompliance with applicable standards.

## Subtitle 2. Correctional Training Commission

This subtitle contains provisions that relate to the establishment, powers, and duties of the Correctional Training Commission.

In § 8-201(e)(2) of this subtitle, the reference in current Art. 41, § 4-301(b)(7) to an individual "serving as ... [a correctional officer] solely by virtue of his occupying any other office or position" is deleted. The meaning of this phrase is unclear, but it appears to be unnecessary in light of the specific listing of particular offices and positions in § 8-201(e)(2). The General Assembly may wish to retain this language or clarify its meaning.

The introductory language in current Art. 41, § 4-301(e), which refers to "powers, authority, responsibilities, and duties" of the Correctional Training Commission, gives rise to the issue of whether current Art. 41, § 4-301(e)(7) and (8) establish powers (i.e., authority) or duties (i.e., responsibilities). Since the word "shall" is used several times in current Art. 41, § 4-301(e)(7) and (8), these provisions have been revised in § 8-206 of this subtitle to create duties. If the General Assembly wishes to make these powers discretionary, the word "may" should be substituted for the word "shall."

The meaning of the references to "a majority" of the Correctional Training Commission in § 8-207(a)(1) and (b) of this subtitle is unclear. There is uncertainty as to whether this means a majority of the authorized membership of the Correctional Training Commission (i.e., seven members) or a majority of the members then serving on the Correctional Training Commission. The General Assembly may wish to clarify the meaning of the reference to "a majority" in § 8-207(a)(1) and (b).

## Subtitle 3. Law Enforcement and Correctional Training Fund

This subtitle contains provisions that relate to the establishment, investments, and expenditures of the Law Enforcement and Correctional Training Fund.

## Subtitle 4. Interstate Agreement on Detainers and Related Matters

This subtitle contains the Interstate Agreement on Detainers. It also contains other provisions relating to enforcement of the Agreement, duties of managing officials, duties of the Attorney General, escape, and diminution credits.

## Subtitle 5. Intrastate Detainers

This subtitle contains provisions relating to intrastate detainers.

Sections 8-502(a)(2) and 8-503(a) of this subtitle refer only to those inmates who are authorized under Title 4, Subtitle 3 of the article to participate in the "eligible person" program at the Patuxent Institution or are being evaluated for participation in the "eligible person" program. These sections do not apply to inmates who are in the Patuxent Institution Youth Program, as authorized under Title 4, Subtitle 4 of the article, or to inmates of the Division of Correction who are confined in the Patuxent Institution, as authorized under § 2-117 of the article. The General Assembly may wish to amend §§ 8-502(a)(2) and 8-503(a) to refer to "any inmate who is confined in the Patuxent Institution." This language is broad enough to include all inmates at the Patuxent Institution, including those inmates who are there for evaluation before sentencing.

Section 8-502(c)(4) of this subtitle refers to diminution credits awarded to an inmate for "good conduct" rather than to any type of diminution credits awarded to an inmate. The term "diminution credits" includes various types of credit for diminution of an inmate's term of confinement, including those that are awarded for good conduct, completion of work assignments, vocational or educational progress, and completion of special selected work projects. All of these types of diminution credits are used to calculate an inmate's mandatory supervision release date from a State correctional facility or an inmate's expiration release date from a local correctional facility. See generally Title 3, Subtitle 7 and Title 11, Subtitle 5 of the article. The General Assembly may wish to amend § 8-502(c)(4) to refer to the amount of "diminution credits" awarded to an inmate.

Section 8-502(c)(6) of this subtitle is limited to decisions of the Maryland Parole Commission. The General Assembly may wish to amend this provision to include parole decisions made by the Board of Review at the Patuxent Institution, which makes parole decisions regarding "eligible persons" at the Patuxent Institution. The General Assembly may also wish to amend this provision to refer to "the most recent decision" rather than "any

decision" because the most recent parole decision is the relevant decision in the context of intrastate detainers.

Section 8-503(c)(1) and (e)(1) of this subtitle are inconsistent with § 8-503(c)(3) and (e)(3) of this subtitle. Section 8-503(c)(1) and (e)(1) provide that a court "no longer has jurisdiction over the untried indictment, information, warrant, or complaint" if specified events do not occur within specified periods. However, § 8-503(c)(3) and (e)(3) require the court to "dismiss the untried indictment, information, warrant, or complaint" under the same circumstances. These provisions are in conflict because a court cannot dismiss an indictment, information, warrant, or complaint unless the court has jurisdiction over the matter. The General Assembly may wish to repeal § 8-503(c)(1) and (e)(1) as surplusage.

## Subtitle 6. Interstate Corrections Compact

This subtitle contains the Interstate Corrections Compact, which provides a vehicle for states to develop and implement programs of cooperation relating to the confinement, treatment, and rehabilitation of offenders.

## Subtitle 7. Community Service Programs

This subtitle contains provisions that relate to the establishment and operation of community service programs.

In §§ 8-703 and 8-704(3) of this subtitle, the meaning of the phrase "has not been convicted of a crime of violence" is unclear. There is uncertainty as to whether this phrase refers only to the current conviction or to prior convictions as well. The General Assembly may wish to clarify whether this phrase was intended to apply to individuals who have a prior conviction for a crime of violence but who are currently before the court after being convicted of a crime other than a crime of violence.

There is inconsistent compliance with § 8-705(b) of this subtitle in the various counties of the State. Some clerks are unaware of the requirement that a participating agency file a form with the clerk's office. Some clerks are aware of the provision but do not enforce it. The General Assembly may wish to repeal this provision.

## Subtitle 8. Prohibited Acts

This subtitle prohibits certain conduct relating to correctional facilities, including false imprisonment by an inmate, the sale of produce by correctional facilities, and the delivery, receipt, and possession of weapons, controlled dangerous substances, alcoholic beverages, and other contraband.

With one exception, § 8-802 of this subtitle, which relates to weapons, mirrors the provisions of § 8-803 of this subtitle, which relates to contraband to effect an escape. Taken together, these two sections prohibit delivery, possession with intent to deliver, and receipt of weapons and contraband to effect an escape. Section 8-803 also prohibits an individual from depositing or concealing contraband in or about a correctional facility or on any land appurtenant to the facility to effect an escape. The General Assembly may wish to amend § 8-802 to make it consistent with § 8-803, i.e., to prohibit an individual from depositing or concealing a weapon in or about a correctional facility or on any land appurtenant to the facility.

The prohibitions against receipt of weapons and contraband set forth in §§ 8-802(c) and 8-803(d) of this subtitle do not apply to individuals other than inmates, i.e., aiders and abettors. If the General Assembly intended that §§ 8-802(c) and 8-803(d) apply to aiders and abettors, it should amend these provisions accordingly.

The meaning of the reference to a fine of "not less than $50" in § 8-808(b) of this subtitle, which is derived from current Art. 27, §703A, is unclear in light of Art. 27, § 643, which allows a court to impose "a lesser penalty of the same character." The General Assembly may wish to clarify whether § 8-808(b) is intended to create a mandatory minimum penalty of $50. The Article Review Committee was unable to resolve this question with any certainty because the applicability of Art. 27, § 643 to current Art. 27, § 730A is unclear. In State v. Fisher, 204 Md. 307, 315 (1953), Robertson v. Warden, 212 Md. 646, 648 (in dicta)(1956), Woodfork v. State, 3 Md. App. 622, 624-625 (1967), and Dodson v. State, 14 Md. App. 483, 485-486 (1971), the courts held that Art. 27, § 643 is controlling only with regard to statutory penalty provisions that existed at the time of its adoption in 1906 but that it might also be given effect as to subsequently enacted laws "by construction." The original version of current Art. 27, § 703A was enacted in 1929. See Ch. 473, Acts of 1929. Accordingly, under the above cases, Art. 27, § 643 is not applicable to current Art. 27, § 703A unless it is given effect "by construction." However, the relevancy of those decisions to this issue is unclear because Art. 27, § 643 was repealed and reenacted three times after the last of those cases was decided in 1971. In 1972, Art. 27, § 643 was made applicable to the newly formed District Court. See Ch. 181, Acts of 1972. In 1982, the obsolete reference to the "Criminal Court of Baltimore" was deleted from Art. 27, § 643. See Ch. 820, Acts of 1982. In the 1988 Corrective Bill, the reference to the imposition of a "lesser" penalty was substituted for the former reference to the imposition of a "less" penalty. See Ch. 6, Acts of 1988. In sum, if the General Assembly intended that § 8-808(b) create a mandatory minimum penalty of $50, it may wish to amend this provision to expressly state that "notwithstanding Article 27, § 643 of the Code, it is mandatory on the court to impose a penalty of no less than $50" and that "the mandatory minimum penalty of $50 may not be suspended." See also § 7-205(e)(1).

# I. Title 9. State and Local Correctional System - Inmates

This title contains provisions that are applicable to inmates of both State and local correctional facilities, including provisions that relate to sentences, transfers, the use of inmates for public work, pregnant inmates, sick inmates, release dates, and State reimbursement of local correctional facilities.

Current Art. 27, § 234, which requires a fugitive felon found in this State to be confined in this State or, on demand, delivered to the state from where the felon escaped, is deleted in the revision as unnecessary and obsolete in light of the Uniform Criminal Extradition Act and the Uniform Act for Persons of Unsound Mind. These two uniform laws, which are codified, respectively, in Subtitles 2 and 3 of Title 2 of Article 41 of the Code, set forth in detail the circumstances under which the Governor may request the extradition to this State of an individual imprisoned or awaiting trial in another state or may surrender, on demand of the executive authority of any other state, any individual in this State charged with a criminal offense in the other state.

## Subtitle 1. Sentences - Generally

This subtitle establishes the circumstances under which an inmate may be sentenced to a State correctional facility or a local correctional facility.

## Subtitle 2. Sentences - Consecutive and Concurrent

This subtitle contains provisions that require the imposition of a consecutive sentence under certain circumstances relating to sexual offenses. This subtitle also contains provisions governing the manner in which sentences to multiple jurisdictions shall be served.

The term "sexual offense," as defined in § 9-201(a)(2) of this subtitle, does not include first degree rape (Art. 27, §462) or second degree rape (Art. 27, § 463). However, it does include first degree sexual offense (Art. 27, § 464), second degree sexual offense (Art. 27, § 464A), third degree sexual offense (Art. 27, § 464B), fourth degree sexual offense (Art. 27, § 464C), attempt to commit rape in the first or second degree or a sexual offense in the first or second degree (Art. 27, § 464F), and attempt to violate any of the provisions of Art. 27, §§ 464 through 464C. The General Assembly may wish to amend the definition of "sexual offense" in § 9-201(a)(2) to include first and second degree rape.

Section 9-201(a)(3) of this subtitle is a new definition added to reflect that this section does not apply to the Patuxent Institution or the Baltimore City Detention Center because these facilities are not "administered by the Division of Correction" as specified by current Art. 27, § 692A(a). However, this section should logically apply to inmates of the Patuxent Institution and the Baltimore City Detention Center as well as inmates of State

correctional facilities that are operated by the Division of Correction. The General Assembly may wish to amend this section to make it applicable to the Patuxent Institution and the Baltimore City Detention Center.

The reference in § 9-201(b) of this subtitle to "the sentence that the inmate was serving at the time of the sexual offense" may not have the meaning that was intended by the General Assembly. For example, if an inmate is serving a 5 year sentence and also has a 10 year sentence that runs consecutive to the 5 year sentence, § 9-201(b) requires that the sentence that is imposed for the new sexual offense be served consecutive to the 5 year sentence rather than the 10 year sentence. See Robinson v. Lee, 317 Md. 371 (1989) (holding that a sentence that is to be served "consecutive with [the] sentence now serving" is to be served consecutively to the sentence then being served rather than the aggregate of all preexisting unserved sentences). The General Assembly may wish to amend § 9-201(b) to require that the sentence for the new sexual offense be served consecutive: (1) in the case of an inmate who is serving a single sentence, to that sentence; and (2) in the case of an inmate who is serving multiple sentences, to the last sentence to expire.

## Subtitle 3. Transfers

This subtitle contains provisions that establish procedures governing the transfer of inmates to and from correctional facilities and other locations.

Section 9-304 of this subtitle authorizes the Commissioner of Correction to transfer a "minimum security" inmate to a local correctional facility for participation in community-oriented correctional programs. Since "prerelease" is a lower security status than "minimum security," the General Assembly may wish to make § 9-304 applicable to both "minimum security" and "prerelease" inmates.

## Subtitle 4. State Reimbursement of Local Correctional Facilities

This subtitle contains provisions that relate to State reimbursement of counties for operating costs associated with local correctional facilities.

The discretion granted to the Commissioner of Correction in § 9-403(c) of this subtitle to select between different ways of determining the previous fiscal year's total actual annual operating cost is not guided by any criteria or standard. The General Assembly may wish to establish a standard or specific criteria to be considered by the Commissioner of Correction in making this decision.

## Subtitle 5. Inmate Work Force

This subtitle contains provisions that authorize the use of inmates of State and local correctional facilities in public work projects.

Many aspects of §§ 9-503 through 9-506 of this subtitle are duplicative of §§ 9-507 through 9-514 of this subtitle. There is no clear reason for this duplication. The source law for §§ 9-503 through 9-506, current Art. 27, §§ 712 through 718, was enacted by Ch. 211, Acts of 1916. The source law for §§ 9-507 through 9-514, current Art. 27, §§ 719 through 726, was enacted as an emergency measure by Ch. 4, Acts of 1917 (Special Session). All of these provisions remained largely unchanged after their original enactment. The provisions of current Art. 27, §§ 719 through 726 stand alone and are not intertwined with the provisions of current Art. 27, §§ 712 through 718. In light of the uncertainty as to the purpose of the overlapping aspects of this subtitle and the age of the underlying source law for this subtitle, the General Assembly may wish to examine this subtitle and determine whether the current inmate work force system should be modified or eliminated.

The reference to "male" inmates in §§ 9-503(a), 9-507(b), and 9-508(a) and (b) of this subtitle may reflect outdated assumptions about differences between male and female inmates and may be a violation of the guarantees of equal protection that are embodied in the State and federal constitutions. The General Assembly may wish to repeal these provisions or make them gender neutral.

Sections 9-504(d) and 9-512(b) of this subtitle set forth rules governing the distribution of an inmate's earnings. As noted above in this report in connection with § 3-804 of the article, there are significant inconsistencies throughout the article in provisions governing the disposition of an inmate's earnings in different contexts. The General Assembly may wish to amend the relevant provisions to create uniformity in this area.

The meaning of the reference to a "good behavior allowance" in § 9-506 of this subtitle is unclear. There is uncertainty as to how a good behavior allowance granted under this section relates to diminution credits awarded for good conduct under §§ 3-704, 11-503, and 11-504 of the article, for work tasks under §§ 3-705 and 11-505 of the article, and for special work projects under §§ 3-707 and 11-506 of the article. Diminution credits awarded under these sections are used to reduce an inmate's term of confinement. See § 7-101(g). Did the General Assembly intend that a "good behavior allowance" granted under § 9-506 be used to reduce an inmate's term of confinement? Section 9-506 refers to an "additional" good behavior allowance. Did the General Assembly intend to authorize the Division of Correction to grant diminution credits for "good behavior" under § 9-506 in addition to diminution credits awarded for good conduct under §§ 3-704, 11-503, and 11-504 of the article, for work tasks under §§ 3-705 and 11-505 of the article, and for special work projects under §§ 3-707 and 11-506 of the article? The General Assembly may wish to repeal § 9-506 in light of the specific provisions regarding diminution credits in §§ 3-704, 3-705,

3-707, 11-503, 11-504, 11-505, and 11-506. Alternatively, the General Assembly may wish to clarify: (1) whether a good behavior allowance granted under § 9-506 should be used to reduce an inmate's term of confinement; and (2) if so, whether diminution credits for "good behavior" may be granted under § 9-506 in addition to the diminution credits awarded under §§ 3-704, 3-705, 3-707, 11-503, 11-504, 11-505, and 11-506. See also § 9-513.

Section 9-506 of this subtitle authorizes the Division of Correction to adopt regulations that are applicable to each inmate who is employed in public work "under this subtitle." This language is technically broader than the language of current Art. 27, § 718, which authorized the Division of Correction to adopt regulations that were applicable to each inmate employed in public work under current Art. 27, § 711A through 726, because current Art. 27, § 681L and current Art. 88B, § 26 are also revised in this subtitle. See §§ 9-519 and 9-520. No substantive change is intended. However, in light of the questions discussed in the previous paragraph of this report regarding the meaning of § 9-506, the General Assembly may wish to examine whether the reference to an inmate employed in public work "under this subtitle" reflects a substantive change, i.e., whether it allows the Division of Correction to award diminution credits to an inmate who engages in work under §§ 9-519 and 9-520 of this subtitle in addition to those diminution credits that may be awarded under §§ 3-704, 3-705, 3-707, 11-503, 11-504, 11-505, and 11-506 of the article.

Section 9-508 of this subtitle authorizes the governing body of a municipal corporation to make inmates of a local correctional facility under its jurisdiction available for work on public roads. Although there are currently no local correctional facilities in the State that are operated by a municipal corporation, this language is retained in the proposed article because this situation could conceivably change in the future.

The part of current Art. 27, § 726 that is revised in § 9-514(a)(1) of this subtitle requires that expenses relating to guarding, transporting, lodging, feeding, clothing, and otherwise caring for an inmate be "paid out of any moneys in the [T]reasury available therefor and not otherwise appropriated." This requirement may be unconstitutional under Article III, §§ 32 and 52 of the Maryland Constitution. Under Article III, § 52(1), the General Assembly is prohibited from "appropriat[ing] any money out of the Treasury except in accordance with the provisions of this section." Article III, § 52(2) requires that "[e]very appropriation bill ... be either a Budget Bill, or a Supplementary Appropriation Bill, as hereinafter provided." The requirement in § 9-514(a)(1) that expenses be paid out of money in the Treasury that has not been "otherwise appropriated" may be unconstitutional because the bill that originally enacted this requirement was not a Budget Bill or a Supplementary Appropriation Bill. See Ch. 4, Acts of 1917. Even if § 9-514(a)(1) does not violate Article III, § 52 of the Maryland Constitution, it may violate Article III, § 32 of the Maryland Constitution because it places no cap on the amount of money that can be drawn from the Treasury. Article III, § 32 provides that "[n]o money shall be drawn from the Treasury of the State, by any order or resolution, nor except in accordance with an appropriation by Law; and every such Law shall distinctly specify the sum appropriated, and the object, to which

it shall be applied." To eliminate any question about the constitutionality of § 9-514(a)(1), the General Assembly may wish to repeal the language that allows expenses to be "paid out of money in the Treasury that has not been otherwise appropriated and is available for those purposes."

The General Assembly may wish to repeal § 9-515 of this subtitle as obsolete. Currently, there are no correctional "camps" in Queen Anne's County and no inmates are being used in agricultural work as authorized by this section.

Section 9-520(b) of this subtitle is one of many provisions in the article that relates to inmates who escape while legitimately outside the confines of a correctional facility (e.g., while on work release, home detention, pretrial release, weekend leave, compassionate leave, family leave, etc.). For a discussion of the Article Review Committee's perspective on these provisions, see the discussion set forth above in this report relating to § 3-305(c) of the article.

## Subtitle 6. Miscellaneous

This subtitle contains miscellaneous provisions that relate to the handling of pregnant and sick inmates, methadone detoxification programs, payment of burial and funeral expenses for indigent inmates, medical treatment of juvenile inmates, release dates, grand jury visits to correctional facilities, warrants, and detainers.

Section 9-601 of this subtitle, which relates to pregnant inmates, does not apply to inmates in the Patuxent Institution, the Baltimore City Detention Center, or local correctional facilities. The General Assembly may wish to make this section applicable to such inmates or establish separate procedures relating to the handling of pregnant inmates in those facilities.

Section 9-601(b)(3) of this subtitle gives the Governor authority to suspend the execution of an inmate's sentence without first giving notice to the public as required by Article II, § 20 of the Maryland Constitution for reprieves and pardons. The Article Review Committee believes that the suspension of the execution of a sentence is a "reprieve" within the meaning of Article II, § 20 and is not certain as to whether the General Assembly has the power to authorize the Governor to grant a reprieve without first giving the required notice. The General Assembly may have the power to do so under Article III, § 60 of the Maryland Constitution, which gives the General Assembly power to "provide by general enactment ... for the suspension of sentence by the Court in criminal cases." However, the General Assembly may wish to consider, as a matter of policy, whether the Governor should be required to give the notice specified in Article II, § 20 of the Maryland Constitution before suspending a sentence under § 9-601(b)(3).

Section 9-601(e)(1) of this subtitle authorizes the Division of Correction to order a father or other relative to take custody of a child born to an inmate. If the Division of Correction decides to place a child in the custody of a father or other relative, § 9-601(e)(2) of this subtitle requires that the father or relative care for the child until the mother is released from the correctional facility or the child is adopted. In essence, these provisions give the Division of Correction authority to make a child custody decision and suggest that custody of the child automatically reverts back to the mother upon her release from confinement. The General Assembly may wish to consider whether it is appropriate to give the Division of Correction authority to make a child custody decision or to require that custody of a child automatically revert back to the mother upon her release from confinement. The Article Review Committee believes that a better policy would require that the mother arrange for custody of the child and, in situations in which the mother is unable to do so, that the Division of Correction place the child in the care of the Department of Human Resources.

Section 9-602(e) of this subtitle is one of many provisions in this article that relates to inmates who escape while legitimately outside the confines of a correctional facility (e.g., while on work release, home detention, pretrial release, weekend leave, compassionate leave, family leave, etc.). For a discussion of the Article Review Committee's perspective on these provisions, see the discussion set forth above in this report relating to § 3-305(c) of the article.

Section 9-605 of this subtitle, which provides that an inmate's estate is liable for certain costs, may be unconstitutional under Article 27 of the Maryland Declaration of Rights, which provides that "[n]o conviction shall work corruption of blood or forfeiture of estate". The General Assembly may wish to examine this issue. If the General Assembly decides that this section does not violate the constitutional prohibition against a conviction causing "corruption of blood or forfeiture of estate", it may wish to transfer this section to the Estates and Trusts Article.

## J. Title 10. State Correctional Facilities

This title contains provision that relate to State correctional facilities, including provisions that relate to construction of correctional facilities, inmate grievances, sundry claims, citizens' advisory committees, and inmate welfare funds.

### Subtitle 1. Construction of Facilities

This subtitle contains provisions relating to the design and construction of State correctional facilities.

The term "State correctional facility" is defined in § 10-101(c) of this subtitle to have the meaning stated in § 11-101(v) of the State Finance and Procurement Article. Currently,

the definition of "State correctional facility" in § 11-101(v) of the State Finance and Procurement Article does not differ in any substantive way from the definition of "State correctional facility" in § 1-101 of the proposed article. However, to ensure that "State correctional facility" is always defined to have the same meaning in both sections, the General Assembly may wish to amend § 11-101(v) of the State Finance and Procurement Article to provide that "'State correctional facility' has the meaning stated in § 1-101 of the Correctional Services Article." If the General Assembly chooses to amend § 11-101(v) of the State Finance and Procurement Article to track the definition of "State correctional facility" in § 1-101 of the Correctional Services Article, § 10-101(c) should be deleted as circuitous.

In addition to the term "State correctional facility," two terms that are used in this subtitle are defined in § 11-101 of the State Finance and Procurement Article. These terms are "architectural services" and "engineering services." The General Assembly may wish to define these two terms in § 10-101 of this subtitle to have the same meaning stated in § 11-101 of the State Finance and Procurement Article. The General Assembly may also wish to define "construction related services" in § 10-101 of this subtitle to have the same meaning stated in § 11-101 of the State Finance and Procurement Article and use the defined term as a substitute for references to similar language throughout this subtitle (e.g., references to a "matter concerning construction").

The meaning of the term "engineering question" in §§ 10-102(a)(1) and (2) and 10-103 of this subtitle is unclear. The General Assembly may wish to clarify the meaning of this term.

Section 10-102(a)(3) of this subtitle requires the Department of Public Safety and Correctional Services to "approve each architectural and engineering design and service in connection with the construction of a State correctional facility." This provision does not explicitly allow the Department to "disapprove" a design or service. The General Assembly may wish to fill this gap.

## Subtitle 2. Inmate Grievance Office

This subtitle contains provisions relating to the establishment of the Inmate Grievance Office and the handling of inmate complaints.

Section 10-209(c)(1) of this subtitle authorizes the Secretary of Public Safety and Correctional Services to affirm, reverse, or modify an order of the Office of Administrative Hearings. This provision lacks explicit authority to "remand" such an order. However, the Secretary does, in practice, remand certain cases under the other authority implicit in § 10-209(c)(1). The General Assembly may wish to add explicit authority to "remand."

Section 10-209(c)(3)(ii) of this subtitle makes the Secretary's order "the final decision for purposes of judicial review." The General Assembly may wish to create an exception for an order that remands a case.

## Subtitle 3. Sundry Claims Board

This subtitle contains provisions relating to the establishment of the Sundry Claims Board and the administration of benefits to inmates who file claims with the Sundry Claims Board.

This subtitle does not include explicit authority for the Sundry Claims Board to adopt regulations. Nevertheless, the Sundry Claims Board has adopted regulations. See COMAR 12.05.01.01 through .14. The General Assembly may wish to expressly authorize the Sundry Claims Board, with the approval of the Secretary, to adopt regulations.

## Subtitle 4. Citizens' Advisory Committee

This subtitle contains provisions that relate to the establishment, powers, and duties of the Citizens' Advisory Committee for State correctional facilities.

Taken together, §§ 10-402 and 10-403(a) of this subtitle strongly suggest that one committee must be created for each of the political subdivisions specified in § 10-402 of this subtitle. However, since the appointment process is based on legislative districts, there is some confusion as to how these provisions should be applied in Baltimore City. Most of the State correctional facilities in Baltimore City are located in District 44. However, the Baltimore Prerelease Unit for Women is located in District 41 and the Baltimore Prerelease Unit for Women-Annex is located in District 40. Because each legislative district in Baltimore City is represented by three Delegates and one Senator, the law provides for more nominations than there are member positions. Also, since § 10-402(b) of this subtitle requires that the Governor appoint each nominee submitted by a legislator, the Governor does not have the authority to pick four appointees out of a larger nomination pool. The General Assembly may wish to amend this subtitle to clarify the procedure for appointing committee members for Baltimore City.

Current Art. 41, § 4-1102(j), which is revised in § 10-405(c) of this subtitle, does not authorize reimbursement of expenses for committee members. In the absence of source law that authorizes reimbursement of expenses for members of boards, commissions, and committees, etc., the usual practice of the Article Review Committee is to add standard language that authorizes reimbursement as provided under the Standard State Travel Regulations. See COMAR 23.02.01.01 through .12. However, such language has not been added to § 10-405(c) because the Article Review Committee is uncertain as to whether the Standard State Travel Regulations apply to Citizens' Advisory Committees. The Standard

State Travel Regulations apply only to expenses incurred for official business undertaken by "officials and employees of units of the Executive Branch of State government." See COMAR 23.02.01.01. The General Assembly may wish to clarify whether committee members are entitled to reimbursement for expenses.

### Subtitle 5. Inmate Welfare Funds

This subtitle establishes an inmate welfare fund in each State correctional facility and sets forth rules governing administration of the funds.

### Subtitle 6. Correctional Facilities Operated by Other States

This subtitle prohibits another state from beginning construction of a correctional facility in Maryland unless the other state follows certain procedures relating to the construction and location of the facility.

## K. Title 11. Local Correctional Facilities

This title contains provisions relating to local correctional facilities, including laws that relate to establishment of local correctional facilities, community adult rehabilitation centers, correctional farms, diminution credits, alternatives to incarceration, and the safety, health, and welfare of inmates.

### Subtitle 1. Establishment of Local Correctional Facilities

This subtitle contains provisions that relate to the establishment and operation of local correctional facilities.

The meaning of the second clause of current Art. 27, § 705(d)(2), which is revised in the second clause of § 11-104(c) of this subtitle, is unclear. This provision was originally enacted as part of Ch. 481, Acts of 1968, which authorized the governing body of one or more counties to establish and maintain a regional detention center. The legislative history of the original provision relating to the State share for funding of construction costs for regional detention centers is not available because there are no bill files from that period. Similarly, the purpose paragraph of Ch. 481, Acts of 1968 offers no guidance as to the meaning of this particular provision. The meaning of this provision was further clouded by the enactment of Ch. 128, Acts of 1986, which revised the term "regional detention center" throughout current Art. 27, § 705 to be "local detention center" and defined "local detention center" to mean "any jail, work release, or prerelease center or any other correctional facility operated by one or more counties for the purpose of adult detention and confinement." The definition added by Ch. 128, Acts of 1986 made the provision relating to the State share for funding of construction costs in current Art. 27, § 705(d)(2) circuitous because the entire

subtitle deals with "jail construction and rehabilitation" and because jails are included in the definition of "local detention center" in current Art. 27, § 705(a)(1). In sum, the second clause of current Art. 27, § 705(d)(2) seems to reflect a distinction between detention centers and jails that no longer exists. However, merely repealing this provision leaves unaddressed the issue of whether there is any mandatory State share for construction of or improvements to a local correctional facility. The General Assembly may wish to delete the second clause of § 11-104(c) as meaningless or amend this clause to give it meaning.

Section 11-104(d) of this subtitle authorizes the Secretary to receive grants from a public or private "foundation or agency." This language excludes grants from individuals. The General Assembly may wish to amend § 11-104(d) to authorize the Secretary to receive grants from any public or private "source."

## Subtitle 2. Safety, Health, and Welfare of Inmates

This subtitle contains provisions that relate to the duties of sheriffs and managing officials with regard to the safety, health, and welfare of inmates of local correctional facilities.

The amount that must be paid under § 11-201(a)(2)(iii) of this subtitle to sheriffs for keeping federal inmates is extraordinarily low and does not reasonably reflect current costs. As a practical matter, each county usually enters into an agreement with the federal marshal service or other appropriate federal agency for a per diem rate for any federal prisoner the county agrees to take into custody. The General Assembly may wish to repeal § 11-201(a)(2)(iii) as obsolete or amend it to reflect current practice, i.e., to authorize a county to enter into an agreement with the federal government regarding reimbursement for the cost of keeping and supporting individuals who are committed to the custody of the sheriff under the authority of the United States government.

The references in the second sentence of current Art. 87, § 48(a), which is revised in § 11-201(b)(2) of this subtitle, and current Art. 87, § 46(b)(1), which is revised in § 11-203(a)(1) of this subtitle, to inmates who are "committed" to the custody of a local correctional facility could be interpreted to exclude the following two categories of inmates: (1) inmates who are being held in the custody of a local correctional facility under the terms of a contract with the federal government, another state, or any other entity; and (2) inmates who are being held in the custody of the local correctional facility after being arrested but prior to an appearance before a commissioner or other judicial authority. The General Assembly may wish to amend §§ 11-201(b)(2) and 11-203(a)(1) to clarify that the managing official's duty to provide for the safekeeping, care, and feeding of inmates extends to these two categories of inmates.

The meaning of the word "certified" in §§ 11-201(c) and 11-202(b) of this subtitle is unclear because the former law does not indicate the source of certification. This term

may refer to certification by the Correctional Training Commission (see Title 8, Subtitle 2 of the article), the Police Training Commission (see Art. 41, § 4-201), or another entity. the General Assembly may wish to amend §§ 11-201(c) and 11-202(b) to clarify the source of certification.

The penalty provision in § 11-202(c) of this subtitle, by its terms, does not apply to law enforcement officers in Anne Arundel County who are authorized under § 11-202(b) of this subtitle to perform the duty described in § 11-202(a) of this subtitle instead of the sheriff. The General Assembly may wish to amend § 11-202(c) to make it applicable to any individual who does not comply with the requirements of § 11-202(a).

## Subtitle 3. Community Adult Rehabilitation Centers

This subtitle contains provisions that relate to the establishment and operation of community adult rehabilitation centers.

Section 11-305(c) of this subtitle, which requires the Secretary to comply with "the Administrative Procedure Act, Title 7, Subtitle 2 of the State Government Article, and other applicable laws" in the development, adoption, and enforcement of standards relating to community adult rehabilitation centers, seems unnecessary. All Executive Branch agencies that promulgate regulations must comply with the Administrative Procedure Act, which sets forth requirements governing the proposal and adoption of regulations, including publication in the Maryland Register and review by the Joint Committee on Administrative, Executive, and Legislative Review. See Title 10, Subtitle 1 of the State Government Article. Also, Title 7, Subtitle 2 of the State Government Article, which was formerly the State Documents Law and is now entitled "Division of State Documents," has no particular relevance to the responsibilities of an executive agency in connection with the "development, adoption, and enforcement" of regulations. The General Assembly may wish to repeal § 11-305(c) as meaningless.

Current Art. 27, § 710(a), which is revised in §11-307(a)(3) of this subtitle, requires the "county governing body" to hold at least one public hearing in the county in which a site is proposed. There is uncertainty as to the meaning of the term "county governing body" in the context of a regional center. Is this reference intended to require the governing body of each of the counties in a region to hold a hearing in the county in which the site is proposed? Alternatively, is this intended to require only the governing body of the county in which the site is proposed to hold a hearing? The proposed article reflects the latter interpretation. If the General Assembly intended the former interpretation, the General Assembly may wish to amend § 11-703(a)(3) accordingly.

Section 11-310(b)(3) of this subtitle makes a distinction between inmates who, under §§ 11-316 and 11-317 of this subtitle, "have been placed in [a] center under a sentence of more than 90 days" or "have been transferred to [a] center." However, in light of the

language of §§ 11-316 and 11-317, there is uncertainty as to the meaning of this distinction. Under § 11-316, the Commissioner of Correction has authority under certain circumstances to place an inmate of a State correctional facility in a center. Under § 11-317, a court has authority under certain circumstances to place an inmate of a local correctional facility in a center. Both of these sections seem to relate to the "transfer" of an individual to a center - either from a State correctional facility (§ 11-316) or a local correctional facility (§ 11-317). Neither of these sections makes a distinction based on "a sentence of more than 90 days." In practice, the Department of Public Safety and Correctional Services interprets § 11-310(b)(3) as follows: (1) the reference to inmates who "have been placed in [a] center under a sentence of more than 90 days" means inmates who have been sentenced to serve 90 days or more in a local correctional facility and have been placed in a center by a judge under § 11-317; and (2) the reference to inmates who "have been transferred to [a] center" means inmates who have been placed in a center by the Commissioner of Correction under § 11-316. The General Assembly may wish to amend § 11-310(b)(3) to reflect current practice or otherwise clarify the meaning of this provision.

Section 11-312(b) of this subtitle does not seem to apply to regional centers or to centers that are operated by the State by reason of default. The General Assembly may wish to amend this provision to require, in the case of a regional center, that the advisory function, composition, and appointment of members be in accordance with the agreement between the counties or be determined by the county in which the center is located. The General Assembly may also wish to amend this provision to require, in the case of a State-operated center, that the advisory function, composition, and appointment of members be determined by the State.

Section 11-317(d)(2)(i) of this subtitle conflicts with § 9-104(b) of the article. Under current Art. 27, § 710C(c)(3), which is revised in § 11-317(d)(2)(i), a court has authority to designate the Division of Correction as the agency of custody when an inmate's term of confinement exceeds 6 months. Under ~~current~~ Art. 27, § 690(c), which is revised in § 9-104(b), a judge has authority to sentence to the jurisdiction of the Division of Correction only if an inmate's sentence exceeds 12 months. Current Art. 27, § 710C(c)(3) was originally enacted in 1980. See Ch. 533, Acts of 1980. At that time, the 6-month designation did not conflict with Art. 27, § 690(c), which, at that time, authorized a judge to sentence to the jurisdiction of the Division of Correction only if an inmate's sentence exceeded 3 months. See Art. 27, § 690(c) (1976 Replacement volume and 1980 Supplement). However, when the 3-month designation in Art. 27, § 690(c) was changed to a 12-month designation in 1986, no corresponding change was made to current Art. 27, § 710(c)(3). See Ch. 128, Acts of 1986. The General Assembly may wish to amend § 11-317(d)(2)(ii) to authorize a court to designate the Division of Correction as the agency of custody when an inmate's term of confinement exceeds 12 months.

Section 11-319(a)(5) of this subtitle is one of many provisions in the article that relates to inmates who escape while legitimately outside the confines of a correctional

facility (e.g., while on work release, home detention, pretrial release, weekend leave, compassionate leave, family leave, etc.). For a detailed discussion of these provisions, see the discussion set forth above in this report relating to § 3-305(c) of the article.

Section 11-319(b) of this subtitle sets forth rules governing the disposition of an inmate's earnings. As noted above in this report in connection with § 3-804 of the article, there are significant inconsistencies throughout the article in provisions governing the disposition of an inmate's earnings in different contexts. The General Assembly may wish to amend the relevant provisions to create uniformity in this area.

## Subtitle 4. Correctional Farms

This subtitle authorizes all counties, except Frederick, Garrett, Harford, Howard, Washington, and Worcester counties, to establish and operate correctional farms.

There are currently no correctional farms operating in any county in the State. According to the Chair of the Correctional Officials' Committee of the Maryland Association of Counties, there are no pending efforts to establish correctional farms in any county. The General Assembly may wish to repeal this subtitle.

Sections 11-404 and 11-405 of this subtitle grant to the County Council of a Charter county authority that may otherwise be exercised by the County Executive. The General Assembly may wish to amend §§ 11-404 and 11-405 to authorize the "county," rather than the defined term "governing body," to exercise the powers listed in these sections.

Section 11-407(b) of this subtitle sets forth rules governing the disposition of an inmate's earnings. As noted above in this report in connection with § 3-804 of the article, there are significant inconsistencies throughout the article in provisions governing the disposition of an inmate's earnings in different contexts. The General Assembly may wish to amend the relevant provisions to create uniformity in this area.

## Subtitle 5. Diminution Credits

This subtitle authorizes local correctional facilities to award diminution credits to inmates for good conduct, educational and training courses, selected work projects, special programs, and industrial, agricultural, or administrative tasks.

The standard for good conduct that is established in § 11-503(a) of this subtitle for presentence confinement is different than the standard for good conduct that is established in § 11-504 of this subtitle for postsentence confinement. Under § 11-503(a), an inmate is allowed a deduction of 5 days from the inmate's term of confinement for each calendar month of presentence confinement during which the inmate: (1) does not violate the rules

of discipline; and (2) labors with diligence and fidelity when the opportunity for labor is available. Under § 11-504, an inmate is allowed an initial deduction from the inmate's term of confinement that is calculated at a rate of 5 days for each calendar month of postsentence confinement. The deductions that are allowed under § 11-504 may be revoked only if the inmate violates the rules of discipline. See § 11-507. There is no statutory authority for revoking the deductions that are allowed under § 11-504 for failure to "[labor] with diligence and fidelity when the opportunity for labor is available." The General Assembly may wish to amend one or both of these sections to make the standard for good conduct the same for both presentence and postsentence confinement.

## Subtitle 6. Alternatives to Incarceration

This subtitle contains provisions that authorize judges in all counties other than Montgomery County to allow individuals who are convicted of crimes to continue their regular employment or obtain new employment. This subtitle also establishes the powers and duties of managing officials and the Division of Parole and Probation with regard to inmates who continue or seek employment.

The source law for this subtitle uses the words "judge," "sentencing judge," "court," and "committing court" in various contexts. There is no apparent consistency regarding the use of one term versus another. The General Assembly may wish to amend this subtitle to create uniformity in this area.

Section 11-604(b) and (c) of this subtitle set forth rules governing the disposition of an inmate's earnings. As noted above in this report in connection with § 3-804 of the article, there are significant inconsistencies throughout the article in provisions governing the disposition of an inmate's earnings in different contexts. The General Assembly may wish to amend the relevant provisions to create uniformity in this area.

The meaning of the reference in § 11-605 of this subtitle to the court's authority to allow diminution of "one-fourth of the inmate's term of confinement" is unclear. There is uncertainty as to whether this language: (1) establishes a maximum number of diminution credits that a court may allow an inmate (i.e., up to one-fourth of the inmate's term of confinement); or (2) establishes an "all or nothing" rule whereby a court is authorized to allow an inmate a fixed amount of diminution credits (i.e., one-fourth of the inmate's term of confinement) or none at all. It is also unclear how § 11-605 relates to §§ 11-503 through 11-506 of this title, under which an inmate may be awarded various types of diminution credits. The General Assembly may wish to amend § 11-605 to clarify these issues.

## Subtitle 7. Individual County Provisions

This subtitle contains provisions that relate to work release, pretrial release, home detention, leave, and other correctional programs in particular counties.

Sections 11-702(b)(2), 11-709(b)(2)(i), 11-712(d)(2), 11-714(b)(1) and (d)(2), 11-715(d)(1), and 11-723(b)(2) of this subtitle authorize a "sentencing judge" to allow an individual to participate in a work release or home detention program. However, these provisions are silent as to what happens when the sentencing judge is unable to act on the matter. The General Assembly may wish to amend these provisions to state expressly that, when the sentencing judge is unable to act, the authority to place an individual in the program extends to other judges of the committing court. See, e.g., §§ 11-704(c)(1)(i), 11-706(b)(2), 11-712(c)(2)(ii), and 11-717(d)(1) and (2) and (f)(3). Alternatively, the General Assembly may wish to amend these provisions to reflect the language of Maryland Rule 4-347, which establishes procedures for hearings on alleged violations of probation. Maryland Rule 4-347 requires "[t]he court" to hold a hearing to determine whether a violation has occurred. The rule also provides that "[w]henever practicable, the hearing shall be held before the sentencing judge."

In §§ 11-702(b)(3)(ii), 11-708(b)(2)(ii) and (c)(3)(ii), 11-709(b)(3)(ii), 11-712(b)(4)(ii) and (d)(3)(ii), 11-714(d)(3)(ii), 11-715(d)(1)(ii), and 11-723(b)(3)(ii) of this subtitle, the references to charges pending in any "jurisdiction" are substituted for the current references to those that are pending in any "city, county, or state" for consistency within this subtitle. The references in the revision to charges pending in any "jurisdiction," which include charges filed in federal court, may be broader than the more ambiguous references in source law to charges pending in any "city, county, or state."

Sections 11-702(b)(8) and 11-723(b)(8) of this subtitle refer to an inmate who "knowingly or willfully" violates a term or a condition. There is uncertainty as to whether this language is redundant. The General Assembly may wish to consider the meaning of this language and determine whether the reference to either "knowingly" or "willfully" should be deleted.

Sections 11-703(d)(4), 11-704(d), 11-705(i), 11-706(b)(5), 11-707(b), 11-708(b)(7), 11-711(g), 11-712(c)(5), 11-714(c)(4), 11-715(e), 11-716(g), 11-717(e), 11-718(e), 11-719(b), 11-722(b), 11-724(g), and 11-725(b) of this subtitle set forth rules governing the disposition of an inmate's earnings. As discussed above in this report in connection with § 3-804 of the article, there are significant inconsistencies throughout the article in provisions governing the disposition of an inmate's earnings in different contexts. The General Assembly may wish to examine all of the relevant provisions and determine whether they should be changed to reflect a more consistent policy in this area.

Sections 11-703(d)(5)(ii) and (f)(4), 11-705(h), 11-706(b)(8), 11-708(b)(8), 11-711(h)(2), 11-712(c)(6)(ii), 11-714(c)(6), 11-715(g)(2), 11-716(h)(2), 11-717(f)(2), and 11-724(h)(2) of this subtitle are some of the many provisions in this article that relate to inmates who escape while legitimately outside the confines of a correctional facility (e.g., while on work release, home detention, pretrial release, weekend leave, compassionate leave, family leave, etc.). For a detailed discussion of these provisions, see the discussion set forth above in this report relating to § 3-305(c) of the article.

Section 11-703(f) of this subtitle authorizes the managing official of a local correctional facility in Anne Arundel County to assign inmates to farm labor. The General Assembly may wish to repeal § 11-703(f) as obsolete in light of the fact that Anne Arundel County does not have a farm labor program for its inmates and does not plan to adopt one. If § 11-703(f) is not repealed, the General Assembly may wish to consider whether § 11-703(f)(2), which allows "able-bodied male" inmates to be assigned to farm labor, conflicts with Article 46 of the Maryland Declaration of Rights or the Americans with Disabilities Act.

Section 11-703(f)(2)(ii) of this subtitle, which requires that a person requesting farm labor pay certain costs, does not specify to whom the payments must be made or how it relates to the requirement in § 11-703(f)(3) of this subtitle that the County Council reimburse the Administrator for similar costs. If § 11-703(f) is not repealed for the reasons discussed in the previous paragraph of this report, the General Assembly may wish to require that a farmer pay the County for the specified costs and that the County appropriate money to reimburse the Administrator.

The reference to the defined term "court" in § 11-706(b)(2) of this subtitle may be narrower than the reference to "court" in current Art. 27, § 645Z(a)(2) because it does not include the orphans' court. See §11-701 for the definition of "court." This appears to be an appropriate use of the term "court" because the orphans' court should not have authority to order the release of an inmate from custody. The General Assembly may wish to restrict the authority granted under § 11-706(b)(2) to judges of "the committing court." See, e.g., §§ 11-704(c)(1)(i), 11-712(c)(2)(ii), and 11-717(d)(1) and (2) and (f)(3).

Sections 11-706(b)(6) and 11-715(f) of this subtitle could be clarified by substituting references to "the court" for the more ambiguous references to "judicial officer".

Sections 11-711(g)(2)(v), 11-712(c)(5)(ii)5, 11-716(g)(2)(v), 11-717(e)(2)(iv), and 11-724(g)(2)(v) of this subtitle are silent as to whether, from the earnings of an inmate in the program, the Public Defender will be repaid for services provided to the inmate. Compare §§ 11-703(d)(4)(ii)6 and 11-705(i)(2)(v) of this subtitle. The General Assembly may wish to amend these provisions to require that the warden deduct and disburse, from the earnings of an inmate, any amount that the inmate was ordered to pay under Art. 27A, § 7 for services rendered by the Public Defender.

Section 11-718(d)(1) of this subtitle refers to conditions imposed by the "sentencing or administrative judge." The General Assembly may wish to amend this provision to refer to conditions imposed by the "court" or, alternatively, the "committing court." See, e.g., §§11-704(c)(1)(i), 11-706(b)(2), 11-712(c)(2)(ii), and 11-717(d)(1) and (2) and (f)(3).

Section 11-718(f)(2)(ii)1 of this subtitle requires that notice be given to the "sentencing judge" when an inmate violates a trust or condition relating to the inmate's participation in an educational or vocational program. This provision is silent as to what happens when the sentencing judge is retired or otherwise not able to receive the required notice. The General Assembly may wish to amend § 11-718(f)(2)(ii)1 to require that, in those situations where the sentencing judge is not able to receive notice, the notice be given to the committing court. See, e.g., §§ 11-704(c)(1)(i), 11-706(b)(2), 11-712(c)(2)(ii), and 11-717(d)(1) and (2) and (f)(3).

Section 11-724(h)(1)(ii) of this subtitle allows an inmate's diminution credits to be canceled without expressly requiring a hearing. The General Assembly may wish to clarify whether a hearing is required in this situation. See, e.g., § 11-703(d)(5)(ii).

## Subtitle 8. Miscellaneous

This subtitle contains miscellaneous provisions relating to weekend inmates, retake warrants, and powers of arrest.