Maryland's Criminal and Juvenile Justice Process

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Maryland's Criminal and Juvenile Justice Process

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Foreword

After rising dramatically in the 1980s, the crime rate substantially decreased in the 1990s and 2000s. Despite this decrease, the State and local jurisdictions continue to use significant amounts of financial resources and personnel in fighting crime and promoting public safety. An understanding of the criminal justice system is necessary for making public policy judgments regarding these matters.

This handbook describes the criminal justice process in the State of Maryland. Following a discussion of crime rates and arrest trends, the focus shifts to the offender's movement through the judicial and correctional systems. Although the emphasis is on the adult offender, juvenile justice procedures are also fully presented. In addition, the role of the victim in the process is presented.

The information within this handbook is based in large measure on materials prepared by the Judiciary and the departments of State government. In several instances, existing resources and documentation were substantially adapted or incorporated in the text. Many individuals who work in the criminal justice system provided materials and reviewed the manuscript. Their assistance is greatly appreciated.

This is the eighth of eight volumes of the 2006 Legislative Handbook Series prepared prior to the start of the General Assembly term by the Office of Policy Analysis of the Department of Legislative Services. Guy Cherry, Amy Devadas, Kelly Dincau, Chantelle Green, John Joyce, Susan McNamee, Karen Morgan, Elizabeth Moss, Lauren Nestor, Jeanette Ortiz, Shirleen Pilgrim, Claire Rossmark, and Susan Russell researched and wrote the material for this volume. Douglas Nestor and Shirleen Pilgrim provided additional writing and review. Mary LaValley and Carol Mihm provided administrative assistance.

The Department of Legislative Services trusts that this volume will be of use to all persons interested in the criminal justice system in Maryland. The department welcomes comments so that future editions may be improved.

Karl S. Aro
Executive Director
Department of Legislative Services
Maryland General Assembly

Annapolis, Maryland
November 2006

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Chapter 1. Introduction

Handbook Overview

In General

This handbook is intended to provide policymakers with an overview of the criminal justice process in Maryland. The topics of discussion include the charging process, pretrial disposition, trials, sentencing, and punishment under some form of supervision or incarceration. Developments pertaining to the death penalty are also included, as are victims' rights. Although the primary focus is on the adult offender, juvenile justice is also considered. For each component of the criminal justice system, statistics are provided to illuminate the process and outcomes of criminal justice in this State.

Items Not Included

This handbook deals primarily with the types of crimes that one normally considers as part of the criminal law. The Annotated Code of Maryland, however, is replete with crimes in other areas. A far from exhaustive list includes environmental crimes, crimes involving failure to obtain required licenses, natural resources violations, labor and employment violations, and tax code violations. Also, this handbook does not discuss activities prohibited by local law.

Although a discussion of these types of crimes is beyond the scope of this handbook, the procedures described in this handbook concerning charging, trial, sentencing, judicial review, and punishment are applicable to any criminal offense in the State.

Organization

The handbook has been divided into 17 chapters organized under three major sections – crimes, the judicial process, and punishment and incarceration. A summary of each chapter is provided below.

- Chapter 1. This chapter provides an overview of the handbook and a brief overview of source law in the areas of constitutional law, criminal law, juvenile law, criminal procedure, motor vehicle law, and other public safety issues.

- Chapter 2. This chapter begins with a discussion of the problem of crime and crime rates. Trends and reports on criminal activity, based on data collected by the Maryland State Police and compiled in the *Uniform Crime Report*, are presented for the most serious offenses (Part I offenses) reported to the State Police. The chapter also discusses adult and juvenile arrest trends. The chapter concludes with information on automated technologies, such as the Maryland Automated Fingerprint Identification System, the Arrest Booking System, Network Livescan, and the Offender Case Management System.

- Chapter 3. This chapter reviews the judicial procedures and criminal penalties for motor vehicle offenses, such as convictions, fines, and incarceration, and the administrative component, which includes the assessment of points and revocation or suspension of driving privileges. There is also a discussion of drunk and drugged driving, including the involvement of young adult and teenage drivers, and the impact on highway fatalities. Finally, the chapter discusses sanctions and treatment programs such as the Drinking Driver Monitor Program for persons convicted of driving while under the influence of or impaired by alcohol.

- Chapter 4. This chapter discusses the commencement of the criminal justice process, which begins when a person commits a crime that is observed by or reported to a law enforcement officer. The topics discussed include arrests and charging documents.

- Chapter 5. This chapter explains what occurs before trial of the case in court. The chapter describes police procedures and the defendant's initial appearance before a District Court commissioner, as well as the facts and circumstances that a commissioner or judge must consider in determining whether a defendant should be released on personal recognizance or bail and, if so, the conditions of pretrial release, or whether the defendant should be confined in a local detention center pending trial. This chapter further discusses preliminary hearings to determine whether there is probable cause to support a felony charge, the discovery process, and plea bargaining.

- Chapter 6. This chapter discusses the jurisdiction and recent caseload trends of the two trial courts in the State – the circuit courts and the District Court. There is also a discussion of alternative court programs for criminal cases.

- Chapter 7. This chapter begins with a discussion of criminal trial trends in the State and is followed by a discussion of the various components of the jury trial process such as jury selection, direct and cross-examinations, and closing

arguments. The chapter concludes with a discussion of District Court jury trial requests.

- Chapter 8. This chapter discusses the juvenile justice system, a separate system created to protect public safety while restoring order to the lives of young offenders without a determination of guilt or the imposition of fixed sentences. The flow of the system is illustrated, from intake to final disposition. The specific procedures involved with juvenile court and classification, statistical information, and information on youth services programs are included in this chapter.

- Chapter 9. According to law, some defendants with a mental disorder or mental retardation may not be prosecuted or punished. There are two circumstances under which these conditions are considered in a criminal proceeding. The first is whether a defendant is competent (*i.e.*, mentally able) to participate in a trial. The second is whether the defendant was criminally responsible for the crime (*i.e.*, had the necessary mental capacity at the time of the crime). The processes by which the courts determine competency to stand trial or criminal responsibility are outlined in this chapter.

- Chapter 10. The chapter reviews criminal sentencing with an emphasis on sentencing restrictions in Maryland law, as well as on sentencing guidelines, which are designed to promote consistent and equitable sentencing. The chapter specifically discusses the State Commission on Criminal Sentencing Policy, which evaluates and monitors the State's sentencing and correctional laws and policies, as well as a variety of related issues such as the role of all forms of probation, the Interstate Compact for Adult Offender Supervision, the death penalty, and sexual offenders.

- Chapter 11. This chapter focuses on the alternatives available to defendants seeking judicial review of a conviction or sentence imposed by a trial court, including reviews at the trial court level, appeals, and postconviction petitions.

- Chapter 12. This chapter explains a number of rights and services for victims of crime, or their representatives if the victim is deceased, disabled, or a minor, before, during, and after a criminal trial or juvenile hearing.

- Chapter 13. Local detention centers house defendants who are arrested but not released before trial and inmates whose sentences are 18 months or less. The detention center populations, as well as the local capital and operating programs, are discussed in this chapter.

- Chapter 14. This chapter discusses the State prison system and the services the facilities provide to the different classifications of inmates. Statistical trends and characteristics of the inmate population are described. The use of alternatives to incarceration and intermediate sanctions are also examined. The capital projects to build new prisons, services such as inmate grievance procedures, and the use by the Department of Public Safety and Correctional Services of a Repeat Incarceration Supervision Cycle to follow up on offenders in an effort to reduce recidivism are also presented.

- Chapter 15. This chapter examines the Patuxent Institution, the only State correctional institution that has its own conditional release and supervision authority. The history of Patuxent Institution and its programs and services are discussed.

- Chapter 16. This chapter examines the three ways in which a Division of Corrections inmate may be released from imprisonment before the completion of the term of confinement: parole, mandatory release, and gubernatorial pardon.

- Chapter 17. The final chapter concludes with a brief commentary about changes in criminal justice policy.

- Glossary. A glossary of many of the legal and technical terms used in this handbook is provided to enhance the reader's understanding of the criminal justice process.

Overview of the Law

The law pertaining to Maryland's criminal justice process is derived from several sources: constitutional law, statutory law, the common law, court rules (Maryland Rules), and court decisions.

Constitutional Law

The Constitution of the United States, the Maryland Constitution, and the Maryland Declaration of Rights all contain law dealing with the areas discussed in this handbook. Primarily these constitutional provisions regulate matters concerning criminal procedure. Examples include prohibitions on unreasonable searches and seizures, the right to a jury trial, the right to remain silent after arrest and at trial, and the right to due process. The constitutional prohibition on *ex post facto* laws (*i.e.*, a law criminalizing an act or increasing a penalty for an act after it was done) is relevant to criminal laws,

including issues relating to parole and diminution credits (see Chapter 16). This provision also prohibits retroactive criminal legislation. These constitutional provisions and court cases interpreting them may not be overturned by statute and may only be altered by constitutional amendment (or subsequent reversal of a court decision by a court).

In addition to the constitutional rights provided to defendants, Maryland has adopted Article 47 of the Maryland Declaration of Rights, which establishes constitutional rights for crime victims. See Chapter 12 of this handbook for a discussion of victims' rights.

Statutory Law

Maryland's statutory criminal law is primarily found in five volumes of the Annotated Code. Prohibitions and penalties are in the Criminal Law Article. Provisions dealing with criminal procedure are found in both the Criminal Procedure Article and the Courts and Judicial Proceedings Article. The Correctional Services Article contains the law dealing with incarceration and punishment. The Public Safety Article contains the laws concerning law enforcement, the militia, regulation of firearms, and the State Police.

Common Law

The common law is law based on prior court decisions drawn from the common law of England, which the State adopted, as it existed on July 4, 1776, in Article 5 of the Maryland Declaration of Rights. The Declaration of Rights contains Maryland's constitutional provisions that are similar to the United States Constitution's Bill of Rights. The common law is subject to change through the ordinary legislative process.

Unlike most states, Maryland still retains many common law crimes. Murder, for instance, is a common law crime. By statute, however, Maryland divides murder into first and second degree murder for punishment purposes. Manslaughter is a common law crime that has a statutory maximum penalty of 10 years. For common law crimes that do not have a statutory penalty, the maximum penalty that may be imposed is life imprisonment, with the limitation that the actual penalty may not violate the constitutional prohibition on cruel and unusual punishment.

Also, inchoate crimes (incomplete crimes) are generally common law crimes. For example, a person who attempts but fails to burn down a building is guilty of the crime of attempted arson. The statutory law prohibits arson, not attempted arson, but the common law prohibits the attempt as well. Attempted murder, rape, sexual offense, and robbery have been made statutory felonies with punishment equal to the completed crime. The

maximum penalty for these inchoate crimes is the same as the maximum penalty for the completed crime. Other examples of inchoate common law crimes include conspiracy (two or more persons planning to commit a crime) and solicitation (one person requesting another to commit a crime).

Court Rules

In addition to what is found in the Criminal Procedure Article and the Courts and Judicial Proceedings Article, the Maryland Rules also contain rules on court procedure, including rules of evidence. The Maryland Rules are adopted by the Court of Appeals under authority of the Maryland Constitution and are law. The Court of Appeals has appointed a Standing Committee on Rules of Practice and Procedure consisting of judges, legislators, and lawyers to consider and recommend rules for consideration by the Court of Appeals.

Both the General Assembly and the Court of Appeals have authority to make laws concerning court procedures. If there is a conflict between a statute and a rule, whichever provision was adopted last in time applies. If one branch did not like what the other did, it could change it by passing or adopting another provision, subject of course to a possible later reversal by the other branch. Because there are legislative members of the Standing Committee on Rules of Practice and Procedure who are able to provide insight into how the General Assembly would react to a certain rule, this type of conflict with the judiciary is rare.

Court Decisions

Regardless of whether one believes that courts make new law or simply interpret what is already law, it is clear that court decisions are an important source of the law in general and criminal law in particular. The published decisions of the Court of Appeals and the Court of Special Appeals are particularly important in this regard, although decisions of the United States Supreme Court and other federal courts, as well as trial court decisions in the State, must also be considered.

Whether the General Assembly has authority to reverse or modify a court decision depends on whether the decision is based on the constitution or on other law. If a decision is based on the United States Constitution, the General Assembly has no authority to reverse or modify. If a decision is based on the Maryland Constitution or the Maryland Declaration of Rights, the General Assembly may pass a constitutional amendment, subject to approval by the voters at the next statewide general election. If, however, a decision is based on a statute or the common law, the General Assembly may pass legislation to reverse or modify the decision.

As an example, the Court of Appeals held in a case that a person could not be sentenced for both child abuse and murder arising out of the same act. Because the decision was based on a reading of a State statute, the General Assembly had the power to and did pass legislation that allows a person to be sentenced for both child abuse as well as any underlying crime (*e.g.*, murder, assault, sexual offenses).

Felonies and Misdemeanors

In Maryland a crime is either a felony or a misdemeanor. Felonies are the more serious of these two types of crimes. There is no clear line for determining whether a crime is a felony or misdemeanor based on the length of incarceration. Unless specified in a statute or unless an offense was a felony at common law, a crime will be considered a misdemeanor. Most statutes specify whether a crime is a misdemeanor or a felony. Common law crimes retain their common law grades as either felonies or misdemeanors unless changed through the legislative process. The General Assembly may choose to label a statutory crime a felony or misdemeanor independent of the amount of punishment the statute provides. The General Assembly may also choose to change the status of a crime from a misdemeanor to a felony or a felony to a misdemeanor.

The following are the practical differences between a felony and a misdemeanor. First, unless a statute specifically provides otherwise, all felonies are tried in the trial courts of general jurisdiction (*i.e.*, the circuit courts) where a defendant has a right to a jury trial. Unless a statute specifically allows it, felonies may not be tried in the District Court, which is a court of limited jurisdiction. A misdemeanor may be tried before a judge in the District Court. However, if the maximum length of imprisonment is three years or more or the maximum fine is $2,500 or more, with the exception of misdemeanor drug possession cases, a misdemeanor may also be tried in the circuit court (where a defendant would have the right to a jury trial). Further, a misdemeanor that has a maximum term of imprisonment of more than 90 days permits a defendant to pray (request) a jury trial, thereby removing the case from the District Court to a circuit court for a jury trial. See Chapter 7 of this handbook for a full discussion of jury trial prayers.

Second, there is no statute of limitations for a felony. A person may be charged at any time with a felony, regardless of when the offense occurred. Unless a statute provides otherwise, a misdemeanor must be charged within one year after the offense was committed.

In addition, a conviction for a felony also subjects a person to other legal disabilities. A first-time felon may not vote in an election until the full time of the sentence has been served including terms of parole and probation. A second or subsequent-time felon may not vote until three years have passed since expiration of the

sentence, including terms of parole and probation. A person convicted of a second or subsequent crime of violence loses permanently the right to vote. Convicted felons may also be disqualified from obtaining certain State-issued licenses.

Motor Vehicle Offenses

Most motor vehicle offenses are found in the Transportation Article of the Annotated Code. These offenses, which include drunk and drugged driving offenses, are all misdemeanors (with the exception of the most serious hit-and-run crimes) that subject an individual to criminal penalties (fines and in some cases imprisonment) and administrative penalties (possible license sanctions). Drunk and drugged driving offenses that result in death or life-threatening injuries are found in the Criminal Law Article and are felonies. For a full discussion of these issues, see Chapter 3 of this handbook.

Juvenile Law

The prohibitions of the criminal law apply to all persons, regardless of age. The penalties and procedures, however, do not apply to juveniles (individuals under the age of 18) unless they are subject to the jurisdiction of the adult court. Provisions of law dealing with juveniles are found in the Courts and Judicial Proceedings Article. For a full discussion of juvenile law, see Chapter 8 of this handbook.

Chapter 2. Crime Rates and Arrest Trends

The Problem

The underlying causes of crime in our society are complex. A number of theories have been proposed by experts in various fields suggesting that crime stems from a lack of economic opportunities, education, and job training. Demographics also influence crime rates, especially the number of persons in their teens and twenties who are most likely to commit crimes. Other theories include peer pressure, the breakdown of the family, suburban migration, urban poverty and decay, increased gang activity, and substance abuse.

Although there may be merit in many of these theories, current data indicate that substance abuse constitutes one of the major contributing factors to criminal activity. Crime may be either directly or indirectly influenced by the abuse of legal or illegal substances. Examples of directly influenced crime include possession or sale of controlled dangerous substances and driving while intoxicated. Many other offenses, such as murder, robbery, or motor vehicle theft, may be committed either to support addictions or while under the influence of drugs and alcohol. The available data suggest that overall crime rate reductions or increases tend to mirror respective declines or upward spikes in drug use.

Although alcohol abuse has been a significant problem historically, there have been declines since 1990 in the number of alcohol-related arrests, accidents, and fatalities. Inasmuch as direct law enforcement activities have not been curtailed, it would appear that policies supporting efforts to educate the public, providing stricter laws, and emphasizing enforcement activities are combining to modify individual behavior.

It should also be noted that in the 1990s there was a significant increase in the State prison population. In 1988, the State prison population was about 13,000 inmates. By 2005, the State prison population exceeded 22,900 inmates. Whether there is a causal relationship between the rise in prison population and lower crime rates is a matter of conjecture.

Beginning in 1994, some new initiatives by the Maryland State Police and local police agencies were given credit for the declines in crime rates in the State. The federal Violent Crime Control and Law Enforcement Act of 1994 provided major new crime fighting money for State and local governments. The Governor's Office of Crime Control and Prevention is responsible for the development and revision of the Maryland Crime Control and Prevention Strategy. The strategy's four key elements involve

targeting high-risk offenders; reclaiming at-risk neighborhoods; protecting and supporting victims; and preventing youth violence, drug use, and gangs.

Crime Rates

In 1975, by statute, Maryland instituted a program to require all local law enforcement agencies to submit standardized crime reports based on the federal reporting system to ensure consistency. Data for the reports is gathered from each agency's record of complaints, investigations, and arrests. The Maryland State Police compile the information by calendar year, which is published as *Crime in Maryland, Uniform Crime Report*. The methodology for these reports follows guidelines and definitions of crimes as provided by the National Uniform Crime Reporting Program, which is administered by the Federal Bureau of Investigation. Although all these acts are crimes in Maryland, Maryland law may use different terms. For instance, forcible rape in the *Uniform Crime Report* would be either first or second degree rape or first or second degree sexual offense under Maryland law.

The *Uniform Crime Report* measures the incidence, arrests, and trends for the following eight crimes, referred to as Part I offenses:

- murder and voluntary manslaughter;
- forcible rape;
- robbery;
- aggravated assault;
- breaking and entering (burglary);
- larceny-theft;
- motor vehicle theft; and
- arson.

Arrest data is collected and reported for another 21 infractions, referred to as Part II offenses. Examples are disorderly conduct, drug abuse, embezzlement, prostitution, and vandalism.

Although *Uniform Crime Report* data provides an indicator of criminal activity in the State, collection and reporting limitations understate overall criminal activity, primarily because data relating to Part II offenses is only collected for arrests and not total reported offenses. Additionally, citizens do not report all criminal activity, nor are provisions made to distinguish degrees of severity for offenses committed or to assess the actual psychological or economic impact to victims.

It is important to understand the difference between offenses committed and persons arrested. Crimes relate to events, and arrests relate to persons. A single criminal act can involve several crimes, offenders, and victims. For example, one offender could be responsible for committing a traffic violation, robbery, and murder. In this instance, one arrest is linked to three crimes.

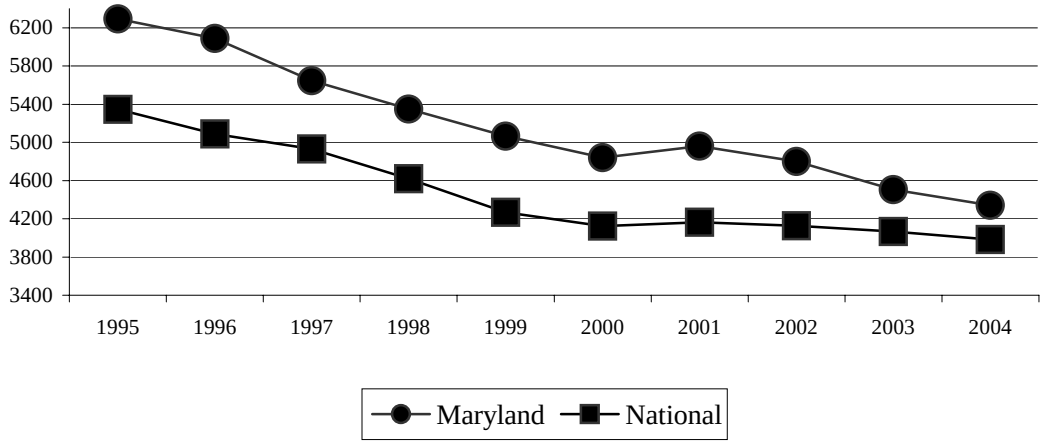
Finally, juvenile crime and arrest statistics can cause some misunderstanding. Many juvenile offenders are handled informally. As a consequence, inaccurate or incomplete recording of the event or action may result. Procedures for handling juveniles vary between departments more so than the handling of adult offenders.

Based upon reported offenses, a crime rate is calculated for the number of offenses per 100,000 inhabitants. In 2005, Maryland's crime rate was 4,247 victims for every 100,000 population, a 14.4 percent decrease from the 2001 rate of 4,960. The 2005 rate for violent crime was 703 victims per 100,000 of population, an 11.9 percent decrease from the 2001 rate of 798. Maryland property crime in 2005 occurred at a rate of 3,544 victims, while the rate in 2001 was 4,161 victims – a 14.8 percent decrease.

By comparison, in 2000, Maryland's overall crime rate was 4,839 victims for every 100,000 population, a 20.5 percent decrease from the 1996 rate of 6,090. The 2000 violent crime rate was 790 victims per 100,000 population, a 15.2 percent decrease from the 1996 rate of 931. Property crime in 2000 had a rate of 4,049 victims, a 21.5 percent decrease from 1996 (5,158).

As seen in Exhibit 2.1, the statewide crime rate for Part I offenses has continued a steady decline from 1995 through 2004. (It should be noted that the Federal Bureau of Investigation announced in June 2006 that preliminary 2005 data indicate a 0.5 percent decrease in the Nation's Crime Index from the 2004 figure.)

Exhibit 2.1
Maryland and National Crime Rate Trends
Offenses Per 100,000 of Population
Calendar 1995-2004



Note: National crime rate data for 2005 were not available as this table was being prepared. Maryland's rate for 2005 was 4,246.9 per 100,000 of population, a decrease of 2 percent from 2004.

Source: *2005 Uniform Crime Report*, Maryland State Police

Drug Arrests

Although the *Uniform Crime Report* does not provide information concerning drug offenses, it does provide information concerning arrests. Arrests for the sale and manufacture of drugs have decreased from about 15,600 in 2001 to about 13,200 in 2005. However, arrests for possession have risen from about 37,100 in 2001 to 39,900 in 2005. These numbers are reflective of continuing efforts to curtail the sale and distribution of controlled dangerous substances.

Offense Trends

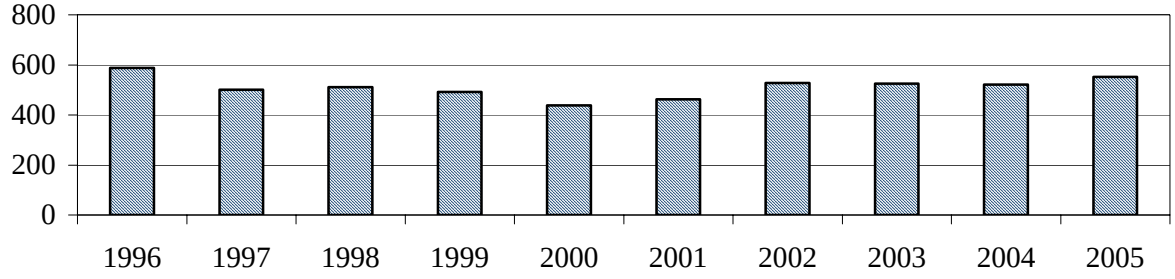
Calendar year trends in each of the eight reported Part I offense areas are discussed in further detail below, showing offense trends in Maryland over the most recent 5-year period for which there is complete data (2001 through 2005). Murder data is presented covering a 10-year period (1996 through 2005). Violent crimes include

murder, forcible rape, robbery, and aggravated assault. Property crimes include burglary, larceny-theft, and motor vehicle theft. Arrest totals for calendar 2005 are included in the text in order to provide an indication of the magnitude of arrests relative to the number of offenses within each category.

Murder

In 2005, 552 murders were reported to law enforcement agencies in Maryland, which represents a high mark for the last 5-year reporting period, an increase of 31 cases over 2004, and an increase of 89 murders over 2001 (see Exhibit 2.2). The 2005 total is fewer than the high of the last 10 years (588 in 1996) and fewer than the all-time high of 632 reported in 1993. Maryland's annual number of murders had hovered near 600 from 1990 through 1996. In 2005, Maryland's crime rate for murder was 9.9 offenses per 100,000 persons, while the national rate for this offense in 2004 was 5.5.

Exhibit 2.2
Offense Trends
Murder



Source: *2005 Uniform Crime Report*, Maryland State Police

In 2005, a majority of the victims (424 or 77 percent) were African American. When the race of both the victim and offender is known, they tend to be of the same race. Drug-related murders were 2 percent of the total. In 2000, drug-related murders were at 4 percent, and in 1996 at 8 percent. Family-related murders accounted for 7 percent of the total, while boyfriend or girlfriend murders (those not cohabitating) were only 1 percent of the total. Handguns were used in 72 percent of the reported murders in 2005, which is a 9 percent increase over 2004. Most murders occurred in either Baltimore City (269 or 48.7 percent) or Prince George's County (164 or 29.7 percent). In 2000, those jurisdictions had proportions of the total of 60 percent and 16 percent, respectively.

In 2000, it was noted that researchers from the University of Massachusetts and the Harvard Medical School had found that improvements in emergency care over the past 40 years have helped to reduce deaths among assault victims by nearly 70 percent and, in the process, lowered the nation's homicide rate. However, the extent to which these findings may relate to reductions in the murder rate in Maryland is unknown.

Rape

From 2001 through 2005, the number of reported rape offenses (and attempted rapes) declined by an average of about 2.8 percent annually, from 1,453 to 1,266 reported cases (see Exhibit 2.3). The State's crime rate for such offenses in 2005 was 22.6 offenses per 100,000 persons and 418 persons were arrested for forcible rape. In 2004, the national rate for this offense was 32.2.

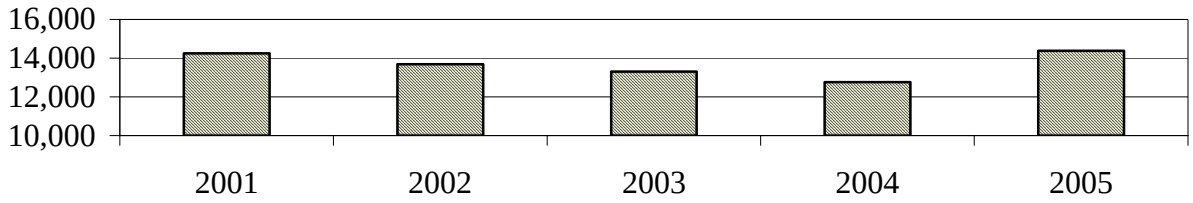
Exhibit 2.3
Offense Trends
Rape

Source: *2005 Uniform Crime Report*, Maryland State Police

Robbery

Robbery is defined as the taking, or attempted taking, of anything of value by force. After declining for several years, the number of robberies in 2005 (14,378) increased by 12.7 percent over 2004 (12,761). This number of reported offenses in 2005 was quite similar to the reported offenses in 2001 (14,252) – see Exhibit 2.4. During 2005, 47 percent of the robberies in the State were committed "on the street," while only 1 percent were bank robberies. Of the total, 54 percent involved the use of firearms. In 2005, 3,583 persons were arrested for robbery. In 2005, Maryland's crime rate for robbery was 256.7 offenses per 100,000 persons, while the national rate for this offense in 2004 was 136.7.

Exhibit 2.4
Offense Trends
Robbery



Source: *2005 Uniform Crime Report*, Maryland State Police

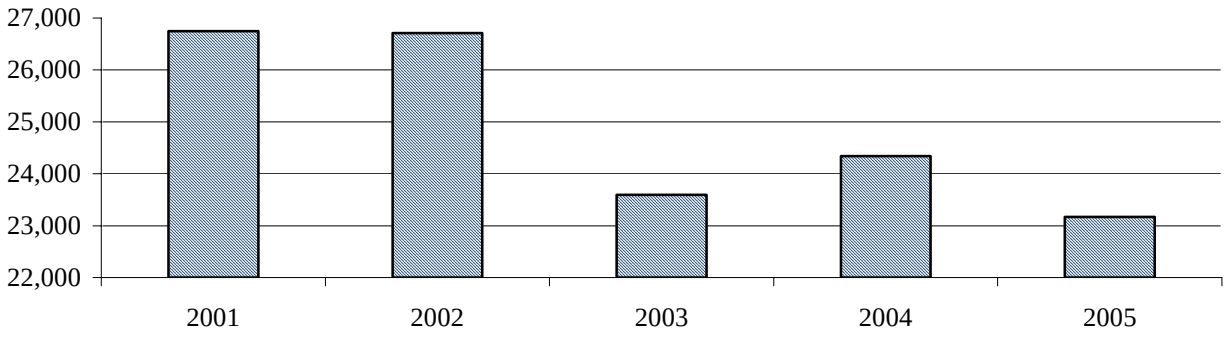
Aggravated Assault

Aggravated assault is the unlawful attack by one person upon another for the purpose of inflicting severe bodily injury. During 2005, there were 23,173 aggravated assaults reported in Maryland, representing a relatively steady decline from the 26,748 reports in 2001 (see Exhibit 2.5). In 2000, 3,627 (16 percent) of the aggravated assaults were committed with the use of a firearm, and 5,415 (23 percent) were committed with a knife or other cutting instrument. Arrests for aggravated assault totaled 7,758 in 2005. In 2005, Maryland's crime rate for aggravated assault was 413.8 offenses per 100,000 persons, while the national rate for this offense in 2004 was 291.1.

Burglary

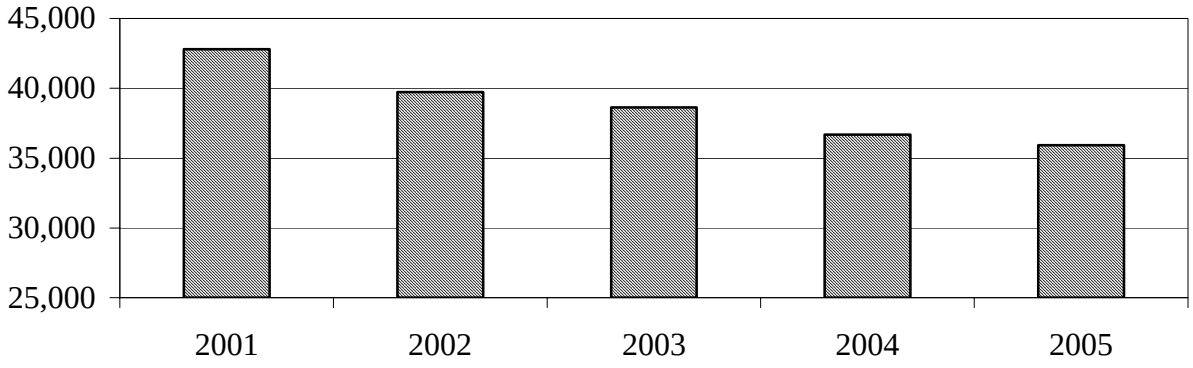
The crime of burglary (also referred to as breaking and entering), defined as the unlawful entry of a property to commit a felony or theft, has continued to decline over the last several years. From 2001 through 2005, reported offenses decreased from 42,799 to 35,921 (see Exhibit 2.6). The 10-year high had been 50,316 in 1996. Approximately 67 percent of burglaries in 2005 involved forcible entry, and 67 percent of the offenses were committed in a residence. The average dollar value loss reported during 2005 was $1,630. In 2005, 7,088 individuals were arrested for burglary. In 2005, Maryland's crime rate for burglary was 641.4 offenses per 100,000 persons, while the national rate for this offense in 2004 was 729.9.

Exhibit 2.5
Offense Trends
Aggravated Assault



Source: *2005 Uniform Crime Report*, Maryland State Police

Exhibit 2.6
Offense Trends
Burglary



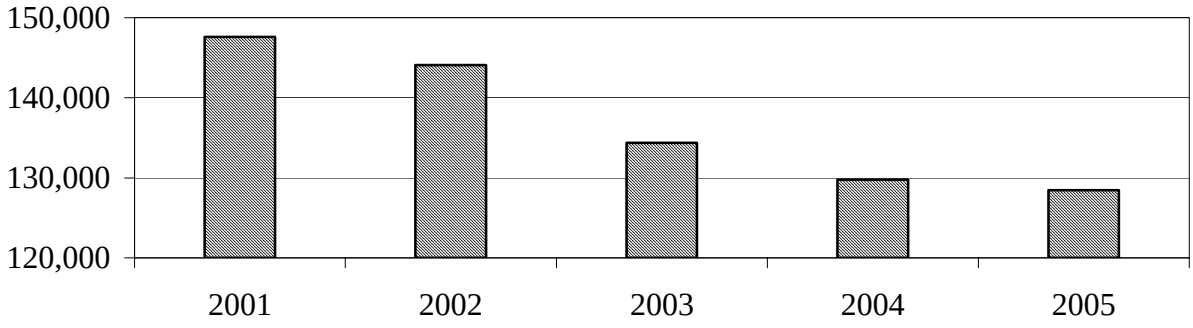
Source: *2005 Uniform Crime Report*, Maryland State Police

Larceny-theft

From 2001 through 2005, the number of reported larceny-theft offenses declined by an average of about 2.7 percent annually, from 147,594 to 128,483 reported cases (see Exhibit 2.7). The State's crime rate for such offenses in 2005 was 2,791.5 offenses per

100,000 persons, and 23,399 persons were arrested for larceny-theft. In 2004, the national rate for this offense was 2,365.9. Law enforcement agencies in the State reported a total value of over $82 million of such stolen property, with the highest percentage having been the theft of automobile parts and accessories (23 percent).

Exhibit 2.7
Offense Trends
Larceny-theft

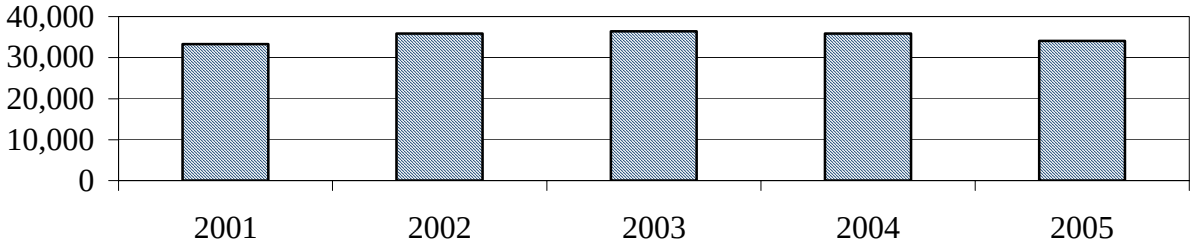


Source: *2005 Uniform Crime Report*, Maryland State Police

Motor Vehicle Theft

In 2005, 34,070 motor vehicle thefts were reported. This represents an increase of 781 cases over 2001 but a decrease of 1,788 from 2004. Reports of motor vehicle theft in each year of this 5-year period were higher than the 10-year low in 1999 of 26,067. There were 4,419 persons arrested in Maryland for motor vehicle theft during 2005. Of the vehicles reported stolen in 2005, 69 percent were automobiles and 25 percent were trucks or buses. A total of 25,770 of the stolen vehicles (76 percent) were recovered. In 2005, Maryland's crime rate for motor vehicle theft was 608.4 offenses per 100,000 persons, while the national rate for this offense in 2004 was 421.3.

Exhibit 2.8
Offense Trends
Motor Vehicle Theft

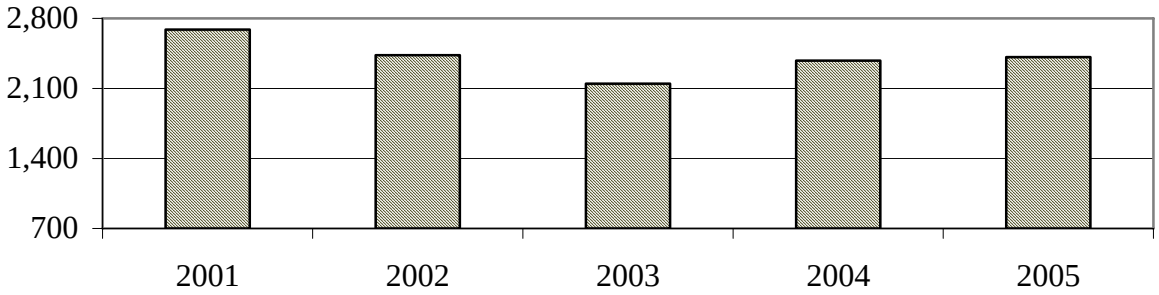


Source: *2005 Uniform Crime Report*, Maryland State Police

Arson

In 2005, there were 2,413 incidents of arson reported, a 1 percent increase over 2004 (see Exhibit 2.9), but about a 10 percent decrease from the 2,687 reports in 2001. The value of the resulting property damage in 2005 was estimated at about $21 million. Reflecting the difficulty of identifying the perpetrators, there were 572 persons arrested for arson in 2000. In 2005, Maryland's crime rate for arson was 43.1 offenses per 100,000 persons, while the national rate for this offense in 2004 was 28.2.

Exhibit 2.9
Offense Trends
Arson



Source: *2005 Uniform Crime Report*, Maryland State Police

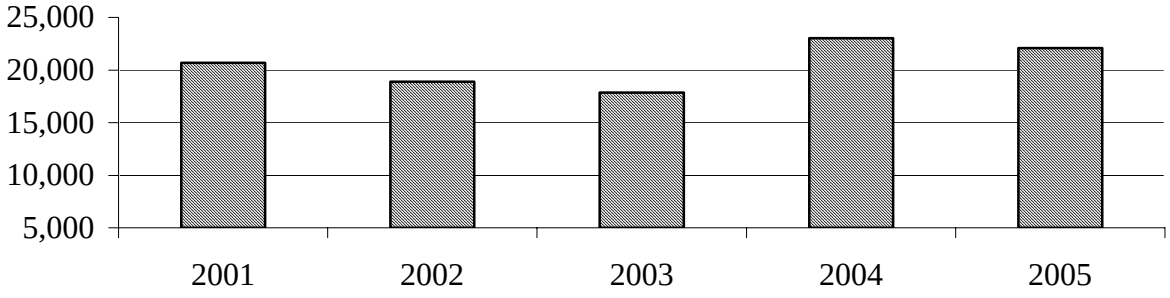
Domestic Violence

Under the Domestic Violence Act of 1994, reports of incidents involving domestic violence were added to the compilations maintained under the annual *Uniform Crime Reports*. However, it should be noted that, although the Maryland State Police created a revised battered spouse data collection form, procedures for handling domestic violence crimes vary among law enforcement agencies and counties of occurrence. According to the State Police, because of data conversion difficulties, the Baltimore City Police Department was unable to provide any 2002 or 2003 data.

Under the Maryland reporting program, a victim of a domestic violence incident is considered to be an individual who has received deliberate physical injury or is in fear of imminent deliberate physical injury from a current or former spouse or a current or former cohabitant. This includes a homosexual relationship. Same sex incidents were not including in the report data collected prior to 1996.

In any case, in 2005, there were 22,092 reported incidents statewide characterized as domestic violence, while 20,688 incidents had been reported in 2001. The vast majority of such reports in any year involve an assault (approximately 93 percent in 2005). Of the 20,482 domestic violence assaults in 2005, 4,668 were reported as aggravated. There was an average of 22 domestic violence homicides per year from 2001 through 2005.

Exhibit 2.10
Offense Trends
Domestic Violence



Note: Due to data conversion difficulties, data for 2002 and 2003 does not include any domestic violence information from Baltimore City.

Source: *2005 Uniform Crime Report*, Maryland State Police

Arrests

Each State, county, and municipal law enforcement agency is required to submit monthly reports for the number of persons arrested for crimes that have occurred within its jurisdiction. The arrest report shows the age, sex, and race of those arrested and the disposition of juveniles by the arresting agency. Traffic arrests, except for drunk and drugged driving, are not reported. A total of 308,075 arrests for Part I and Part II criminal offenses were reported during calendar 2005, representing a 5 percent decrease over 2004 (309,077). Maryland's arrest rate for 2005 was 5,501.0 per 100,000 of population, a 1 percent decrease from 2004.

A person is counted in the monthly arrest report each time the person is arrested. This means that a person could be arrested several times during a given month and would be counted each time. However, a person is counted only once each time regardless of the number of crimes or charges involved. A juvenile is counted as arrested when the circumstances are such that if the juvenile were an adult an arrest would have been counted or when police or other official action is taken beyond an interview, warning, or admonishment.

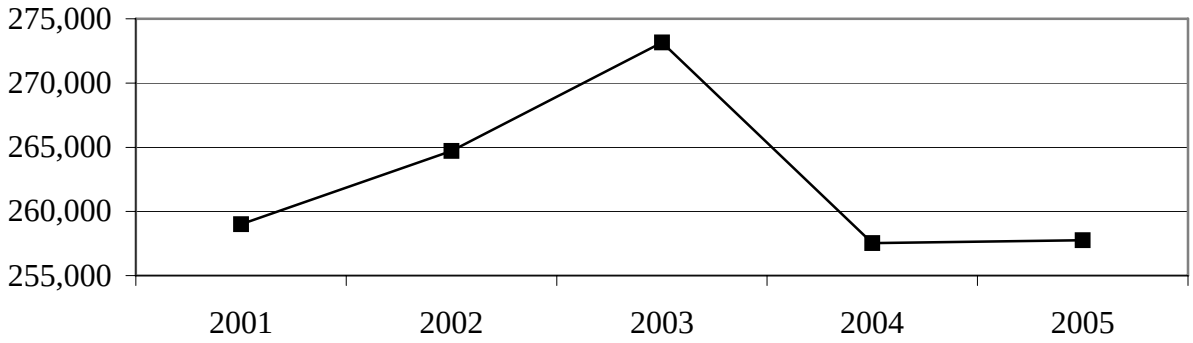
Arrest figures do not indicate the number of different individuals arrested or summoned because, as stated above, one person may be arrested several times during the month. However, arrest information is useful in measuring the extent of law enforcement activities in a given geographic area as well as providing an index for measuring the involvement in criminal acts by the age, sex, and race of perpetrators.

During 2005, 15 percent of all reported arrests were for Part I offenses. The majority of arrests were for larceny-theft, which accounted for 50 percent of the total for Part I offenses. About 45 percent of all Part II offenses were made up of arrests in the categories of drug abuse, driving under the influence, violations of liquor laws, and assaults.

Aggregate Arrest Trends

From 2001 through 2005, all adult arrests declined slightly from 259,000 to 257,761 after a significant increase in 2002 and 2003 (see Exhibit 2.11).

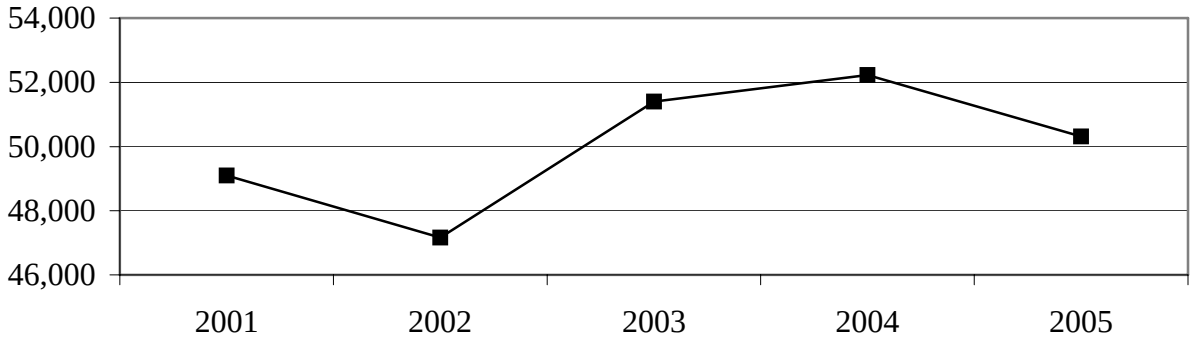
Exhibit 2.11
Adult Arrest Trends



Source: *2005 Uniform Crime Report*, Maryland State Police

On the other hand, juvenile arrests from 2001 to 2005 increased slightly from 49,094 to 50,314 (see Exhibit 2.12). From 1997 through 2000, juvenile arrests showed a decline of about 8 percent after rising significantly from 1992 through 1996.

Exhibit 2.12
Juvenile Arrest Trends



Source: *2005 Uniform Crime Report*, Maryland State Police

Information Management and Technology

The Information Technology and Communications Division of the Department of Public Safety and Correctional Services is the statewide hub for criminal justice information management and support services. The division serves local, State, and federal law enforcement entities, as well as State and local licensing agencies.

The division is responsible for administering the Criminal Justice Information System, which is maintained and operated by the Criminal Justice Information System Central Repository. As the official State identification bureau, the Central Repository compiles a chronological history of every offender in Maryland, from "reportable events" submitted by all State criminal justice units, into what is popularly known as the criminal "RAP sheet." This system is the basis for all authorized criminal history records checks, including those related to employment or licensing matters.

The division also supports numerous links to national criminal justice and related systems including the Federal Bureau of Investigation's National Crime Information Center, which is the centralized national compendium of criminal history record information; the Interstate Identification Index System, which allows states to exchange criminal history record information directly; the National Law Enforcement Telecommunications System, which links the nation's law enforcement and motor vehicles agencies; and the National Sex Offender Registry.

Within Maryland, the division supports the Arrest Booking System in operation at the Baltimore Central Booking and Intake Center and in Charles, Frederick, Harford, Howard, Montgomery, Prince George's, St. Mary's, and Wicomico counties. The Arrest Booking System electronically tracks offenders as they are processed through booking and performs identification functions via four other automated systems carrying fingerprint, mug shot, arrest/disposition, and criminal history information. The Information Technology and Communications Division also provides placement and systems operation support for Network Livescan system equipment in 15 State and local criminal justice units. The Livescan technology allows law enforcement personnel to collect and transmit electronic fingerprint images and receive electronic responses for booking purposes. The use of this technology is also now available for some employment and licensing purposes.

The information management systems serving the department's correctional agencies will be gradually replaced over several years by the Offender Case Management System, designed to track an offender as the offender moves through the correctional system. The division is also upgrading its Automated Fingerprint Identification System, which provides identification for criminal processing and background checks. The

department's short- and long-term information technology and management strategies are detailed in an Information Technology Master Plan maintained by the Department of Budget and Management.

Chapter 3. Motor Vehicle Offenses and the Court System

Procedures and sanctions for motor vehicle law offenses may consist of criminal fines and incarceration or civil penalties, as well as administrative revocation or suspension of driving privileges. This chapter will discuss the judicial and administrative processes that apply to a wide range of motor vehicle offenses.

The Interaction of Judicial and Administrative Processes

Judicial Process

Generally, a violation of the Maryland Vehicle Law (as the collection of vehicle-related statutes contained in the Transportation Article is known) is a misdemeanor, unless the offense is specifically classified to be a felony or is punishable only by a civil penalty. (Additional motor vehicle offenses under the Criminal Law Article that involve a homicide or life-threatening injury may be classified as a felony or a misdemeanor, depending on the severity of the offense.) Most violations of the Maryland Vehicle Law are punishable only by a fine, but certain offenses are punishable by a fine as well as a term of imprisonment.

If an individual violates the Maryland Vehicle Law or any traffic law or ordinance of a local government in the State, the individual is charged by a citation (*i.e.*, a ticket) issued by a police officer. A police officer may issue a citation only if the officer has probable cause to believe that the person has committed such an offense. A citation must include a notice to appear in court; the name, address, and driver's license number of the alleged violator; the vehicle registration number; and the violation charged. If the offense is punishable by incarceration, the defendant must appear for trial. For offenses for which incarceration is not a penalty, a police officer will include in the citation a preset fine amount that allows a person to admit guilt and pay a fine without having to appear for trial. The amounts of the preset fine for nonjailable offenses are set by the Chief Judge of the District Court and include court costs.

Each citation also contains a notice that, in the case of a nonjailable offense, the person charged may request a hearing regarding disposition and sentencing for the offense instead of a trial. Such a request may be granted if the person does not dispute the facts as alleged in the citation and does not intend to compel the appearance of the law enforcement officer who issued the citation.

A police officer may make a warrantless arrest if a person commits certain serious violations such as hazardous material or vehicle weight offenses in the presence of the

officer; if the officer has probable cause to believe that a person has committed certain other serious offenses such as driving without a license, driving while under the influence of alcohol, or impaired by alcohol, drugs, or controlled dangerous substances; or for any offense if the person does not have satisfactory evidence of identity or the officer reasonably believes the person will disregard a citation.

The hearing or trial generally will be held in the District Court in the county in which the offense occurred. (However, motor vehicle offenses under the Criminal Law Article involving a homicide or life-threatening injury are tried in the circuit courts.) If a person fails to comply with a notice to appear, the court may either issue an arrest warrant for the person or notify the Motor Vehicle Administration of the person's noncompliance. If the person fails to appear, pay the fine, or post bond for a new trial or hearing date after notification from the administration, the administration may suspend the person's driving privileges.

Exhibit 3.1 shows the number of motor vehicle offense charges filed over the most recent six-year period, as well as the number of cases that were tried, the number of nontrial dispositions (*i.e.*, *nolle prosequi* dispositions, stet dispositions, or jury trial prayers), and the number of fines paid. Just about half of all motor vehicle charges result in an election by the defendant to pay the preset fine in a citation rather than appear in court. (Please note that estimate does not reflect the number of drivers charged because multiple citations may be given in certain situations.)

Exhibit 3.1
Motor Vehicle Offenses – District Court of Maryland
Fiscal 2001-2006

Year	Total # of Charges Filed	Total # of Cases Tried	Total # of Nontrial Dispositions	Total # of Fines Paid
2001	1,064,864	303,876	159,982	598,035
2002*	1,154,719	307,730	181,727	598,543
2003	1,202,279	314,220	210,515	569,673
2004	1,360,976	346,792	238,639	671,369
2005	1,406,510	357,273	255,308	670,500
2006**	1,259,905	331,159	240,413	623,750

* Traffic case counts for fiscal 2002 and following years include citations, parking and red light citation requests for trials, Department of Natural Resources cases, and Mass Transit Administration citations. Prior to fiscal 2002, case counts included citations issued under the Maryland Transportation Article only.

** Fiscal 2006 data complete through May 2006.

Source: District Court of Maryland

Administrative Process

As a traffic offense is processed through the judicial system, there is also an administrative process that may be initiated through the Motor Vehicle Administration that could affect the driving privileges or vehicle of the offender.

The Maryland District Court and the Judicial Information Systems of the Administrative Office of the Courts have developed a computerized system, known as the Maryland Automated Traffic System (MATS), for processing more than one million motor vehicle citations that are issued in Maryland each year. All information concerning the disposition of motor vehicle citations, whether occurring as a result of a

conviction at trial or by the defendant's election to waive trial and pay the preset fine, is forwarded directly from the Judicial Information Systems computer to the computer at the administration. This system facilitates the inclusion of conviction data in driver records.

The administration has the authority to suspend, revoke, or refuse to issue or renew the license of any person under certain circumstances, such as for multiple moving violations that indicate an intent to disregard the traffic laws and safety of others; for unfit, unsafe, or habitually reckless or negligent driving; and for other specific offenses.

The General Assembly has established a "point" system that may result in suspension or revocation of drivers' licenses. For most minor moving violations, 1 point is assessed against the driver's license. For more serious moving violations, the General Assembly has mandated that a greater number of points be assessed. For example, speeding in excess of the posted speed limit by 10 mph or more is a 2-point offense, while speeding by 30 mph or more is a 5-point offense. Driving while impaired by alcohol is an 8-point offense, while driving while under the influence of alcohol or impaired by a controlled dangerous substance are 12-point offenses. Points assessed against a person's license remain on the record for two years from the date of the violation.

The accumulation of a certain number of points within a two-year period results in various administrative actions. For example, a warning letter is sent from the administration to each person who accumulates 3 points within a two-year period, and a conference or training session is required for a person who accumulates 5 points. The administration must issue a notice of license suspension to any person who accumulates 8 points and must issue a notice of license revocation to any person who accumulates 12 points. An individual may request a hearing before the Office of Administrative Hearings concerning a proposed suspension or revocation. An administrative law judge generally has the discretion not to order the suspension or revocation or to issue a work-restricted license.

Automated Traffic Enforcement

For two civil traffic violations, motorists may be cited by mail without personally receiving a citation from a police officer. The State and local governments of Maryland have the authority to install automated traffic enforcement systems (red light cameras) that record drivers who continue into an intersection governed by a steady red traffic signal. Most counties with large populations have installed red light cameras, including Anne Arundel, Baltimore, Howard, Montgomery, and Prince George's counties and Baltimore City. Except for the monitoring cameras located at toll facilities, the State has

not installed red light cameras. The maximum fine for a red light violation recorded by a red light camera is $100.

In 2006, Montgomery County received authorization from the General Assembly to enforce speeding laws through the use of automated systems (speed cameras) in residential districts with a maximum posted speed limit of 35 miles per hour and in school zones. The maximum fine for a speeding violation recorded by a speed camera is $40.

A driver who receives a citation from an automated system has the right to a hearing to contest the citation.

Traffic violations recorded by automated systems are different from traditional convictions in that a violation recorded through an automated system is not considered a moving violation, no points are recorded against the driver's record, a violation may not be disclosed to the driver's insurance company, and the violation is a civil offense. Red light or speeding violations observed and cited by a police officer are moving violations and misdemeanors for which points are assessed if the driver is convicted of the offense, and the violation may be reported to the driver's insurance company.

If a civil penalty owed by a driver is not paid, the administration may refuse to register or re-register the vehicle or may suspend the registration of the vehicle.

Drunk and Drugged Driving

Generally

The Maryland Vehicle Law prohibits a person from driving or attempting to drive any vehicle while under the influence of alcohol, while under the influence of alcohol "per se," or while impaired by alcohol, drugs, or controlled dangerous substances. The specific offense and the severity of the sanction are often determined through breath or blood testing, which measures the amount of alcohol or determines the presence and type of drugs.

An individual is deemed to be under the influence of alcohol "per se" if an alcohol test result indicates blood alcohol concentration of 0.08 or more as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. Since driving with a 0.08 blood alcohol concentration is a per se offense, the focus of a prosecution is limited to whether or not a person had an alcohol concentration of 0.08 at the time of testing rather than whether or not the person was under the influence of alcohol.

If an alcohol test for an individual indicates a blood alcohol concentration of at least 0.07, but less than 0.08, the test is *prima facie* evidence that the individual was driving while impaired by alcohol. If an individual has a blood alcohol concentration above 0.05, but less than 0.07, there is no presumption, but the blood alcohol concentration may be considered with other competent evidence in determining if one of the offenses has occurred. Finally, if an individual has a blood alcohol concentration of 0.05 or less, there is a presumption that the individual was neither under the influence of or impaired by alcohol.

Even if an alcohol test is not used or is unavailable, a trier of fact may find that a person was under the influence of alcohol or impaired by alcohol based on other sufficient evidence, including the personal observations of the person's behavior by a law enforcement officer or other witness. The evidence may consist of the defendant's erratic driving, odor of alcohol, and poor performance of various roadside tests.

Additionally, an individual is prohibited from driving or attempting to drive any vehicle while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the individual cannot drive a vehicle safely. Finally, an individual is also prohibited from driving or attempting to drive any vehicle while impaired by any controlled dangerous substance.

Exhibit 3.2 shows the number of total highway deaths and the number of highway deaths in which alcohol was a contributing factor from calendar 1996 through 2005.

Exhibit 3.2
Maryland Highway Fatalities and Alcohol Involvement
Calendar 1996-2005

Year	Total Number of Traffic Fatalities	Fatality Rate (Fatalities per 100 Million Vehicle Miles)	Fatalities in Which Alcohol Was a Contributing Factor	% in Which Alcohol Was a Contributing Factor
1996	608	1.3	221	36.3%
1997	608	1.3	201	33.0%
1998	606	1.3	178	29.4%
1999	598	1.2	205	34.3%
2000	617	1.2	195	31.6%
2001	662	1.3	216	32.6%
2002	661	1.2	276	41.8%
2003	651	1.2	287	43.7%
2004	643	1.2	286	44.5%
2005*	614	1.1	270	44.0%

* 2005 data estimated.

Source: State Highway Administration

Young Drivers and Impaired Driving

According to the Motor Vehicle Administration, more than 200,000 young drivers between the ages of 16 and 20 are authorized to operate motor vehicles in Maryland, either with a driver's license, a provisional license, or a learner's permit. In fiscal 2005, out of 3,846,425 licensed drivers, 228,490 drivers, or 5.9 percent of the Maryland driving population, were between the ages of 16 and 20.

Statistics reveal the relatively high propensity for young drivers to be involved in traffic accidents, including those where alcohol and/or drugs are contributing factors. According to the National Highway Traffic Safety Administration, from calendar 2003 to 2004, 11.6 percent of Maryland drivers killed who tested positive for alcohol were under the age of 21. During the same time period, 11.3 percent of Maryland drivers killed in traffic accidents who had blood alcohol content of 0.08 or greater were younger than 21.

Exhibit 3.3 shows the number of traffic accidents from calendar 2001 to 2005 involving drivers from ages 16 to 20 where alcohol and/or drugs were contributing factors. The exhibit shows that for the most recent five-year period in Maryland, an average of 28 young drivers were killed and 723 young drivers were injured in traffic accidents where alcohol and/or drugs were contributing factors. In comparing the average percentages of injuries and fatalities of young drivers to the average percentages of injuries and fatalities for drivers from all age groups who were involved in traffic crashes, the exhibit shows that the likelihood of a fatality or injury is significantly greater (2.4 percent compared to 0.6 percent for fatalities and 41.2 percent compared to 36.4 percent for injuries) for alcohol and/or drug impaired young drivers than it is for drivers from all age groups who are involved in crashes due to all types of factors.

Exhibit 3.3
Maryland Drivers Age 16 to 20 with Alcohol and/or Drug Impairment
Crash Summary
Calendar 2001-2005

	2001	2002	2003	2004	2005	5 Yr. Avg. 16 - 20	5 Yr. % 16 - 20 Impaired Crashes	5 Yr. % All Ages/ All Crashes
Fatal Crashes	33	21	28	21	19	24	2.4	0.6
Injury Crashes	467	484	414	395	375	427	41.2	36.4
Property Damage Only	594	626	608	548	543	584	56.4	63.0
Total Crashes	1,094	1,131	1,050	964	937	1,035	100.0	100.0
Total Fatalities	37	25	34	26	20	28		
Total Injuries	797	797	719	672	632	723		

Source: State Highway Administration

To reduce or prevent incidences of alcohol driving violations, young drivers are subject to mandatory license suspensions and revocations that do not apply to drivers 21

or older. For a drunk or drugged driving offense, the Motor Vehicle Administration is required to suspend the license of a young driver for one year. For a second or subsequent offense, the license suspension must be two years.

Criminal Penalties

A first offense of driving while under the influence of alcohol, under the influence of alcohol per se, or while impaired by a controlled dangerous substance is punishable by up to a $1,000 fine and/or imprisonment for up to a year. Subsequent offenses may subject the offender to a fine of up to $3,000 and/or imprisonment for up to three years.

If a subsequent offense is committed within five years of the first offense, the offender is subject to a mandatory minimum penalty of 5 days imprisonment, while a third or subsequent offense within five years is subject to a mandatory minimum penalty of 10 days imprisonment. Subsequent offenders are also required to undergo a comprehensive alcohol or drug abuse assessment and, if recommended, participate in an alcohol or drug treatment program.

The offenses of driving while impaired by alcohol, or while impaired by a combination of drugs and/or alcohol, are punishable by a maximum $500 fine and/or imprisonment for two months. A person convicted of a subsequent offense of driving while impaired by alcohol, drugs, or drugs and alcohol is subject to imprisonment for up to a year.

There are increased penalties for committing drunk and drugged driving offenses while transporting a minor. A first offense is punishable by a maximum fine of $2,000 and/or imprisonment for two years. A second offense is punishable by a maximum fine of $3,000 and/or imprisonment for three years. A third or subsequent offense is punishable by a maximum fine of $4,000 and/or imprisonment for four years.

Enhanced criminal penalties may be imposed on a driver convicted of an alcohol and/or drug-related driving offense if the trier of fact finds, beyond a reasonable doubt, that the driver knowingly refused to take a test of blood or breath that was requested at the time of the violation. In addition to any penalties that may be imposed for the drunk or drugged driving violation, the driver is also subject to a maximum $500 fine and/or two months imprisonment for the test refusal.

Other criminal charges may apply to drunk and drugged driving that results in a death or life-threatening injury. Manslaughter by vehicle is causing the death of another as the result of the driving, operation, or control of a vehicle in a grossly negligent

manner. This is a felony punishable by a maximum of 10 years in prison and/or a $5,000 fine.

If an individual causes the death of another as the result of the negligent driving, operation, or control of a motor vehicle while under the influence of alcohol or under the influence of alcohol per se, the individual is guilty of a felony known as "homicide by motor vehicle while intoxicated," which is punishable by a maximum of five years in prison and/or a $5,000 fine. Homicide by vehicle while impaired by alcohol, drugs, or controlled dangerous substances is also a felony punishable by a maximum of three years in prison and/or a $5,000 fine.

If an individual causes a life threatening injury to another as the result of the negligent driving, operation, or control of a motor vehicle while under the influence of alcohol or under the influence of alcohol per se, the individual is guilty of a misdemeanor known as "life threatening injury by motor vehicle while under the influence of alcohol," which is punishable by a maximum of three years in prison and/or a $5,000 fine. Causing a life threatening injury by motor vehicle while impaired by alcohol, drugs, or controlled dangerous substances is also a misdemeanor punishable by a maximum of two years in prison and a $3,000 fine.

Administrative Per Se Sanctions

Independent from the outcome of a criminal proceeding, if a licensed driver takes a breath or blood test that indicates an alcohol concentration of 0.08 or more, the Motor Vehicle Administration is required to suspend the person's driver's license for 45 days for a first administrative per se offense and 90 days for a subsequent offense. If a person refuses to take a test, the administration must suspend the driver's license for 120 days for a first administrative per se offense and one year for subsequent offenses. This automatic license suspension provides a disincentive to refuse to take a test for alcohol or drugs. These sanctions are usually imposed prior to the criminal trial and apply even if the defendant is not convicted of the criminal offense.

Effective January 1, 2007, if a driver takes a test of blood or breath that indicates a blood alcohol concentration of 0.15 or greater, the administration is required to suspend the license of a driver for 90 days for a first offense and 180 days for a second or subsequent offense. The administration is prohibited from modifying an administrative suspension and issuing a restrictive license to drivers who had a test result of 0.15 or more or refuses a test unless the driver participates in the Ignition Interlock Program for one year. Also, a driver who either refuses to take a test or who takes a test with a result of 0.15 blood alcohol or greater may participate in the Ignition Interlock Program for one

year instead of requesting a hearing on the administrative penalties, but only if the driver meets certain conditions:

- the driver's license must not be currently suspended, refused, canceled, or revoked;

- the driver must not be charged with a moving violation arising from the same circumstances that caused serious physical injury or death to another person; and

- within the time limits for requesting an administrative hearing, the driver must surrender a valid Maryland driver's license or certify that he/she does not possess a license and must elect in writing to participate in the Ignition Interlock Program for one year.

Postconviction Administrative Sanctions

In addition to the administrative per se sanctions, the Motor Vehicle Administration may revoke, suspend, or restrict the license of the offender who is convicted of a drunk or drugged driving offense. The administration may revoke the license of a person convicted of driving while under the influence of alcohol or under the influence of alcohol per se or while impaired by a controlled dangerous substance.

The administration may suspend for not more than 60 days the license of a person convicted of driving while impaired by alcohol, drugs, or drugs and alcohol. Subsequent offenders are subject to longer terms of suspension or to revocations by the administration. Participation in the administration's Ignition Interlock Program (discussed below) may be required by the administration as a condition of issuance of a restrictive license.

Sanction and Treatment Programs

The State, along with many counties, has established alternative sanction programs that include drug and alcohol assessment and treatment, weekend confinement as a condition of probation, and probation with home detention and electronic monitoring and ignition interlock restrictions for drinking drivers. These programs give judges more sentencing options for repeat or serious offenders. Two programs with an established track record of treating drinking drivers are the Drinking Driver Monitor Program and the Ignition Interlock Program.

Drinking Driver Monitor Program

The Drinking Driver Monitor Program is a specialized program under the Division of Parole and Probation of the Department of Public Safety and Correctional Services for persons convicted of drunk or drugged driving offenses. The program emphasizes abstinence from alcohol and other drugs, alcohol education and treatment, and rehabilitation. Offenders may be referred to the program through special conditions established by court-ordered probation, including abstinence, or through assignment by the Motor Vehicle Administration as a condition for reinstating a motor vehicle license after it has been suspended or revoked.

Offenders assigned to the program must report within 72 hours of sentencing. At that time, offenders are notified of the conditions of probation and assigned to a weekly reporting location and a probation officer known as a monitor. The monitor verifies lawful conduct of the offender through periodic criminal and motor vehicle record checks and collects fines, costs, and court-ordered restitution.

If an offender does not report, violates the conditions of probation, or displays unlawful conduct, the monitor will notify the court or administration within 10 days. The monitor will provide testimony and possible recommendations at court hearings on violation of probation charges. According to the Department of Public Safety and Correctional Services, 20,207 people were assigned to the program in fiscal 2005, and 11,290 people successfully completed the program.

Ignition Interlock Program

An ignition interlock system is a device that connects a motor vehicle ignition system to a breath analyzer that measures a driver's blood alcohol level and prevents the ignition from starting if the driver's blood alcohol level exceeds the device's calibrated setting. The law prohibits tampering with or attempting to circumvent the use of an ignition interlock system, for example, by having another person attempt to start the ignition. A court may order a person to participate in the Ignition Interlock Program after conviction for a drunk driving offense. The Motor Vehicle Administration may also require participation in conjunction with the issuance of a restrictive license. According to the Motor Vehicle Administration, about 4,500 individuals participate in the program annually. The increased administrative penalties effective January 1, 2007, for blood alcohol test results of 0.15 or higher may increase the number of program participants in future years.

Chapter 4. Commencement of the Criminal Justice Process

The criminal justice process generally begins when a person is alleged to have committed a crime that is observed by or reported to a law enforcement officer. This is followed by either a warrantless arrest or the issuance of a charging document. This chapter will discuss these processes.

Arrest

An arrest is the detention of a suspected offender for the purpose of potential criminal prosecution. An arrest may be made either upon the issuance of an arrest warrant after a charging document has been filed or without a warrant in certain situations.

Generally, to make an arrest, a judge or District Court commissioner must first issue a warrant based on a finding of probable cause. A law enforcement officer may, however, make a warrantless arrest when:

- the crime was committed in the officer's presence;

- the officer has probable cause to believe that a felony was attempted or committed, even though the crime did not occur in the officer's presence; or

- the officer has probable cause to believe that one of a limited number of misdemeanors was committed, (*e.g.*, illegal carrying of a handgun or other weapon, theft, malicious mischief) even though the crime did not occur in the officer's presence.

Although rarely done, an individual also has authority under the common law to make a "citizen's arrest" if the individual witnesses a felony or a misdemeanor giving rise to a breach of the peace.

Charging Documents

The issuance of a charging document, regardless of whether an individual is arrested, formally initiates the criminal process. The charging document is a written accusation alleging that the defendant has committed a crime. A charging document may come in the form of a citation, a statement of charges, an information (filed by a State's Attorney), or an indictment.

A charging document must contain (1) the identity of the accused; (2) a concise and definite statement of the essential facts of the offense; (3) the time and location of the offense; and (4) the rights of the accused, including the right to counsel. The statute or other law allegedly violated must follow each charge or count in the charging document.

This section will discuss the four types of charging documents. Exhibit 4.1 also provides a summary of each charging document and its primary use.

Exhibit 4.1
Summary of Charging Documents

Charging Document	Filed by	Where Filed	Mainly Used for
Citation	law enforcement officer	District Court	minor offenses, especially motor vehicle offenses
Statement of charges	judicial officer/ law enforcement officer	District Court	arrests with or without a warrant
Information	State's Attorney	District Court or circuit court	misdemeanors and certain felonies
Grand jury indictment	circuit court	circuit court	serious felonies

Source: Department of Legislative Services

Citation

A "citation" is issued to a defendant by a law enforcement officer and filed by the officer in District Court. Citations are generally used to charge petty or other relatively minor offenses committed in the officer's presence. Citations may only be used to try offenses in District Court, unless the accused is entitled to and demands a jury trial for the offense in circuit court. The citation contains a command to the defendant to appear in court when notified to do so, and the defendant promises to appear by signing the citation. The advantage of a citation is that it does not require the officer and the defendant to go through the arrest process if it is likely that the defendant will appear in court.

Most motor vehicle offenses are charged by means of a citation. Citations for minor motor vehicle offenses allow a defendant to pay a fine, which constitutes a guilty plea and disposition, in lieu of appearing in court to contest the charge. See Chapter 3 of this handbook for a full discussion of motor vehicle offenses.

Statement of Charges

Before the arrest of an alleged offender, a "statement of charges" may be filed by a judicial officer with the District Court based on an application of a law enforcement officer or another individual. The application contains an affidavit demonstrating probable cause that the defendant committed the crime charged.

An individual may apply for the issuance of a statement of charges. The individual files the application, including an affidavit signed before a judicial officer, and a judicial officer decides whether probable cause exists to file the statement of charges.

The judicial officer may be a judge but is more likely to be a District Court commissioner. A commissioner is a judicial officer who is available 24 hours a day. As with a citation, a statement of charges may only be used to try offenses in District Court, unless the defendant is entitled to and demands a jury trial for the offense in circuit court.

If a law enforcement officer makes a warrantless arrest, the officer must cause a statement of charges to be filed in the District Court, along with an affidavit showing probable cause.

Information

An "information" is filed by a State's Attorney in either a circuit court or the District Court. Any offense within the jurisdiction of the District Court may be tried on an information. The following offenses may be tried by information in a circuit court:

- a misdemeanor (provided that the circuit court has jurisdiction);

- a felony that is within the concurrent jurisdiction of the circuit court and the District Court; and

- any other felony (including any lesser included offense) if the defendant (1) requested or consented in writing to be charged by information; (2) requested a preliminary hearing for a felony within the sole jurisdiction of the circuit court and

the hearing resulted in a finding of probable cause; or (3) waived the right to a preliminary hearing.

Indictment by Grand Jury

A State's Attorney usually seeks to have the accused charged by grand jury indictment when the charge is a serious felony. The circuit court files an indictment returned by a grand jury. A defendant who is indicted by a grand jury is not entitled to a preliminary hearing, since the grand jury has already made the determination that there is probable cause to believe the defendant committed the offense.

A grand jury may subpoena evidence and witnesses that may be difficult for a law enforcement agency or the State's Attorney to obtain through regular investigation. All witnesses must testify under oath without an attorney present. The proceedings are confidential.

A grand jury consists of 23 members, with an affirmative vote of 12 required to indict. The frequency of meeting and the term length varies by jurisdiction. In Baltimore City, for example, grand juries usually meet five days a week for four months. The process of selecting grand jurors is no different from selection of petit jurors for a trial jury. A designated jury commissioner or the clerk of court selects the pool of jurors at random according to written procedures (*e.g.*, using voter registration or driver's license records). Members of the grand jury are interviewed, and the circuit court jury commissioner selects the foreman.

Like petit jurors, grand jurors may not be fired by their employers because of missing work time due to service on the jury; may not be discriminated against due to race, color, religion, sex, national origin, or economic status; are compensated for service as provided in State law (currently $15 each day plus any additional amount provided by county law); and may be excused or resummoned. Grand jurors usually serve for a predetermined amount of time. This time may be extended, however, to allow the grand jury to complete a particular investigation.

Summons or Arrest Warrant

Once a charging document is filed, the court must issue a summons or arrest warrant. A copy of the charging document accompanies the summons or warrant. A summons notifies the defendant of the time and place to make an initial appearance to answer the charges. It may be served on the defendant by mail or in person. A summons will be issued unless (1) an arrest warrant has been issued; (2) the defendant is in custody; or (3) the charging document is a citation.

There are several circumstances in which an arrest warrant may be issued in lieu of a summons. An arrest warrant may be issued from either the District Court or a circuit court if the defendant is not in custody and there is a substantial likelihood that the defendant will not respond to a summons. Additionally, the District Court may issue an arrest warrant if either the defendant previously failed to respond to a summons or citation or the defendant's whereabouts are unknown.

Chapter 5. Pretrial Procedure

This chapter discusses what occurs after a defendant is arrested or charged, but before trial.

Police Procedures

Upon arrest, the police will advise the defendant of the rights of an accused person, including the right to remain silent and the right to counsel, and then "book" the defendant. The booking process includes fingerprinting, photographing, and reviewing the defendant's RAP sheet (Report of Arrests and Prosecutions) to determine whether there is a prior criminal record. The arrest and booking process places the defendant into or updates information already in the Criminal Justice Information System records. If the arrest was made before charges are filed – such as when the crime was committed in the officer's presence – the police officer will also file charges against the defendant.

Initial Appearance

Within 24 hours after arrest, the defendant is taken before a judicial officer – typically a District Court commissioner – for an initial appearance. At the initial appearance, the defendant is advised of (1) the offense charged; (2) the right to counsel; and (3) the right to a preliminary hearing, if applicable. In some jurisdictions, the defendant is given a District Court trial date at the initial appearance. Otherwise, the defendant is told that notice of the trial date will follow by mail.

If the defendant was arrested without a warrant, the commissioner must determine whether there was probable cause for the arrest. If there was no probable cause, the defendant is released on personal recognizance, with no other conditions of release. If there was probable cause, the commissioner must also determine whether the defendant is eligible for release from custody prior to trial and, if so, under what conditions. A defendant who is denied pretrial release by the commissioner, or one who remains in custody 24 hours after the commissioner has set the conditions of release, is entitled to a bail review hearing before a judge. The primary purpose of the bail review hearing is to determine whether the conditions set by the commissioner should be continued, amended, or revoked.

Right to Counsel

Criminal defendants are advised of their right to legal representation upon arrest and at their initial appearance. Written notice of this right is included with the charging

document, which is given to and discussed with the defendant at the initial appearance. The notice is read to those who are unable to read and is typically signed by the defendant to acknowledge its review and receipt. The notice explains how a lawyer can be helpful to the defendant and advises the defendant that the Office of the Public Defender provides legal representation to a defendant who is subject to incarceration on conviction and unable to afford private counsel.[1] The defendant is referred to the court clerk for assistance in locating and applying for assistance from the public defender.

The defendant is also told not to wait until the day of trial to get a lawyer and that the right to counsel can be waived by a defendant's inaction. The defendant is advised that if he or she appears for trial without a lawyer, a judge could require the defendant to proceed to trial without representation.

If the defendant is served with a criminal summons or citation rather than arrested, the initial appearance is before a judge on the date of arraignment or trial. The judge will advise the defendant of the nature of the charges and the right to counsel and confirm that the defendant received a copy of the charging document.

If an appropriate judicial officer has not previously advised the defendant of these rights, the case will be postponed so the defendant can have an opportunity to obtain counsel and prepare a defense.

Pretrial Release/Detention

In General

A criminal defendant is entitled to be released pending trial unless a judge ultimately determines that no conditions can be placed on the defendant's release to reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. Most defendants are eligible for and will be released on personal recognizance. However, if a judicial officer determines that release on personal recognizance alone is not appropriate, or the defendant is by law ineligible for release on recognizance, the defendant may be released prior to trial only by posting bail in a suitable amount set by the judicial officer.

[1] The Office of Public Defender is the State government entity charged with providing legal representation statewide to indigents primarily in criminal and juvenile delinquency matters. In calendar 2005, 424 attorneys in the Office of Public Defender handled 188,000 criminal and juvenile cases.

Ineligibility for Personal Recognizance

A defendant is by law ineligible for release on personal recognizance if charged with (1) a crime punishable by death or life imprisonment without parole; or (2) a crime of violence, certain drug offenses, or certain other serious crimes, after having been previously convicted of one of these crimes.

District Court Commissioners

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants charged:

- with a crime punishable by death or life imprisonment;
- with escaping from a place of confinement in the State;
- as a drug kingpin;
- with a crime of violence, if the defendant has a previous conviction for a crime of violence;
- with committing a crime of violence or certain serious crimes while on pretrial release for a pending prior charge involving one of these crimes; and
- with violating certain provisions of a domestic violence protective order.

Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, with any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others.

Conditions of Release

Whether released on recognizance or bail, one or more conditions may be imposed, including:

- releasing the defendant to the custody of a designated person or organization (including a private home detention company) that agrees to supervise the defendant and assist in ensuring the defendant's future appearance in court;

- placing the defendant under the supervision of a probation officer or other appropriate public official, such as a governmental pretrial services unit, which in some jurisdictions can provide home detention, electronic monitoring, and drug testing or treatment pending trial;

- restricting the defendant's travel, associations, or residence;

- prohibiting contact with the alleged victim; and

- any other conditions reasonably necessary to (1) ensure the appearance of the defendant as required; (2) protect the safety of the alleged victim; and (3) ensure that the defendant will not pose a danger to another person or the community.

Basis for Pretrial Release Determinations

In determining the conditions of pretrial release, the judicial officer is required to take into account the following information, if available: the nature and circumstances of the offense; the nature of the evidence and the potential sentence upon conviction; the defendant's prior record and history with regard to appearing in court as required; the defendant's employment status and history, length of residence in the community and the State, family ties, financial resources, reputation and character, and mental condition; the potential danger of the defendant to himself or herself, the victim, or others; recommendations of the State's Attorney and any agency that conducts a pretrial release investigation; and information provided by the defendant or the defendant's counsel.

At the initial appearance, the commissioner has access to several criminal justice databases to review the defendant's criminal history and to determine whether there are any pending charges, any prior occasions when then defendant failed to appear in court, or any outstanding warrants. These include the Criminal Justice Information System (CJIS), the National Crime Information Center (NCIC), the Maryland Interagency Law Enforcement System (MILES), the Unified Court System (UCS), Motor Vehicle Administration (MVA) records, Warrants (WARS), and the National Law Enforcement Telecommunications System (NLETS). The commissioner also relies on information provided in the statement of probable cause or charging document, the defendant's RAP sheet, and information learned from the defendant.

In some jurisdictions, a pretrial investigation services unit provides verified factual information that becomes available to assist the judge in setting conditions for release at a bail review hearing. The investigation by the pretrial services unit could include a community background check, verification of employment, information provided by the

defendant or the defendant's family, and additional factors concerning the defendant's criminal history that were not available to the commissioner. Where local conditions provide for it, a pretrial release plan can be designed by the pretrial services unit so that the defendant can be released under supervision of that unit, providing an option for the release of some offenders who are unable to make bail or who ordinarily would be confined until trial. Supervision may include residential placement, home detention, electronic monitoring, and testing or treatment for alcohol and drug use.

For more discussion of alternatives to incarceration, see Chapter 9 of this handbook.

Release on Bail

Bail is intended to ensure the presence of the defendant in court, not as punishment. If there is a concern that the defendant will fail to appear in court, but otherwise does not appear to pose a significant threat to the public, the defendant may be required to post a bail bond rather than be released on recognizance. A bail bond is the written obligation of the defendant, with or without a surety or collateral security, conditioned on the personal appearance of the defendant in court as required and providing for payment of a specified penalty (the amount of the bail) upon default.

Once the bail has been set, the defendant may secure release by posting cash or other collateral with the court, such as a corporate surety bond, a certified check, intangible property, or encumbrances on real property, in an amount required by the judicial officer. Often the defendant is released after posting cash equal to 10 percent of the full penalty amount, although security for a greater percentage of the penalty amount, up to the full amount of the bail, may be required. When the defendant is unable to post the amount required, as is often the case, the defendant may seek the assistance of a bail bondsman to obtain a corporate surety or lien on the bondsman's real property to secure the bond with the defendant. The bail bondsman typically charges a fee equal to 10 percent of the required bail bond amount for this service.

If a defendant fails to appear in court as required, the court will order the forfeiture of the bond and issue a warrant for the defendant's arrest. If the defendant or surety can show that there were reasonable grounds for the failure to appear, a judge may strike the forfeiture in whole or in part. Where a surety executed the bond with the defendant, the surety has 90 days to satisfy the bond by either producing the defendant or by paying the penalty amount of the bond. The court may extend this period to 180 days for good cause shown. Should the defendant be produced subsequent to forfeiture of the bond, the surety may seek a refund of any penalty paid, less expenses incurred by the State in apprehending the defendant.

The bond is discharged and the collateral is returned when all charges in the case have been disposed of by *nolle prosequi*, dismissal, acquittal, probation before judgment, or final judgment of conviction or if the charges are placed on the stet docket.

Detention Awaiting Trial

In Maryland, offenders who are arrested but not released on personal recognizance or by posting bail are held in the Baltimore City Detention Center or a county's local detention center. The State operates and funds the Baltimore City Detention Center within the Division of Pretrial Detention and Services of the Department of Public Safety and Correctional Services. Each county is responsible for operating and funding its detention center, although the State does provide assistance for both capital and operating expenses.

In fiscal 2005, of the 12,801 persons confined in these detention centers, 7,906 were awaiting trial or sentencing. Detention centers also house defendants who have been convicted and sentenced to terms of 18 months or less. See Chapter 13 of this handbook for a discussion of local detention centers.

Right to Preliminary Hearing

A defendant charged with any felony that is not within the jurisdiction of the District Court has a right to a preliminary hearing to determine whether probable cause exists that the defendant committed the felony. Examples of these felonies are murder, rape, robbery, and serious controlled dangerous substances crimes. There is no right to a preliminary hearing in cases alleging felony theft or similar offenses (*e.g.*, bad checks, credit card misuse, forgery, and insurance fraud) that may be tried in either the District Court or a circuit court or in cases charging only misdemeanors. There also is no right to a preliminary hearing after a grand jury has returned an indictment, because the grand jury already would have found sufficient probable cause before returning the indictment.

To obtain a preliminary hearing, the defendant must request one within 10 days of the initial appearance. The hearing is scheduled within 30 days of the request. In some jurisdictions, a preliminary hearing is scheduled as a matter of course for all eligible felonies, subject to the defendant's right to waive the hearing. If the defendant waives the right to a preliminary hearing, the State may thereafter file charges in the circuit court.

A District Court judge conducts the preliminary hearing. Only the prosecution may call witnesses, who are subject to cross-examination by the defense. Strict rules of evidence are not applied, and the only question to be decided is whether the State has

established a *prima facie* case that there is probable cause to believe that the defendant committed the felony charged. If so, the State then has 30 days to file a criminal information in the circuit court, secure a grand jury indictment, or dismiss the charges. If the judge determines that no probable cause has been shown, the felony charge is dismissed. Such a dismissal is without prejudice, so the State may seek to charge the defendant again.

Discovery

The State's Attorney is required to furnish or permit inspection of certain material and information about the case to the defendant, a process known as "discovery."

In District Court, discovery is only available for offenses that are punishable by imprisonment. The State's Attorney must provide to the defendant any "exculpatory evidence," that is, material or information that tends to negate or mitigate the guilt or punishment of the defendant as to the offense charged. Upon request, the State's Attorney must also permit the defendant to inspect and copy any statement made by the defendant to a State agent that the State intends to use at trial and any written report or statement made by an expert witness that the State expects to call at trial. If a request for discovery made before trial is refused or denied, the court may grant a delay or continuance in a hearing or trial.

In circuit court, in addition to exculpatory evidence and statements made by the defendant that the State intends to use at trial, the State's Attorney must provide, without the necessity of a request, any relevant material or information regarding searches and seizures, wire taps, or eavesdropping and pretrial identification of the defendant by a witness for the State. Upon request, the State's Attorney must also provide specified information about witnesses that the State intends to call at trial, statements of the defendant and codefendants, reports and statements of experts, tangible evidence, and property obtained from the defendant.

The defendant also is required to provide certain discovery to the State. Upon request, the defendant must cooperate with the State in efforts to identify the defendant, including appearing in a lineup; being fingerprinted; posing for photographs; trying on articles of clothing; permitting the taking of material under the fingernails, blood samples, hair, and other material not involving an unreasonable intrusion; providing handwriting specimens; and submitting to reasonable physical or mental examination. The defendant must also provide, upon request, the names and addresses of alibi witnesses, reports of experts, and computer-generated evidence.

If discovery is not provided as requested, the party who made the request may file a motion to compel discovery. If the court finds that a party has failed to comply with discovery rules or court orders concerning discovery, the court may enter an appropriate order, including ordering discovery, striking testimony or prohibiting the introduction of evidence, granting a reasonable continuance, or granting a mistrial.

Plea Bargaining

Prior to trial, the State's Attorney and the defense often engage in a process commonly referred to as "plea bargaining" to determine whether they can come to some agreement to obviate the need for a full trial. In a typical plea agreement, the defendant agrees to enter a guilty plea in exchange for the State's agreement to reduce the charges or to recommend a sentence less than the maximum allowed by law. For example, a person charged with second degree murder, which carries a maximum sentence of 30 years, may agree to plead guilty to a charge of manslaughter, which carries a maximum sentence of 10 years, in exchange for the State's agreement to recommend to the judge that an 8 year sentence be imposed. Similarly, a person charged with multiple counts may enter a plea agreement to have some counts dismissed in exchange for a guilty plea on others.

Many justifications are offered in support of plea agreements. The practice reduces the amount of time and resources expended by law enforcement agencies, prosecutors, public defenders, and the courts for prosecution, trial, and punishment of offenders. When guilty pleas are obtained in less serious cases, judicial resources are freed up to handle trials for more serious crimes. In cases where the prosecution has some concern about whether the State will be able to obtain a conviction – due to the loss of a key witness, for example – a plea agreement may ensure that the defendant does not escape punishment altogether. A plea agreement may also be offered to induce a defendant to testify against others or to provide information useful in connection with other prosecutions or investigations.

The defendant may enter into an agreement with the prosecutor to enter a plea of guilty on any proper condition. When the State has agreed only to make a particular recommendation as to sentencing, that recommendation is not binding on the judge. In such situations, the defendant is advised that the judge may impose a sentence higher than the one recommended by the State. For this reason, the State and defendant often submit the terms of their agreement to the judge in advance, to determine whether the judge will also agree to be bound by the terms of the agreement and impose a particular sentence or at least agree not to exceed certain sentencing parameters. If the judge will not agree, the defendant may nonetheless proceed with the plea or withdraw it and go to trial.

Once accepted by the court, the plea agreement becomes binding on all parties. If the defendant violates the terms of the plea agreement – by refusing to testify as promised, for example – the State's Attorney may reinstate the original charges against the defendant. Likewise, if the defendant does not violate the agreement, the State's Attorney is barred from prosecuting the defendant on any charges that the State agreed to dismiss or from seeking a longer sentence than was agreed upon.

Chapter 6. The Circuit Courts and the District Court

This chapter will discuss the two levels of criminal trial courts in the State: the circuit courts and the District Court.[1]

Circuit Courts

The Maryland Constitution establishes the circuit courts as the highest criminal trial courts. There is one circuit court in each county, although the courts are grouped geographically for administrative purposes into eight judicial circuits. Each circuit contains at least two counties, except for the eighth circuit which consists solely of Baltimore City. The Governor appoints the circuit court judges, subject to confirmation by the Senate. An appointed judge then stands for election to a 15-year term at the general election at least a year after the occurrence of the vacancy the judge was appointed to fill.

Jurisdiction

The circuit courts have exclusive jurisdiction over most felony cases. Unless a statute specifically grants concurrent jurisdiction to the District Court, felony cases begin in a circuit court. In addition, the circuit courts have concurrent jurisdiction with the District Court for misdemeanors having a maximum penalty of three years' imprisonment or more or a fine of $2,500 or more.[2] Concurrent jurisdiction allows the State, at the prosecutor's discretion, to charge the defendant in either circuit court or District Court.

The circuit courts are the only trial courts that provide for trial by jury. A jury trial is guaranteed in a criminal case under the Sixth Amendment and Fourteenth Amendment of the U.S. Constitution, for all but petty offenses, as well as under the Maryland Constitution. Under Maryland statutory law, there is no right to a jury trial in circuit court unless the crime is subject to a penalty of imprisonment or there is a constitutional right to a jury trial for the crime. In general, a defendant has the right to a trial by jury under the Maryland Constitution in any misdemeanor or felony case with a potential

[1] In addition to criminal cases, these courts also have jurisdiction over civil cases. See Chapter 4 of *Volume II – Government Services in Maryland* of this handbook series for a discussion of the entire Maryland judicial system, including civil jurisdiction.

[2] Misdemeanor possession of drugs is the exception to this rule. Exclusive jurisdiction over this offense, which carries a maximum penalty of a four-year term of imprisonment and a $25,000 fine, is in the District Court.

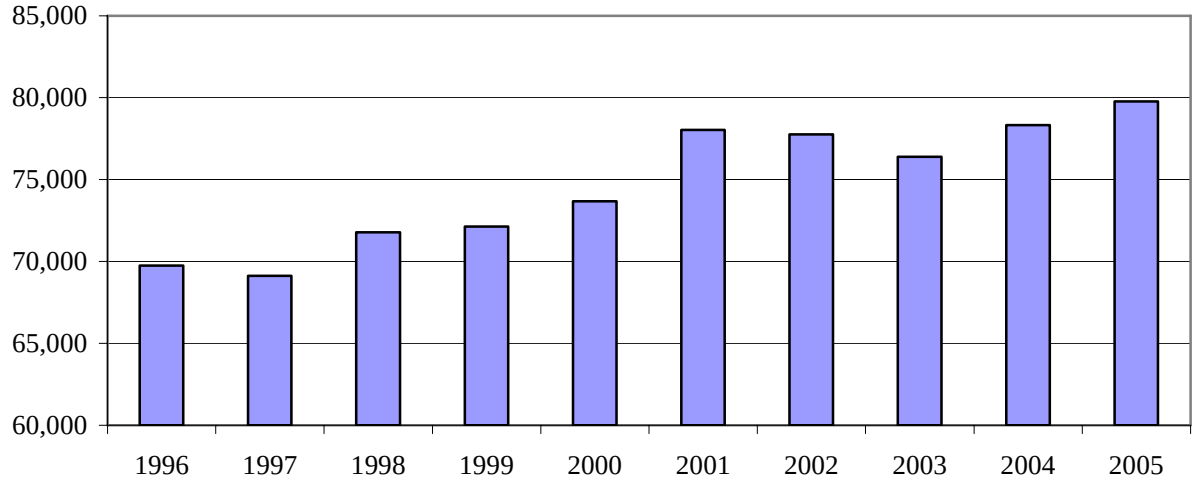
sentence of 90 days or more, and the District Court is divested of jurisdiction if the defendant requests a jury trial.[3]

The circuit courts also exercise appellate jurisdiction over convictions in the District Court. See Chapter 11 of this handbook for a discussion of appeals and judicial review.

Criminal Caseload

Exhibit 6.1 depicts circuit court criminal filings from fiscal 1996 through 2005. The number of annual filings increased from 69,753 to 78,028, or 11.9 percent, during the period of fiscal 1996 through 2001. By contrast, the number of annual filings decreased slightly to 77,750 and 76,379 in fiscal 2002 and 2003, respectively. Since 2003, filings have increased to 79,763, a 4.4 percent increase over the two-year period. While the longevity of the recent upward trend in case filings is unclear, the data reflects an overall increase in case filings since 1996.

Exhibit 6.1
Circuit Court Criminal Filings
Fiscal 1996-2005



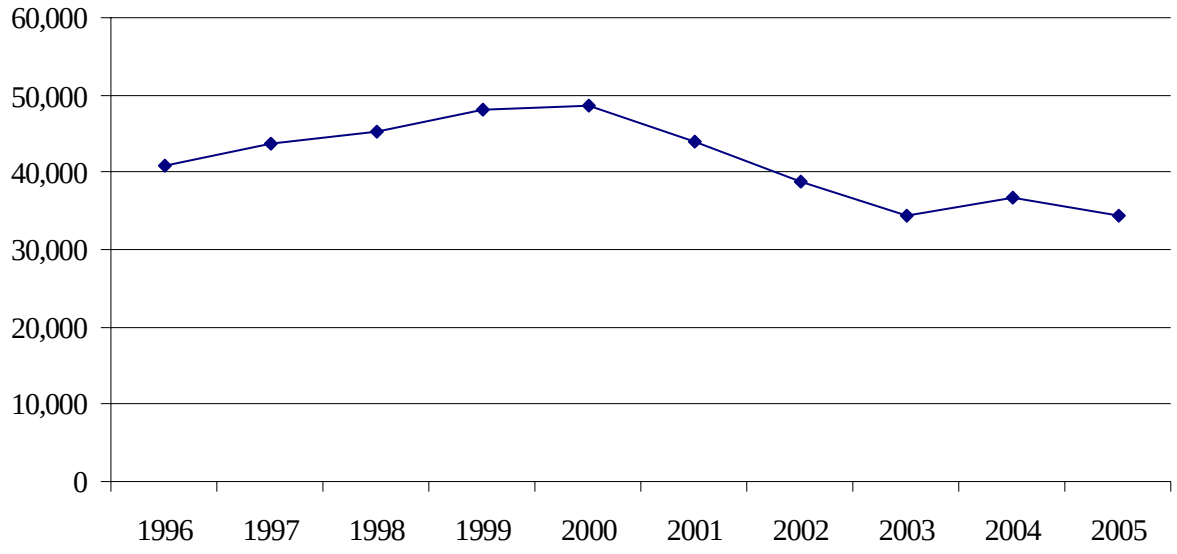
Source: Annual Reports of the Maryland Judiciary

[3] In addition, the Maryland Constitution may provide for the right to a jury trial in the "first instance," even if the maximum term of imprisonment is 90 days or less, if there was historically a right to a jury trial for the offense or the offense is a serious one. A full discussion of this issue is beyond the scope of this handbook.

Juvenile Cases

The circuit courts also have jurisdiction over juvenile cases, typically involving youths under the age of 18 years. Exhibit 6.2 illustrates the number of juvenile cases opened from fiscal 1996 through 2005. During the period of fiscal 1996 through 2000, caseloads increased steadily with 40,903 and 48,502 cases opened in 1996 and 2000, respectively. By contrast, there was a decrease in juvenile caseloads from 44,059 in fiscal 2001 to 34,356 in fiscal 2003. During the past two years, caseloads have fluctuated with 34,294 cases reported as being opened in 2005. See Chapter 8 of this handbook for a full discussion of the juvenile justice system.

Exhibit 6.2
Circuit Court Juvenile Cases
Original and Reopened
Fiscal 1996-2005



Source: Annual Reports of the Maryland Judiciary

The District Court

The District Court of Maryland began operation in 1971 as a result of the ratification of a constitutional amendment consolidating a disparate system of trial magistrates, people's courts, and municipal courts into a fully State-funded court of record possessing statewide jurisdiction. The District Court is divided by statute into 12

geographical districts, each containing one or more counties, with at least one judge and courthouse in each county.

The Governor appoints District Court judges to a term of 10 years subject to confirmation by the Senate. The Governor is required to reappoint a judge to another 10-year term, subject to the consent of the Senate, and the judge is not required to stand for election. The Chief Judge of the Court of Appeals appoints the Chief Judge of the District Court.

Jurisdiction

The District Court of Maryland is a court of limited jurisdiction with jurisdiction over the following criminal cases:

- violations of the vehicle laws and the State Boat Act, unless the violation is a felony or the defendant is under the age of 16;

- all misdemeanor violations, including violations of statutory or common law, a county municipal or other ordinance, or a State, county, or municipal regulation; and

- felonies involving theft, bad checks, credit card offenses, forgery, fraudulent insurance acts, false workers' compensations claims, manslaughter by motor vehicle or vessel, homicide by motor vehicle or vessel while intoxicated, counterfeiting United States currency, and voting equipment offenses.

Although the District Court has jurisdiction over these cases, any case that carries a possible penalty in excess of a 90-day term of imprisonment entitles the defendant to elect a jury trial, and the case is transferred to the appropriate circuit court. The State may not elect a jury trial.

The District Court's jurisdiction is concurrent with the circuit courts in felony cases listed under the preceding discussion of jurisdiction and misdemeanor cases in which the maximum penalty is imprisonment of three years or more or a fine of $2,500 or more. The District Court also has concurrent jurisdiction with the juvenile court in criminal cases arising under the compulsory public school attendance laws. Concurrent jurisdiction allows the State, at the prosecutor's discretion, to charge a defendant in either circuit court or District Court.

Caseload

Exhibit 6.3 shows the number of criminal cases, excluding motor vehicle cases[4], filed in the District Court from fiscal 1996 through 2005. There were 178,935 criminal cases filed in 1996 as compared to 205,153 in fiscal 2005, a 14.7 percent increase. A comparison of the number of criminal cases filed by county in fiscal 1996 and 2005 indicates significant differences among the counties.

In fiscal 2005, cases not prosecuted, *nolle prosequi* cases, accounted for 41.5 percent of the criminal cases terminated in District Court, and cases that had prosecution suspended, stet cases, accounted for 9.7 percent of the District Court caseload.

Exhibit 6.3
Number of Criminal Cases* Filed in the District Court
Fiscal 1996-2005

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Avg. Annual % Change
District 1											
Baltimore City	62,814	72,487	84,848	86,964	80,589	65,959	76,406	75,117	93,677	84,255	4.2
District 2											
Dorchester	1,428	1,483	1,304	1,349	1,215	1,235	1,409	1,354	1,482	1,689	2.3
Somerset	840	853	810	1,079	1,033	1,059	974	1,048	1,050	1,097	2.7
Wicomico	3,440	3,060	2,635	2,740	3,226	3,258	3,221	3,321	3,344	3,334	0.0
Worcester	3,384	3,906	4,843	4,928	4,347	5,264	5,704	5,910	6,066	5,448	6.1
District 3											
Caroline	1,204	1,171	1,170	1,293	1,208	1,139	1,160	1,239	1,071	1,027	-1.6
Cecil	2,838	2,777	2,761	2,842	2,877	2,840	2,958	3,215	3,367	3,059	0.9
Kent	618	614	567	583	678	589	578	728	706	686	1.8
Queen Anne's	843	991	1,059	1,048	1,203	1,190	1,042	1,191	1,384	1,175	4.4
Talbot	1,319	1,372	1,322	1,324	1,391	1,343	1,192	1,292	1,335	1,403	0.9
District 4											
Calvert	1,980	2,015	2,233	2,438	2,828	2,619	2,531	2,360	2,492	2,649	3.5
Charles	3,296	3,550	3,969	4,257	4,365	4,442	4,007	4,316	4,296	4,367	3.3
St. Mary's	2,510	2,646	2,493	2,663	2,670	2,865	2,614	2,809	2,899	3,282	3.2

[4] In fiscal 2005, 1,406,510 motor vehicle cases were filed in the District Court. For further information about motor vehicle cases, see Chapter 3 of this handbook.

Exhibit 6.3 (continued)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Avg. Annual % Change
District 5											
Prince George's	23,271	25,029	25,052	26,303	24,741	21,017	22,104	20,189	19,590	20,606	-1.1
District 6											
Montgomery	14,094	13,785	14,171	14,388	13,136	12,501	12,761	12,446	13,755	14,228	0.2
District 7											
Anne Arundel	12,166	13,573	14,736	14,084	13,996	12,892	13,514	13,634	13,738	14,007	1.7
District 8											
Baltimore	21,076	22,845	23,348	22,095	21,076	19,090	18,758	18,565	18,634	17,745	-1.8
District 9											
Harford	3,808	3,656	4,109	4,133	4,229	4,113	4,401	4,761	4,788	5,114	3.5
District 10											
Carroll	2,737	2,670	2,845	3,094	3,478	3,153	3,420	3,540	3,199	2,956	1.1
Howard	4,358	4,304	4,129	4,169	4,045	4,313	4,230	3,983	3,956	3,795	-1.5
District 11											
Frederick	3,400	3,759	3,559	3,430	3,714	4,070	4,142	3,890	3,927	3,867	1.6
Washington	3,397	3,707	3,815	3,671	4,047	4,309	4,351	4,471	4,899	4,891	4.2
District 12											
Allegany	3,044	3,466	3,444	3,497	3,451	3,426	3,561	3,343	3,481	3,281	1.0
Garrett	1,070	1,114	1,243	1,021	1,099	1,045	1,250	1,224	1,185	1,192	1.3
State	**178,935**	**194,833**	**210,465**	**213,393**	**204,642**	**183,812**	**196,288**	**193,946**	**214,321**	**205,153**	**3.9**

* Does not include motor vehicle cases filed in the District Court.

Source: Annual Reports of the Maryland Judiciary

Exhibit 6.4 shows the substantial increase in the number of civil domestic violence protective order cases filed in the District Court from fiscal 1996 to 2005. The categories of persons generally eligible for relief under the civil domestic violence statute are spouses, cohabitants, and relatives. With the exception of fiscal 1999, the number of domestic violence filings increased annually. A comparison of the number of civil domestic violence protective order cases filed by county in fiscal 1996 and 2005 indicates significant differences among the counties.

Exhibit 6.4
Domestic Violence Cases Filed in the District Court
Fiscal 1996-2005

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Avg. Annual % Change
District 1											
Baltimore City	3,648	3,907	4,150	3,925	3,510	3,474	3,710	3,812	4,220	4,152	1.7
District 2											
Dorchester	114	117	105	119	122	126	129	141	159	154	7.9
Somerset	40	35	25	24	43	40	51	61	72	85	22.8
Wicomico	536	465	515	542	512	516	564	553	491	529	-0.8
Worcester	123	121	155	164	202	149	147	153	149	162	6.8
District 3											
Caroline	88	59	76	106	88	106	114	136	110	128	10.2
Cecil	312	243	322	310	347	348	298	315	363	358	4.5
Kent	23	25	23	29	38	28	26	42	38	33	13.3
Queen Anne's	69	88	92	106	123	124	138	152	167	192	30.4
Talbot	33	61	76	70	94	74	88	85	144	110	48.1
District 4											
Calvert	133	156	178	166	182	232	224	267	289	303	23.7
Charles	204	240	265	232	310	308	355	408	573	593	34.4
St. Mary's	190	165	192	167	203	166	220	261	364	469	25.7
District 5											
Prince George's	3,228	3,485	3,607	3,317	3,410	3,606	4,136	4,595	4,912	5,085	11.4
District 6											
Montgomery	1,008	1,109	1,287	1,271	1,250	1,250	1,323	1,303	1,537	1,712	12.8
District 7											
Anne Arundel	1,332	1,632	1,696	1,676	1,743	1,859	2,030	2,117	1,971	1,998	10.3
District 8											
Baltimore	2,475	2,847	3,018	2,807	3,169	3,475	3,582	3,620	3,972	3,780	11.5
District 9											
Harford	373	400	375	364	446	599	538	628	621	742	17.7

Exhibit 6.4 (continued)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Avg. Annual % Change
District 10											
Carroll	152	206	225	306	321	310	286	331	294	292	19.0
Howard	278	332	337	355	416	446	555	516	524	593	20.3
District 11											
Frederick	387	447	475	479	498	480	546	495	575	643	12.2
Washington	403	504	510	586	665	728	790	870	890	991	25.7
District 12											
Allegany	245	277	280	262	277	287	313	319	360	344	9.0
Garrett	98	99	93	106	109	98	119	153	139	178	13.8
State	**15,492**	**17,020**	**18,077**	**17,489**	**18,078**	**18,829**	**20,282**	**21,333**	**22,934**	**23,627**	**10.4**

Source: Annual Reports of the Maryland Judiciary

Legislation enacted in 1999 created a new form of civil relief entitled a "peace order." An individual who is not eligible for relief under the domestic violence statute, but who shows a legitimate reason to fear harm, may apply for a peace order requiring another individual to stay away. Exhibit 6.5 shows a sizeable increase in the number of peace order cases in the District Court from fiscal 2000 to 2005. There were 4,560 peace orders filed in fiscal 2000 as compared to 15,086 in fiscal 2005, a 230.8 percent increase.

Exhibit 6.5
Peace Order Cases Filed in the District Court
Fiscal 2000-2005

	2000*	2001	2002	2003	2004	2005
District 1						
Baltimore City	481	652	1,195	2,071	2,296	2,370
District 2						
Dorchester	42	46	61	66	113	128
Somerset	4	18	28	26	84	91
Wicomico	85	143	213	302	289	245
Worcester	57	72	100	125	104	83

Exhibit 6.5 (continued)

	2000*	2001	2002	2003	2004	2005
District 3						
Caroline	17	40	20	59	70	65
Cecil	86	150	156	195	187	177
Kent	8	8	36	37	54	53
Queen Anne's	49	40	64	93	84	102
Talbot	18	21	41	54	98	64
District 4						
Calvert	72	114	126	211	219	244
Charles	153	230	277	507	503	577
St. Mary's	80	109	181	200	299	374
District 5						
Prince George's	613	1,057	1,759	2,542	2,851	3,067
District 6						
Montgomery	516	842	1,053	1,140	1,299	1,479
District 7						
Anne Arundel	416	626	942	1,319	1,213	1,308
District 8						
Baltimore	845	1,415	1,650	2,063	2,327	2,035
District 9						
Harford	257	304	354	397	482	462
District 10						
Carroll	89	155	190	247	288	323
Howard	202	280	343	399	397	422
District 11						
Frederick	172	343	416	502	548	517
Washington	199	297	385	530	608	586
District 12						
Allegany	74	94	120	164	171	166
Garrett	25	29	45	129	121	148
State	**4,560**	**7,085**	**9,755**	**13,378**	**14,705**	**15,086**

* Legislation authorizing peace orders took effect October 1, 1999.

Source: Annual Reports of the Maryland Judiciary

Alternative Court Programs

In an effort to relieve overcrowded dockets and expedite cases, two different court programs have been established for specific types of cases: a drug treatment court program, known as "drug court," and an early resolution program, known as "early resolution court."

Drug Court Programs

Several jurisdictions have criminal drug courts in their circuit courts and the District Court for adult and juvenile offenders. A drug court is a specialized docket responsible for handling drug and dependency related cases through judicial intervention, intensive monitoring, and continuous substance abuse treatment. These programs are used for offenders who are charged with less serious drug crimes and who do not have a history of violence. The drug treatment court program provides options other than commitment or incarceration. Participants are generally assigned to one of two tracks: probation or diversion from prosecution in exchange for a plea of guilty or admission of a delinquent act. Terms of program participation require intensive supervision and alcohol and other drug treatment.

Family/dependency drug courts in several circuit courts address parents at risk of losing custody of their children due to alcohol and other drug dependence. Eligible participants can voluntarily enter prior to the filing of the petition, enter pre-adjudication at shelter care, or be required to participate as part of disposition.

The State's fiscal 2007 budget included approximately $10.3 million for drug courts. These funds were allocated amongst the Judiciary, the Alcohol and Drug Abuse Administration, the Department of Public Safety and Corrections, and the Department of Juvenile Services.

Exhibit 6.6 describes the operational adult, juvenile, and family/dependency drug courts in Maryland as well as the current number of drug court participants.

Exhibit 6.6
Operational Drug Courts in Maryland

County	Court Location	Type of Program	Date Established	No. of Current Participants
Anne Arundel	Circuit	Adult	Dec 2005	6
	District	Adult	Feb 1997	144
	District	DUI	Jan 2005	9
	Circuit	Juvenile	Mar 2002	22
Baltimore City	Circuit	Adult	Oct 1994	471
	District	Adult	Mar 1994	250
	Circuit	Family	Aug 2005	70
	Circuit	Juvenile	Sep 1998	24
Baltimore County	Circuit	Juvenile	Mar 2003	47
Calvert	Circuit	Juvenile	May 2006	1*
Caroline	Circuit	Juvenile	Jul 2004	4
Cecil	Circuit	Adult	Jun 2006	2*
Charles	Circuit	Juvenile	May 2006	1*
Dorchester	Circuit	Juvenile	Jul 2004	7
Frederick	Circuit	Adult	May 2005	8
Harford	District	Adult	Nov 1997	36
	District	DUI	Jan 2005	10
	Circuit	Family	May 2004	11
	Circuit	Juvenile	Oct 2001	26
Howard	District	Adult	Jul 2004	11
	District	DUI	Jul 2004	6
Montgomery	Circuit	Adult	Nov 2005	27
	Circuit	Juvenile	Nov 2005	9
Prince George's	Circuit	Adult	Aug 2002	85
	Circuit	Juvenile	Aug 2002	5
Somerset	Circuit	Juvenile	Apr 2006	1*
St. Mary's	Circuit	Juvenile	Feb 2004	22
Talbot	Circuit	Juvenile	Oct 2004	6
Wicomico	Circuit	Adult	Sep 2005	17
Worcester	District	Adult	Dec 2005	2
	Circuit	Juvenile	Oct 2005	2
Total				**1342**

* Number of participants as of June 15, 2006; all others as of December 31, 2005.
Source: Maryland Judiciary

Early Resolution Program

In 2000, an early resolution court (formerly known as early disposition court) was created for the Baltimore City criminal justice system. The early resolution court was designed for defendants charged with certain nonviolent crimes who were offered pleas shortly after arrest. The primary purpose of the early resolution court is to reduce the District Court docket by expediting cases through the judicial system.

Currently, the early resolution court hears various cases[5] and offers two diversion programs for defendants: the 90-day diversion program and the marijuana diversion program. Under the 90-day diversion program, first time offenders are placed under pretrial supervision for 90 days and given drug treatment, if necessary. Additionally, the defendant is required to perform community service. Upon successful completion of the program, the defendant's case is dismissed. Approximately 75 defendants are referred to this program each month. By contrast, the marijuana diversion program is a two-day program where the defendant attends education lectures regarding substance abuse and performs community service. The defendant's case is dismissed upon successful completion of the marijuana diversion program.

To date, early resolution courts have been established at both the Eastside and Hargrove District Court locations in Baltimore City.

[5] The early resolution court hears the following types of cases: simple possession of a controlled dangerous substance, attempted distribution of a controlled dangerous substance, prostitution, gaming, open container, assault on police officers, misdemeanor theft, disorderly conduct, failure to obey, loitering, littering, public urination, selling without a traders license, and trespassing.

Chapter 7. Criminal Trials

This chapter will discuss several aspects of criminal trials.

Court Rules

Unlike other areas of criminal law, trial procedures are primarily governed by the Maryland Rules of Procedure. Both the General Assembly and the Court of Appeals have authority to make laws concerning court procedures. The Court of Appeals is authorized by the Maryland Constitution to adopt the Rules of Procedure, and it utilizes the Standing Committee on Rules of Practice and Procedure to consider proposed rules and submit its recommendations to the court.

Circuit Courts

There are two types of criminal trials held in the circuit courts: court or bench trials (where a judge decides issues of fact and renders a verdict) and jury trials. Exhibit 7.1 shows the number of criminal cases tried in circuit courts from fiscal 1996 through 2005. In fiscal 1996, 4,750 cases were tried statewide as compared to 3,073 cases in 2005, a 35.3 percent decline.

Exhibit 7.1
Circuit Court Criminal Cases Tried
Fiscal 1996-2005

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	96-05 % Change
1st Circuit											
Dorchester	154	49	43	45	52	36	14	29	29	23	-85.1
Somerset	55	46	72	47	22	14	14	5	24	13	-76.4
Wicomico	116	117	76	165	121	109	89	123	100	121	4.3
Worcester	591	549	723	743	640	645	640	722	474	488	-17.4
2nd Circuit											
Caroline	27	27	20	24	19	24	48	34	27	142	425.9
Cecil	35	42	58	35	31	31	37	44	60	44	25.7
Kent	22	16	12	14	3	7	16	16	10	12	-45.5
Queen Anne's	30	24	17	21	15	21	29	26	15	27	-10.0
Talbot	42	10	42	64	40	41	60	38	61	33	-21.4

Exhibit 7.1 (continued)

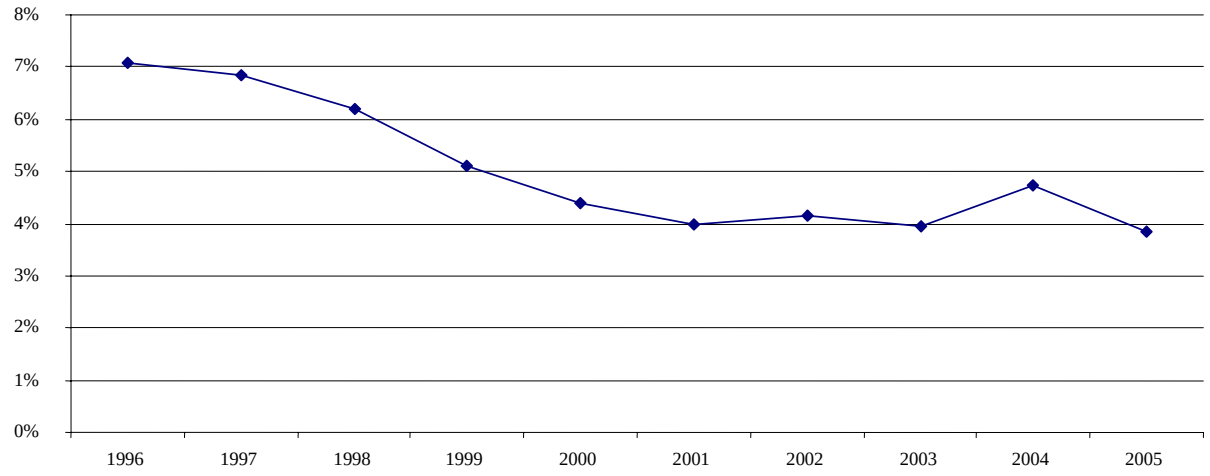
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	96-05 % Change
3rd Circuit											
Baltimore	340	232	189	182	132	122	169	26	83	*	n/a
Harford	74	49	58	81	52	62	71	53	57	67	-9.5
4th Circuit											
Allegany	45	38	36	31	38	35	40	24	27	20	-55.6
Garrett	16	19	2	11	3	13	10	17	10	13	-18.8
Washington	53	75	120	123	104	117	148	137	122	129	143.4
5th Circuit											
Anne Arundel	426	380	388	400	381	440	443	351	387	138	-67.6
Carroll	1,223	894	614	93	86	117	140	206	272	274	-77.6
Howard	127	272	284	278	341	150	139	172	149	164	29.1
6th Circuit											
Frederick	45	55	28	66	74	73	24	28	22	26	-42.2
Montgomery	258	299	215	191	210	246	213	186	168	278	7.8
7th Circuit											
Calvert	18	19	6	8	12	9	20	15	15	7	-61.1
Charles	73	50	41	31	22	29	23	30	29	35	-52.1
Prince George's	240	342	287	247	193	150	161	123	115	222	-7.5
St. Mary's	43	57	40	29	32	26	32	28	44	46	7.0
8th Circuit											
Baltimore City	697	733	818	695	435	412	434	375	789	751	7.7
State	**4,750**	**4,394**	**4,189**	**3,624**	**3,058**	**2,929**	**3,014**	**2,808**	**3,362**	**3,073**	**-35.3**

* Data unavailable.

Source: Annual Reports of the Maryland Judiciary

A significant number of criminal cases filed in the circuit courts do not result in a trial. Many cases are disposed of by a guilty plea, *nolle prosequi*, dismissal, or stet. Exhibit 7.2 illustrates the ratio of circuit court criminal trials to dispositions for fiscal 1996 through 2005. The ratio of trials to dispositions is the number of criminal trials divided by the number of criminal dispositions. In fiscal 1996, 7.1 percent of the criminal cases disposed of were as the result of a trial as compared to 3.9 percent in fiscal 2005. Overall, since 1996, there has been a decline in the ratio of trials to dispositions.

Exhibit 7.2
Ratio of Circuit Court Criminal Trials to All Dispositions
Fiscal 1996-2005



Source: Annual Reports of the Maryland Judiciary

Voir Dire

If a defendant elects a jury trial, jurors must be selected from those persons summoned to appear for jury service. Article 21 of the Maryland Declaration of Rights guarantees a criminal defendant the right to an impartial jury. A defendant's right to an impartial jury involves a process known as *voir dire*. The phrase "*voir dire*" means to "speak the truth" and generally refers to the process by which prospective jurors are questioned under oath about their backgrounds and potential biases before serving on a jury. The purpose of *voir dire* is to exclude from the jury those prospective jurors who cannot render a fair and impartial verdict based solely upon the law and the evidence.

As part of the *voir dire* process, the State and the defendant are allowed to exercise what are known as "for cause" challenges and "peremptory" challenges. A prospective juror may be excluded by the court from sitting on the jury due to a challenge for good cause shown. A challenge for cause is properly based on any statutory ground[1] for juror disqualification or any circumstances that may reasonably be regarded as rendering a

[1] Reasons for exclusion include the inability to speak or comprehend English and specified criminal convictions and pending charges. See § 8-207(b) of the Courts and Judicial Proceedings Article, Annotated Code of Maryland.

person unfit for jury service. One common basis for challenges for cause is when a prospective juror expresses an opinion that one side or the other should prevail. Parties are not limited to the number of challenges for cause they may exercise.

Typically, after challenges for cause have been ruled upon by the court, the process of exercising peremptory challenges begins. When exercising peremptory challenges, the State and the defendant do not have to state a reason for excluding the prospective juror so long as there is no indication that individuals are being excluded unconstitutionally from the jury solely on the basis of race. State law[2] provides that for a trial in which the State is seeking the death penalty or life imprisonment, the defendant is permitted 20 peremptory challenges, and the State is permitted 10 challenges. In other criminal cases, each party is permitted 4 peremptory challenges, excluding cases involving sentences of 20 years or more in which the defendant is permitted 10 peremptory challenges, and the State is permitted 5 challenges.

State's Burden

In a criminal case, the prosecution must offer evidence which is sufficient to authorize a finding on the matter in issue unless contradicted or explained. In order to establish a prima facie case, the prosecution must generally offer evidence to establish (1) the date of the offense; (2) the identity of the defendant as the perpetrator; and (3) the statutory elements of the offense charged. The prosecution's failure to establish a prima facie case will result in a judgment for an acquittal or a dismissal of the charge by the trial judge.

A defendant is not obligated to present any evidence unless the defendant raises an affirmative defense.[3] In addition, the Fifth Amendment to the United States Constitution prohibits the State from asking the jury to draw an inference of guilt from the defendant's decision not to testify. However, the defendant may testify or compel other witnesses to appear at trial and testify.

Also, in a criminal case, the defendant is presumed to be innocent and the State has the burden of proof. That is, the State has the burden of establishing the defendant's guilt by presenting evidence and introducing exhibits on each element of the offense to establish the guilt of the defendant "beyond a reasonable doubt." The reasonable doubt

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[2] See § 8-301 of the Courts and Judicial Proceedings Article; Maryland Rule 4-313.

[3] An affirmative defense is one that concedes the basic position of the State but, nevertheless, asserts that the defendant is not guilty because his action was justified or excused, *e.g.*, self-defense. In Maryland, an affirmative defense requires the person asserting it to establish its existence by a preponderance of the evidence.

standard is constitutionally mandated by the due process clause of the Fourteenth Amendment to the Constitution of the United States and the Maryland Constitution.

Direct and Cross-examination

In a criminal case, the State presents evidence through witness examination, exhibits, and stipulations. The initial questioning of the prosecution's witnesses is known as direct examination. Generally, direct examination questions must be open-ended, allowing the witness to present the information to the jury. Direct examination questions must be relevant and limited to proving the elements of the claim made by the prosecution. After the direct examination is concluded, the attorney representing the defendant may examine each witness of the prosecution to bring out additional information or to test the knowledge or creditability of the witness. This examination is known as cross-examination. During cross-examination, attorneys are allowed to ask leading questions which are questions that suggest what the answer should be.

If the defendant chooses to present a case, evidence is presented in the same fashion as for the prosecution.

Jury Instructions

Jury instructions are statements of the law prepared for the jury. The purpose of jury instructions is to inform and instruct the jury as to the law and to aid them in applying the law to the facts in order to reach a just verdict. Under the Maryland Rules, the court is required to give jury instructions at the conclusion of all the evidence and before closing arguments in criminal cases. However, the court is also permitted to supplement those instructions at a later time and to give opening and interim instructions in its discretion. Generally, the court uses a set of standard prepared instructions (Maryland Pattern Jury Instructions); however, counsel is often involved with assisting the judge in determining jury instructions. The standard instructions cover topics such as the burden of proof and the elements of the offense charged.

Closing Arguments

At the conclusion of all of the evidence and after jury instructions, the State and the defendant may give closing arguments. In a criminal prosecution, closing arguments are confined to the facts admitted into evidence. However, counsel may state and discuss all reasonable and legitimate inferences which may be drawn from the facts in evidence, and comment by counsel on such inferences is afforded a wide range.

Jury Deliberation

Once the judge has given the instructions and closing arguments have been made, the jury will retire to the jury room to deliberate. Juries are generally instructed to elect a foreperson who will preside over the deliberations and present the verdict to the court. If the jury has any questions regarding what the judge has said or the evidence presented, the foreperson may send questions in note form to the judge to answer. In order to acquit or convict the accused, the jury verdict must be unanimous. The Maryland Rules require all jury verdicts to be read in open court.

Jury Trial Request in District Court

Many requests for jury trials originate in the District Court, and those cases are transferred to the appropriate circuit courts. A committee of judges formed to study the problems created when defendants in the District Court demand jury trials issued a report in 1987 that found that jury trials are requested in the District Court for some of the following reasons:

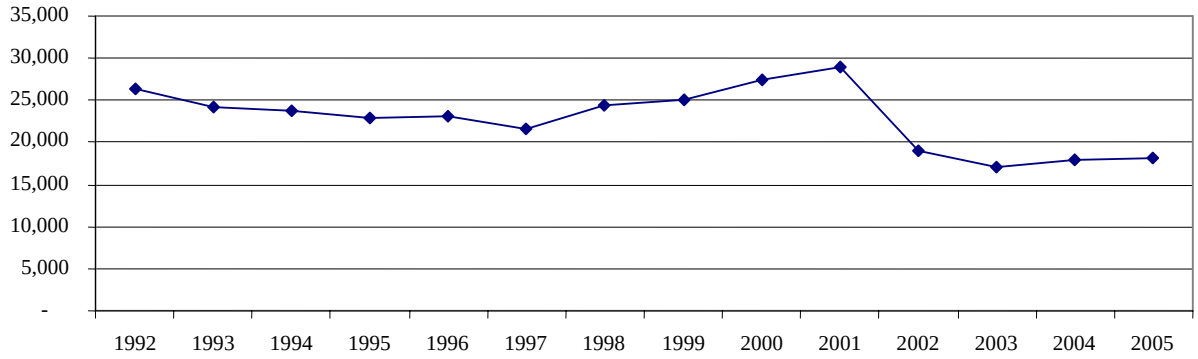
- to obtain a postponement, often so the defendant can obtain counsel or complete payment of counsel fees;
- to remove the case from an individual judge who is unknown to defense counsel or whose sentences are thought to be unduly severe;
- to delay the anticipated incarceration of defendants released on bail or on their own recognizance;
- in traffic cases, to delay the anticipated loss of driving privileges;
- to obtain a change to the more convenient central location of the circuit court, avoiding travel by defense counsel to the outlying locations of the District Court;
- to obtain a convenient trial date in jurisdictions where criminal cases are not tried in District Court on certain days of the week;
- to take advantage of more lenient sentencing in a circuit court, whether actual or perceived;

- to avoid District Court prosecutors considered inexperienced, unyielding, or inflexible, so defense counsel can negotiate with a more experienced prosecutor who has wider discretion in a circuit court; and

- to litigate the case under the Rules of Procedure that govern trials in a circuit court.

In an effort to eliminate the manipulation of the courts through jury trial requests, a program was established in four jurisdictions (Baltimore City and Anne Arundel, Baltimore, and Montgomery counties) whereby a defendant is given a jury trial in circuit court on the same day of, or soon after, a jury request is made in District Court. Exhibit 7.3 shows the number of District Court jury trial requests made from fiscal 1992 through 2005. From fiscal 1992 to 1997, the number of jury trial requests in the District Court decreased from 26,262 to 21,711, or 17.3 percent. However, in fiscal 1998 through 2001, a steady increase in the number of jury trial requests occurred with 28,870 jury trial requests in fiscal 2001. Since 2002, the number of jury trial requests have fluctuated. In 2005, there were 18,182 jury trial requests, a 1.8 percent increase from fiscal 2004.

Exhibit 7.3
District Court Jury Requests
Fiscal 1992-2005



Source: Annual Reports of the Maryland Judiciary

Chapter 8. Juvenile Justice Process

With certain exceptions, persons under the age of 18 who commit illegal acts are handled by the juvenile justice system. Unlike the adult criminal system, the juvenile system is designed to protect public safety while restoring order to the lives of young offenders without a determination of guilt or the imposition of fixed sentences.

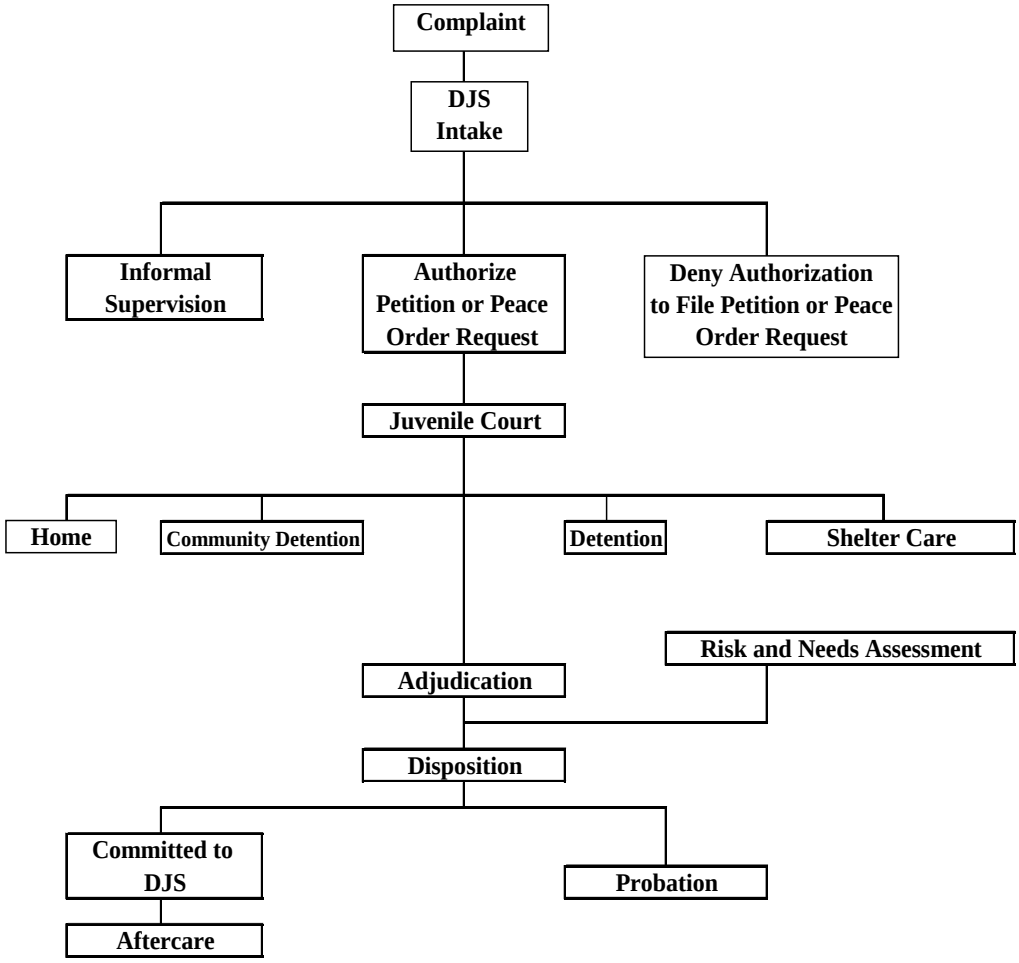
Historically, one of the principal purposes of the juvenile justice system was to remove from children committing delinquent acts the "taint of criminality" and the consequences of criminal behavior. In 1997, the General Assembly passed legislation adopting a philosophy of juvenile justice known as "balanced and restorative justice." Balanced and restorative justice requires the juvenile justice system to balance the following objectives for children who have committed delinquent acts: (1) public safety and the protection of the community; (2) accountability of the child to the victim and the community for offenses committed; and (3) competency and character development to assist the child in becoming a productive member of society.

The terminology used in the juvenile system differs from that used in the criminal system. For example, juveniles do not commit crimes. Rather, they commit "delinquent acts," which are acts that would be crimes if committed by an adult. Juveniles are "adjudicated delinquent" instead of convicted, and the juvenile court makes "dispositions" for juveniles instead of imposing sentences. Additionally, while adult offenders are known as criminal defendants, juvenile offenders are referred to in the law as "respondents."

The Department of Juvenile Services currently administers Maryland's juvenile programs. The department's goal is to assist youths to reach their full potential as valuable and positive members of society through family involvement and constructive programming. Additionally, the department supports community programs intended to prevent delinquent acts by juveniles before State involvement becomes necessary.

Exhibit 8.1 shows the manner in which cases flow through the juvenile justice system.

Exhibit 8.1
Case Flow through the Juvenile Justice System



Source: Department of Juvenile Services

Intake

The first point of contact that a child has with the State's juvenile justice system is at intake. Intake occurs when a complaint is filed by a police officer or other person or agency having knowledge of facts that may cause a child to be subject to the jurisdiction

of the juvenile court. Cases reported by police made up 94.5 percent of the total number of intake cases in fiscal 2005.

Mental Health and Substance Abuse Screening

As soon as possible, but not later than 25 days after receipt of a complaint, an intake officer assigned to the court by the Department of Juvenile Services is required to discuss with the child who is the subject of the complaint and the child's parent or guardian information regarding a referral for a mental health and substance abuse screening of the child. Within 15 days of that discussion, the intake officer must document whether the child's parent or guardian made an appointment for a mental health and substance abuse screening of the child. If, as a result of the screening, it is determined that the child is a mentally handicapped or seriously emotionally disturbed child, or is a substance abuser, a comprehensive mental health or substance abuse assessment of the child must be conducted.

Jurisdictional Inquiry

Also within 25 days after the complaint is filed, the intake officer is required to make an inquiry as to whether the juvenile court has jurisdiction and whether judicial action is in the best interest of the public or the child. In making this determination, the intake officer considers the nature of the alleged offense; the child's home, school, and community environment; and input from the victim and the police.

The intake officer may make any of the following decisions: (1) deny authorization to file a petition or a peace order request or both in the juvenile court; (2) propose informal supervision; or (3) authorize the filing of a petition or a peace order request or both in the juvenile court. A "petition" is the pleading filed with the juvenile court alleging that a child is a delinquent child. A "peace order request" is the initial pleading filed with the juvenile court that alleges the commission of any of certain acts against a victim by a child and that serves as the basis for a peace order proceeding. For a more detailed description of a peace order request and a peace order proceeding, see below under "Juvenile Court – Peace Order Proceedings."

Denial of Authorization to File a Petition or Peace Order Request

Lack of Jurisdiction

The intake officer may deny authorization to file a petition alleging delinquency or a peace order request in the juvenile court if the matter is not within the jurisdiction of the juvenile court or otherwise lacks legal sufficiency. In fiscal 2005, intake officers denied

authorization to file a petition for lack of jurisdiction in 731 cases (1.4 percent of total cases).

Resolution of Case at Intake

If the intake officer determines that the juvenile court does have jurisdiction over the matter, but that further action by the Department of Juvenile Services or the court is not necessary to protect the public or to benefit the child, the case may be resolved at intake. The child may receive immediate counseling, a warning, a referral to another agency for services, or a combination of these or other short-term interventions. In fiscal 2005, 16,628 cases (32.1 percent of total cases) were resolved at intake.

The victim, the arresting police officer, or the person or agency that filed the complaint or caused it to be filed may appeal a denial of authorization to file a petition to the State's Attorney. If authorization to file a peace order request is denied, the person or agency that filed the complaint or caused it to be filed may submit the denial for review by the Department of Juvenile Services area director for the area in which the complaint was filed.

Proposal of Informal Supervision

The intake officer may propose informal supervision if the juvenile court has jurisdiction and the child or the child's family needs assistance in preventing further legal violations, but the child does not require, and may not benefit from, judicial intervention or long-term formal supervision. To conduct informal supervision, consent must be received from the victim, the child, and the child's parents or guardian. Informal supervision may not exceed 90 days, unless extended by the court or as necessary to complete a substance abuse treatment program, and may include referrals to other agencies, completion of community service, regular counseling, supervision by the Department of Juvenile Services, family counseling, substance abuse treatment, and other types of nonjudicial intervention. If the intake officer proposes informal supervision, the victim, the arresting police officer, or the person or agency that filed the complaint may appeal that decision to the State's Attorney.

If, at any time before the completion of the agreed-upon informal supervision, the intake officer believes that the informal supervision cannot be completed successfully, the intake officer may authorize the filing of a petition alleging delinquency or a peace order request in the juvenile court. In fiscal 2005, informal supervision was conducted in 11,668 cases (22.5 percent of total cases).

Release of Child to Custody of Parent or Guardian

If the intake officer denies authorization to file a petition or a peace order request or recommends informal supervision, the child will be sent home in the custody of a parent or guardian.

Authorization to File a Petition or Peace Order Request

If the intake officer determines that the juvenile court has jurisdiction over the matter and that judicial action is in the best interest of the public or the child, the intake officer may authorize the filing of a petition alleging delinquency or requesting a peace order or both in the juvenile court.

In fiscal 2005, intake officers authorized 22,264 petitions alleging delinquency (43.0 percent of total cases) for formal processing in juvenile court. Also, during the same period, intake officers authorized the filing of 338 peace order requests (0.7 percent of total cases) for processing in juvenile court.

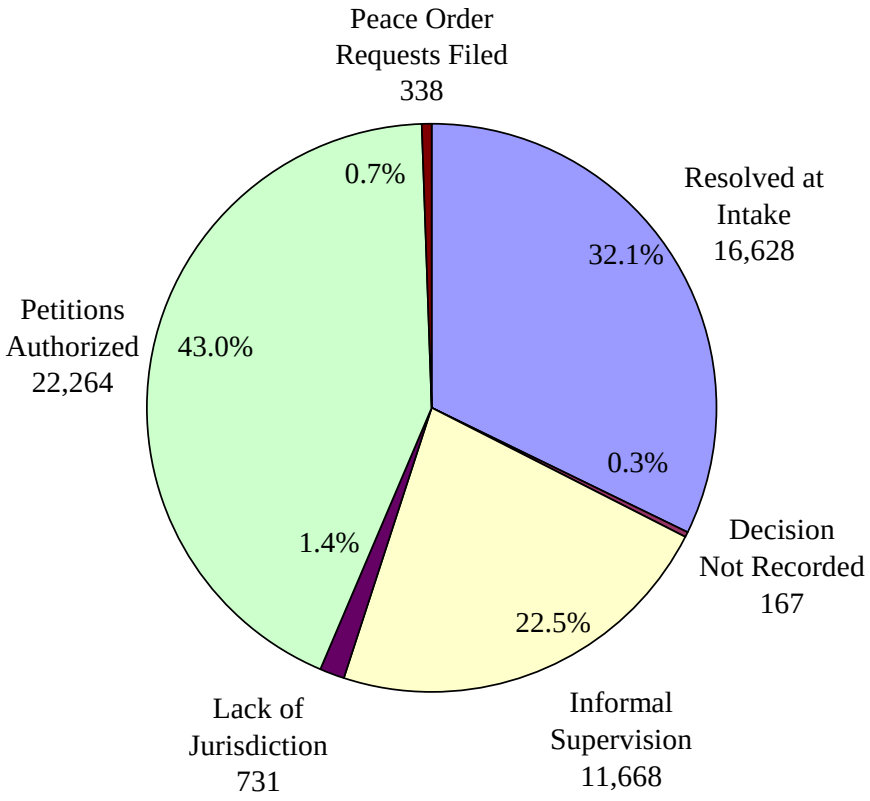
Exhibit 8.2 shows the distribution of 51,796 intake determinations for fiscal 2005.

Detention and Shelter Care Prior to Hearing

If the filing of a petition alleging delinquency is recommended, the child may be released to the custody of a parent or guardian prior to the hearing. In certain cases, the child may be assigned to community detention, which is 24-hour supervision of the child in the community through the use of daily in-person and telephone contacts with a Department of Juvenile Services worker. As part of community detention, the child may be required to wear an electronic monitoring device at all times to verify the child's whereabouts.

If there is no suitable home environment, the child may be placed in shelter care while awaiting a juvenile court hearing. Shelter care provides temporary care and a variety of services for children in physically unrestricting facilities. If the child is at risk of leaving the jurisdiction or poses a danger to himself or herself or to others, the child may be placed in a detention facility that provides 24-hour temporary confinement in a secure setting.

Exhibit 8.2
Intake Determinations
Fiscal 2005



Source: Department of Juvenile Services

Juvenile Court – Delinquency Proceedings

Petition

Petitions alleging delinquency are prepared and filed by the State's Attorney. A petition alleging delinquency must be filed within 30 days of a referral from an intake officer, unless that time is extended by the court for good cause shown.

Jurisdiction

Generally, the juvenile court has jurisdiction over any child alleged to be delinquent. However, the juvenile court does not have jurisdiction over (1) a child at

least 14 years old alleged to have committed an act which would be a crime punishable by death or life imprisonment; (2) a child at least 16 years old alleged to have violated certain traffic or boating laws; (3) a child at least 16 years old alleged to have committed certain violent crimes; or (4) a child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult. These cases would be tried in adult criminal court. However, for items (1), (3), and (4) above, the criminal court may transfer the case back to juvenile court if the court determines from a preponderance of the evidence that transfer is in the interest of the child or society and certain other conditions are met. This is often referred to as "reverse waiver."

Juvenile Competency

At any time after a petition alleging that a child has committed a delinquent act is filed with the juvenile court, the court, on its own motion, or on motion of the child's counsel or the State's Attorney, must stay all proceedings and order the Department of Health and Mental Hygiene or any other qualified expert to conduct an evaluation of the child's competency to proceed. This is to occur if there is probable cause to believe that the child has committed the delinquent act and there is reason to believe that the child may be incompetent to proceed with a required waiver, adjudicatory, disposition, or violation of probation hearing. "Incompetent to proceed" means that a child is not able to understand the nature or object of the proceeding or assist in the child's defense.

The juvenile court must hold a competency hearing to determine whether the child is incompetent to proceed based on the evidence presented on the record. If the child is found to be competent, the stay is lifted and proceedings on the child's petition continue. However, if the juvenile court determines that the child is incompetent to proceed, the court may order that competency attainment services be provided to the child or may dismiss the delinquency petition.

Waiver

The juvenile court may waive its jurisdiction with respect to a petition alleging delinquency if the petition concerns a child who is at least 15 years old or a child who is charged with committing an act which, if committed by an adult, would be punishable by death or life imprisonment. The court may waive its jurisdiction only after it has conducted a waiver hearing held prior to the adjudicatory hearing and after notice has been given to all parties. The court may not waive its jurisdiction over a case unless it determines, from a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures.

Adjudication

After a petition has been filed, and unless jurisdiction has been waived, the juvenile court must hold an adjudicatory hearing. The hearing may be conducted by a judge or by a master. If conducted by a master, the recommendations of the master do not constitute an order or final action of the court and must be reviewed by the court.

The purpose of an adjudicatory hearing is to determine whether the allegations in the petition are true. Before a child may be adjudicated delinquent, the allegations in the petition that the child has committed a delinquent act must be proven beyond a reasonable doubt.

Disposition

After an adjudicatory hearing, unless the petition is dismissed or the hearing is waived in writing by all of the parties, the court is required to hold a separate disposition hearing, which may be held on the same day as the adjudicatory hearing.

Classification Process

Prior to the disposition hearing, each child goes through a classification process administered by the Department of Juvenile Services to standardize case management and structure the department's recommendations to the juvenile court. The classification process assists in determining the level of risk of harm that a child presents to himself, herself, or the public as well as the risk that the child will escape from placement.

Disposition Hearing

A disposition hearing is a hearing to determine whether a child needs or requires the court's guidance, treatment, or rehabilitation and, if so, the nature of the guidance, treatment, or rehabilitation.

In making a disposition on a petition, the court may:

- place the child on probation or under supervision in the child's own home or in the custody or under the guardianship of a relative or other fit person, upon terms the court deems appropriate, including community detention;

- commit the child to the custody or guardianship of the Department of Juvenile Services or other agency on terms that the court considers appropriate, including designation of the type of facility where the child is to be accommodated; or

- order the child or the child's parents, guardian, or custodian to participate in rehabilitative services that are in the best interest of the child and the family.

A disposition may include the suspension or revocation of the child's driving privileges under certain circumstances. For example, if the child is found to have committed certain alcoholic beverage violations or certain violations relating to destructive devices, a disposition may include ordering the Motor Vehicle Administration to initiate an action to suspend the driving privileges of the child. If the child is found to have violated the State vehicle laws, including a violation involving an unlawful taking or unauthorized use of a motor vehicle, that violation must be reported to the administration, which must assess points against the child. Finally, the administration is required to suspend or revoke the driver's license of a child who is found to have committed certain drunk or drugged driving offenses.

Restitution

In addition to other sanctions, if property of a victim was stolen or damaged or the victim suffered personal out-of-pocket losses or loss of wages as a result of the delinquent act, the court may order the child, the child's parent, or both to pay restitution in an amount not exceeding $10,000 to the victim. A hearing concerning restitution may be held as part of the disposition hearing.

Commitment to the Department of Juvenile Services for Placement

Residential Programs

If the disposition ordered by the juvenile court includes commitment to the Department of Juvenile Services for placement, the court may recommend the level of care for the child and the type of facility that the court considers appropriate. The department determines the particular residential facility and program that will best suit the needs of the child.

Residential programs administered by the department include family foster care for children whose families cannot appropriately care for them, short-term programs designed to confront a child's behavior and provide consequences for misbehavior, group homes, specialized substance abuse and mental health programs, and secure training

school programs. In fiscal 2005, there were 5430 admissions into residential care.[1] The average length of stay in secure residential programs is 184.5 days

Residential programs are either State-owned and operated, State-owned and privately operated, or privately owned and operated. Exhibit 8.3 lists all State-owned juvenile facilities.

Exhibit 8.3
Department of Juvenile Services
State-owned Facilities
June 2006

Facility Name	Location	Type of Facility	Operated by State/Private	Rated Capacity
Allegany County Girls Home	Allegany	Group Home	Private	9
Green Ridge	Allegany	Youth Center	State	40
Thomas J.S. Waxter	Anne Arundel	Detention	State	68
Catonsville Structured Shelter	Baltimore	Shelter Care	Private	10
Baltimore City Juvenile Justice Center	Baltimore City	Detention	State	144
Mount Clare House	Baltimore City	Special Residential	Private	4
Charles H. Hickey, Jr.	Baltimore County	Detention	Private	72
		Sex Offender	Private	26
William Donald Schaefer House	Baltimore County	Special Residential	State	19
MD Youth Residence Center	Baltimore County	Shelter Care	State	24
		Choice Program	Private	12
Sykesville Structured Shelter	Carroll	Shelter Care	Private	5
Thomas O'Farrell	Carroll	Youth Center	Private	48
Backbone Mountain	Garrett	Youth Center	State	40
Meadow Mountain	Garrett	Youth Center	State	40
Savage Mountain	Garrett	Youth Center	State	36
J. DeWeese Carter	Kent	Detention	State	27
Alfred D. Noyes	Montgomery	Detention	State	57
Cheltenham	Prince George's	Detention	State	86
		Shelter	State	24
Western MD Children's Center	Washington	Detention	State	24
Lower Easter Shore Children's Center	Wicomico	Detention	State	24

Source: Department of Juvenile Services

[1] This figure includes the admission of a child into more than one program for the same charge.

Aftercare

Aftercare is a term used to describe the array of supervision and ancillary services that a child receives after the completion of a long-term residential placement. The aftercare program is currently administered by the Department of Juvenile Services and is similar in concept to "parole" in the adult criminal system. The purpose of aftercare is to ease the transition from the highly supervised environment of the residential program to the less structured home environment. Aftercare workers from the department begin contact with the child, the child's school, and other necessary services and programs prior to the child's release. After release, aftercare workers visit the child's home and school to monitor the child's progress and compliance with the terms of the aftercare contract. During the period of aftercare, the child continues to be held accountable for his or her actions in order to ensure public safety.

Juvenile Court – Peace Order Proceedings

Peace Order Request

In addition to, or instead of, authorizing the filing of a petition alleging delinquency in the juvenile court, an intake officer may file with the court a peace order request that alleges the commission of any of the following acts against a victim by the child, if the act occurred within 30 days before the filing of the complaint: (1) an act that causes serious bodily harm; (2) an act that places the victim in fear of imminent serious bodily harm; (3) assault in any degree; (4) rape or sexual offense or attempted rape or sexual offense in any degree; (5) false imprisonment; (6) harassment; (7) stalking; (8) trespass; or (9) malicious destruction of property.

Peace Order Proceeding

If the court finds by clear and convincing evidence that the child has committed, and is likely to commit in the future, an act specified above, or if the child consents, the court may issue a civil order, called a "peace order," to protect the victim. The peace order may order the child to refrain from committing or threatening to commit a prohibited act; end all contact with the victim; stay away from the victim's home, place of employment, or school; or participate in professionally supervised counseling.

All relief granted in a peace order is effective for up to six months. A violation of any of the provisions of a peace order is a delinquent act, and a law enforcement officer is required to take the child into custody if the officer has probable cause to believe a violation has occurred. A peace order provides civil relief that is intended to deter delinquent behavior before it escalates.

Chapter 9. Incompetency and Not Criminally Responsible Findings

There are two separate circumstances under which a mental disorder or mental retardation[1] is considered in criminal proceedings. The first is whether a defendant is competent to stand trial (*i.e.*, whether the defendant is mentally able to participate in the proceedings). The second is whether a defendant is criminally responsible for the crime (*i.e.*, whether the defendant is mentally culpable for the crime). This chapter will discuss these two issues as they relate to adult defendants. For a discussion of competency issues relating to juvenile offenders, see Chapter 8 of this handbook.

Initial Screening of Defendants

The following procedures apply whenever competency to stand trial or criminal responsibility is at issue and the court has referred the defendant to the Department of Health and Mental Hygiene for evaluation. In the first step of this process, a psychiatrist or psychologist performs an initial screening. The initial screening is usually performed on an outpatient basis, either in the jail or in the community. According to the department, in fiscal 2005 there were 1,206 court-ordered initial screenings for purposes of determining competency to stand trial or criminal responsibility.[2] If the initial screener finds that it is possible that the defendant is not criminally responsible or is incompetent to stand trial, the screener refers the defendant to a facility under the department's jurisdiction for further (postscreening) evaluation. In fiscal 2005, 682 defendants were referred for a postscreening evaluation.

Postscreening Evaluation of Defendants

The postscreening evaluation may take place at one of five regional psychiatric hospitals under the jurisdiction of the Department of Health and Mental Hygiene or at Clifton T. Perkins Hospital in Jessup, Maryland.[3] If the defendant is believed to have mental retardation, the defendant may be evaluated at a facility operated by the Developmental

[1] Since the term "mental retardation" is used in the law, it is also the term used in this handbook.

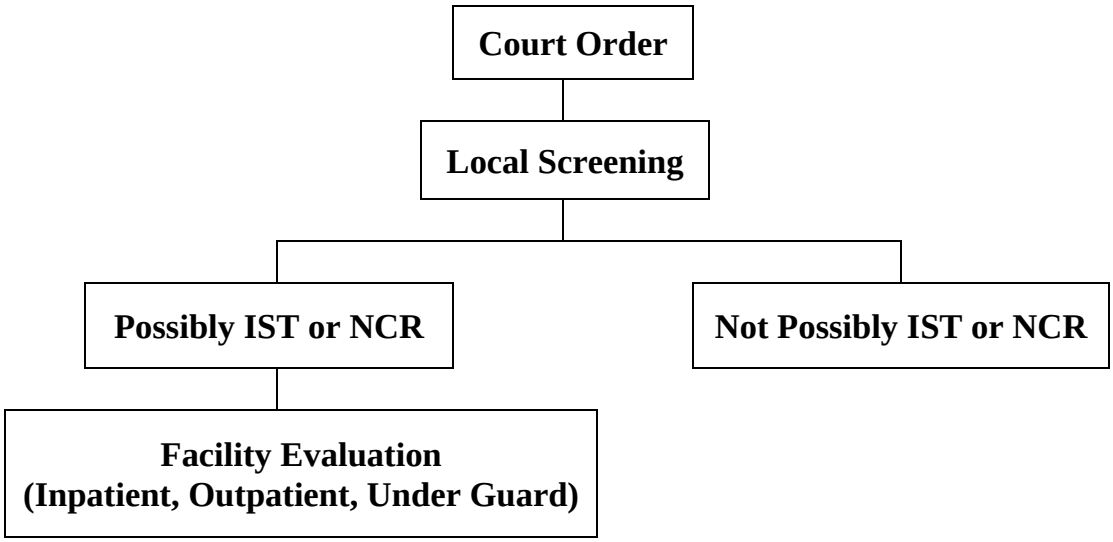
[2] All of these screenings evaluated the defendant's competency to stand trial; some of these screenings additionally evaluated criminal responsibility of the defendant. Defendants referred by the courts to the department for criminal responsibility screenings are also screened for competency to stand trial.

3 The five regional psychiatric hospitals that conduct forensic evaluations are Spring Grove Hospital, Springfield Hospital, Eastern Shore Hospital Center, Upper Shore Community Mental Health Center, and the Thomas B. Finan Center.

Disabilities Administration. Rosewood Center, a State residential center for individuals with mental retardation, is one such facility.

The evaluation may be conducted either on an inpatient or outpatient basis. Defendants who are admitted for evaluation may be offered treatment. However, except in an emergency, a defendant may not be forced to take medication. The substantial majority accept treatment if it is offered; as a result, many defendants whose competency to stand trial was questionable on admission are competent to stand trial by the time the evaluation is completed. See Exhibit 9.1 for a chart on pretrial evaluation.

Exhibit 9.1
Pretrial Evaluation
Incompetency to Stand Trial (IST) and Not Criminally Responsible (NCR)



Source: Department of Health and Mental Hygiene

The Department of Health and Mental Hygiene determines which facility will conduct the postscreening evaluations. Usually, defendants charged with murder, rape, armed robbery, and arson receive postscreening evaluation at Perkins Hospital. This hospital is the only maximum-security hospital in the State. In addition to performing evaluations for competency and criminal responsibility, Perkins Hospital houses individuals who are found incompetent to stand trial or not criminally responsible, as well as a small number of patients who are hospitalized under civil commitment proceedings.

Defendants charged with other offenses are evaluated at one of the five regional hospitals that conduct forensic evaluations.

At each facility, a forensic review board oversees treatment decisions and makes decisions concerning recommendations by treatment teams on an individual's readiness for release.

Incompetency to Stand Trial

Overview

By statute a defendant is incompetent to stand trial if the defendant is not able to:

- understand the nature or object of the proceeding; or
- assist in the defense.

As this definition indicates, incompetency in this context is not related to the actual guilt or innocence of the defendant. Rather, incompetency deals with the current mental ability of the defendant to participate in the proceedings.

Ultimately, it is up to the trial judge to determine whether a defendant is competent to stand trial. If it appears that the defendant may be incompetent to stand trial, the court may decide to hold a competency hearing on its own initiative. Alternatively, either the defendant or the State may move to have the court decide the issue of competency, in which case the court must hold a hearing and decide whether the defendant is incompetent based on evidence received at the hearing. For a determination of competency, the court must find beyond a reasonable doubt that the defendant is able both to understand the nature and object of the proceedings and to assist in the defense. Prior to making this determination, the court may order the Department of Health and Mental Hygiene to evaluate the defendant.

If the court determines that the defendant is competent to stand trial, the trial may begin or, if it has already begun, may continue. Likewise, after a finding that a defendant is incompetent to stand trial, if the defendant's competency is later restored, the criminal case can resume.

Incompetent to Stand Trial – Defendant Dangerous

If the court finds that the defendant is incompetent to stand trial and, because of mental retardation or a mental disorder, is a danger to self or the person or property of others, the court may order the defendant committed to a facility designated by the Department of Health and Mental Hygiene until the court finds that the defendant is (1) no longer incompetent to stand trial; (2) no longer a danger to self or the person or property of others due to mental illness or mental retardation; or (3) not substantially likely to become competent to stand trial in the foreseeable future.

For those defendants who are committed to a facility, the court is required to hold a competency review hearing annually to determine whether the defendant continues to meet the criteria for commitment stated above.

Additionally, the court must hold a hearing within 30 days after the filing of a motion by the State's Attorney or counsel for the defendant or after receiving from the department a report setting forth new facts or circumstances relevant to the determination. The court, at any time and on its own initiative, may hold a conference or a hearing on the record to review the status of the case.

At a competency review hearing, if the court finds that the defendant is incompetent and is not likely to become competent in the foreseeable future, the court is required to:

- civilly commit the defendant to an inpatient psychiatric facility that the department designates, if the court finds by clear and convincing evidence that:
    - the defendant has a mental disorder;
    - inpatient care is necessary;
    - the defendant presents a danger to the life or safety of self or others;
    - the defendant is unable or unwilling to be voluntarily committed to a medical facility; and
    - there is no less restrictive form of intervention that is consistent with the welfare and safety of the defendant; or

- order the confinement of the defendant for 21 days as a resident in a Developmental Disabilities Administration facility for the initiation of admission proceedings, if the defendant, because of mental retardation, is a danger to self or others.

Incompetent to Stand Trial – Defendant Not Dangerous

If the court finds that the defendant is incompetent to stand trial but is not dangerous to self or the person or property of others, the court may release the defendant on bail or recognizance[4] and may order the defendant to obtain treatment as a condition of release. For these defendants, the court is required to hold a hearing annually from the date of release and at any time upon the motion of the State's Attorney or counsel for the defendant. The court may also hold a hearing at any time, on its own initiative.

At a hearing described above, the court must reconsider whether the defendant remains incompetent to stand trial or is not a danger to self or the person or property of others as a result of a mental disorder or mental retardation. At the hearing, the court may modify or impose additional conditions of release on the defendant. However, if the court finds that the defendant remains incompetent, is not likely to attain competency in the foreseeable future, and is dangerous, the court must revoke the pretrial release of the defendant and either civilly commit the defendant to a psychiatric facility or confine the defendant to a Developmental Disabilities Administration facility in accordance with the provisions described above pertaining to dangerous defendants.

Reporting Requirements

As long as the defendant remains committed to the department, the department is required to submit a report to the court every six months from the date of commitment and whenever the department determines that the defendant is no longer incompetent to stand trial or is no longer a danger because of mental illness or mental retardation or there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future. If the report states the opinion that the defendant is competent to stand trial or is no longer a danger as a result of a mental disorder or mental retardation, the department must include a supplemental report providing a plan for services to maintain the defendant safely in the community, maintain competency, or restore competency.

[4] This option does not apply to death penalty cases.

Dismissal of Charges

If the defendant remains incompetent to stand trial, whether or not the defendant is confined, and unless the State petitions the court for extraordinary cause to extend the time, the court shall dismiss all charges:

- after the expiration of 10 years, if the defendant is charged with a capital offense;

- after the lesser of the expiration of five years or the maximum sentence for the most serious offense charged, if the defendant is charged with a felony or crime of violence;

- after the lesser of the expiration of three years or the maximum sentence for the most serious offense charged, if the defendant is charged with an offense not covered above; or

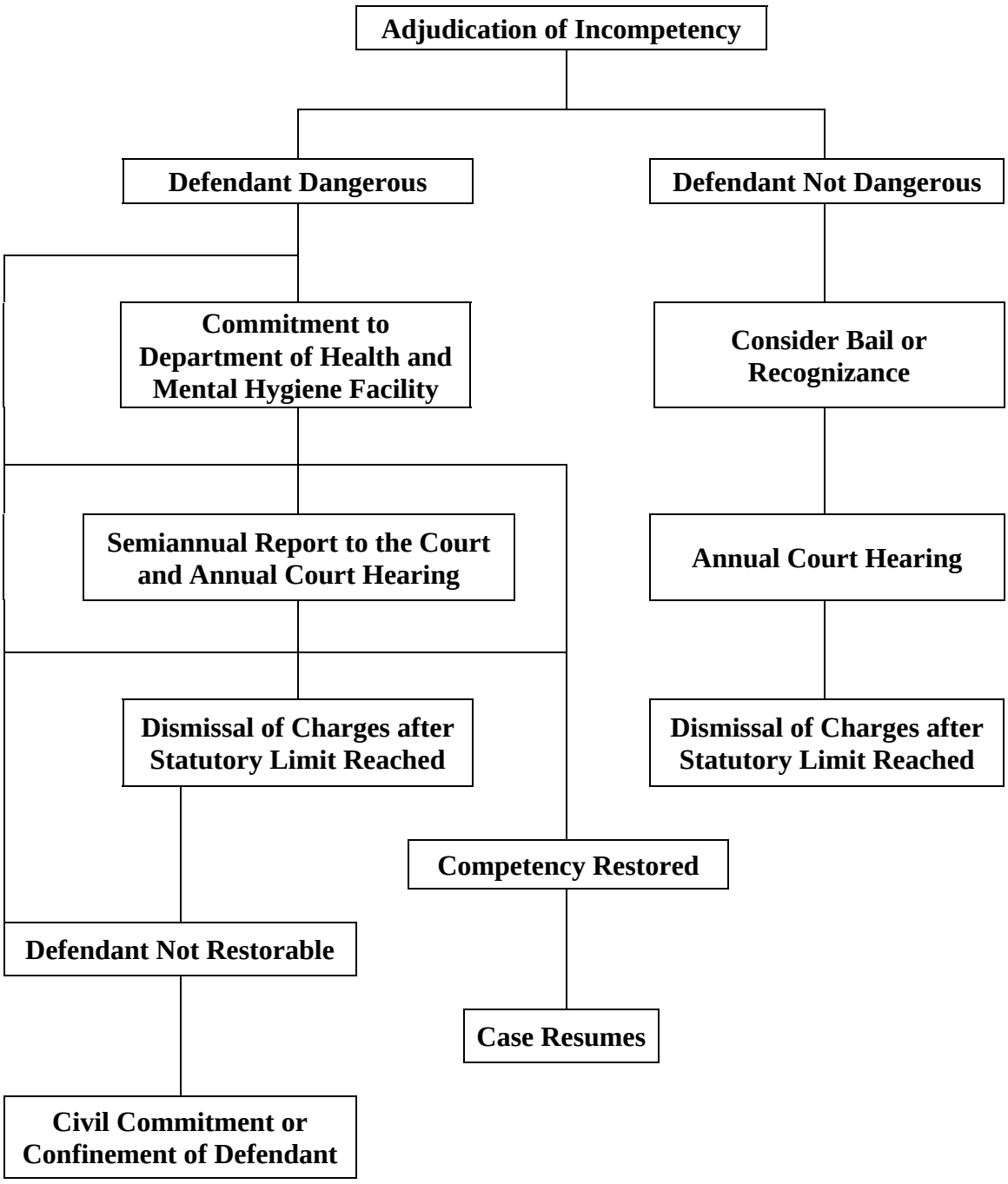
- at any time if the court finds resuming the criminal proceeding would be unjust because so much time has passed, if notice and an opportunity to be heard has been provided to the State's Attorney and victim as specified in statute.

See Exhibit 9.2 for a chart outlining procedures for incompetency to stand trial.

All dispositions concerning committed individuals must be sent to the State's Criminal Justice Information System, which maintains computerized records of all criminal actions.

In fiscal 2005, of the 374 defendants who received postscreening evaluations solely to determine competency, 102 (27 percent) were evaluated as incompetent to stand trial and 135 (36 percent) were evaluated as competent only due to treatment received during the evaluation.

Exhibit 9.2
Incompetent to Stand Trial



Source: Department of Health and Mental Hygiene

Not Criminally Responsible Findings

Overview

In order to be guilty of a crime, a person must not only commit a criminal act but also generally must have had a necessary mental state at the time of the act, sometimes called an intent to commit the act. If an individual injures another or commits an act while unconscious (*e.g.*, while sleepwalking or under anesthesia), this individual is not guilty of what would be a crime under ordinary circumstances. Similarly, an individual who commits a crime may not be found guilty if the individual is not criminally responsible. The plea of not criminally responsible is often referred to as the insanity defense. Unlike the issue of incompetency to stand trial, the focus of the not criminally responsible concept is on the mental state of the defendant at the time of the crime. Under Maryland law, a defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of a mental disorder or mental retardation, lacks substantial capacity to appreciate the criminality of that conduct or to conform that conduct to the requirements of law. The law further clarifies that a mental disorder does not mean an abnormality manifested only by repeated criminal behavior or other antisocial misconduct.

If a defendant intends to rely on a defense of not criminally responsible, the defendant must enter a written plea. After the plea is entered, the court may order the Department of Health and Mental Hygiene to evaluate the defendant and to report back to the court, the State, and the defendant.

According to the department, in fiscal 2005, 348 defendants received further evaluation for both competency and criminal responsibility. Of these defendants, 52 (15 percent) were evaluated as incompetent to stand trial and 75 (22 percent) were evaluated as competent only due to treatment received during the evaluation. Ninety-one (26 percent) were found not criminally responsible. The remainder of those evaluated as not criminally responsible by the department were either not committed despite the finding, withdrew the plea of not criminally responsible, or (rarely) received a verdict rejecting the not criminally responsible plea. In May 2005, about 345 defendants were committed to a department facility because of a not criminally responsible verdict.

Trial Procedures

In a trial involving a plea of not criminally responsible, the trier of fact (either a judge or jury) must first find beyond a reasonable doubt that the defendant committed the criminal act. After the trier of fact determines that the defendant committed the act, it must then

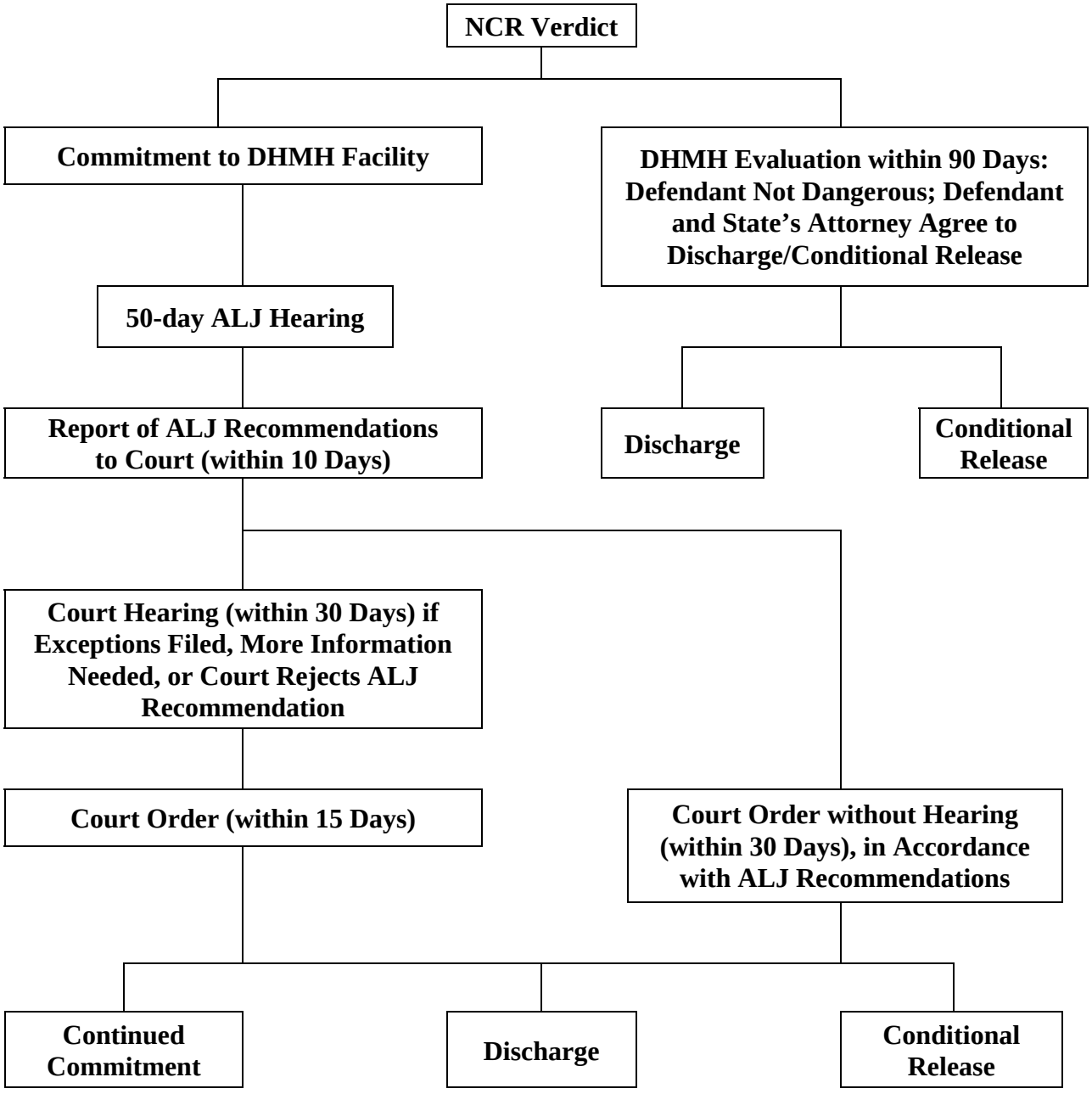
decide whether the defendant has proven by a preponderance of the evidence[5] that the defendant is not criminally responsible for committing the act.

Commitment

After a verdict of not criminally responsible, a court ordinarily is required to commit a defendant to the custody of the Department of Health and Mental Hygiene for institutional inpatient care or treatment. However, the court may release a defendant after a not criminally responsible verdict if (1) the Department of Health and Mental Hygiene issues a report within 90 days prior to the verdict stating that the defendant would not be a danger if released; and (2) the State's Attorney and the defendant agree to the release and any conditions the court chooses to impose. See Exhibit 9.3 for a chart on procedure following a not criminally responsible verdict.

[5] This is the usual standard of proof in civil cases. It means that the defendant must show that it was more likely than not that the defendant was not criminally responsible. It is a lesser standard than the reasonable doubt standard that the State must show in order to obtain a conviction.

Exhibit 9.3
Procedure Following Not Criminally Responsible (NCR) Verdict



ALJ: Administrative law judge; DHMH: Department of Health and Mental Hygiene

Source: Department of Health and Mental Hygiene

Release after Commitment

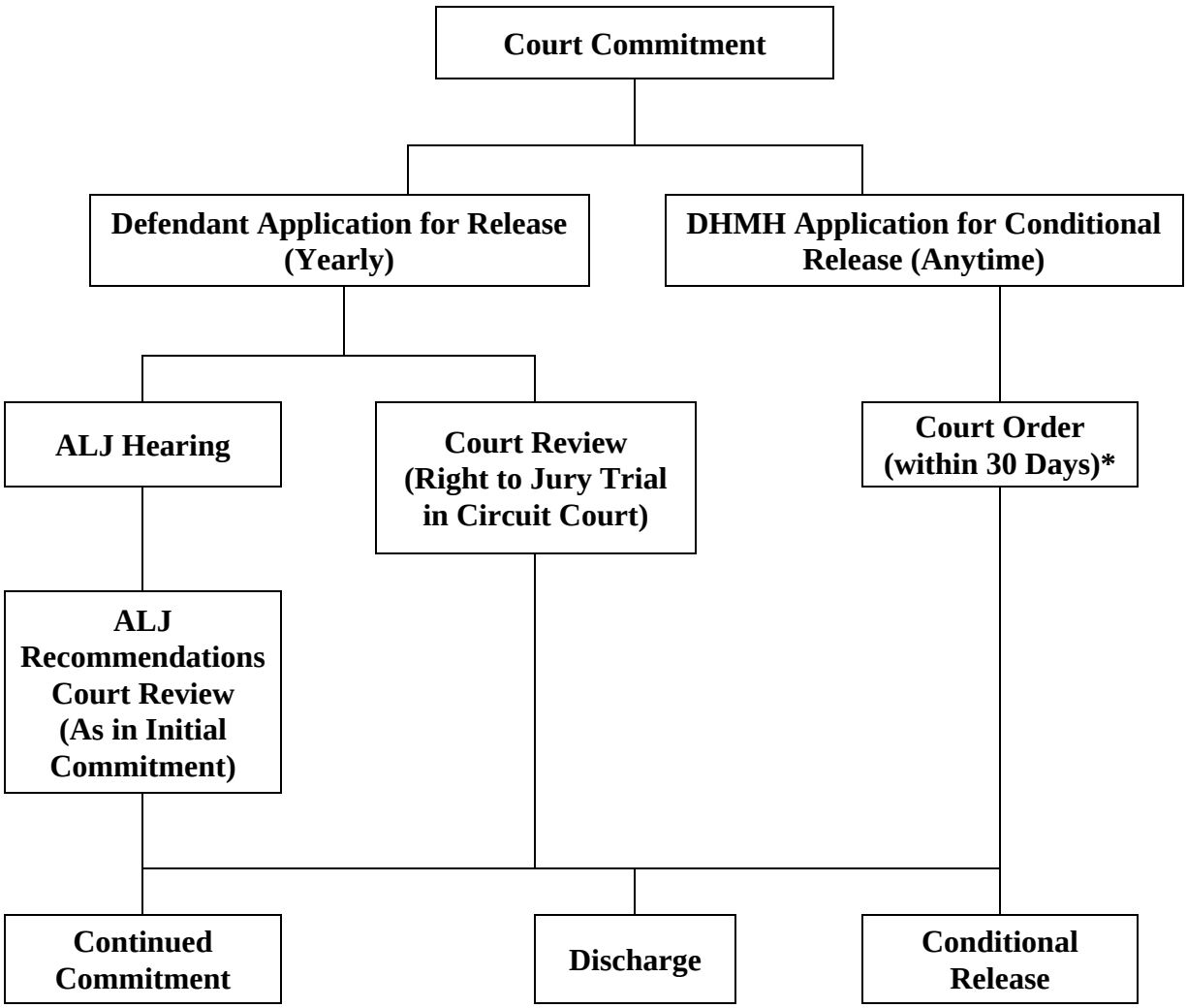
A committed defendant is eligible for release only if the defendant proves by a preponderance of the evidence that the defendant will not be a danger due to mental illness if released. Within 50 days after commitment to the Department of Health and Mental Hygiene, unless waived by the defendant, the department is required to hold a hearing at the facility before an administrative law judge to determine whether to recommend to the court that the defendant be released from commitment with or without conditions placed on the defendant to ensure that the defendant is not a danger to self or others as a result of mental illness or mental retardation. At the hearing, the formal rules of evidence do not apply. The defendant is entitled to legal representation. In addition, the department and the State's Attorney are entitled to participate in the hearing. After the hearing, the administrative law judge is required to submit a report of written findings to the court and to all parties.

When the court receives the report of the administrative law judge, the court may choose to hold a hearing. If the court does not hold a hearing, the court must enter an order in accordance with the administrative law judge's recommendations. If a party files exceptions to the report, or the court on its own decides to hold a hearing, the court may enter an order as to whether the defendant has proven eligibility for release and, if so, whether the release should be conditional. The conditions of release may not extend longer than five years, unless the court holds a hearing and orders an extension for not more than five years.

If the court orders continued commitment, not earlier than one year after the initial release hearing ends or is waived, the defendant may apply for release. The defendant may choose to pursue an administrative hearing conducted before an administrative law judge and subject to the same procedures as the initial release hearing. In the alternative, the defendant may file a petition directly with the court that ordered the defendant's commitment. The defendant has the right to request a jury trial in the case. The defendant also has the right to petition annually for release.

In addition, the Department of Health and Mental Hygiene may apply at any time to the court to order the defendant's conditional release. The department is required to send a copy of the application to the defendant, the defendant's counsel, and the State's Attorney. After receipt of the application, the court must issue an order either continuing commitment or allowing the conditional release. See Exhibit 9.4 for procedures relating to a review of a not criminally responsible commitment finding.

Exhibit 9.4
Not Criminally Responsible Commitment



* ALJ hearing sometimes held first.

ALJ: Administrative law judge; DHMH: Department of Health and Mental Hygiene

Source: Department of Health and Mental Hygiene

The Community Forensic Aftercare Program within the Mental Hygiene Administration's Office of Forensic Services monitors cases of individuals on conditional release. A director, three social workers, and a secretary staff this program. The number of defendants monitored on conditional release is approximately 500.

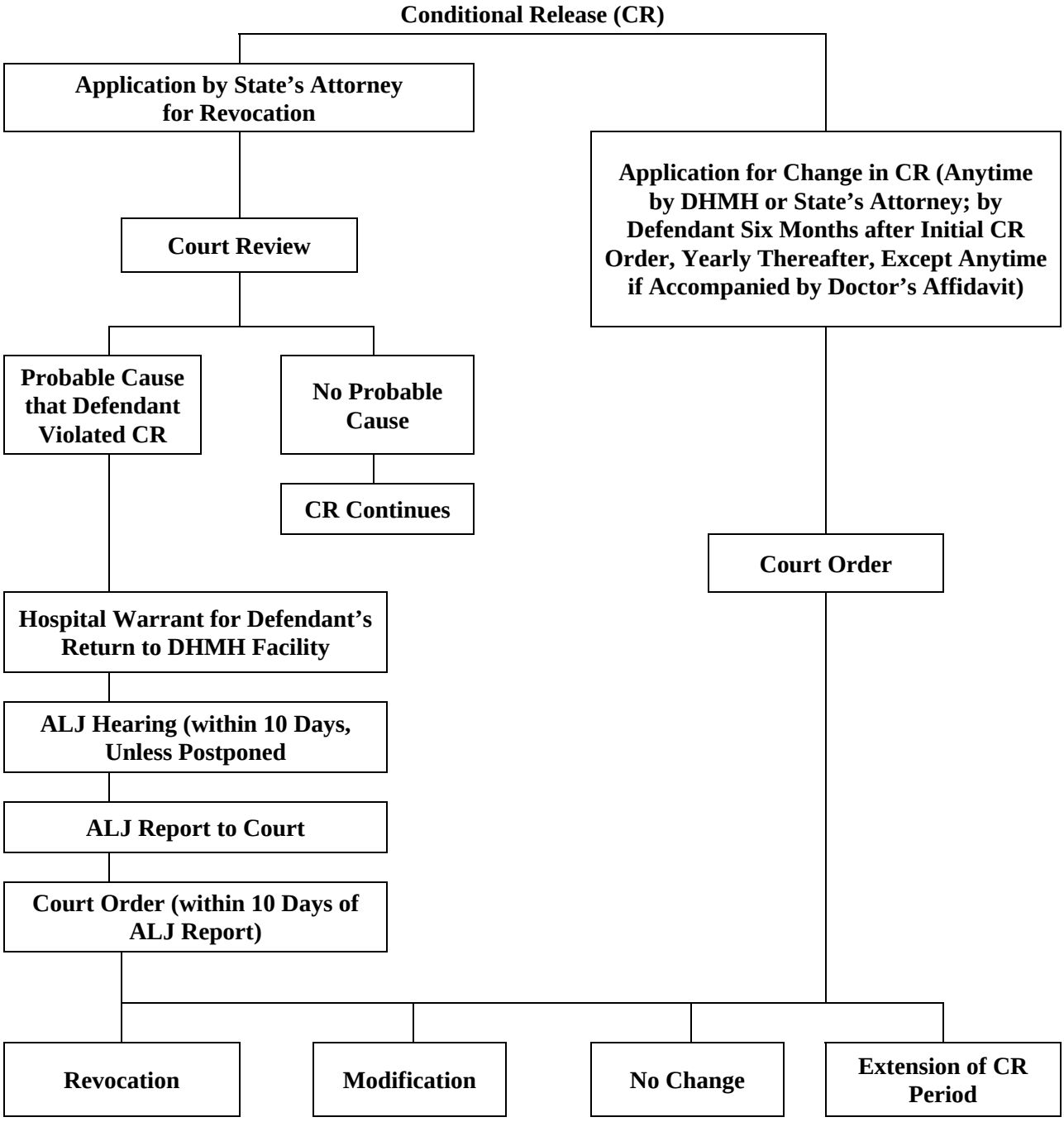
Revocation or Modification of Conditional Release

If the State's Attorney receives a report that a defendant who was given a conditional release has violated a condition of release, or if the State's Attorney is notified by the court or the Department of Health and Mental Hygiene that the defendant has violated a condition of release, the State's Attorney must conduct an investigation. If the State's Attorney determines that there was a violation and believes that further action is necessary, the State's Attorney must notify the department and file with the court a petition for modification or revocation of conditional release. The court is required to review the petition. If the court determines that there is not probable cause to believe that a violation occurred, the court must note this determination on the petition and notify the State's Attorney, the department, and the person reporting the violation. If the court decides that there is probable cause to believe that a violation occurred, the court must issue a hospital warrant for the defendant's arrest and return to the department's jurisdiction and notify the State's Attorney, the defendant's counsel, the department, the person reporting the violation, and the administrative law judge.

Unless all parties agree to an extension or the administrative law judge finds good cause, a hearing must be held within 10 days of the defendant's return to the department under the hospital warrant. At the hearing, the defendant is entitled to representation by an attorney, and all parties are entitled to submit evidence and call witnesses. The State is required to show by a preponderance of the evidence that the violation occurred. If the State meets this burden, the defendant may nevertheless prove by a preponderance of the evidence eligibility for continued release. The administrative law judge is required to report the findings and recommendations to the court promptly. Any party may file timely exceptions. After receipt of the report, and after reviewing any exceptions filed, the court may revoke the release, continue the release, modify the terms of release, or extend the conditional release for an additional five-year term.

The Department of Health and Mental Hygiene and the State's Attorney may petition a court to change the conditions of release at any time. Unless good cause is shown for an earlier hearing, a defendant on conditional release may petition a court for a change in conditions after six months on release. Thereafter, the defendant may petition for a change annually. If, however, the defendant has a physician's or psychologist's affidavit stating that the defendant's mental condition has improved, the defendant may petition for a change at any time. See Exhibit 9.5 for procedures relating to a revocation/modification of conditional release.

Exhibit 9.5
Revocation/Modification of Conditional Release



ALJ: Administrative Law Judge; DHMH: Department of Health and Mental Hygiene
Source: Department of Health and Mental Hygiene

Victims' Rights

A victim of a crime who has filed certain requests for notification is entitled to notification of all hearings and proceedings concerning a defendant who has been found incompetent to stand trial or not criminally responsible for a crime involving the victim. For additional discussion on victims' rights, see Chapter 11 of this handbook.

Chapter 10. Sentencing

Sentencing is the judgment formally pronounced by the court on a defendant after the defendant's conviction in a criminal proceeding, imposing the punishment to be applied. This chapter will discuss the variety of ways a court imposes punishment.

A sentence is usually expressed in the law as a monetary fine, a term of imprisonment or probation, or a combination of these elements. In many cases, Maryland law states a maximum sentence for an offense but does not identify a minimum sentence, leaving sentencing to the discretion of the court. Certain factors, such as the use of a handgun in connection with an offense or subsequent convictions for violent crimes, carry with them minimum sentences or specific sentence lengths. For many offenses in which a minimum sentence is specified, however, the court may have some discretion in imposing a penalty of less than the statutory minimum sentence.

The following circumstances require the application of mandatory minimum sentencing which the court may not suspend: (1) use of a handgun or assault pistol in a felony or crime of violence; (2) use of a firearm in a drug trafficking crime; (3) volume drug dealing and being a drug kingpin; (4) drug dealing as a subsequent offense; (5) crimes of violence as a subsequent offense; and (6) commission of first or second degree rape or first or second degree sexual offense by a person at least 18 years old when the victim is under age 13. In addition, first degree murder carries a mandatory life sentence that may be either with or without the possibility of parole (unless the death penalty is imposed). Certain subsequent drunk driving offenders are also subject to mandatory sentences. See Chapter 3 of this handbook for additional discussion of drunk driving.

Most, but not all, criminal violations are found in statutory law. Some offenses are common law crimes. Common law refers to the body of law developed over time in England and adopted by the American colonies. It is based primarily upon judicial precedent or court decisions. For example, the attempt, conspiracy by two or more persons, or solicitation by one person of another to commit a crime are generally common law offenses, the penalty for which is the same as for the completed offense. Theoretically, the maximum sentence for other common law offenses is life imprisonment; however, certain statutes and case law have served to limit the maximum possible terms to less than life for most common law offenses. See Chapter 1 of this handbook for a full discussion of common law crimes.

Sentencing Guidelines

Maryland was one of the first states to initiate a sentencing guideline system. The sentencing guidelines have been in effect statewide since 1983. Maryland's guidelines were originally designed by circuit court judges for circuit court judges. Today the State Commission on Criminal Sentencing Policy administers the guidelines. Among the goals of the guidelines are increased sentencing equity, articulated sentencing policy, provision of information to new or rotating judges, and promotion of understanding of the sentencing process.

Certain sentencing matters handled by judges in the circuit courts are excluded from the guidelines. These matters include circuit court trials resulting from requests for jury trials from the District Court, appeals from the District Court, crimes that carry no possible penalty of incarceration, first degree murder convictions involving the death penalty, and violations of public local laws and municipal ordinances.

Offenses covered by the guidelines are divided into three categories: person, drug, and property. An offense against a person involves bodily harm or the threat of bodily harm. Drug offenses involve controlled dangerous substances or related paraphernalia. Property offenses are offenses in which property is unlawfully damaged or stolen.

In addition to the category of offense, the guidelines are based upon two types of scores: an offense score and an offender score. In drug and property offenses, the offense score is determined by the seriousness of the offense. In offenses against persons, the offense score is determined by the seriousness of the offense, the physical or mental injury to the victim, the weapon used, and any special vulnerability of the victim such as being under 11 years old, 65 years or older, or physically or mentally disabled. The offender score is a calculation of the individual's criminal history and is determined by whether or not the offender was in the criminal justice system at the time the offense was committed (*i.e.*, on parole, probation, or on temporary release from incarceration, such as work release), has a juvenile record or prior criminal record as an adult, and has any prior adult parole or probation violations.

The guidelines determine a sentence length range. For each category of offense there is a separate grid or matrix, and there are recommended sentence ranges in each cell of the grid. The sentence recommendation is determined in the grid by the cell that is the intersection of an offender's offense score and offender score. In multiple offense cases, the overall guideline range is determined after calculating sentence recommendations for the individual offenses. The guideline sentence range represents only nonsuspended time. The actual sentence accounts for credit for time served, suspended time, length of probation, fine, restitution, and community service. If a judge imposes a sentence of

probation, the length of the probation is left to the judge's discretion, within statutory limits.

The sentencing guidelines are not mandatory and judges may, at their discretion, impose a sentence outside the guidelines. Judges who wish to sentence outside the guidelines, however, are required to submit an explanation to document the reason or reasons for departure.

The sentencing guidelines can be found in the Code of Maryland Regulations (COMAR). The State Commission on Criminal Sentencing Policy also prepares a manual containing the guidelines as well as sample cases illustrating use of the guidelines.

The rate of compliance with the guidelines in fiscal 2005 was 75.8 percent for all offenses. Specifically, 80.4 percent of sentences imposed for offenses against persons, 74.1 percent of sentences for drug offenses, and 77.2 percent of sentences for property offenses were within the guidelines.

State Commission on Criminal Sentencing Policy

In 1996, the Maryland Commission on Criminal Sentencing Policy was established to examine issues relating to and make recommendations concerning "truth in sentencing" for Maryland. In its final report, this study commission recommended the creation of a permanent sentencing commission that would assume responsibility for the sentencing guidelines and their related administration and reporting. In response, in 1999, the Maryland General Assembly created the State Commission on Criminal Sentencing Policy. The commission's enabling legislation set out the following six legislative goals for sentencing in Maryland:

- Sentencing should be fair and proportional and sentencing policies should reduce unwarranted disparity, including any racial disparity, in sentences for criminals who have committed similar offenses and have similar criminal histories.

- Sentencing policies should help citizens to understand how long a criminal will be confined.

- Sentencing policies should preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to allow individualized sentences.

- Sentencing guidelines are voluntary.

- The priority for the capacity and use of correctional facilities should be the confinement of violent and career offenders.

- Sentencing judges in the State should be able to impose the most appropriate criminal penalties, including corrections options programs for appropriate offenders.

The permanent commission is authorized to adopt voluntary sentencing guidelines "for sentencing within the limits set by law which may be considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or *nolo contedere* to, or who were found guilty of crimes in a circuit court." The commission is authorized to adopt guidelines identifying appropriate offenders for corrections options programs. The commission is also required to use a projection model to forecast State prison guidelines populations and fiscal impacts of new legislation and conduct guidelines training and orientation.

Further, the commission collects and automates the State sentencing guideline worksheets. Using the data collected, the commission monitors circuit court sentencing practices and adopts changes to the guidelines consistent with legislative intent. The data collected will also support the legislatively mandated use of a correctional population simulation model designed to forecast prison bed space and resource requirements. Any forecasts exceeding available State resources must include alternative guidelines recommendations to bring prison populations into balance with State resources.

The commission annually reports to the General Assembly regarding changes made to the sentencing guidelines and reviews judicial compliance with the sentencing guidelines. In 2002, the General Assembly required the commission to include in its annual report a review of the reductions or increases in original sentences that occur because of reconsiderations of sentence and a categorization of information on the number of reconsiderations of sentence by crimes of violence and by judicial circuit.

The commission is composed of 19 members representing various constituencies within the criminal justice field and a chairman appointed by the Governor.

Probation

Probation is a disposition that allows a court to impose conditions on an offender in addition to the sanctions already provided in the law that the offender violated. A court has broad authority to impose conditions to fit each case, provided that the conditions are reasonable. A standard condition of probation, for example, prohibits the

offender from engaging in any further criminal activity. Additional conditions may require an offender to obtain drug or alcohol treatment, to refrain from the use of drugs or alcohol, to obtain counseling (common in domestic violence and sexual offense cases), to pay restitution, or to refrain from contacting or harassing the victim of the crime and the victim's family. A judge may also order "custodial confinement," which usually refers to home detention or in-patient drug or alcohol treatment but can also include other forms of confinement short of imprisonment.

Probation allows a court to operate in a manner similar to a parole board. If an offender is alleged to have violated a condition of probation, the offender is returned to court for a violation of probation hearing. If the court finds that a violation occurred, it may revoke the probation and impose a sentence allowed by law. The court may alternately choose to continue the offender on probation subject to any additional conditions it chooses to impose. Probation may either be probation before judgment (commonly known as "PBJ") or probation following judgment.

Probation Before Judgment

Probation before judgment requires a finding of guilt by a judge or jury – either after trial or after a guilty plea by the defendant. However, if the judge finds that it is in the best interests of the defendant and also consistent with the welfare of the people of the State, the judge may, instead of entering a judgment of conviction, grant the defendant probation before judgment. This disposition allows the judge to impose a reasonable punishment upon the defendant without including the taint of a conviction that could have adverse consequences on the defendant's future. In the case of motor vehicle offenses, probation before judgment allows for the imposition of a penalty without the additional imposition of points on a defendant's driving record, enabling the defendant to avoid, when deemed appropriate, possible license sanctions and insurance issues.

A judge may impose a fine as a condition of probation before judgment. In six counties (Allegany, Calvert, Charles, Garrett, Howard, and St. Mary's), a judge may impose a period of incarceration as a condition of probation before judgment. A court may not impose probation before judgment for drunk or drugged driving or for a drug offense if the defendant has previously been convicted of or been granted probation before judgment for drunk or drugged driving or a drug offense within five years of the current offense. A court may also not impose probation before judgment if the offense is rape or a sexual offense (except for a fourth degree sexual offense) involving a victim under 16 years of age.

Upon fulfilling the conditions of probation before judgment, the defendant is discharged from probation by the court, and that discharge "is without judgment of

conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of a crime." Under certain circumstances a defendant who fulfills the conditions of probation before judgment may file a petition for expungement of the police record, court record, or other record maintained by the State or political subdivision relating to the defendant.

Probation Following Judgment

Probation following judgment allows the court to impose any sentence provided by law and to impose conditions on an offender after the sentence is completed. Probation following judgment requires a court to enter a judgment of conviction, after which the court may suspend the imposition or execution of a sentence and place the offender on probation. Often courts will impose a split sentence, requiring the offender to serve a portion of an imposed period of incarceration (but suspending the remainder of that period) after which the offender will begin a period of probation. In the event the court orders a term of imprisonment, the court may order that the term of probation commence on the date the offender is released from imprisonment. The term of probation may not exceed five years unless the period is extended with the offender's consent for the purpose of allowing the offender to make restitution or the crime is a sexual crime involving a minor.

Supervised Probation

If a court grants probation, the court may order the probation to be supervised or unsupervised. For example, if a court orders probation before judgment for a minor speeding ticket, the court most likely will not order supervised probation. For more serious offenses, however, a court will order the offender to be supervised by the Division of Parole and Probation – a unit of the Maryland Department of Public Safety and Correctional Services. An offender placed on supervised probation is required to pay a monthly fee of $40 to the division unless exempted by law.

The division supervises probationers and parolees who are serving sentences in the community. As of June 2006, approximately 663 parole and probation agents and 82 drinking driver monitors were responsible for the supervision of approximately 66,000 offenders – 40,653 under probation supervision, 15,494 being monitored by the Drinking Driving Monitor Program, 5,166 under mandatory release supervision, and 4,659 under parole supervision. In addition, another 55 parole and probation agents currently function as full time investigators, conducting pre-sentence, pre-parole, and other types of investigations for the Maryland Parole Commission, the courts, and other criminal justice agencies. See Chapter 16 of this handbook for a full discussion of parole and mandatory release supervision.

An offender on supervised probation is assigned to a parole and probation agent, and a written case plan is developed by that agent which includes not only the conditions of probation imposed by the court or parole commission but also the risk factors and needs identified during the course of supervision. Supervision is focused on addressing these elements in a manner intended to reduce the offender's potential for recidivism and increase the offender's ability to establish and maintain a more productive lifestyle.

The size of a general supervision caseload is approximately 107 cases, but caseload size varies within the Division of Parole and Probation's specialized programs. Agents in the Collaborative Supervision and Focused Enforcement (CSAFE) program supervise approximately 72 offenders each. Agents involved in the implementation of the Proactive Community Supervision strategy maintain caseloads of 51 intensive-level offenders or caseloads of 184 offenders classified as intermediate. Specialized sexual offender caseloads currently average 65 offenders.

The Drinking Driver Monitor Program is a specialized program for persons sentenced to probation for drunk or drugged driving. Currently, each program monitor is responsible for approximately 188 clients. See Chapter 3 of this handbook for a further discussion of this program.

Interstate Compact for Adult Offender Supervision

According to the Bureau of Justice Statistics, there are nearly 5 million adult men and women under federal, State, or local probation or parole jurisdiction. Of that number, approximately 250,000 legitimately relocate across state lines each year. The Interstate Compact for Adult Offender Supervision is a congressionally authorized agreement that governs the transfer of supervision for parolees and probationers among the member states to the compact.

Pursuant to Chapter 123 of the Acts of 2001, Maryland became a member of the compact. Chapter 123 repealed the former compact, the Uniform Act for Out-of-State Parolee Supervision, which was first enacted in 1937. The current compact continues the public safety mission by providing for uniform rules and guidelines governing the transfer of an offender's parole or probation supervision from one state to another. An offender continues to be supervised under the terms of release established by the sentencing court or paroling authority of original sentencing, even after relocation to another state. All 50 states, the District of Columbia, and Puerto Rico have enacted the current compact.

The compact has standing as both a binding State law and as a contract between member states, and no one state may act unilaterally in conflict with its terms.

Additionally, as a congressionally authorized agreement (in accordance with the Compact Clause of the U.S. Constitution), the compact carries the force and effect of federal law. Disputes between and among member states are subject to adjudication in the federal courts. Accordingly, all supervision agencies, parole authorities, and state courts are bound by the compact and its rules.

In addition, each member state to the compact has established a State Council to (1) appoint a state Commissioner to the Interstate Commission for Adult Offender Supervision; (2) oversee and advocate for that state's participation in interstate commission activities; and (3) develop state policy concerning compact operations and procedures. The Division of Parole and Probation, through its Interstate Compact Unit, handles all requests for offender supervision transfer for Maryland.

Death Penalty

Maryland always has had a death penalty, also known as capital punishment. Until the twentieth century, Maryland followed English common law which mandated the death penalty for 200 crimes, including murder. In 1908, the mandatory imposition of the death penalty was eliminated; the death penalty, however, was still a sentencing option for murder, rape, assault with intent to rape or murder, and kidnapping. Public executions ended in 1922, and all executions were centralized at the Maryland Penitentiary. In 1955, hanging was replaced by lethal gas as the method of execution, and in 1994, lethal gas was replaced by lethal injection.

Recent Interpretation of Death Penalty Statutes

In *Furman v. Georgia*, 1972, the United States Supreme Court evaluated the imposition of the death penalty in light of the Eighth Amendment, which prohibits cruel and unusual punishment. While the court found the use of the death penalty to be constitutional, it also determined that the death penalty is cruel and unusual when it is arbitrarily imposed. As a result, states were required to narrow the use of the death penalty and eliminate the arbitrariness between individual defendants.

States developed two types of responses: mandatory sentences or guided discretionary sentences. In 1975, Maryland imposed a mandatory sentence of death for first degree murder under certain circumstances. However, in a series of cases in 1976, the United States Supreme Court approved the use of guided discretion and rejected mandatory sentences. The court ruled that the United States Constitution requires individualized sentencing in death cases.

In response to the 1976 Supreme Court ruling, the then-existing death penalty statutes were invalidated. Under the ruling, the court or the jury was required to consider aggravating circumstances such as whether the victim was a law enforcement officer, an abducted child, or a hostage or whether the murder was committed under a contract by the defendant. The court or jury also was required to weigh these aggravating circumstances against mitigating circumstances, such as no previous act of violence, duress, youthful age, or substantial impairment as a result of mental incapacity or intoxication. The court or the jury must unanimously find that the aggravating circumstances outweigh any mitigating factors for a person to be given the death penalty.

In 2005, in the case *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court held that imposition of the death penalty against a person who was younger than the age of 18 (when he/she committed a death penalty-eligible crime) violates the constitutional prohibition against cruel and inhuman punishment. In 2002, the Supreme Court barred the execution of mentally retarded persons in the case of *Atkins v. Virginia*. When the cases were decided, Maryland law already exempted minors and mentally retarded individuals found guilty of murder in the first degree from capital punishment.

There are currently 38 states with the death penalty. Thirty-seven states use a lethal injection process for execution and one state (Nebraska) uses electrocution as its primary method of execution. The following 12 states and the District of Columbia do not currently have a death penalty statute: Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.

In Maryland, a person charged with murder is tried in a circuit court by either a jury or a judge. If the State has given notice that it seeks the death penalty and the defendant is convicted of first degree murder, a separate sentencing proceeding is held before the original jury or a new jury if the defendant pled guilty or was convicted by a judge. The defendant may choose to waive the right to a jury and have the judge decide. The trier must consider whether beyond a reasonable doubt any of 10 specific statutory aggravating circumstances exist. If the trier determines that one or more aggravating circumstances exist, the trier must then consider whether by a preponderance of the evidence there are one or more mitigating factors. The statute lists eight nonexclusive factors. The trier must then find by a preponderance of the evidence that the aggravating factors outweigh the mitigating factors in order to impose the death penalty. The Maryland Court of Appeals upheld the constitutionality of this standard for weighing aggravating and mitigating factors in *Borchardt v. State* in 2001.

If a death sentence is imposed, the case is automatically reviewed by the Court of Appeals. As in other appeals, the Attorney General represents the State. The Court of

Appeals is required to review not only errors alleged in the case but also the sentence of death. The court must determine whether the sentence was arbitrarily imposed, whether the evidence supports the finding of the existence of an aggravating circumstance, and whether it outweighs mitigating circumstances.

If the death penalty sentence is upheld, the defendant usually will file a petition for review in the Supreme Court of the United States. If this is unsuccessful, the defendant may next file a petition for postconviction relief in circuit court. Federal *habeas corpus* review may then be available. See Chapter 11 of this handbook for a full discussion of judicial review.

The appeal process can be very lengthy. Since 1978, when the death penalty was reinstated in the State, there have been 53 persons sentenced to death (representing imposition of 78 death sentences). To date, five persons have been executed, three in the 1990s, one in 2004, and one in 2005.

Because pursuit of the death penalty is lengthy and costly, some jurisdictions, such as Baltimore City, rarely seek the death penalty and instead request life imprisonment without the possibility of parole. On the other hand, in Baltimore County, the State's Attorney, with limited exceptions, routinely seeks the death penalty in every case that meets the statutory requirements. A majority of the inmates sentenced to death in Maryland were prosecuted by Baltimore County.

In May 2002, the Governor, expressing concern as to possible racial discrimination or geographical disparity in the capital punishment process, declared a moratorium on executions until a two-year study of the death penalty being conducted by the Department of Criminology of the University of Maryland, College Park, was completed. The study was released in January 2003 and included data collection from a wide variety of sources searching for and identifying certain case characteristics for all capital cases tried in the State since the reintroduction of capital punishment in 1978 until December 1999. The study found that the race of the offender did not have a significant impact in the death penalty process. However, the jurisdiction where the murder was prosecuted and the race of the victim did affect application of the death penalty. Generally, the early decisions made by prosecutors, specifically whether a case is eligible for the death penalty and the decision to retain or drop pursuit of a death sentence, were major factors in determining who faced execution. The moratorium ended in January 2003 when a new Governor took office.

A defendant may avoid the death penalty if the defendant is incompetent at the time of execution despite his or her sanity at the time of the crime and competence to stand trial. In *Ford v. Wainwright*, 1986, the Supreme Court reaffirmed that an insane

person may not be executed and that a person is entitled to a judicial determination on the issue of competency at the time of execution. Still another means by which a defendant subject to capital punishment can avoid the death sentence is for the Governor to commute the sentence from death to imprisonment for life or a term of years. More recently, execution by lethal injection and its administrative protocols have been challenged as cruel and unusual in several states, including Maryland. See Chapter 16 of this handbook for a discussion of the Governor's pardon power, including power to commute a sentence.

Sexual Offenses

The federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 required all states to register sex offenders, sexually violent predators, and offenders who commit certain crimes against children. These laws have become popularly known as "Megan's Law" in memory of a child in New Jersey who was sexually assaulted and murdered by a convicted sex offender who had moved into her neighborhood without notice to the neighbors.

Failure to comply with the federal law results in a loss of federal money, although the law allowed extensions of time for states making good faith efforts to comply. The Maryland law, first passed in 1995, subsequently has been amended six times with the intent of complying with the federal law.

Four categories of individuals are required to register with a supervising authority on release from incarceration or at the court if not incarcerated: (1) offenders; (2) child sexual offenders; (3) sexually violent offenders; and (4) sexually violent predators. Current law defines the term "registrant" to cover all four types of sexual offenders who are required to register, and most provisions apply to all four categories. In addition to the initial registration, registrants are required to provide notice of a change of address. Offenders convicted in other states of crimes that would require registration if committed in Maryland are required to register if they move to Maryland, are employed in Maryland, or attend school in the State. Registration is required for either life or 10 years, depending on the offense. Sexually violent offenders, child sex offenders, and offenders must register every six months, while sexually violent predators must register every three months.

The Department of Public Safety and Correctional Services posts on the Internet a current listing of each person who is registered as an offender, child sexual offender, sexually violent offender, or sexually violent predator. A listing contains a registrant's name, the offense, a picture of the registrant (updated annually), and other identifying information including the registrant's most current address. The department is also

charged with giving notice of the location of particular registrants to schools and people who request such information.

As a result of the 2006 special session, an omnibus sex offender bill was passed and enacted that, in part, provided for an extended parole supervision scheme (including the use of GPS tracking) for specified sexual offenders and made other related changes to registration and community notification provisions applicable to sexual offenders. The extended supervision provision required the affected offenders, sentenced on or after August 1, 2006, to have a term of extended supervision for a minimum of three years to a maximum of a term of life, with the ability to petition for discharge after the minimum period.

This enactment required the creation of sexual offender management teams to conduct the extended parole supervision and to submit progress reports to the Parole Commission. A Sexual Offender Advisory Board was also created, with specified reporting requirements, to review technology and practices for the tracking and monitoring of such offenders, to review the effectiveness of the State's laws concerning sex offenders, and to review developments in the treatment and assessment of sex offenders. In addition, when the victim is under age 13, a mandatory minimum, nonsuspendable 25-year sentence is required for a person at least 18 years old convicted of first degree rape or first degree sexual offense. A similar five-year minimum sentence is required under the same circumstances for second degree rape or second degree sexual offense. The State is required to provide at least 30 days' notice when seeking such a mandatory minimum sentence for any of these offenses.

Home Detention

Over the last 20 years, alternative-to-incarceration programs have been implemented by the Department of Public Safety and Correctional Services and by many local jurisdictions. Use of these programs has expanded in recent years. On a daily average, 400 State prisoners are in a home detention program for a variety of offenses. In addition, a number of offenders are monitored through county programs. The following jurisdictions have (or are authorized to have) a home detention program: Allegany, Anne Arundel, Baltimore, Carroll, Cecil, Dorchester, Frederick, Harford, Howard, Kent, St. Mary's, Washington, and Wicomico counties.

Postconviction home detention is a type of alternative confinement that is used for persons who have been convicted of a crime. It allows the person to continue to live in the person's residence and continue to work but is designed to provide supervision over the person's activities. Electronic monitoring, usually by way of a waterproof, weatherproof, pager-sized device attached to an offender, either on the wrist or ankle, is

designed to ensure that the person is at home when not working. Monitoring is also undertaken in person or over the telephone.

The Commissioner of Correction or the commissioner's designee may approve an inmate committed to the custody of the commissioner for participation in the State home detention program. In addition, the Department of Public Safety and Correctional Services is authorized to license and regulate private home detention companies. However, the vast majority of home detention carried out in the local jurisdictions does not involve the use of private home detention companies. The department may also request national and State criminal history record checks on the operators and employees of such companies. A more comprehensive discussion of alternatives to incarceration can be found in Chapter 14 of this handbook.

Diversion for Substance Abuse Treatment

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

Chapters 237 and 239 of 2004 were a response to this problem. The new provisions provide for the evaluation of nonviolent offenders for drug or alcohol dependency and the diversion of such defendants to treatment services rather than incarceration. They provide for diversion of inmates by State's Attorneys and the Parole Commission to substance abuse treatment and also provide direct access by courts to substance abuse evaluation, referral, and treatment. Additionally, the Maryland Substance Abuse Treatment Fund was established as a nonlapsing fund to be used for evaluation and treatment of criminal defendants for drug or alcohol abuse problems. Finally, each county was required to have a local drug and alcohol abuse council to develop a local plan to meet the county's needs for drug and alcohol abuse evaluation, prevention, and treatment services and to review funding requests for the provision of services.

Chapter 11. Judicial Review

A person convicted of a crime has a number of alternatives for seeking review of a conviction and/or sentence. The options include review at the trial court level (motion for new trial, motion for revision of sentence), appeal to a circuit court for a trial *de novo* (if the trial was in the District Court), review of a sentence by a three judge panel, *in banc* review, appellate review by the Court of Special Appeals, appellate review by the Court of Appeals, petition under the Postconviction Procedure Act, *habeas corpus* (both State and federal), *coram nobis*, and postconviction review in federal court. In general, a defendant is not limited to any particular option for judicial review and may pursue multiple avenues for review in connection with a single conviction.

The State, on the other hand, has very limited ability to seek judicial review. The circumstances in which the State may pursue appellate review of trial court decisions are:

- a dismissal or quashing of a criminal charge before trial;
- a failure of a judge to impose a statutorily required sentence; and
- a decision granting a defendant's motion to exclude evidence in certain felony drug cases and in crimes of violence. The appeal must be made before jeopardy attaches to the defendant and must be taken within 15 days of the date that the decision was rendered.

Review by Trial Court

Motion for New Trial

In general, a defendant has 10 days after the verdict to file a motion for a new trial. The decision to grant a new trial is at the discretion of the trial court. Common grounds for seeking a new trial include:

- a verdict contrary to the evidence;
- misconduct of jurors or of the officers in charge of the jurors;
- bias and disqualification of jurors; and

- misconduct or error of the judge or prosecution.

A motion for a new trial may also be granted on the ground of newly discovered evidence that could not have been discovered within 10 days after the original verdict by due diligence, on motion filed within one year after the later of imposition of a sentence or receipt of a mandate (*i.e.*, ruling) from the Court of Special Appeals or Court of Appeals. A motion for a new trial on the ground of newly discovered evidence may be filed at any time if (1) a sentence of death was imposed and the newly discovered evidence, if proven, would show that the defendant is innocent of the murder or an aggravating circumstance or other condition of eligibility for the death penalty; or (2) the motion is based on DNA identification testing or other generally accepted scientific techniques, the results of which, if proven, would show the defendant is innocent of the crime.

The court may set aside an unjust or improper verdict and grant a new trial on motion filed within 90 days after imposition of sentence.

Revision of Sentence

A court may correct an illegal sentence at any time. In addition, a court has revisory power over a sentence in cases of fraud, mistake, or irregularity.

A court also has revisory power over a sentence if the defendant files a motion within 90 days after imposition of the sentence. However, the court may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant, and it may not increase the sentence. In the District Court, this revisory power only applies if an appeal has not been perfected or has been dismissed.

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. See Chapter 12 of this handbook for a complete discussion of victims' rights.

Appeal from District Court – Trial *De Novo*

A defendant tried and convicted in the District Court in a criminal case has a right to appeal to a circuit court. A notice of appeal must generally be filed within 30 days. On appeal, the case is tried *de novo*. A *de novo* trial is a completely new trial which does not rely on the record from the first trial.

On appeal, a defendant has a right to trial by jury if the offense charged is subject to a penalty of imprisonment or there is a constitutional right to a jury trial for that offense. See Chapter 6 of this handbook for a discussion of the right to a jury trial.

Sentence Review by Three Judge Panel

With certain exceptions, a person convicted of a crime by a circuit court and sentenced to a term of imprisonment that exceeds two years in a correctional facility is entitled by statute to have a panel of three circuit court judges of the judicial circuit in which the sentencing court is located review the appropriateness of the sentence. The sentencing judge may not be a member of the review panel but may sit with the review panel in an advisory capacity. The defendant must file a motion within 30 days after sentencing to exercise the right to review.

After a hearing, the panel may increase, modify, or reduce the sentence. With or without a hearing, the panel may decide that the sentence should remain unchanged. A review panel may not increase a sentence to a sentence of death. The panel has 30 days after the filing date of the motion to render a decision.

In general, there is no right to appeal a decision made by the review panel. If the panel increases a sentence, however, a defendant may appeal on the limited grounds of whether the sentence is within statutory and constitutional limits and whether the panel was free from ill will, prejudice, and other impermissible considerations.

In Banc Hearing

The Maryland Constitution allows any party, including a criminal defendant, to reserve a point or question for consideration by a court *in banc* when a trial is conducted by less than the whole number of the circuit court judges of that judicial circuit. (Although the constitution contains no prohibition on the State moving for *in banc* review in a criminal case, there are serious questions as to whether this would be allowed.) An *in banc* hearing is conducted before a three judge panel of the judicial circuit in which the trial was conducted. *In banc* review may include review of any legal issues raised at trial.

However, the constitutional right to an *in banc* hearing does not apply to all criminal cases. The constitutional provision excludes cases appealed from the District Court and misdemeanors, except those misdemeanors punishable by confinement in the penitentiary.

An *in banc* hearing provides an inexpensive form of judicial review instead of traveling to Annapolis for an appeal. It has been called the “poor person’s appeal.” As

with appeals, the review panel decides questions of law properly preserved at trial but more expeditiously and without the expense and formality of an appeal.

The notice for the *in banc* hearing must be filed within 10 days after an entry of judgment or 10 days after a motion for a new trial is denied. A hearing must be held as soon as practicable unless both parties notify the clerk of the court that the requirement for a hearing is waived.

If the *in banc* court rules in favor of a criminal defendant, the State has the right to seek review by the Court of Appeals by filing a petition for writ of *certiorari*. However, a criminal defendant who seeks *in banc* review is precluded from appealing the decision of the *in banc* panel.

DNA Evidence – Postconviction Review

A person who is convicted of first or second degree murder, manslaughter, first or second degree rape, or first or second degree sexual offense may file a petition for DNA testing of scientific identification evidence that the State possesses which is related to the conviction. The court must order DNA testing if the court finds that (1) a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing; and (2) the requested DNA test employs a method of testing generally accepted within the relevant scientific community. If the results of the DNA testing are favorable to the defendant, the court must order the State to pay the costs of the testing. Otherwise, the defendant must pay for the testing.

If the results of the DNA testing are unfavorable to the defendant, the court must dismiss the petition. If the results of the testing are favorable to the defendant, the court must open a proceeding under the Uniform Postconviction Procedure Act discussed below.

The State is required to preserve scientific identification evidence that the State has reason to know contains DNA material and is secured in connection with an offense for which postconviction DNA testing is authorized. The State must preserve such evidence for the time of the sentence, unless the State provides advance notice to the defendant, the defendant's attorney of record, and the Office of the Public Defender and no objection to the disposition is filed within 120 days.

An appeal to the Court of Appeals may be taken from a court's order that DNA testing be conducted, that a postconviction proceeding be opened, or that representative samples of evidence be made available to a party objecting to the disposition of evidence.

State Appellate Court Review

In General

There are two appellate courts in Maryland: the Court of Special Appeals and the Court of Appeals. The Court of Appeals is the highest court in Maryland. The Court of Special Appeals is the intermediate appellate court. Appellate review is conducted on the record made in the trial court.

A defendant ordinarily has the absolute right to appeal to the Court of Special Appeals from a final judgment entered in a criminal case by a circuit court. A defendant who is tried in District Court and appeals to a circuit court may not subsequently appeal to the Court of Special Appeals. Rather, the defendant must file a petition for writ of *certiorari* with the Court of Appeals. A defendant originally convicted in a circuit court may appeal to the Court of Special Appeals and request further review by the Court of Appeals through a writ of *certiorari*. In cases where the death penalty is imposed, the Court of Appeals is required to review the sentence on the record.

The State is represented by the Criminal Appeals Division of the Office of the Attorney General rather than the local State's Attorney in all appellate cases. On appeal, the following are some of the most frequently litigated issues stemming from the conviction of a defendant:

- Did the trial judge make any errors in pretrial procedures, such as rulings on the suppression of evidence?

- Did the trial judge make any errors in conducting the trial, such as admitting evidence that should not have been admitted, incorrectly interpreting a statute, or giving improper jury instructions?

- Was the alleged error preserved for appellate review – was a timely objection made at the time of trial?

- If the error was preserved for appeal, was the error harmless?

- Was the evidence legally sufficient to convict the defendant?

- Was the defendant's sentence legally permissible?

When an appellate court is called upon to determine whether sufficient evidence exists to sustain a criminal conviction, it is not the function of the appellate court to undertake a review of the record that would amount to, in essence, a retrial of the case; rather, the evidence is reviewed in the light most favorable to the State, giving due regard to the finding of fact, resolution of conflicting evidence, and opportunity to observe and assess the credibility of witnesses by a jury or a judge.

In such cases, an appellate court's standard of review is whether the factual findings were clearly erroneous. If there is any competent material evidence to support the factual findings, those findings cannot be held to be clearly erroneous.

By contrast, the clearly erroneous standard does not apply to a trial court's conclusions of law based on findings of fact; in these instances, whether the trial court was legally correct is the proper standard of review by the appellate court.

Court of Special Appeals

The 13-member Court of Special Appeals typically sits in panels of three to hear cases, although the court in exceptional cases may elect by a decision of the majority of the judges of the court to sit *in banc*, or as a whole. The concurrence of a majority of a panel is necessary for the decision of a case. The types of cases heard by the Court of Special Appeals include:

- *First appeal of right* – All persons convicted of a crime first tried in a circuit court are entitled to a direct appeal to the Court of Special Appeals for a review of their trials. This first direct appeal is an appeal of right because the Court of Special Appeals must hear the case. The first appeal must be taken within 30 days after final judgment of a circuit court or 30 days after a motion for a new trial is denied or withdrawn.

- *Application for leave to appeal to the Court of Special Appeals* – Certain defendants do not have an automatic right of appeal to the Court of Special Appeals. These defendants may still ask the court to review their cases. Such requests are called applications for leave to appeal because the granting of review by the Court of Special Appeals is discretionary, not mandatory. An application for leave to appeal would be made if the defendant (1) had pleaded guilty in a circuit court; (2) had filed an appeal from an order denying relief under the Uniform Postconviction Procedure Act; or (3) is appealing a circuit court's order revoking probation. A victim of a violent crime may also file an application for leave to appeal from an interlocutory or final order that denies or fails to consider

a right secured to the victim under certain statutes. See Chapter 12 of this handbook for a discussion of victims' rights.

Court of Appeals

The Court of Appeals is composed of seven judges. Although the constitution only requires five judges to consider a case, in practice all seven judges hear most cases. Its criminal jurisdiction is generally discretionary, meaning the court may select which cases it will hear. Criminal cases are brought before the Court of Appeals in one of the following ways:

- *Writ of certiorari* – Any party, including the State, may file a petition for a writ of *certiorari*, which means an application for the Court of Appeals to review a case on appeal from the Court of Special Appeals or circuit court.

- *Court initiative or motion* – The Court of Appeals may decide on its own initiative or motion to take the case from the docket of the Court of Special Appeals.

- *Direct appeal* – The Court of Appeals has exclusive appellate jurisdiction over a criminal case in which the death penalty is imposed. When a sentence of death is imposed, there is an automatic appeal to the Court of Appeals of both the determination of guilt and the sentence. The Court of Appeals reviews the sentence on the record.

Collateral Challenges

A collateral challenge is a separate and distinct civil procedure by which a defendant may challenge a conviction, sentence, or imprisonment. To make a collateral challenge a defendant must initiate an entirely new action in which to set forth the claims. If the defendant prevails in the civil court where the collateral relief was sought, the court then issues a writ directing the criminal court to take certain actions. There are three forms of collateral challenge under Maryland law: a proceeding under the Uniform Postconviction Procedure Act, *habeas corpus* review, and *coram nobis*.

Uniform Postconviction Procedure Act

The Uniform Postconviction Procedure Act was enacted in 1958 to attempt to create a simple statutory procedure in place of the common law *habeas corpus* and *coram nobis* procedures for challenging criminal convictions and sentences. (*Habeas corpus* and *coram nobis* remain available, however).

Any person convicted of a crime in either the District Court or a circuit court has a right to institute a proceeding for postconviction relief in a circuit court to set aside or correct a verdict. This right extends to a sentence of parole or probation, as well as confinement or death. A postconviction proceeding is not an inquiry into guilt or innocence; the trial and appellate review are where that issue is determined. Postconviction proceedings focus on whether the sentence or judgment imposed is in violation of the U.S. Constitution or the constitution or laws of the State. In theory, the scope of this inquiry is quite broad. The postconviction court may not, however, grant relief based upon an allegation of a particular error if the petitioner has finally litigated or waived the error. As a practical matter, this requirement bars the petitioner from obtaining relief for most trial errors.

Unless extraordinary cause is shown, a petition for postconviction relief must be filed within 10 years of the sentence for all cases in which there is not a sentence of death. The petition must be filed in the circuit court for the county where the conviction took place. In a case in which there is a sentence of death, a petition for postconviction relief must be filed within 210 days following action by the U.S. Supreme Court or, if no review is sought, the expiration of the time for seeking review by the Supreme Court. A person may only file one petition arising out of each trial. A defendant is entitled to a hearing on the merits, the assignment of counsel, and a right of appeal. In the interests of justice, a court may reopen a postconviction proceeding that was previously decided.

The most common reason for seeking postconviction relief is a claim of ineffective assistance of counsel. Prosecutorial misconduct is another basis.

State *Habeas Corpus* Review

An individual who is confined, detained, or on parole or probation may also petition for a writ of *habeas corpus* to challenge the legality of the confinement. The petition may be filed with a circuit court judge, with a judge of the Court of Special Appeals, or with a judge of the Court of Appeals. The court must limit its review to claims that the convicting court lacked jurisdiction or violated the defendant's fundamental rights. If the judge determines that the individual is detained without legal warrant or authority, the judge must order that the individual be released. Appeals are permitted only in limited situations.

Coram Nobis

Another way to challenge the legality of a conviction is to file a petition for a writ of *coram nobis*. It is available only to people who have no other statutory mechanism for attacking their conviction. The purpose of the writ of error *coram nobis* is to bring before

the court a judgment previously rendered by it for the purpose of modification of some error of fact that affected the validity and regularity of the proceedings and which was not raised as an issue at trial. For example, a writ of error *coram nobis* may be granted where a plea of guilty was procured by duress or at the time of the trial the defendant was not competent to stand trial, if such facts were not known to the trial court when the judgment was entered. A petition for writ of error *coram nobis* is filed with the court where the conviction took place. A petitioner may appeal from a circuit court's denial of *coram nobis* relief.

Coram nobis has largely disappeared as a postconviction remedy, but the one situation in which it is important is when the convicted offender is no longer on parole or probation. The offender has no remedy in this situation under the Uniform Postconviction Procedure Act or on *habeas corpus,* because both those remedies are available only to offenders in custody. *Coram nobis* may be used by an offender facing recidivist penalties on a new charge, for example.

Federal Court Review of State Convictions

A defendant may seek review of a State court conviction in the federal courts in two ways:

- after exhausting all appellate review in State courts, a defendant may petition the U.S. Supreme Court to consider the case; or

- a defendant may file a writ of *habeas corpus* in federal district court. A federal court will not grant federal *habeas corpus* relief until a defendant has exhausted all available state remedies.

Issues raised in the federal courts must be presented as federal constitutional issues. Only those claims that were litigated fully in state court will be considered for review by the federal courts.

Governor's Power of Pardon and Commutation

In the event that a defendant has exhausted the remedies discussed in this chapter, the defendant may always seek to have the Governor issue a pardon or commutation. See Chapter 16 of this handbook for a discussion of the Governor's power to pardon or commute.

Chapter 12. Victims' Rights

Maryland law explicitly provides rights for crime victims and their representatives. Article 47 of the Maryland Declaration of Rights requires the State to treat crime victims with "dignity, respect, and sensitivity during all phases of the criminal justice process." Article 47 further provides that for circuit court cases, a crime victim, upon request and if practicable, has the right to be notified of, to attend, and to be heard at a criminal justice proceeding, as those terms are defined by law. Maryland statutes provide that a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) has a broad range of specific rights during the criminal justice process. This chapter will discuss these rights.

Victim Notification

Law enforcement officers, District Court commissioners, and juvenile intake officers are responsible for giving an identified victim a copy of a pamphlet that advises the victim of the rights, services, and procedures available in the time before and after the filing of a charging document. Also, within 10 days after the filing or unsealing of an indictment or information the State's Attorney must provide a victim with a pamphlet that describes the rights, services, and procedures available to a victim after the indictment or information is filed and a notification request form by which a victim may request notice of various proceedings. The pamphlets are prepared by the State Board of Victim Services, discussed below. The exercise of many of the rights discussed in this chapter depends on a victim completing a notification request form or otherwise requesting notifications and rights.

Once a victim has filed the notification request form, the State's Attorney is required to notify the victim of all court sentencing proceedings, the terms of any plea agreement, and the victim's right to file a victim impact statement. Additionally, the State's Attorney must notify the victim of the terms of any agreement, action, or proceeding that affects the victim's interests as soon after the proceeding as practicable. The clerk of the court must forward the victim's notification request with the offender's commitment order or probation order, and if an appeal is filed in the case, a copy of the request must be sent to the Attorney General and the court to which the case has been appealed. The notification request also requires a victim to be notified about postsentencing proceedings, such as an offender's parole hearing or release under mandatory supervision, and if an offender violates probation, escapes, is recaptured, or dies.

Specific Rights

In addition to the notification rights, a victim of a crime has numerous other rights established by statute. These rights include the right:

- to have their safety considered by the court, a District Court commissioner, or a juvenile intake officer in setting conditions of pretrial or prehearing release, including possibly imposing a condition of no contact with the victim;

- if practicable, to attend any proceeding in which the right to appear has been granted to a defendant;

- to remain present, except under specific circumstances, at a criminal trial or delinquency hearing, after initially testifying;

- if practicable, to address the judge (or jury in a death penalty case) before the imposition of a sentence or other disposition;

- to advance notification of, and to present oral testimony at, a parole hearing, if the victim has made a request for the hearing to be open to the public;

- to request that conditions of no contact with the victim be attached to the release of the defendant on parole;

- to address a three judge panel that reviews a request to change an offender's sentence;

- to file an application for leave to appeal to the Court of Special Appeals from an order of a trial court that denies or fails to consider a statutory right of the victim of a violent crime;

- to be advised of the protection available and, on request, to be protected by criminal justice agencies, to the extent reasonable, practicable, and (in the agency's discretion) necessary, from harm or threats of harm arising out of the crime victim's or witness's cooperation with law enforcement and prosecution efforts;

- during any phase of the investigative proceedings or court proceedings, to be provided, to the extent practicable, a waiting area that is separate from a suspect or defendant and the family and friends of a suspect or defendant;

- to be informed by the appropriate criminal justice agency of financial assistance, Criminal Injuries Compensation Act funds, and any other social services available;

- to be informed in appropriate cases by the State's Attorney of the right to request restitution and, on request, be provided assistance in the preparation of the request and advice as to the collection of any restitution awarded; and

- to not be deprived of employment solely because of job time lost attending a proceeding for which there is a right to attend.

Most of the rights available to a victim of a crime in which the offender is an adult are also available to a victim of a juvenile offender.

A circuit court may order, either on its own motion or by request of the State's Attorney, the Division of Parole and Probation of the Department of Public Safety and Correctional Services or the Department of Juvenile Services to complete a presentence investigation (commonly referred to as a "PSI") before sentencing or disposition. The report of the investigation must include a victim impact statement if the crime is a felony, or a delinquent act that would be a felony if committed by an adult, that caused physical, psychological, or economic injury to the victim or a misdemeanor that caused serious physical injury or death to the victim. A victim impact statement identifies any damages or injuries sustained by the victim, any request that the offender be prohibited from contacting the victim as a condition of release, and other information related to the impact of the crime on the victim. If the court does not order a presentence investigation, the State's Attorney or the victim still has the right to prepare a victim impact statement for submission to the court.

Further, a judge may prohibit release of the addresses or phone numbers of victims or witnesses.

Board of Victim Services

The State Board of Victim Services within the Governor's Office of Crime Control and Prevention consists of 22 members and is chaired by the Governor or the Governor's designee. The board is responsible for developing the informational pamphlets that notify victims of the rights, services, and procedures available before and

after the filing of a charging document, other than an indictment or information in the circuit court, and after the filing of an indictment or information in circuit court.

However, the primary function of the board is to administer the State Victims of Crime Fund, discussed below, and provide technical support for efforts to assist victims of crime through a Victim Services Coordinator who is appointed by the Executive Director of the Governor's Office of Crime Control and Prevention.

Special Funds

When an offender is convicted of a crime, the offender is required to pay two costs: court costs and Criminal Injuries Compensation costs. Court costs are $80 in the circuit courts and $22.50 in the District Court. The Criminal Injuries Compensation costs are $45 in the circuit court and $35 in the District Court (except for nonincarcerable motor vehicle offenses, for which the costs are $3). Portions of these costs are divided among the State Victims of Crime Fund, the Victim and Witness Protection and Relocation Fund, and the Criminal Injuries Compensation Fund as described below.

State Victims of Crime Fund

The State Victims of Crime Fund is a special continuing, nonlapsing fund that receives funding primarily from Criminal Injuries Compensation costs described above. The State Board of Victim Services administers the fund to implement Article 47 of the Maryland Declaration of Rights and other laws designed to help crime victims and to assist other agencies and persons providing services to crime victims. Grants by the board and administrative costs are paid from this fund.

From the Criminal Injuries Compensation costs, $22.50 from each fee collected in the circuit courts and $12.50 from each fee collected in the District Court are deposited into the State Victims of Crime Fund. From the $3 costs assessed in cases where a defendant is convicted of a nonincarcerable motor vehicle offense, the Comptroller deposits one-half of the first $500,000 in fees collected annually into the State Victims of Crime Fund and one-half into the Criminal Injuries Compensation Fund (any fees in excess of $500,000 in a fiscal year are deposited into the Criminal Injuries Compensation Fund).

Victim and Witness Protection and Relocation Fund

From the $22.50 court costs assessed in the District Court, $125,000 annually is dedicated to the Victim and Witness Protection and Relocation Fund. Also, $2.50 from the Criminal Injuries Compensation costs assessed is dedicated to this fund. This fund

goes to the Victim and Witness Protection and Relocation Program administered by the State's Attorneys' Coordinator. The program is designed to protect victims and witnesses and their families and to relocate these persons for purposes of protection or to facilitate their participation in court proceedings.

Criminal Injuries Compensation Fund

The Criminal Injuries Compensation Board under the Department of Public Safety and Correctional Services administers a compensation program for victims of crime, persons who have made efforts to prevent crime, and their dependent survivors. After review and evaluation of claims filed, the board awards compensation from the Criminal Injuries Compensation Fund for medical expenses, funeral expenses, property damage, disability or dependency claims, other necessary services, and lost wages under certain circumstances.

The Criminal Injuries Compensation Fund is a special, nonlapsing fund that receives funding from several sources including investment earnings and federal matching funds derived from federal court costs. A small portion of the funding is from restitution paid by a defendant to the fund for reimbursement of money already paid by the fund to a victim. However, the fund's principal source of money is from court costs and Criminal Injuries Compensation costs imposed in criminal cases.

From the $22.50 court cost imposed in District Court criminal cases, $500,000 is dedicated to the Criminal Injuries Compensation Fund. In addition, after $22.50 from each $45 circuit court Criminal Injuries Compensation cost and $12.50 from each $35 District Court Criminal Injuries Compensation cost is distributed to the State Victims of Crime Fund and $2.50 from each circuit court and District Court Criminal Injuries Compensation cost is distributed to the Victim and Witness Protection and Relocation Fund, the remainder of the circuit court and District Court Criminal Injuries Compensation costs are distributed to the Criminal Injuries Compensation Fund.

Further, from the $3 Criminal Injuries Compensation cost that a court assesses in cases where a defendant is convicted of a nonjailable motor vehicle offense, the Comptroller deposits one-half of the first $500,000 in fees collected annually from this cost into the Criminal Injuries Compensation Fund and one-half into the State Victims of Crime Fund. After the first $500,000, all such fee amounts are deposited to the Criminal Injuries Compensation Fund.

In fiscal 2006, the fund received $3,810,973 from the court costs, $160,133 from Baltimore City, and $1,400,000 from federal funds.

In fiscal 2006, the Criminal Injuries Compensation Board received 1,581 applications for monetary awards. From those applications, there were 1,460 investigations and 837 awards actually paid. The total amount of money paid in awards for fiscal 2006 was $5,482,088.

Restitution

In General

A victim may seek restitution if, as a direct result of a crime or delinquent act, the victim incurred personal injury resulting in out-of-pocket expenses, incurred property damage, or received other benefits paid by a governmental entity or board as a result of a crime. If a defendant is convicted or given probation before judgment or a child is adjudicated delinquent or given probation, the courts are generally required to order restitution to victims when requested by the victim or the State if the court has evidence that the losses to the victim actually exist. The court may deny a request for restitution if the court finds that the defendant or juvenile does not have the ability to pay or other extenuating circumstances exist to show that restitution is inappropriate. The court must state on the record why restitution was not ordered if it was requested.

If a judgment of restitution is entered, the court may order the restitution to be made to the victim, the Department of Health and Mental Hygiene, the Criminal Injuries Compensation Board, or any other governmental entity or third party payor. A judgment of restitution is a money judgment in favor of the victim, governmental entity, or third party payor. The Division of Parole and Probation or the Department of Juvenile Services are required to collect restitution and may assess a fee not exceeding 2 percent of the amount of the judgment on the defendant, juvenile, or juvenile's parent to pay for the administrative costs of collecting payments. The division or department then forwards the property or payments in accordance with the judgment of restitution to the appropriate party.

Delinquent accounts may be turned over to the Central Collection Unit of the Department of Budget and Management for further action, such as interception of lottery prizes, income tax refunds, and other measures. The Central Collection Unit may add a collection fee of up to 20 percent to the unpaid amount.

The Division of Parole and Probation and the Department of Juvenile Services are required to notify the court and request an earnings withholding order if the defendant, juvenile, or liable parent does not make restitution. If after a hearing the court determines that the defendant, juvenile, or liable parent intentionally became impoverished to avoid

payment of the restitution, the court may find them in contempt of court or in violation of probation.

Juvenile Restitution

The juvenile court may order a juvenile, the juvenile's parent, or both to pay restitution to a victim. A parent must be allowed a reasonable opportunity to be heard and to present appropriate evidence on the parent's behalf before a judgment of restitution may be entered against the parent. A judgment of restitution against a juvenile, the juvenile's parent, or both may not exceed $10,000 for each act arising out of a single incident.

Release from Incarceration

Victims of violent crime or child abuse or who suffer physical injury, or their representatives if the victim is deceased, a minor, or disabled, are entitled to certain rights concerning an inmate's release from incarceration.

If a victim files a notification request form or makes a written request to the Department of Public Safety and Correctional Services and maintains a current address, the department is required to notify the victim at least 90 days before a parole release hearing. A victim is also entitled to be notified when a Mutual Agreement Program contract is entered into by an inmate and the commission, when an inmate is being considered for a pardon or commutation, or when an inmate is released from incarceration under any circumstances.

On written request, the victim is entitled to testify orally and a parole hearing is required to be open to the public. The Maryland Parole Commission may restrict the attendance of certain individuals under certain circumstances. On the written request of the chief law enforcement official responsible for an investigation, some hearings may be closed to protect the investigation.

In addition, a victim of a violent crime has 30 days from the date of the parole commission's notice to request that the Division of Parole and Probation complete an updated victim impact statement. The division must complete the updated statement and provide it to the commission at least 30 days before the parole hearing.

The victim may make a written recommendation on the advisability of parole and may request a meeting with a commission member. The commission is required to consider any information received from a victim when making its decision.

The victim may also request that the inmate be prohibited from contacting the victim as a condition of parole, mandatory supervision, work release, or other administrative release. For a full discussion of release from incarceration, see Chapter 16 of this handbook.

Patuxent Institution

The Patuxent Institution is a maximum security correctional treatment facility under the Department of Public Safety and Correctional Services. The Patuxent Board of Review has parole authority independent of the Parole Commission.

The Patuxent Board of Review must include a member of a victims' rights organization. Also, the board of review must give the victim or victim's representative an opportunity to comment in writing on any action before the board and must promptly notify the victim or the victim's representative of any decisions regarding parole. For further discussion on the Patuxent Institution, see Chapter 15 of this handbook.

HIV Testing of Offenders

The law also allows a victim of a sexual offense or another criminal offense that may have resulted in a victim being exposed to an offender's bodily fluids to request a court to order the offender to be tested for HIV. On conviction for a crime involving a prohibited exposure, a granting of probation before judgment, or a finding of delinquency, a court is required to order an offender to submit to a test for HIV on request of the victim. The court may also order an offender to submit to an HIV test pretrial if the court, after a hearing, finds there is probable cause that an exposure occurred. The court must hold the hearing to determine probable cause within 30 days after the request for testing is made by the State's Attorney and must issue an order granting or denying the request within three days of the end of the hearing.

Victim and Witness Intimidation

Intimidation of victims and other witnesses impedes effective prosecution of crimes if the subject of the intimidation is unavailable to testify as a result of the intimidation. Maryland statutes aim to protect victims and other witnesses from intimidation in two ways.

First, a person who directly or indirectly intimidates a witness into not reporting the crime, testifying falsely about a crime, withholding testimony about the crime, or not appearing at proceedings related to the crime is subject to penalties ranging from a

misdemeanor to a felony depending on the underlying crime to which the witness was supposed to testify.

Second, to deal with intimidation that succeeds in causing the unavailability of testimony, certain out-of-court statements of a witness may be used in a felony case involving a crime of violence if the statement is offered against a party that has engaged in, directed, or conspired to commit wrongdoing that was intended to and did procure the unavailability of the witness. These statements can only be allowed into evidence if, after a hearing, a court finds by clear and convincing evidence that the party against whom the statement is offered engaged in, directed, or conspired to commit the act that made the witness unavailable. Also, the statement must have been made under oath and subject to the penalties of perjury at a proceeding or in a deposition, have been written and signed by the declarant, or have been recorded at the time the statement was made.

Notoriety of Crimes Contract Statute

A "Son of Sam" provision was enacted to prohibit a defendant from profiting from crime by writing a book or contracting to reenact the crime for press or media. Instead, any money payable under a contract would go to settle claims of the victim of the crime or to the State Victims of Crime Fund. The constitutionality of this statute was brought into question by the Court of Appeals in the 1994 case of *Curran v. Price*. While the court declined to actually rule on the constitutionality of the "notoriety of crimes contract" statute as a whole, parts of the statute are presumably unenforceable based on *dicta* in the case.

Chapter 13. Adult Incarceration in Local Correctional Facilities

State Payments for Local Correctional Facilities

Except in Baltimore City, the law establishes that the minimum sentence for incarceration in the State prison system is a sentence of more than one year. For offenders given sentences between 1 year and 18 months, judges have the discretion to send them to either a local correctional facility or the State prison system. Any inmate sentenced to 12 months or less is incarcerated in a local correctional facility. The counties are reimbursed for those inmates who have been sentenced to the jurisdiction of the Division of Correction, sentenced to the local correctional facility, and actually serve a sentence of more than 3 months and not more than 18 months. The State pays these costs in one of the following two ways depending on which calculation provides for the highest payment:

- 50 percent of the daily cost of housing an inmate for the ninety-first day through the three-hundred sixty-fifth day of confinement; or

- 85 percent of the daily cost of housing an inmate for every day that the actual number of inmate days[1] exceeds the average number of inmate days.

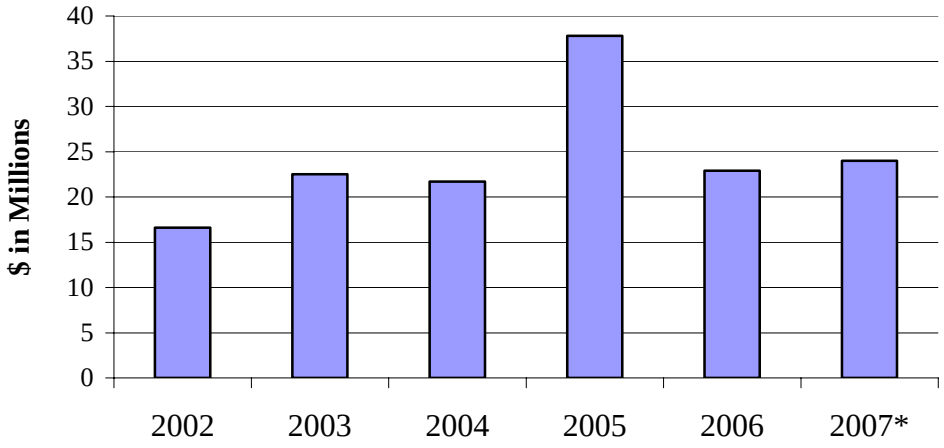
Exhibit 13.1 shows the amount of State payments for local correctional facilities from fiscal 2002 to 2007.

The State does not pay for pretrial detention time in a local correctional facility. However, the State does pay at the daily rate for time spent in a local correctional facility by inmates sentenced to and awaiting transfer to the State correctional system.

In Baltimore City the above provisions do not apply. The Baltimore City Detention Center is a State correctional facility. All inmates in Baltimore City are sentenced to the custody of the Commissioner of Correction, regardless of the sentence length.

[1] Inmate days means the actual total days served by sentenced inmates, not the length of the sentence. The daily cost of housing Division of Correction prisoners in local correctional facilities and inmates sentenced to local correctional facilities is determined by dividing the total actual inmate days of the facility for the previous fiscal year into the total actual operating costs of that local facility for the previous fiscal year.

Exhibit 13.1
State Payments for Local Correctional Facilities
Fiscal 2002-2007



* Legislative appropriation.

Source: Department of Public Safety and Correctional Services

Local Detention Center Construction Program

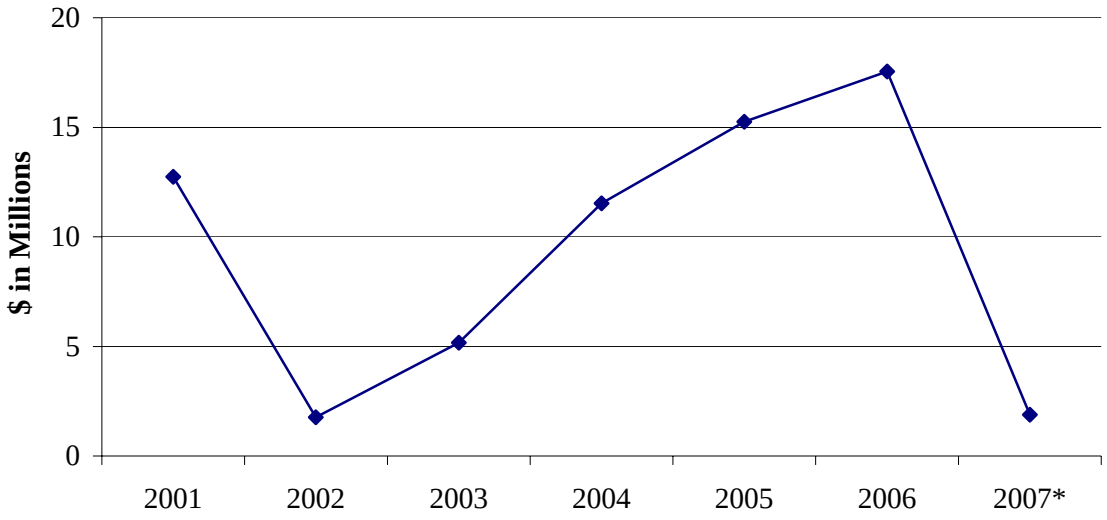
The State operates a Local Detention Center Construction Program that assists jurisdictions with the planning, improvement, and construction of local correctional facilities and work release and other correctional facilities.

Subdivisions apply to the Department of Public Safety and Correctional Services for inclusion in the construction program, which provides either 100 percent or 50 percent funding for construction or expansion of local correctional facilities. To meet the needs of growing inmate populations at the local level, the State pays a minimum of 50 percent of eligible costs for construction or expansion of local detention centers. If a county can demonstrate that a portion of the expansion is necessary to house additional offenders serving between 6-month and 12-month sentences due to changes in sentencing guidelines, then the State provides 100 percent of funding for that portion of the project. Most assistance grants require the local subdivision to provide equal or matching funds.

Since fiscal 2001, the State has appropriated almost $66 million in local correctional facilities construction grants. As Exhibit 13.2 shows, capital appropriations for local correctional facilities have varied from year to year between fiscal 2001 and

2007, primarily as a result of the funding for a few major projects that extended over this time period.

Exhibit 13.2
Local Correctional Facility
Capital Appropriations
Fiscal 2001-2007



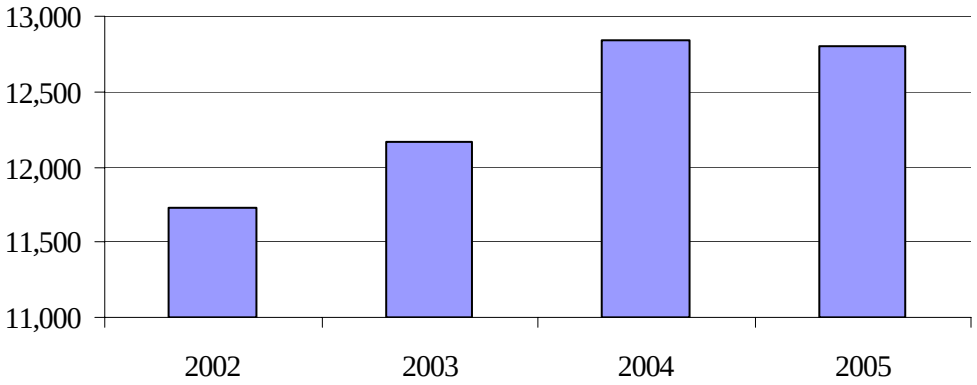
* Legislative appropriation.

Source: Department of Legislative Services

Local Correctional Facility Population

The average daily population of local correctional facilities increased from 11,729 in fiscal 2002 to 12,843 in fiscal 2004 and then decreased slightly to 12,801 in fiscal 2005, as shown in Exhibit 13.3.

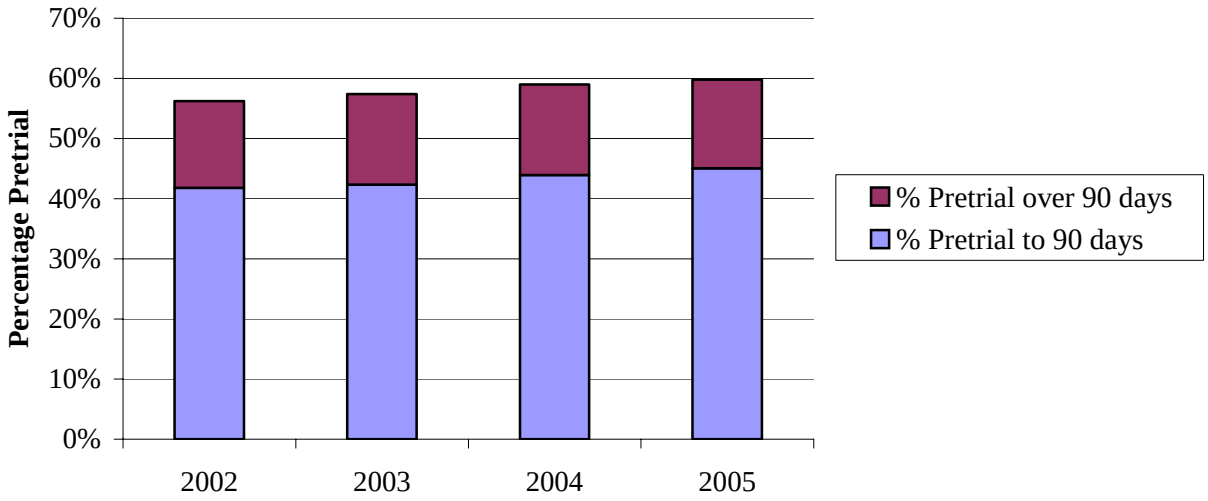
Exhibit 13.3
Local Correctional Facilities
Average Daily Population
Fiscal 2002-2005



Source: Department of Public Safety and Correctional Services

As shown in Exhibit 13.4, between fiscal 2002 and 2005, approximately 56 to 60 percent of the average daily population was awaiting trial.

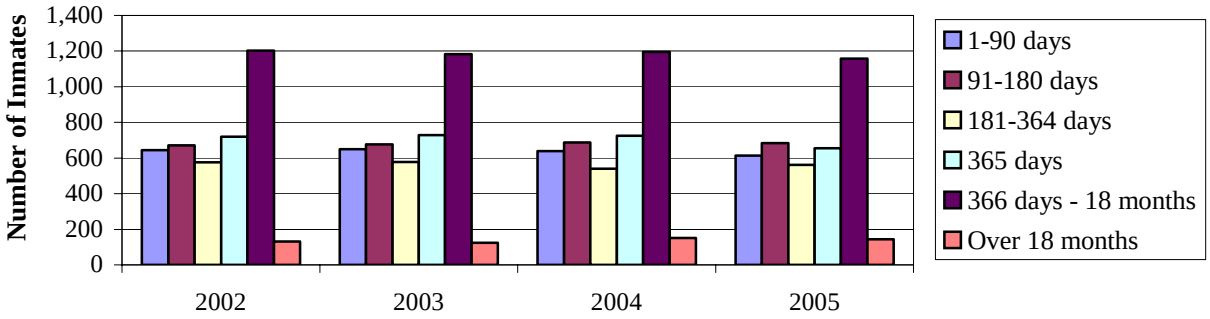
Exhibit 13.4
Local Correctional Facilities
Percentage Pretrial Inmates
Fiscal 2002-2005



Source: Department of Public Safety and Correctional Services

Exhibit 13.5 shows the number of inmates in local correctional facilities by the length of sentence.

Exhibit 13.5
Locally Sentenced Inmates
Last Day Population
June 2002-2005



Source: Department of Public Safety and Correctional Services

Community Adult Rehabilitation Centers

Local jurisdictions are also authorized to administer Community Adult Rehabilitation Centers. First built in the 1970s with State construction and operating funds, Community Adult Rehabilitation Centers place eligible offenders in community-based facilities, allowing offenders to go to work or perform community services. This arrangement maintains an offender's community ties while serving his or her sentence. An offender is eligible to participate in this program if the offender has less than 6 months remaining on the sentence prior to a predetermined parole date or if the total sentence is less than 36 months.

These facilities have been established in three jurisdictions: Baltimore City, Montgomery County, and Cecil County. Community Adult Rehabilitation Center services in Baltimore City are provided by Dismas House, Inc. and Threshold, Inc. Through its two locations, Dismas House East and Dismas House West, Dismas House, Inc. has the capacity to serve 90 inmates. Threshold, Inc. has the capacity to serve 30 inmates. Originally constructed in 1978 to house 44 offenders, the Montgomery County facility has been expanded to a total of 122 beds, with 10 dedicated to Maryland Division of Correction inmates. The Cecil County facility was initially constructed in 1981 and

has subsequently been enlarged to accommodate 70 offenders. The majority of the inmates housed in these units are county-sentenced offenders, rather than State inmates.

Local Incarceration Alternatives

In fiscal 1991, the General Assembly directed local jurisdictions to make greater use of alternatives to incarceration. Implementation has been directed largely toward local pretrial populations and includes programs such as community service, electronic monitoring, intensive supervision, and pretrial release. In fiscal 2005, an average of 402 individuals were under home detention supervision by the counties and the Baltimore City Detention Center each day. For more information on alternatives to incarceration, see Chapter 14 of this handbook.

Chapter 14. Adult Incarceration in State Prisons

Division of Correction Facilities

The Division of Correction of the Department of Public Safety and Correctional Services has the responsibility for operating 25 State correctional facilities whose combined average daily population is nearly 24,000 inmates.[1] More than 7,000 State correctional employees maintain order in these institutions and ensure inmates' health, safety, welfare, and secure confinement. In a separate agency, the Department of Public Safety and Correctional Services also operates the Patuxent Institution. See Chapter 15 of this handbook for a discussion of Patuxent Institution.

Inmate Classification

Reception

The Division of Correction has three reception, diagnostic, and classification centers (administrative centers) to receive recently sentenced offenders, classify them to a security level, and evaluate their programming needs. The administrative center within the Maryland Correctional Institution for Women in Jessup receives and classifies women. The Maryland Reception, Diagnostic, and Classification Center in Baltimore receives and classifies all male offenders serving sentences longer than 18 months. The administrative center located in the Metropolitan Transition Center receives and classifies male offenders from Baltimore City serving sentences of 18 months or less. New inmates in each administrative center go through identification (fingerprinting and photographing), general orientation, medical and psychological screenings, AIDS education, and various addictions and educational assessments and tests.

A case manager interviews the inmate and assembles a confidential case record from interviews, assessments, test results, identification records, and criminal history documents. Case record information is entered on the division's automated offender database, the Offender-Based State Correctional Information System. In 1997, a program to apply diminution credits and calculate release dates was added to the system, and in 2006, the Division implemented a software program to calculate length of stay, as well as determine the section of law that applies to each particular inmate for allocation of diminution credits.

[1] North Branch Correctional Institution is not included in the 25 correctional institutions. It is scheduled to open in January 2007.

Initial Classification

Within 15 days of reception, the case manager applies a numerical point system to assess the inmate's potential for violence, escape, and misbehavior and assign a risk score that is translated to the least restrictive security level necessary to control the inmate's behavior. The case manager, the case manager's supervisor, and the warden or the warden's designee review the risk score recommendation. The reviewers may agree with the recommendation or may recommend an override to a higher or lower security level. A written explanation of the reasons to deviate from the scored security level must accompany a decision to override. Also, if the commissioner of the division or the commissioner's designee determines that emergency housing conditions exist, an inmate may be housed in an institution with a security level different from that of the inmate.

Reclassification

A reclassification hearing occurs at least annually for all inmates, except inmates in minimum security. Inmates within two years of a parole hearing or release date receive a hearing at least every six months. At a reclassification hearing, correctional case management staff use a numerical point system to assess incarceration variables such as time remaining to serve, drug or alcohol abuse, behavior, and job and program performance.

The total score on these factors shows whether the security level should increase, remain the same, or decrease. Case managers' recommendations are also necessary for an inmate to be approved for, assigned to, or removed from programs.

Security Classifications

The Division of Correction uses six security levels in classifying inmates, institutions, and housing units. The security level of an institution reflects the physical features and staffing patterns required to control inmate behavior and prevent escape. These physical features include the number and type of perimeter barriers, existence and use of gun towers, use of exterior perimeter patrols, use of various detection devices, and layouts of housing units.

Exhibit 14.1 reflects the various inmate custody factors based on the level of security. Additionally, inmate custody factors based on special confinement areas within the maximum and medium security institutions are detailed under the Special Housing Classifications subheading in this chapter.

Exhibit 14.1
Maryland Division of Correction
Inmate Custody Factors

Factors	Pre-release	Minimum	Medium – Level I	Medium – Level II	Maximum – Level I	Maximum – Level II
Observation	Minimal but appropriate to the situation	Periodic	Periodic	Periodic	Periodic	Periodic
Institutional Day Movement	Observed	Observed	Indirectly controlled and periodically observed	Indirectly controlled and periodically observed	Indirectly observed and supervised	Directly observed, supervised, fully restrained outside of housing unit and escorted by correctional officers; small groups of no more than six inmates
Institutional Night Movement	Observed	Indirectly controlled and periodically observed	Indirectly controlled and periodically observed	Indirectly controlled and periodically observed	Indirectly controlled and periodically observed	Directly observed, supervised, fully restrained outside of housing unit and escorted by correctional officers; small groups of no more than six inmates
Institutional Meal Movement	Observed	Observed	Observed, supervised, or may be escorted	Observed, supervised, or may be escorted	Observed, supervised, or may be escorted	None, fed in cells
Access to Jobs and Programs	Inside or outside perimeter, including community-based	Inside or outside perimeter, with supervision	Inside perimeter only	Selected; inside perimeter only	Selected; inside perimeter only	Limited, inside housing unit only
Institutional Visits	Contact, periodically supervised	Contact, supervised	Contact or noncontact, direct observation	Contact or noncontact, direct observation	Contact or noncontact, direct observation	Noncontact, direct observation, indoor only

Exhibit 14.1 (continued)

Factors	Pre-release	Minimum	Medium – Level I	Medium – Level II	Maximum – Level I	Maximum – Level II
Transportation	May be escorted by on-duty staff or unescorted and accountable to staff	Escorted by on-duty staff	Strip searched before and after, restrained in handcuffs, black box, waist chain, and leg irons (unless there is a life-threatening medical condition which requires immediate medical care), escorted by at least one armed correctional officer or as determined by shift commander	Strip searched before and after, restrained in handcuffs, black box, waist chain, and leg irons (unless there is a life-threatening medical condition which requires immediate medical care), escorted by at least one armed correctional officer or as determined by shift commander	Strip searched before and after, restrained in handcuffs, black box, waist chain, and leg irons (unless there is a life-threatening medical condition which requires immediate medical care), escorted by at least two armed officers or as determined by shift commander	Strip searched before and after, restrained in handcuffs, black box, waist chain, and leg irons (unless there is a life-threatening medical condition which requires immediate medical care), escorted by at least two armed correctional officers for an individual inmate or two or more armed correctional officers for a group of inmates
Special Leaves	May be escorted by on-duty staff or unescorted and accountable to staff, intrastate only	Escorted by on-duty staff, intrastate only	Not eligible	Not eligible	Not eligible	Not eligible
Family Leaves	Unescorted and accountable to staff, intrastate only	Not eligible	Note eligible	Not eligible	Not eligible	Not eligible
Compassionate Leaves	Unescorted and accountable to staff, intrastate only	Not eligible	Not eligible	Not eligible	Not eligible	Not eligible

Source: Department of Public Safety and Correctional Services

Level II Maximum Security

Level II maximum security is the highest security level for inmates who pose a high risk of violence toward others, are a high risk to the security and safety of the institution, or are such a high risk that they cannot be maintained at a level I maximum security institution. Inmates under a sentence of death are also housed in a level II maximum security institution. This level provides intensive and specialized staff supervision and extremely restricted confinement. The level II maximum security facility is the Maryland Correctional Adjustment Center (known colloquially as "Supermax"), located in Baltimore City.

Level I Maximum Security

Level I maximum security provides secure housing to control the behavior of inmates who pose a high risk of violence, are significant escape risks, have a history of serious institutional disciplinary problems, or are likely to have serious disciplinary problems. The level I maximum security facilities are the Maryland House of Correction and the Jessup Correctional Institution (formerly Maryland House of Correction – Annex), both located in Jessup (Anne Arundel County), and the North Branch Correctional Institution, scheduled to open in Cumberland (Allegany County) in January 2007.

Level II Medium Security

Level II medium security provides a restricted environment to control the behavior of inmates who may pose a high risk of violence toward others, have a significant history of disciplinary problems, are escape risks, or pose a greater risk to institutional safety and security but do not require maximum security. The level II medium security facilities are the Roxbury Correctional Institution located in Hagerstown (Washington County) and the Western Correctional Institution located in Cumberland (Allegany County).

Level I Medium Security

Level I medium security provides secure housing within a secure perimeter to control the behavior of those inmates who may pose a risk of violence toward others, have had a history of disciplinary problems, are escape risks, or pose a risk to institutional safety and security but do not require a level II medium or maximum security.

The level I medium security facilities are:

- Eastern Correctional Institution, Westover (Somerset County)
- Maryland Correctional Training Center, Hagerstown (Washington County)
- Maryland Correctional Institution, Hagerstown (Washington County)
- Maryland Correctional Institution, Jessup (Anne Arundel County)
- Roxbury Correctional Institution, Hagerstown (Washington County)
- Maryland House of Correction, Jessup (Anne Arundel County)

Minimum Security

Minimum security provides fewer security features for inmates who pose less risk of violence or escape and who have a minimal history of disciplinary problems. The minimum security facilities are:

- Brockbridge Correctional Facility, Jessup (Anne Arundel County)
- Baltimore Pre-Release Unit for Women (Baltimore City)
- Central Laundry Facility, Sykesville (Carroll County)
- Jessup Pre-Release Unit (Anne Arundel County)
- Baltimore City Correctional Center
- Herman L. Toulson Correctional Boot Camp, Jessup (Anne Arundel County)
- Maryland Correctional Training Center/Emergency Housing Unit Building, Hagerstown (Washington County)
- Eastern Correctional Institution – Annex, Westover (Somerset County)

Pre-release Security

Pre-release security provides the fewest security features for inmates who present the least risk of violence and escape and who have a record of satisfactory institutional behavior. The pre-release facilities are:

- Baltimore Pre-Release Unit (Baltimore City)
- Eastern Pre-Release Unit, Church Hill (Queen Anne's County)
- Southern Maryland Pre-Release Unit, Charlotte Hall (St. Mary's County)
- Poplar Hill Pre-Release Unit, Quantico (Wicomico County)
- Maryland Correctional Training Center/Harold E. Donald Building, Hagerstown (Washington County)
- Dismas House East, Dismas House West, and Threshold (Baltimore City)

Special Housing Classifications

Maximum and medium security institutions have the following types of special confinement arrangements:

- *Disciplinary Segregation:* Disciplinary segregation isolates an inmate from the population for punishment when found guilty of an infraction. Inmates receive meals in their cells, at least an hour daily out-of-cell time, regular medical and dental care, mail privileges, and reading material requested through the institutional library. Visitation and other privileges are restricted or revoked.

- *Administrative Segregation:* Administrative segregation isolates inmates to prevent escape, for medical and mental health reasons, pending investigation or disciplinary action, and to house inmates under a death sentence or protect other inmates and staff. Following the warden's placement of an inmate on administrative segregation, a case management team must decide within five hours whether the inmate should remain in this status. As much as possible, conditions and privileges are the same as for general population inmates.

- *Protective Custody:* Protective custody is used when verified information shows that the inmate would be in danger if housed in the general prison population, the inmate has physical traits or health-related issues that make the inmate susceptible to harm, or there is valid reason to show the inmate is in danger. The regional protective custody units are Jessup Correctional Institution for maximum security and Western Correctional Institution for medium, minimum and pre-release security.

Division of Correction inmate populations by region and facility are reflected in Exhibit 14.2. Each facility is identified by security classification and the estimated cost per inmate in fiscal 2005.

Exhibit 14.2
Division of Correction Prison Population by Region
Fiscal 2005

Jessup Region

	Security Classification	Average Population	Cost per Inmate
MD Correctional Institution for Women	Multilevel	864	$24,738
MD House of Correction	Maximum Level I	1,240	28,683
Jessup Correctional Institution (MD House of Correction – Annex)	Maximum Level I	1,202	28,127
MD Correctional Institution – Jessup	Medium Level I	1,002	26,541
Maryland Correctional Pre-Release System:			
Baltimore City Correctional Center	Minimum	499	16,865
Baltimore Pre-Release Unit	Pre-release	216	16,092
Brockbridge Correctional Facility	Minimum	623	19,834
Jessup Pre-Release Unit	Minimum	584	19,366
Toulson Correctional Boot Camp	Minimum	293	28,759
Central Laundry Facility	Minimum	516	20,438
Eastern Pre-Release Unit	Pre-release	180	19,044
Southern Maryland Pre-Release Unit	Pre-release	178	18,071
Total		**7,397**	

Exhibit 14.2 (continued)

Baltimore Region

	Security Classification	Average Population	Cost per Inmate
MD Correctional Adjustment Center	Maximum Level II	113	$133,108
Metropolitan Transition Center	Multilevel	1,591	22,300
MD Reception, Diagnostic and Classification Center	Multilevel	626	47,394
Baltimore Pre-Release Unit for Women:	Minimum	142[1]	32,315
Baltimore Pre-Release Unit for Women – Annex	Pre-release		
Total		**2,472**	

Hagerstown Region

	Security Classification	Average Population	Cost per Inmate
MD Correctional Institution – Hagerstown	Medium Level I	2,094	$21,564
MD Correctional Training Center	Medium Level I	2,906	15,945
Roxbury Correctional Institution	Medium Level II	1,817	18,086
Total		**6,817**	

Eastern Shore Region

	Security Classification	Average Population	Cost per Inmate
Eastern Correctional Institution:	Medium Level I	3,020[2]	$21,772
Eastern Correctional Institution – Annex	Minimum		
Poplar Hill Pre-Release Unit	Pre-release	192	16,945
Total		**3,212**	

Exhibit 14.2 (continued)

Western Region

	Security Classification	Average Population	Cost per Inmate
Western Correctional Institution	Medium Level II	1,929	$19,963
Total		**1,929**	

Division of Correction Population in Nondivision Housing

	Security Classification	Average Population	Cost per Inmate
Central Home Detention Unit	Pre-Release	208	$25,437
Local Jail Backup	Multi-Level	562	Variable[3]
Contractual Pre-Release Units	Pre-release	129	Variable by contract
Patuxent Institution[4]	Maximum	606	23,688
Patuxent Institution – Women's Facility	Maximum	62	23,688
Total		**1,567**	

[1] Figure includes Baltimore Pre-Release Unit for Women – Annex.
[2] Figure includes Eastern Correctional Institution – Annex.
[3] Counties having local jail backup facilities charge the Division of Correction variable daily rates to house inmates waiting to be transferred to an appropriate reception facility.
[4] Patuxent Institution is not part of the Division of Correction but is an independent unit of the Department of Public Safety and Correctional Services. Patuxent Institution houses the Division of Correction's programmed inmates as well as the division's Central Mental Health Unit.

Source: Department of Public Safety and Correctional Services; Department of Legislative Services

Alternatives to Incarceration and Intermediate Sanctions

The Division of Correction administers two programs designed to be alternatives to incarceration: home detention with electronic monitoring, available for nonviolent offenders, and boot camp, an intermediate sanction for youthful nonviolent offenders. Also, the Division of Parole and Probation administers the State's Correctional Options Program that combines community supervision with drug treatment and rehabilitative programs as appropriate punishment for low-risk offenders.

Home Detention and Electronic Monitoring

The Central Home Detention Unit is a pre-release system program for eligible inmates from Baltimore and adjacent counties. Most participants are low-risk offenders with less than 18 months remaining on their sentences, although some participants are pretrial detainees, probationers, and parolees.

Home detention allows inmates to live in approved private homes and work in the community. Public service or gainful employment is mandatory, and substance abuse treatment, school, and self-help programs may be required. Supervision is by electronic monitoring equipment and intensive 24-hour oversight by correctional officers and other staff. A band around the offender's ankle maintains electronic contact with a verification unit in the home. If the offender breaks contact, the detention unit is alerted that a violation is in progress. Armed correctional officers in patrol vehicles respond to the alert. Offenders receive random home and work site visits and residence searches. Breath testing and urinalysis are conducted to detect alcohol and illegal drug use.

To be eligible, an inmate must not be serving a life sentence or a sentence for a crime of violence and must not have convictions for child abuse or escape. Sponsors and their families must agree to limitations on their personal telephone calls, maintenance of an alcohol-free home, and removal of all firearms. Offenders must contribute to the cost of the electronic monitoring equipment and pay court-ordered obligations such as child support and restitution.

In the past few fiscal years, over 80 percent of enrolled inmates have successfully completed the program. In fiscal 2005, 1,308 inmates participated in home detention and 1,047 successfully completed the program, and in fiscal 2006, 1,300 inmates enrolled in the home detention program and 1,055 successfully completed it.

Herman L. Toulson Correctional Boot Camp

The Herman L. Toulson Correctional Boot Camp, located in the Jessup area of Anne Arundel County, is the only program of its kind in the State. The boot camp program has three primary goals. The first goal is to assist in the overcrowding crisis by providing the means for inmates serving sentences of five years or less to be released after completion of a six-month program. An inmate serving a second major adult incarceration of 10 years or less may participate in the boot camp program but will not be considered for release until after serving a minimum of one-fourth of the sentence.

The second goal of boot camp is to encourage inmates to become responsible productive citizens and provide inmates with the means to accomplish this goal. The third goal is to create a more positive work environment for both the inmates and the correctional employees who operate the boot camp. Offenders must be younger than 36 years old when they start the program.

Correctional officer drill instructors provide and teach military drill and physical training as well as maintain the security of the facility. The case management staff and a social worker at the boot camp provide "network" sessions for boot camp inmates; addictions counselors provide addiction education and treatment; and academic education is provided by the school principal, seven education instructors, and one education aide provided by the Maryland Department of Education.

From the boot camp's inception in August 1990 until the November 17, 2005, graduation, 8,086 inmates participated, not including an additional 148 currently in training. A total of 6,185 inmates completed the program (76 percent). Additionally, 761 inmates earned a GED, 4,742 inmates completed Pre-Employment Readiness Training, 883 completed the Building Construction Skill Training Program, 350 completed the Cable and Copper Wire Program at Anne Arundel Community College, and 1,407 inmates completed a four-month intervention addiction treatment and were referred for additional institutional and community-based treatment.

Between July 1, 1994, when improved statistical reporting began, and November 17, 2005, a total of 3,022 Part II inmates (inmates serving a sentence of 10 years or less) participated in the program with 1,761 (58 percent) completing it.

Correctional Options Program

The Correctional Options Program operated by the Division of Parole and Probation places carefully screened, low-risk, nonviolent offenders under rigorous community-based supervision. Currently, approximately 1,600 offenders participate in the various program components. This program has enabled the avoidance of potentially substantial capital and operating costs of confinement. In addition, an independent evaluation of one of the program components suggested that participants were less likely to recidivate than individuals who had not participated.

Case Management Services

There are many programs and services that are offered to inmates ranging from substance abuse education to parenting that are coordinated by the Case Management Services Unit. This unit is also responsible for the development and implementation of

classification policies and procedures, as well as the training of case management staff. Additionally, the unit oversees screening for inmate programs, coordination of criminal alien deportation hearings, interstate corrections compact transfers, substance abuse treatment transfers with outside agencies, and the processing of administrative remedy appeals.

In fiscal 2005, the Case Management Services Unit processed 1,682 administrative remedy appeals and conducted nine correctional institution audits, as well as coordinated 49 alien deportation hearings. The unit also coordinated the transfer of 96 inmates into substance abuse treatment programs through stayed sentences, in addition to the transfer of five interstate corrections compact inmates to Maryland and 48 biannual reviews of 48 interstate corrections compact inmates housed in Maryland. Finally, the unit developed manuals for Case Management and Administrative Remedy Appeals for use within the Division of Correction.

Although case management is more than internal programs and services for inmates, limited resources hinder many institutions from providing a full range of in-house programs and restrict inmates from participating in those programs. However, the division has an obligation to ensure that programs and services are delivered systematically to inmates at the most beneficial time. Therefore, as inmates approach their final years of incarceration, case managers may use one of two protocols discussed below to reevaluate inmates' needs and reserve slots for programs and services to meet those needs.

Case Management Plan

At the beginning of incarceration and at specific intervals throughout incarceration, inmates are evaluated for medical and programming needs. Various assessment and screening tools are used to determine the inmate's needs, including substance abuse problems, educational issues, or any other treatment issues. The inmate and classification team develop a comprehensive "case management plan" to address the remainder of the inmate's incarceration. A case manager monitors an inmate's compliance with his or her plan to ensure that programming is provided and the inmate is participating.

Mutual Agreement Plan

The second protocol available to case managers is a "mutual agreement plan." If eligible, a mutual agreement plan is signed by the inmate and representatives of the division. The Maryland Parole Commission guarantees a parole release date and requires

the inmate to meet strictly-enforced behavioral standards, complete specific programming, and develop a stable home plan and full-time job in consideration of the guaranteed release date.

Diminution of Confinement Credits

Diminution of confinement credits are a means of recognizing an inmate's good behavior and participation in programs through a reduction in the term of confinement by awarding various categories of time credits. Inmates generally receive reductions of up to a certain number of days per month beginning the first day of commitment that count toward expiration of their sentences. These credits may be for good conduct; performance of industrial, agricultural, or administrative tasks; participation in vocational, educational, or other training courses; and involvement in special projects. The number of inmates in fiscal 2005 that were released early based on diminution credits averaged over 250 inmates per month. See Chapter 16 of this handbook for a full discussion of diminution credits.

An additional category of diminution credit is special credit for housing in a double cell at certain institutions. Reports show several inmates are released each month after receiving double-cell housing credits.

Reentry Enforcement Services Targeting Addiction, Rehabilitation, and Treatment (RESTART)

In 2004, the Department of Public Safety and Correctional Services developed a new initiative entitled Reentry Enforcement Services Targeting Addiction, Rehabilitation, and Treatment (RESTART). The RESTART initiative is designed to provide substance abuse, educational, cognitive restructuring, and transitional services to inmates reentering the community. Two pilot sites were chosen for the initiative – the Maryland Correctional Training Center (Hagerstown) and the Maryland Correctional Institution for Women (Jessup). As of March 2006, just over 25 percent of the general population at each institution was participating in the various program components, a total of 1,173 inmates. In fiscal 2007, the department was authorized to expand RESTART to offenders transferred to pre-release facilities if they had participated in RESTART services for at least one year in one of the two pilot sites.

Academic, Vocational, and Library Programs

A variety of programs are provided by the Maryland State Department of Education under the authority of the Education Coordinating Council for Correctional Institutions to assist inmates in improving their academic and vocational skills. The

Maryland State Department of Education, in conjunction with the Division of Correction, is responsible for developing, overseeing, modifying, and monitoring the educational programs operating in the Maryland correctional facilities. Research in Maryland and a number of other states indicates that participation in academic and vocational programs is correlated with a significant reduction in reoffending by inmates.

In fiscal 2005, 845 inmates earned their high school diplomas (GED), with a pass rate of 64.5 percent. Additionally, 1,253 inmates completed adult literacy courses, 906 completed occupational courses, and 346 completed basic literacy programs. Correctional libraries also play a critical role in the preparation of offenders for release by providing extensive up-to-date information on community resources in the areas of housing, addictions, counseling, and training. Every inmate has the opportunity to visit a correctional library on a weekly basis.

Social Work Reentry Programs

Social workers provide comprehensive release planning services for offenders who have serious medical or mental health needs. These services include pre-release counseling and group therapy to engage the offenders to look at past behaviors and attitudes that impacted their involvement with the criminal justice system. The Department of Public Safety and Correctional Services has recently developed agreements with the Department of Human Resources, the Department of Health and Mental Hygiene, and the Social Security Administration. These agreements will allow social workers to apply, prior to release, for benefits for offenders who qualify. This will ensure that offenders will be able to continue their medications and medical or mental health treatment upon release.

Transition Programs

The Division of Correction releases approximately 15,000 inmates per year with over half of the releases returning to Baltimore City. In cooperation with local government and other State agencies, the Division of Correction has implemented a comprehensive set of reentry programs and services to support the development of a home plan for each offender. The programs and services include partnerships for reentry programming, reentry seminars, aftercare transition, residential substance abuse treatment, institutional-based programs and services, and community-based programs and initiatives.

Religious Services

The Division of Correction provides worship and study activities for 27 religions and provides nondenominational activities as well. Operational and budgetary realities of the prison environment limit religious practice to one group worship and one study session per week and holy day observances. In fiscal 2005, inmates submitted over 60,000 requests for chaplain assistance in such matters as obtaining religious literature and devotional items, family relations, spiritual counsel, and working through life developmental crises.

Volunteer Services

About 2,600 volunteers registered with the division and provided at least 45,000 hours of service in fiscal 2006. Fifty percent of donated time supports chaplain services. Other areas benefiting from volunteer services include inmate self-help groups and organizations; education programs; classification; social work, psychology, and medical services; mailrooms; and fiscal offices. For example, several organizations sponsor Girl Scouts Beyond Bars at the Maryland Correctional Institution for Women, a program designed to help improve the mother-daughter relationship with the goal of ending the generational cycle of crime. Other volunteers offer the Alternatives to Violence Project at six correctional institutions. The most recent innovation delivered by volunteers is the Great Dads Program, offered at four institutions.

Victims' Assistance Services

Victims' Affairs Unit staff coordinate responses to victims' requests to be notified when the offender is released or escapes and to have a victim's impact statement read at any hearing to consider temporary leave or provisional release. Division of Correction staff cooperate with the Maryland Parole Commission to provide open parole hearings, should the victims request them, and to carry out procedures to comply with the State's sex offender notification and registration statute. For a full discussion of victims' rights see Chapter 11 of this handbook.

Health Care Services

The Department of Public Safety and Correctional Services provides comprehensive medical, dental, and mental health services for all inmates in the division, for pretrial detainees in the Division of Pretrial Detention and Services, and for inmates at the Patuxent Institution. Services are provided through contractual health care providers who deliver primary, secondary, and chronic-care services through a Managed Care Program for all facilities.

In 2006, the department's model for the delivery of health care services was changed to provide that comprehensive health services be delivered to the department's inmates and detainees through six separate contracts with five different providers. The contracts are for the following areas: medical, mental health, dental, pharmacy, electronic patient health record system, and utilization management services.

Although the inmate health care provided to those under the supervision and custody of the department is outsourced to various healthcare contract providers, it is managed and supervised by State employees in the Office of Treatment Services. The Office of Treatment Services, developed in 2003 as a part of the Office of the Secretary, is the umbrella for all treatment related services, including inmate health care and services provided at the Patuxent Institution.

Medical Copayment

A medical copayment requirement enacted in 1994 promotes inmate/detainee responsibility for participation in health care. It reduces the misuse of sick call without restricting access to health care. Inmates who are indigent are exempt from medical copayment. The medical copayment is applied only when an inmate requests a sick call. Inmates who are referred to medical services by staff are not charged, nor are there copayment requirements for any other health service.

Tuberculosis Program

The department provides programs to control tuberculosis that include screening on reception, annual testing, clinical testing, education, and, as required, respiratory isolation. In fiscal 2005, 26,650 inmates were tested through reception, 20,478 inmates were tested through annual testing, and 6 inmates tested positive for active tuberculosis.

HIV/AIDS

The Department of Public Safety Infection Control Division works collaboratively with the social work office in providing HIV testing for the division's inmates, both male and female. In fiscal 2005, 5,350 inmates elected to be tested for HIV infection. Of those tested, 76 were HIV positive. The total number of inmates in the department with HIV infection is 824. Of that number, 160 have full-blown AIDS. The department stages and manages inmates diagnosed with HIV infection through its Managed Care Program.

The department is using an oral testing procedure, swabbing inside the mouth, as an alternative to invasive blood draws to increase the participation of individuals in voluntary testing at reception.

Medical Parole/Compassionate Release

The department participates in a medical parole program that affords early release for inmates with serious irreversible terminal illness who no longer present a risk to public safety. The department recommends inmates with terminal conditions to the Parole Commission for evaluation. In the pretrial facilities, compassionate releases are arranged for offenders who have not yet been adjudicated and who are terminal with less than six months to live. The social work office assists individuals who have special needs and require continuity of care in community health care facilities.

Palliative Care Unit

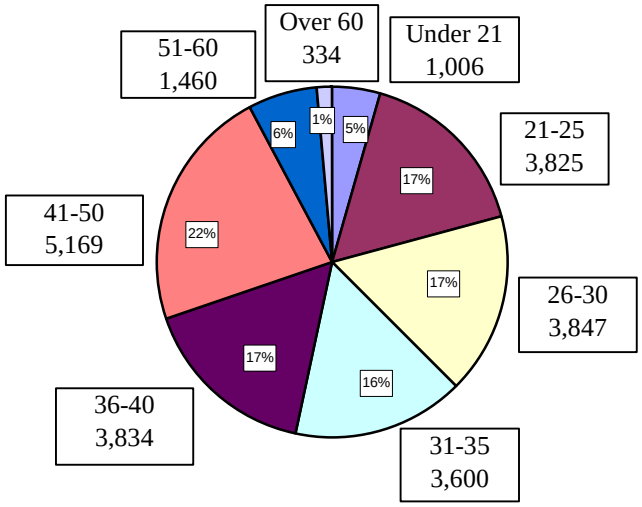
Inmates who are not approved for medical parole that have terminal illnesses are medically managed through the department's Palliative Care Unit at the Maryland House of Correction in Jessup. Jessup region staff has been trained in alliance with the Joseph Richey Hospice to provide care for terminally ill inmates. The hospice staff visits the institution's four-bed unit on a regular basis to consult on hospice care issues.

Inmate Characteristics

The prison population is aging. As Exhibit 14.3 shows, in fiscal 2005, the average age of inmates was 35.2 years, and there has been a gradual increase in the segment of inmates over 40. While this trend may not have serious implications for housing in the future, ultimately an older prison population will require more health care and other age-related services.

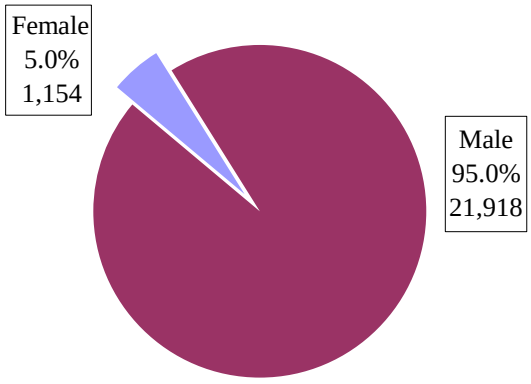
Exhibits 14.4 and 14.5 contain sex and race data for the inmate population. As of July 2005, 95.0% of the population was male and 5.0% was female. African Americans composed 75.8% of the inmate population, whites composed 23.9% of the population, and all other races made up less than 1.0% of the population. Additionally, as of 2005, about 62% of offenders were natives of Maryland, and about 64.5% were convicted in Baltimore City courts.

Exhibit 14.3
Division of Correction
Inmate Population by Age
Fiscal 2005



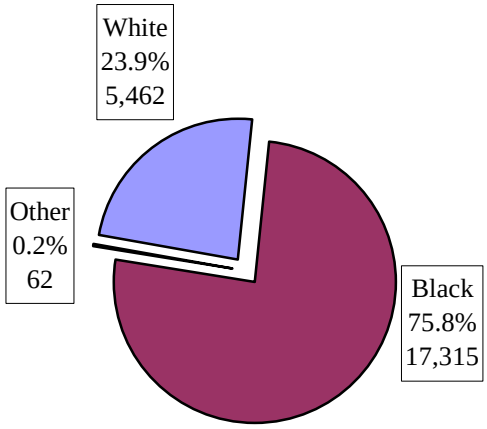
Source: *Inmate Characteristic Report*, Department of Public Safety and Correctional Services, July 2005

Exhibit 14.4
Sex Data for the Inmate Population
Fiscal 2005



Source: *Inmate Characteristic Report*, Department of Public Safety and Correctional Services, July 2005

Exhibit 14.5
Race Data for the Inmate Population
Fiscal 2005



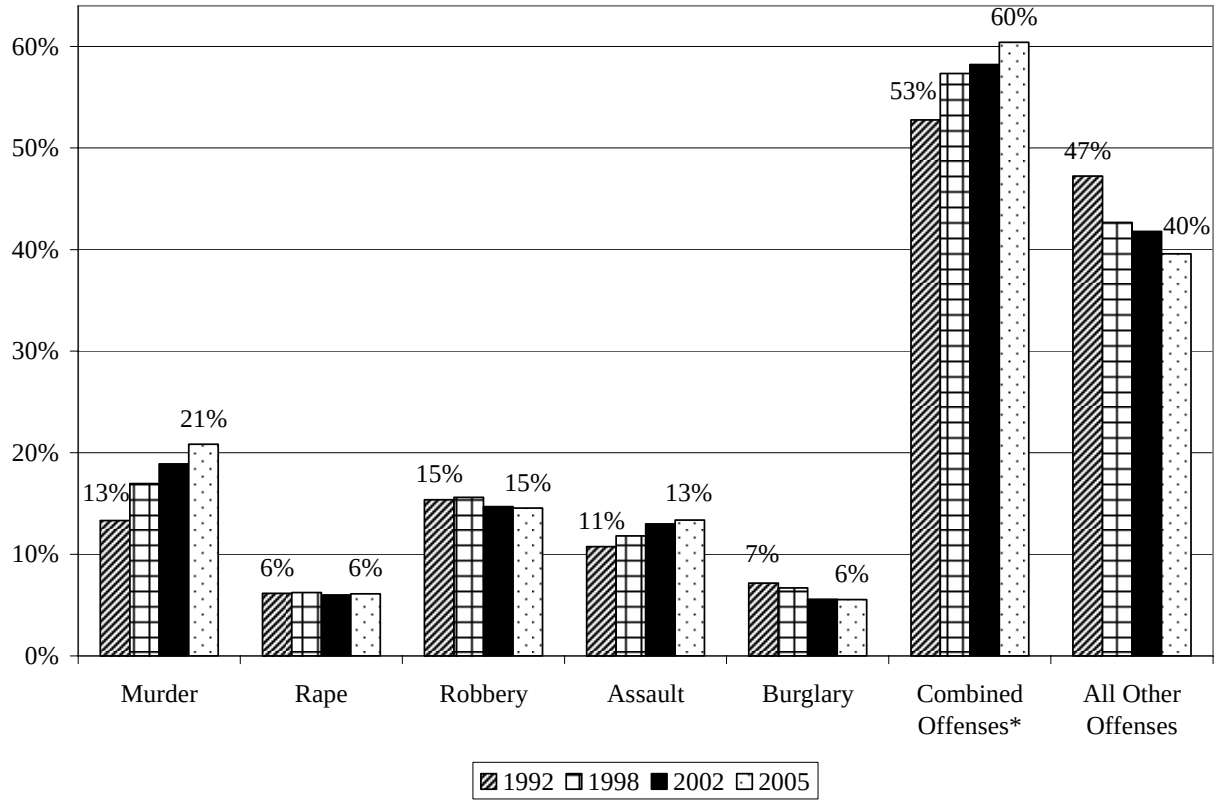
Source: *Inmate Characteristic Report*, Department of Public Safety and Correctional Services, July 2005

Population Growth

Because intakes have consistently exceeded releases, the inmate population has expanded from an average of almost 22,000 in 1998 to over 23,000 in 2005. There has been an average of over 15,000 inmates coming into the correctional system each year over the past 10 fiscal years. At the same time, the average length of stay has been increasing.

Concurrent with growth in the total prison population in recent years, the composition of the prison population has shifted. Exhibit 14.6 illustrates the various categories of offenses as a percentage of the total population of State inmates as of July 1 for the years 1992, 1998, 2002, and 2005. The combined offenses of assault, burglary, murder, rape, and robbery increased from approximately 53% of the total population in 1992 to 60% in 2005. The offense of murder constituted the most notable increase, growing from approximately 13% of the total offense population in 1992 to 21% in 2005.

Exhibit 14.6
Offense Distribution for State Inmates
As of July 1, 1992, 1998, 2002, and 2005



Source: Department of Public Safety and Correctional Services, October 2006

Among the current population, the combined major crime categories of assault, burglary, murder, rape, and robbery increased significantly in number from 10,300 to 13,901, as well as proportion (from 52 percent in 1992 to 60 percent in 2005).

Prison Construction

As seen in Exhibit 14.7, capital projects from fiscal 1987 through 2007 for prisons added 11,631 prison beds[2] at a cost of more than $655 million.

[2] This number includes all of the beds that will exist after the opening of two housing units at North Branch Correctional Institution.

The 1997 General Assembly authorized funds to build a new maximum security prison next to the Western Correctional Institution near Cumberland. The North Branch Correctional Institution (scheduled to open the first two units in January 1, 2007) will be a maximum security, 1,024-bed, single cell institution. With the latest in correctional technology, it will be completely self-contained and separate from the Western Correctional Institution. Through fiscal 2007, over $155 million in State funds and approximately $17 million in federal funds has been authorized for this institution.

Exhibit 14.7
Capital Construction Projects
Summary of Capital Projects
Fiscal 1987-2007

State Correctional Facilities	Year Opened	Cost ($ in Millions)	Operating Capacity
Eastern Correctional Institution, Westover	1987	$99.60	2,754
Maryland Correctional Adjustment Center, Baltimore	1987	20.70	334
Central Laundry Pre-Release Unit, Sykesville	1990	4.20	256
Patuxent Institution, Jessup	1990	2.50	128
Roxbury Correctional Institution, Hagerstown	1990	11.00	384
Jessup Correctional Institution (Maryland House of Correction – Annex)	1991-93	92.70	1,200
Maryland Correctional Institution, Hagerstown	1991	13.00	384
Pre-Release Unit for Women, Baltimore	1992	3.60	144
Jessup Pre-Release Unit	1992	7.40	560
Maryland Correctional Training Center, Hagerstown	1992	13.00	384
Baltimore City Detention Center	1993	1.00	80
Eastern Correctional Institution – Annex, Westover	1993	6.80	444
Metropolitan Transition Center, Baltimore	1994	15.80	700
Western Correction Institution, Cumberland	1996	111.30	1,724
Baltimore City Booking and Intake Center	1996	52.00	811
Maryland Correctional Institution for Women, Jessup	1997	14.00	384
Maryland Correctional Institution for Women, Jessup	2000	14.00	448
North Branch Correctional Institution, Cumberland	2007	172.50	512[1]
Total		**$655.10**	**11,631**

[1] First two units only.

Source: Department of Public Safety and Correctional Services

Violence, Drug Abuse, and Rule Violations

Inmate Assaults

With a greater propensity for violence among inmate populations, correctional officers face assaults on an increasingly regular basis. Incidents of inmate-on-inmate violence have also increased.

In July 2004, the department implemented the facilities incident reporting manager software to record inmate assaults on both other inmates and correctional staff. The software was developed to collect assault data in a more accurate and consistent manner. The software provides for seven categories of assaults: serious physical assaults, serious weapon assaults, sexual assaults, less serious physical assaults, less serious weapon assaults, bodily fluid assaults, and inappropriate physical contact. Exhibit 14.8 displays inmate assaults and homicides for fiscal 2005 and 2006.

Exhibit 14.8
Division of Correction – Assaults and Homicides
Fiscal 2005 and 2006

Fiscal 2005	**Inmate on Inmate**	**Inmate on Staff**
Homicide	1	0
Serious Physical	36	16
Serious Weapon	89	4
Sexual	8	1
Less Serious Physical	497	226
Less Serious Weapon	140	4
Bodily Fluid	5	130
Inappropriate Physical Contact	0	17
Total Incidents	**776**	**398**

Fiscal 2006	**Inmate on Inmate**	**Inmate on Staff**
Homicide	2	1
Serious Physical	45	17
Serious Weapon	161	8
Sexual	12	2
Less Serious Physical	714	335
Less Serious Weapon	266	80
Bodily Fluid	10	149
Inappropriate Physical Contact	0	35
Total Incidents	**1,120**	**627**

Source: Department of Public Safety and Correctional Services, July 2006

Inmate Drug Testing

A factor contributing to prison violence is use and trafficking of drugs among inmates. The Division of Correction has an inmate drug testing policy to address the use of drugs, alcohol, or other controlled substances by inmates and the importation of these into the State prisons by staff or visitors. Employees and visitors are subject to challenge and search upon entering the institutions, including the use of ionscan and drug sniffing dogs. Inmates are subjected to routine tests if under consideration for work release, family leave, work detail, drug treatment, or any other program that permits the inmate to be outside the institution with or without supervision. Inmates may be subject also to drug testing on a random or spot-check basis. Revised adjustment directives increased sanctions for violators.

Employee Drug Testing

The Division of Correction has more than 5,000 employees in sensitive classifications and positions who are subject to random drug testing. Drug testing is a condition of employment for all applicants for sensitive classifications.

Disciplinary Hearings

At reception, each inmate receives a handbook that explains all rules, regulations, and inmate rights. Any inmate charged with violating any rule has the right of due process assured through an impartial hearing. When a hearing officer finds an inmate guilty of an infraction, that officer may recommend a penalty such as a reprimand, restriction of privileges, revocation of good conduct time, a term of disciplinary segregation, or reclassification to greater security. The Internal Investigation Unit of the Department of Public Safety and Correctional Services may also pursue criminal charges for serious violations.

The Inmate Hearing Unit is responsible for all inmate disciplinary hearings in the Division of Correction facilities, the Division of Pretrial Detention and Services, and the Patuxent Institution. The primary duty of the hearing officer is to provide inmates due process hearings that include the right to a fair and impartial hearing, written notice, a written decision, and appeal rights. During fiscal 2005, staff heard an average of 20,000 cases for the Division of Correction, 4,000 cases of the Division of Pretrial Detention and Services, and 1,500 cases for the Patuxent Institution.

Inmate Grievance Procedures

An administrative remedy procedure exists to resolve complaints or problems that an inmate is unable to resolve informally. Each written complaint is reviewed and investigated at the institutional level. The institutional response may be appealed to the Commissioner of Correction and ultimately to the Inmate Grievance Office. Appeals that the Inmate Grievance Office deem without merit are dismissed without a hearing. If a hearing is warranted, the case is referred to the Office of Administrative Hearings, which may either find the complaint justified or dismiss the case. Dismissed cases may be appealed to the appropriate circuit court.

Final decisions by the administrative law judge are reviewed by the Secretary of Public Safety and Correctional Services for affirmation, reversal, or modification. The Secretary's decision is final but may be appealed to the appropriate circuit court within a 30-day period.

Prisoner Litigation Reform

State law, consistent with the federal Prison Litigation Reform Act, establishes numerous restrictions on civil actions filed by prisoners. The law requires a prisoner who files a civil action to pay all or a portion of the applicable filing fee, as determined by the court based on seven factors. Unless a waiver is granted by the court, the fee charged by the court must be at least 25 percent of the entire filing fee otherwise required for a civil action.

The law also requires a prisoner to exhaust all administrative remedies for resolving a complaint or grievance before filing a civil action. The court must dismiss a civil action if the prisoner filing the action has not completely exhausted administrative remedies.

The law further requires the court to review a prisoner's initial complaint and identify recognizable claims before serving the complaint on the named defendants. The court must dismiss the civil action, or any part of the action, if it finds that the action is frivolous, seeks monetary damages from a defendant who has immunity, or is barred because the prisoner has not exhausted administrative remedies.

If a prisoner has filed three or more civil actions that have been declared to be frivolous by a Maryland court or a federal court for a case originating in Maryland, the prisoner is prohibited from filing any further civil actions without leave of court.

Finally, the law requires any compensatory or punitive damages awarded to a prisoner in connection with a civil action be paid directly to satisfy any outstanding restitution order or child support order pending against the prisoner.

Recidivism

The department uses a "repeat incarceration supervision cycle" to follow up on offenders. The repeat incarceration supervision cycle sample includes only new convictions resulting in return to incarceration in the Division of Correction or to supervision under the Division of Parole and Probation within three years of release from the Division of Correction. Excluded would be subsequent commitments to local detention centers or re-arrests without conviction. Based on this very narrow definition of the criminal event that triggers recidivism, the findings show that in 2002 the rate of recidivism for department inmates who were released after serving a sentence ranged from 23.7 percent the first year after release to a cumulative total of 49.7 percent after the third year. (See Exhibit 14.9.)

Exhibit 14.9
Department of Public Safety and Correctional Services
Recidivism Rates for Fiscal 2002 Releases
Cumulative Totals and Percentages

Return Type	Total Released	First Year		Second Year		Third Year	
	12,696						
Return to Probation		1,372	10.8%	2,360	18.6%	3,128	24.6%
Return to DOC		1,632	12.9%	2,592	20.4%	3,183	25.1%
Total Returned		3,004	23.7%	4,952	39.0%	6,311	49.7%

Source: Department of Public Safety and Correctional Services, July 2005

Chapter 15. Incarceration at the Patuxent Institution

The Patuxent Institution is an independent agency within the Department of Public Safety and Correctional Services. The Director of the Patuxent Institution is appointed by, and reports directly to, the Secretary of Public Safety and Correctional Services. The institution has almost 500 employees and an appropriation of $39.3 million for fiscal 2007.

The institution operates a maximum security correctional treatment facility with a 987 bed capacity (878 men and 109 women) and an average daily population of 809 for fiscal 2005. The primary purpose of the institution is to provide programs and services to youthful offenders, other eligible persons, and mentally ill inmates. In addition, the institution houses inmates from the Division of Correction who participate in specialized programs of the institution or for whom the division does not have room.

The institution is unique in placing the responsibility for diagnostic and rehabilitative services and conditional release decisions and supervision under the control of an independent correctional agency. This chapter will discuss the history of the institution and its current functions.

History

The Patuxent Institution began operating in 1955 and its mandate was to provide evaluation and treatment of a special group of criminal offenders known as "defective delinquents." These individuals were involuntarily committed under an indeterminate sentence due to their persistent antisocial and criminal behavior.

In 1977, public concern over the designation "defective delinquent" and indeterminate sentences led to their repeal, and the eligible person remediation program, with a focus on habitual criminals, was created to provide specialized treatment services to offenders accepted into it.

Incidents involving inmates on early release from the institution led to a statutory change in its mission in 1989 from one of rehabilitating habitual offenders to one of remediating youthful offenders, other eligible persons, and mentally ill inmates. The remediation model focuses on educational and vocational programs and substance abuse treatment rather than the psychological programs emphasized by the rehabilitation model.

In 1994, the institution's youth program was established to address the increasing number of youthful offenders, including juvenile offenders that are convicted in adult

criminal courts. The focus on youthful offenders was also due to a recognition that crimes were more likely to be committed by those offenders.

In 2002, the scope of the purpose of the institution was expanded to include other eligible persons and mentally ill inmates.

Patuxent Institution Programs

There are currently four categories of inmates at the institution's facility: (1) "eligible persons"; (2) youthful offenders; (3) mentally ill inmates; and (4) Division of Correction inmates. The programs discussed below focus on its various categories of inmates.

Eligible Person Remediation Program

The institution has an eligible person remediation program for Division of Correction inmates with at least three years remaining on a sentence. In general, inmates may apply for admission on their own or be admitted by recommendation of the sentencing court, the Director of Patuxent Institution, or the State's Attorney. However, inmates convicted of first degree murder, first degree rape, or a first degree sex offense are not eligible unless the sentencing judge recommends evaluation for admission. Inmates serving multiple life sentences or life sentences for murder with aggravating circumstances are excluded.

In fiscal 2005, 86 offenders were evaluated for the program and 56 were admitted. At the end of fiscal 2005, 251 inmates were in the program. Current law provides that no more than 350 eligible persons may be enrolled in the eligible person remediation program. However, the institution may provide other remediation programs that the Secretary of Public Safety and Correctional Services may designate.

Evaluation and Admission

All inmates considered for admission must be evaluated and approved by an institution evaluation team, which consists of a minimum of three professional employees of the institution, including a social worker or behavioral scientist, a psychologist, and a psychiatrist. The six-month evaluation process involves extensive psychiatric and psychological testing and a thorough review of the inmate's social history. To be found eligible for the eligible person remediation program, the evaluation team must find that an inmate:

- has an intellectual deficiency or emotional imbalance;
- is likely to respond favorably to the institution's treatment programs; and
- can be better remediated by the institution than by other types of incarceration.

Inmates who are found ineligible after evaluation are returned to the Division of Correction. Inmates who are admitted may withdraw from the institution at any time and be transferred to the Division of Correction. An inmate who withdraws may not apply for readmission for three years.

Youth Program

Eligibility criteria and evaluation for admission to the youth program are similar to those of the eligible person remediation program discussed above. In addition, the inmate must be under the age of 21 at the time of referral and must be referred for evaluation by the trial court at the time of sentencing. Inmates in this program must remain at the institution until expiration of the sentence, parole, release on mandatory supervision, or transfer to a Division of Correction institution.

In fiscal 2005, the institution evaluated 47 youthful offenders, and 36 were admitted. As of the end of fiscal 2005, there were 171 offenders in the youth program.

Treatment Units

The Patuxent Institution contains four treatment units. The eligible person remediation, youth, reentry, and female programs each have one treatment unit. See discussion of reentry and female programs below. The treatment unit for the eligible person remediation program contains two remediation management teams, while the other treatment units each have one remediation management team. A team consists of at least one social worker, one psychologist, one psychiatrist, and a senior corrections officer.

An individualized treatment plan developed for each eligible person or youthful offender is carried out by the remediation management team and reviewed every 12 months by the director or the associate director. The Institutional Board of Review also reviews each treatment plan as discussed below.

Tier System

The institution has a graded tier system consisting of four levels, with the first level being the entry tier. The graded tier system extensively uses communications and learning theory to promote socially acceptable behavior. As each inmate successfully completes the requirements of the inmate's treatment plan, that inmate may progress to a higher tier and be accorded additional privileges and responsibilities. While the system assigns a minimum time commitment to each tier, no maximum time is assigned. An inmate may stay at a tier for as long as required for progress and promotion or until it is clear that the inmate is not receiving benefits at the assigned tier. Failure to complete requirements of a treatment plan may result in demotion to a lower tier or removal from a program.

Board of Review

The institution is the only State correctional facility with its own conditional release authority. The Institutional Board of Review is composed of nine members, including the director, two associate directors, the warden, and five members of the general public appointed by the Governor, one of whom must be a member of a victims' rights organization.

The board reviews the progress and treatment plan of each offender in the eligible person remediation program and the youth program at least once each year. The board may grant, deny, or revoke offender eligibility for these programs. The board also may recommend that a sentencing court release an offender from the remainder of a sentence. In addition, the agreement of seven of the nine board members is required before an eligible person may be approved for any conditional release discussed below. In fiscal 2005, the board heard 355 cases, and 308 of those cases were annual reviews.

Conditional Release

Inmates who have completed the tier system with a minimum of one year on the fourth tier and who are therapeutically ready may be recommended to the board for participation in the institution's program of conditional release. The program comprises gradual, hierarchical steps to facilitate a return to community life. The program allows additional evaluation of an inmate as the structure of prison life is reduced.

A pre-status clinical conference is held to review the inmate's criminal and institutional record, as well as an assessment of the risk of future criminal behavior. If the remediation management team decides to recommend conditional release, then an appearance is scheduled before the board. The board secretary also notifies the victim or

victim's representative of the opportunity to comment on conditional release. See Chapter 12 of this handbook for further discussion of victims' rights.

The following are the categories of conditional release, from most restrictive to least restrictive:

- accompanied day release;
- work/school release status in which inmates work or attend school and reside at the institution's reentry facility);
- parole to the institution's reentry facility at which offenders reside and prepare for community release; and
- community parole which allows an offender to live independently outside the institution.

The law places limits on the authority of the board to grant parole. For a sentence other than life imprisonment, the board may approve parole for offenses committed on or before March 20, 1989. While the board may make recommendations concerning parole for nonlife sentences for offenses committed after March 20, 1989, final approval by the Secretary of Public Safety and Correctional Services is required.

With regard to life sentences, the board may approve parole if the offense was committed before July 1, 1982. If the offense was committed after July 1, 1982, and before March 20, 1989, the board may recommend parole, but the Governor's approval is required. The parole of eligible persons serving life sentences for offenses committed after March 20, 1989, must be approved by both the Secretary of Public Safety and Correctional Services and the Governor. In addition, an eligible person serving a life sentence for first degree murder, first degree rape, or a first degree sex offense may not be released on parole until the inmate has served the same minimum time required for Division of Correction inmates (25 years for murder with an aggravating circumstance and 15 years for other life sentences, less diminution of confinement credits).

Unlike the Parole Commission, the board may release an inmate with a mandatory minimum sentence before the mandatory minimum has been served, if the requirements described above are met.

Inmates granted conditional release status are closely monitored and required to abide by a number of special conditions, including approval of itineraries, drug and alcohol testing, and home, job site, and telephone checks. In fiscal 2005, the board granted conditional release in 29 instances (17 accompanied day leaves, 11 work release leaves, and 1 release on community parole).

In fiscal 2005, the board denied four requests for conditional release. Inmates who are denied conditional release by the board are eligible for release on expiration of sentence or release on mandatory supervision in the same manner as Division of Correction inmates. See Chapter 16 of this handbook for further discussion of release from incarceration.

Revocation of Conditional Release/Expulsion

The board may revoke conditional release of an inmate who violates conditions of release and return the inmate to the institution or the Division of Correction.

For offenses committed after March 20, 1989, an eligible person's first major violation of a release condition could require revocation from the status for at least six months, with the possibility of expulsion from the institution. However, the board does have the discretion to reduce the period of status revocation for those inmates found guilty of a major infraction, if they otherwise have a history of positive community adjustment. A second major violation automatically leads to expulsion.

In fiscal 2005, the board revoked work release status in six cases.

Community Reentry Facility

The institution operates a reentry facility in Baltimore City. The facility provides housing for a maximum of 25 inmates on school release, work release, or parole status. Persons housed at the reentry facility are required to contribute room and board from their wages. On-site staff provide supervision services and continued treatment services to all persons housed at the facility or on community parole.

Also, a Reentry Aftercare Center located at this facility provides outpatient services to offenders who are referred from the Division of Parole and Probation's Correctional Options Program, Central Home Detention, and the Toulson Boot Camp.

Division of Correction Inmates and Mental Health Services

In fiscal 2005, the institution's capacity for men was 878 inmates, of whom 192 were under the jurisdiction of the Division of Correction. These Division of Correction inmates are housed at the institution for one of three reasons: (1) to receive mental health treatment; (2) to alleviate crowding throughout the State correctional system; or (3) to participate in the Regimented Offender Treatment Center program. While these inmates do not participate in the institution's treatment programs as eligible persons or youthful offenders, they are provided with educational services.

Mental Health Program

In 1992, mental health services for the Division of Correction were consolidated under the management of the Director of the Patuxent Institution, and the institution became the administrative headquarters and the residential treatment center for mentally ill offenders in the State correctional system.

In 1997, the position of Director of Mental Health Services was created with the mandate to provide a systematic plan for the management and treatment of the mentally ill offender from the point of reception within the correctional system, throughout incarceration, to the time of release. The systematic plan is based on a "least restrictive environment" philosophy and combines general population placement, special needs placement, acute care hospitalization, and a step-down program to treat offenders.

Correctional Mental Health Center – Jessup

The Correctional Mental Health Center, housed at Patuxent, is the inpatient mental health unit for the Division of Correction. The center has a capacity of 192 beds. In fiscal 2005, there were 193 offenders admitted and 140 offenders released. The center consists of an acute unit, a step-down unit, and a mental health transition unit.

The acute unit attempts to stabilize mentally ill inmates so they can be returned to a Division of Correction institution. However, an inmate with a chronic mental illness could spend his or her entire sentence at the center.

The 34-bed step-down unit was created to address those mentally ill inmates who do not need acute care but are unable to function in a general prison population. These inmates may have substance abuse problems or other life skill deficiencies. In this unit, offenders are placed in a structured environment to assist with the development of life skills that will enable them to return to another institution in the Division of Correction.

In fiscal 2005, the unit served an average daily population of 25 inmates and transferred 11 inmates back to the general corrections population.

The 34-bed mental health transition unit began operating in fiscal 2000 to provide comprehensive aftercare for mentally ill offenders who return to the community through mandatory release or parole. Inpatient and outpatient services are provided, as well as individual or group therapy. Stabilized inmates who are within eight months of release and who want to participate in their own aftercare planning are referred to this unit. In fiscal 2005, there were 42 inmates admitted and 34 inmates discharged.

Other Treatment Programs

In 1994, the Regimented Offender Treatment Center was established at Patuxent, in conjunction with the Division of Parole and Probation, as part of the Correctional Options Program. The center targets inmates with moderate substance abuse problems and more serious criminal sentiments. It is a clinical protocol of structured, cognitive-behavioral modules consisting of a core curriculum of relapse prevention, thinking for change, anger management, victim impact, and transition planning. In fiscal 2004, treatment length was expanded from six weeks to four months. In fiscal 2005, the program for men had a capacity of 100 beds, while the program for women had a capacity of 24 beds. Cycles of up to 25 men and 6 women were admitted monthly. In fiscal 2005, the men's program admitted 163 men and discharged 165. The women's program admitted 64 women and discharged 52 during the same period.

In 2000, Patuxent Institution and the Maryland Correctional Institution for Women developed the Women's Intensive Treatment program. The program has been adversely affected by staffing shortages and was downsized during fiscal 2005. The program is intended to provide individualized treatment planning to target criminality and psychological dysfunction. A dual diagnosis approach is used to address substance abuse problems. The maximum capacity is 72 beds.

In January 2001, Patuxent took over the clinical aspects of the Residential Substance Abuse Treatment program. Services for male inmates are located at the Central Laundry Facility in Sykesville, and services for women are at the Patuxent Institution for Women. The program provides 6 months of treatment to inmates who are within 12 to 18 months of release. In fiscal 2005, 21 offenders were taken into the program and 7 of those inmates were transferred.

Due to difficulties in maintaining adequate staffing levels, the Regimented Offender Treatment Center program, the Women's Intensive Treatment program, and the Residential Substance Abuse Treatment program were subcontracted in April 2006 to a

private treatment organization called Gaudenzia, Inc. Gaudenzia provides residential and outpatient programs that address substance abuse treatment, education, and prevention. Transitional services are also offered to those people who complete the residential program. Gaudenzia provides residential and outpatient services to adult male State prisoners through the Metropolitan Transition Center, in cooperation with Baltimore Substance Abuse Systems, and provides prison-based treatment services at the Women's Detention Center in Towson. Gaudenzia manages other substance abuse treatment centers in Park Heights, on the grounds of Rosewood State Residential Center, and in Landover, Maryland.

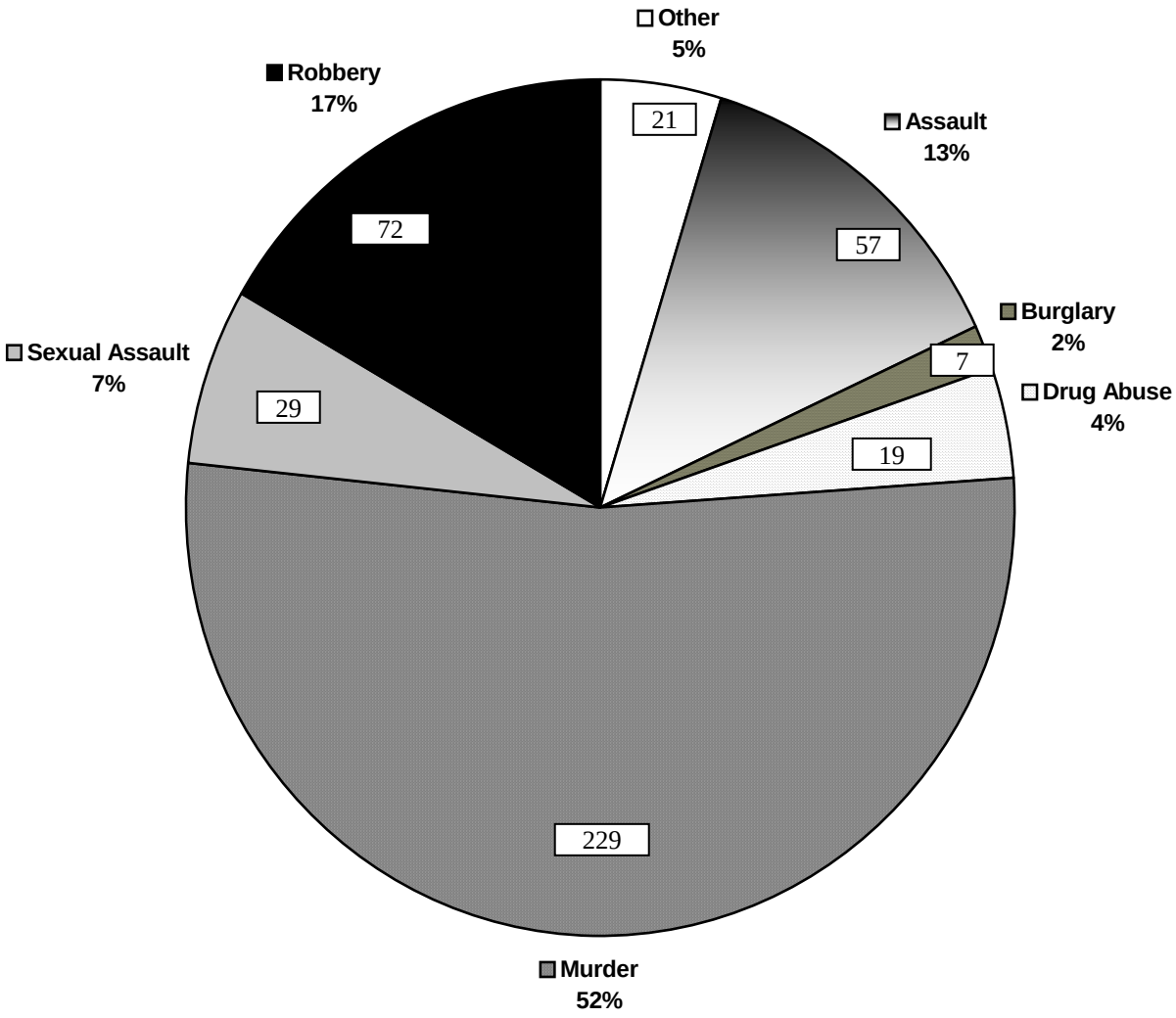
In fiscal 2005, a pre-treatment module was developed to improve readiness for treatment of offenders and institutional security on the tiers where offenders are housed while waiting to be evaluated for admission to the eligible person and youthful offender programs. The treatment program involves offenders participating in a short-term substance abuse group. They also participate in a highly structured cognitive-behavioral/social learning treatment called "Thinking for Change," as well as regular tier meetings to resolve issues relating to prison life.

Statistics/Fiscal Information

Exhibit 15.1 shows the percentage of the institution's inmates by offense committed.

The average annual cost per inmate at Patuxent was estimated to be $41,575 in fiscal 2005, as compared to $28,198 at the Maryland House of Correction-Jessup, which is another maximum security facility. The higher cost (47.4 percent) of incarceration at Patuxent reflects many services not directly provided by other division facilities, such as diagnostic services, academic education, conditional release decision making, and conditional release supervision. These services are provided to division inmates by other agencies, such as the Parole Commission and the Division of Parole and Probation, and are not included in the calculation of per capita costs at the facilities of the Division of Correction.

Exhibit 15.1
Patuxent Institution
Inmates by Offenses
Fiscal 2005



Note: Numbers within graph represent the number of inmates (excluding inmates under the jurisdiction of the Division of Correction) incarcerated by offense.

Source: Department of Public Safety and Correctional Services, Patuxent Institution

Chapter 16. Release from Incarceration

An inmate may be released from imprisonment by one of the following methods: expiration of sentence, release on mandatory supervision, parole, or gubernatorial pardon or commutation of sentence. This chapter will discuss each of these methods.

Expiration of Sentence

An inmate may be released by the method of expiration of the sentence. The entire sentence imposed by a trial court is often not actually served before expiration of sentence because diminution credits that may be awarded to an inmate shorten the time required to be served by the inmate. Diminution credits are days of credit either granted or earned on a monthly basis. Inmates in both Division of Correction and local correctional facilities are eligible for diminution credits.

State law establishes the types of credits that an inmate may be allowed. These are loosely called "good time" credits, although there are a variety of other credits, in addition to good conduct credits, that may be allowed based on an inmate's participation in work, educational programs, and special projects. The purpose of these credits is to encourage good inmate behavior and promote an interest in activities that will occupy inmates while confined and prove useful after release. Inmates serving sentences for violent crimes or drug distribution are awarded good conduct credits at the rate of 5 days per month and may earn up to 10 days of other credits, for a maximum of 15 days per month. Other inmates are awarded good conduct credits at the rate of 10 days per month and may earn up to 10 days of other credits, for a maximum of 20 days per month. Credits may be forfeited or restricted through misbehavior in the institution.

Release of an inmate on expiration of sentence is mandatory and not subject to discretion. A release on expiration of sentence is not subject to any condition or supervision unlike release on mandatory supervision or parole discussed below.

Release on Mandatory Supervision

Release on mandatory supervision is a conditional release from confinement that results from diminution credits discussed above and applies only to Division of Correction inmates sentenced to a term of confinement exceeding one year. Division of Correction inmates serving a term of one year or less and inmates in local detention centers may also earn credits, but they are not subject to mandatory supervision on release. There is no discretion involved in release on mandatory supervision.

Individuals on mandatory supervision are supervised by the Division of Parole and Probation until the end of the sentence and are subject to the same terms and conditions as inmates released on parole. See discussion of parole below.

If an inmate is sentenced to imprisonment for a violent crime committed while on mandatory supervision, and the mandatory supervision is then revoked, the inmate will automatically lose all diminution credits awarded before the inmate's release on mandatory supervision, and the inmate is not eligible for any new diminution credits on that term of confinement.

Parole

In General

Parole is a discretionary and conditional release from imprisonment determined after a hearing for an inmate who is eligible to be considered for parole. If parole is granted, the inmate is allowed to serve the remainder of the sentence in the community, subject to the terms and conditions specified in a written parole order.

The Maryland Parole Commission has jurisdiction regarding parole for eligible inmates sentenced to the Division of Correction and local correctional facilities. Inmates in the Patuxent Institution who are eligible for parole are under the jurisdiction of the Patuxent Board of Review. For a discussion of the Patuxent Board of Review see Chapter 15 of this handbook.

The commission is composed of 10 commissioners who are appointed for six-year terms by the Secretary of Public Safety and Correctional Services, with the advice and consent of the Senate. The Secretary, with the approval of the Governor, also appoints the chairperson of the commission. In addition to the commissioners, there are 10 hearing officers.

Parole Eligibility

Inmates sentenced to less than six months are not eligible for parole. When inmates serving sentences of incarceration of six months or more have served one-fourth of their sentences, they are entitled to be considered for parole, with several significant exceptions. These exceptions are set forth below:

- Inmates serving a term of incarceration that includes a mandatory minimum sentence that a statute provides is not subject to parole (*e.g.*, use of a handgun in a

felony or crime of violence, subsequent violent offenders with enhanced sentences, subsequent felony drug offenders with enhanced sentences) are not eligible for parole until they have served that mandatory minimum sentence. Diminution credits, discussed above, may not be applied towards this requirement.

- Inmates convicted of violent crimes committed on or after October 1, 1994, who do not receive a mandatory minimum sentence are required to serve at least one-half of their sentences before becoming eligible for parole.

- Offenders sentenced to life imprisonment must serve a minimum of 15 years less diminution credits before becoming eligible for parole and may be paroled only with approval of the Governor.

- Offenders sentenced to life imprisonment for first degree murder, instead of a sentence of death or a sentence of life imprisonment without the possibility of parole, must serve a minimum of 25 years less diminution credits before becoming eligible for parole.

- Inmates serving a sentence of life without the possibility of parole may not be granted parole unless the Governor commutes the sentence to allow for the possibility of parole. See discussion of Governor's commutation power below.

- Offenders who are age 65 or older who have served at least 15 years of a mandatory sentence for a crime of violence may apply for and be granted parole.

Parole Hearings

If an inmate is eligible for a hearing, the parole commission is required to give timely notice to the inmate before the hearing. Generally a parole hearing is held before a single hearing officer or a parole commissioner acting as a hearing officer. However, if the inmate is serving a sentence for homicide or is serving a sentence of life imprisonment or if a victim requested that the hearing be opened to public attendance, a parole hearing is held before a panel of at least two commissioners. See Chapter 12 of this handbook for further discussion of victims' rights.

The commission may grant parole, deny parole, or decide to rehear the case at a future date. Immediately after the hearing, the hearing officer must verbally inform the inmate of the hearing officer's recommendation and submit a written report of findings and recommendations to the Commissioner of Correction, the commission, and the

inmate within 21 days after the hearing. A parole commissioner is required to review the written recommendations of a hearing officer.

The inmate, the Commissioner of Correction, and the parole commission have five days to file a written exception to the hearing officer's recommendations. If an exception is not filed within the five-day period, the recommendation of the hearing officer is adopted. If an exception is filed, the parole commission or a panel of at least two commissioners assigned by the chairperson of the commission may schedule an appeal hearing. The appeal hearing is on the record, and the decision on an appeal is final.

Decisions of a two-commissioner panel must be unanimous. When the members of a two-commissioner panel disagree, the chairperson of the parole commission must convene a three-member panel to hear the case. Decisions by more than two commissioners are by majority vote.

The parole commission also reviews cases and makes recommendations to the Governor concerning parole of an inmate serving a sentence of life imprisonment and reviews cases concerning pardons, commutations, or other clemency at the request of the Governor.

An inmate has a right to see any document in the inmate's file except diagnostic opinions, information obtained on a promise of confidentiality, or other privileged information. On request, the commission has the responsibility to provide the substance of any information withheld from the inmate with an explanation as to the legal basis for that exclusion.

When deciding whether to grant parole, the commission must consider:

- the circumstances surrounding the crime;
- the physical, mental, and moral qualifications of the inmate;
- a report on a drug or alcohol evaluation that has been conducted on the inmate, including any recommendation concerning the inmate's amenability for treatment and the availability of an appropriate treatment program;
- the likelihood that the inmate will commit additional crimes if released;
- whether release is compatible with the welfare of society;

- the progress of the inmate during confinement, including academic progress in mandatory education programs;

- any recommendation made by the trial judge at the time of sentencing; and

- an updated victim impact statement or recommendation and any information or testimony presented to the commission by the victim or the victim's designated representative. See Chapter 12 of this handbook for further discussion of victims' rights.

When making its decision, the parole commission also examines the offender's criminal and juvenile record, employment plans, substance abuse problems, family status and stability, and emotional maturity.

If the commission grants parole, the individual must have a verified and approved home plan and generally must have employment. Conditions of parole include required reporting to a parole agent, working regularly, getting permission from a parole agent before changing a job or home or leaving the State, and no involvement with drugs or weapons. Other terms may be imposed if appropriate in an individual case.

For offenders who meet certain criteria, the commission may negotiate a Mutual Agreement Program contract. The contract sets out an individualized program of goals (such as education or job training) that must be met according to a detailed timetable. Offenders who are able to meet the contract requirements are guaranteed a future parole release date. If the contract is canceled before the release date, or if the offender fails to meet the contract requirements, the offender's parole status reverts to the normal parole hearing schedule.

Supervision after Release

An inmate released on parole or under mandatory supervision is assigned to a parole agent of the Division of Parole and Probation within the Department of Public Safety and Correctional Services. The division also supervises probationers. See Chapter 10 of this handbook for information on the supervision of probationers.

Based on an assessment of an offender's risk to the community and other factors, which is updated every six months, offenders are actively supervised at one of three levels of supervision: intensive, intermediate, or standard. An offender is required to pay a monthly fee of $40 to the division unless exempted by law.

As of June 2006, approximately 663 parole and probation agents were responsible for the supervision of approximately 66,000 offenders subject to probation, parole, or mandatory supervision. A total of 5,166 of these offenders are under mandatory release supervision (down from 7,348 offenders at the beginning of fiscal 2003), and 4,659 offenders are under parole supervision (down from 5,518 offenders at the beginning of fiscal 2003). In addition, another 55 parole and probation agents currently function as full-time investigators, conducting presentence, preparole, and other types of investigations for the Maryland Parole Commission, the courts, and other criminal justice agencies.

Revocation of Release

Any parole violation of a condition of release may result in revocation of parole. A violation is classified as either a "technical" violation that is not a crime (*e.g.*, failure to attend a required meeting or failing to be employed) or a commission of a new crime. If a violation is alleged, the Maryland Parole Commission or the Division of Parole and Probation (if this power is delegated to the division) must decide whether to issue a subpoena or retake warrant for purposes of a parole revocation hearing. A subpoena is requested from the parole commission if the parole agent believes that the offender is not a public safety threat and that the offender will not flee. Otherwise, a parole agent must request a retake warrant, which subjects the individual to arrest, and submit a written report to the commission on the alleged violation.

The commission can concur with a no action recommendation, authorize a subpoena, or issue a retake warrant.[1] The commission may, in its discretion, consult with the parole agent or other responsible person if additional information concerning the offender is necessary.

A person on parole or mandatory supervision who is arrested on a retake warrant may not be released on bail. An alleged violator taken into custody on a retake warrant as a result of a technical violation is entitled to a preliminary hearing before a hearing officer. The right to a preliminary hearing may be waived by the alleged violator. The hearing officer may:

[1] A "no action" recommendation is generally made when an offender has been arrested for a new crime but the charge has not been adjudicated at the time of the report and the offender is not considered a threat to the community. This recommendation is also made when, despite the violation, the offender is making a significant effort to address his/her behavior. This could include entering a treatment program, making restitution, or other pro-social behavior.

- determine that there is probable cause to hold the parolee for a revocation hearing; or

- withdraw the retake warrant and substitute a subpoena requiring the violator to appear before the commission at a certain time and date for a revocation hearing.

This second alternative allows an individual to be released pending the parole revocation hearing. Release pending the hearing may include additional conditions to structure the individual's behavior.

If the hearing officer determines that there is probable cause to believe there was a technical violation or the individual waives the right to a preliminary hearing, and in all cases where the alleged violation is for a crime, a commissioner holds a hearing within 60 days if possible after arrest on the retake warrant. As with parole hearings, the entire commission may elect to hear the revocation hearing. The individual is entitled to counsel and, if the commission is notified five days in advance of the revocation hearing, may produce witnesses. The commission may issue subpoenas to compel the appearance of witnesses.

If the commission finds by a preponderance of the evidence[2] that the individual has committed a violation, it may continue the individual on release, subject to any new conditions that it may impose, or revoke parole. If parole is revoked, the commission may order the violator to serve the remainder of the original term of incarceration or set a date for a hearing to reconsider parole.

The commission may in its discretion grant the violator whose parole is revoked credit for time spent on parole before the violation. This is known as "street time." However, a violator on parole for a violent crime whose parole is revoked based on another violent crime may not receive credit for street time. Uncredited time spent on parole is added to the legal expiration date of the original sentence.

The violator may appeal a decision to revoke parole to a circuit court. The circuit court decides the case on the record made by the commission.

[2] This is the same standard of proof applicable in most civil cases and means that there must only be more evidence than not that the violation occurred. It is a much lesser burden than the criminal standard of proof "beyond a reasonable doubt."

Ex Post Facto Legislation

The *ex post facto* clauses of the U.S. Constitution and the Maryland Declaration of Rights prohibit criminal or penal laws that operate retrospectively and to the disadvantage of an offender. As applied to expiration of sentence, mandatory supervision, and parole eligibility, these clauses require that an inmate be subject to the laws and regulations in force at the time the offense was committed. Later laws that are more restrictive may only be applied to future inmates and may not constitutionally be applied to current inmates.

Pardon or Commutation by Governor

An inmate or other offender may apply to the Governor for clemency. Article II, Section 20 of the Maryland Constitution authorizes the Governor to grant reprieves[3] and pardons (including, by implication, commutation of a sentence), if the Governor gives notice in at least one newspaper of the application for clemency. The only limitation on this power is that the Governor may not grant a pardon or reprieve in cases of impeachment or in cases in which the constitution otherwise limits the power.

Also, statutory law authorizes the Governor to pardon a person, or reduce a sentence or commute or change a death penalty into a period of confinement, subject to the same constitutional notice requirements.

A pardon is evidenced by a written executive order signed by the Governor and absolves the individual from the guilt of a criminal act and exempts the individual from any penalties imposed by law for that act. It is presumed that the conviction was lawful and proper unless the pardon states that the grantee has been conclusively shown to have been convicted in error. The Governor may issue a conditional pardon that requires the grantee to do or refrain from doing something as a condition for granting the pardon. The Governor may also issue a partial pardon.

A commutation of sentence is a remission of part of the punishment – a substitution of a lesser penalty for the one originally imposed. For example, the Governor may commute a sentence required by statute to be without the possibility of parole to allow for the possibility of parole. However, most commutations are "Christmas commutations" where the Governor commutes the sentence of an individual

[3] A reprieve is the withdrawal of a sentence for an interval of time whereby the execution of the sentence is suspended. A reprieve is typically used to defer execution of a death penalty. It is not a method of release from incarceration.

due to be released shortly after the holidays to allow the individual to spend the holidays with his or her family.

When the Governor is considering whether to exercise clemency, the Maryland Parole Commission is usually consulted. The commission is required to make recommendations to the Governor concerning applications for pardons, reprieves, and commutations. Also, if delegated by the Governor, the commission hears cases involving an alleged violation of the conditions of a conditional pardon.

Few inmates are released early from incarceration by executive clemency. In calendar 2002 through 2005, the number of pardons fluctuated annually between a low of 13 and a high of 64.[4] During the same period, commutations fluctuated from a low of 1 to a high of 11.

[4] All pardons do not result in release from incarceration because the Governor may grant a pardon after completion of a sentence as a reward for exemplary behavior.

Chapter 17. Conclusion

Changes in criminal justice policy often result from events that trigger a reaction. The violence associated with the crack cocaine epidemic in the 1980s leads to the war on drugs. A fatality caused by a drunk driver spurs the enactment of additional laws against drunk driving and a greater emphasis by law enforcement on enforcing the laws. A victim who is not allowed to be present at an offender's trial starts a victims' rights movement. The murder of a child by a released sex offender gives rise to a "Megan's Law" requiring registration of convicted sex offenders and community notification of their location. This inevitably leads to a piecemeal approach to solving the crime problem.

The State Commission on Criminal Sentencing Policy has as part of its mission the goal of providing policymakers with information on how changes in sentencing and release laws will have an impact on prison population. This type of information should prove useful in predicting those population trends and budgetary requirements. It is of more limited value in assessing how a change will affect public safety.

Although crime rates have slowly declined across the nation since the 1990s, Maryland still experiences overloaded court dockets, overworked law enforcement officers, parole and probation agents and correctional officers, overcrowded correctional facilities (despite additional construction), and high rates of recidivism. Budget concerns have made paying for the cost of growing prison populations an important issue. In response to these concerns, provisions authorizing evaluation of nonviolent offenders for drug or alcohol dependency and the diversion of such defendants into specialized drug courts and treatment services rather than incarceration have expanded. In addition, the Department of Public Safety and Correctional Services has implemented policies focusing on a combination of custody and control along with rehabilitation and treatment services that emphasize cognitive restructuring, academic training, and vocational skills. Yet the extent to which current policies related to criminal justice, corrections, and law enforcement have been effective in deterring crime is unclear.

The future of the death penalty in the State is uncertain. Concerns about fairness and potential errors in the imposition of the death penalty have been raised in the State and the nation. Maryland implemented a death penalty moratorium by way of executive action pending the release of a report concerning the role that racial bias plays in death penalty decisions. The report, released in 2003, found that the race of the offender did not have a significant impact in the death penalty process; however, concerns were raised regarding geographic disparities and racial disparities relating to the race of the victim of the crime. The moratorium ended in January 2003. Currently the Court of Appeals is

reviewing protocols regarding the implementation of the execution procedure itself; thus the death penalty debate continues.

The purpose of this handbook has been to increase the reader's understanding of the criminal justice process in Maryland. The presentation of caseload statistics and trends highlights the problems of the system. The State has limited resources to address the problem of crime in particular and the needs of the State in general. It is with this understanding that future decisions concerning criminal justice policy must be made.

Glossary

Adjudication – the decision rendered by the juvenile court at an adjudicatory hearing.

Adjudicatory hearing – a juvenile court hearing to determine whether the allegations in a petition that a child has committed a delinquent act are proven beyond a reasonable doubt.

Administrative per se offense – the administrative offense of driving or attempting to drive with an alcohol concentration of 0.08 or more grams of alcohol per 100 milliliters of blood or 210 liters of breath or refusing to submit to a test for alcohol concentration which subjects the driver to a suspension of the driver's license by the Motor Vehicle Administration.

Affirmative defense – a defense (*e.g.*, self-defense or insanity) in which the defendant introduces evidence which, if found to be credible, will negate civil or criminal liability, even if it's proven that the defendant committed the alleged acts.

Aftercare – the supervision and ancillary services that a child who has been adjudicated delinquent receives after the completion of a long-term residential placement.

Aggravated assault – a term used for national crime reporting purposes only (*see* Uniform Crime Reports). In Maryland, it includes first degree assault (a felony), as well as the misdemeanor of second degree assault if it involves severe or aggravated bodily injury. Aggravated assault is not technically a crime in Maryland.

Alternatives to incarceration – programs that divert criminal offenders from State or local correctional facilities. Examples are public and private home detention (both pretrial and postconviction), boot camp, the Drinking Driver Monitor Program, and drug court.

Appeal – a petition to a higher court to review the decision of a lower court. An appeal may either be *de novo* (meaning a new trial), where the decision of the lower court is irrelevant to the new proceeding, or on the record, where the decision of the lower court is reviewed on the record for legal errors. The term also applies to a review by a court of a final order of an administrative agency.

Automated enforcement – the issuance of a citation for certain civil motor vehicle offenses by an automatic traffic enforcement system rather than by a police officer. The system is a device with one or more motor vehicle sensors working in conjunction with a traffic control signal or radar detector to produce images of a motor vehicle entering an intersection against a red signal indication or exceeding the speed limit.

Bail – a procedure for conditioning the release of an individual charged with a criminal offense by posting with the court money or other security.

Bench trial – a trial in which there is no jury and a judge determines all questions of fact as well as law.

Burden of proof – the responsibility of a party in a trial to introduce evidence to persuade the judge or jury in order to win a verdict in that party's favor.

Burglary – in Maryland, the unlawful entry of a structure, either with or without intent to commit a crime. There are felony and misdemeanor degrees of burglary, depending on the type of structure entered and whether a crime was intended.

Case management – services applicable to all Division of Corrections inmates within two years of an estimated release date that involve the development of a coordinated program designed to ensure the receipt of services most needed to facilitate successful reentry into society.

***Certiorari,* Writ of** – an order by a superior court to a lower court to produce a certified record of a case decided in the lower court. It is discretionary with the court to grant a petition for writ of *certiorari* filed by a defendant or the State. (Used by the Court of Appeals and the United States Supreme Court when they decide to hear a criminal (or other) case.)

Challenge for cause – a request that a prospective juror be dismissed because there is a specific and forceful reason to believe the person cannot be fair, unbiased, or capable of serving as a juror.

Charges – formal accusation of a criminal offense, typically in the form of a charging document.

Charging document – written accusation alleging that a person has committed a criminal offense. The document may be in the form of a citation, statement of charges, information, or indictment.

Circuit court – a trial court of general jurisdiction, also having jurisdiction to hear appeals from the District Court. Jury trials are available.

Collateral review – review limited to sentencing or other matters not directly bearing on guilt or innocence.

Commitment – the action of a judicial officer ordering that a person subject to judicial proceedings be placed in the legal custody of the Department of Juvenile Services, the Department of Health and Mental Hygiene, the Department of Public Safety and Correctional Services, or a local correctional facility for a specific reason authorized by law; also, the result of the action and admission to the program.

Common law – law found in prior court decisions, conventions, and traditions as opposed to statutory law. The common law of England, as well as English statutes in effect on July 4, 1776, was adopted in Maryland through the Maryland Declaration of Rights, subject to modification or repeal by statute.

Complaint – a written statement from a person or agency having knowledge of facts that may cause a child to be subject to the jurisdiction of the juvenile court.

Coram nobis – bringing to the court's attention errors of fact which were not presented at trial through no fault of the defendant and which would have led to a different result in the trial. Generally superseded in Maryland by the statutory postconviction process.

Court of Appeals – highest State appellate court, having seven members. Generally hears cases by way of writ of *certiorari*, but automatically hears appeals of all death sentences.

Court of Special Appeals – intermediate State appellate court, having 13 members who generally sit in panels of three. Hears appeals on the record from the circuit courts, and considers requests for leave to appeal the denial of certain victims' rights and probation revocations.

Court trial – *see* Bench trial

Crime rate – the number of offenses per 100,000 population. Crime rates may be computed for particular areas, such as an individual county, or for particular crimes, such as murder.

Criminal Justice Information System (CJIS) – an event-based computerized system maintained by the Department of Public Safety and Correctional Services for the reporting of all criminal activity in Maryland. At the federal level, CJIS also means Criminal Justice Information Services Division of the FBI.

De novo – a new proceeding. In criminal procedure, it is used to refer to an appeal in which a party is given a new trial, as if the original trial did not occur.

Defendant – a person who has been arrested for or charged with a criminal offense.

Delinquent – *n.* a child who has committed a delinquent act; *adj*. requiring the guidance, treatment, or rehabilitation of the juvenile court because of the commission of a delinquent act.

Delinquent act – an act committed by a juvenile that would be a crime if committed by an adult.

Detainer – a notice in a criminal defendant's file directed to prison authorities informing them that charges are pending in another jurisdiction against an inmate.

Detention – temporary confinement in a secure setting for a child awaiting a juvenile court hearing.

Detention, Community – an alternative to secure detention in which a child is placed on supervision in the community while awaiting a juvenile court hearing.

Diminution of confinement credits – credits earned by criminal inmates that reduce the period of confinement. In Maryland, inmates can earn up to 20 days per month (15 days for violent criminals and drug dealers) by displaying good conduct and participating in vocational, educational, or other programs. Often referred to colloquially as "good time credits."

Discovery – the process by which the State makes required disclosures of material and information about a criminal case to the defendant before trial. The defendant must also provide certain information to the State.

Dismissal – an order or judgment of a court to terminate adjudication of charges brought against a person.

Disposition – the action by the juvenile court that prescribes the nature of the assistance, guidance, treatment, or rehabilitation to be provided to a child who has been adjudicated delinquent.

Disposition hearing – the juvenile court hearing held after the adjudicatory hearing to determine disposition.

District Court – trial court of limited jurisdiction. A jury trial is not available in District Court.

District Court commissioner – a judicial officer, but not a judge, responsible for issuing statements of charges (a form of charging document), initially setting conditions of pretrial release for arrested individuals, and issuing interim domestic violence and peace orders.

Felony – any criminal offense declared a felony under statute or recognized as a common law felony (murder, manslaughter, robbery, rape, burglary, larceny, arson, sodomy, and mayhem). In general, a felony is a more serious crime than a misdemeanor.

Grand jury – a group of 23 citizens of the State selected to determine whether probable cause exists that a criminal offense has been committed by a certain person and may issue an indictment charging the person with the offense. It takes at least 12 members to issue an indictment. Grand juries also investigate and report on conditions at correctional facilities and may also report on other matters of public interest.

***Habeas corpus*, Writ of** – an order to release a person from unlawful imprisonment. Used by courts, especially federal courts, to review the constitutionality of convictions and sentences. In Maryland courts, the statutory postconviction review process now primarily is used for this purpose. This writ is still used in Maryland where the conviction was legal but the continued incarceration is challenged.

Impaired, Driving while – an alcohol-related motor vehicle offense that is less serious than driving while under the influence. It also applies to motor vehicle offenses involving one or more drugs, a combination of alcohol and one or more drugs, or a controlled dangerous substance.

In banc – (actual spelling used in Maryland law; technically "*en banc*" would be the correct spelling) generally refers to a session where the entire membership of a court or more than the usual number of judges will participate in the decision. In Maryland, *in banc* review also refers to the constitutional and statutory provisions allowing a review of a conviction or a sentence by three judges of the same circuit in lieu of the regular appeal process.

Incarceration – confinement of an individual in a local or State correctional facility. This includes individuals who are sentenced or are detained prior to trial.

Incompetency to stand trial – the standard for determining whether a defendant is able to understand the nature or object of the trial and to assist in the defense of the charges.

Indictment – a charging document returned by a grand jury and filed in a circuit court.

Informal supervision – time-limited counseling, referral, or supervision of a child by the Department of Juvenile Services without formal court intervention.

Information – a charging document filed in a court by a State's Attorney.

Intake, Criminal – the arrival and classification of individuals who have been recently sentenced by the court to imprisonment or returned to imprisonment for violation of parole. Upon intake, inmates are fingerprinted, personal property is inventoried, criminal history is verified, physical and mental examinations are conducted, and educational skills are assessed.

Intake, Juvenile – the first point of contact that a child has with the juvenile justice system; the process for determining whether the interests of the public or the child require the intervention of the juvenile court.

Jury, Grand – *see* Grand jury

Jury (Petit) – a group selected to determine issues of fact in a criminal or civil trial. Unless the parties agree otherwise, a jury in a criminal case consists of 12 persons (plus alternates) and a verdict must be unanimous. In death penalty cases, the jury may also determine whether or not the convict shall be executed.

Larceny – at common law, the unlawful taking of property from the possession of another person. Under Maryland law, the crime of theft includes larceny and other related crimes. Felony theft occurs when the value of the property or services taken has a value of $500 or more.

Mandate – official communication from a superior court to an inferior court directing action be taken or a disposition be made by the lower court, often accompanied by a written opinion of the reasons for the decision.

Mandatory supervision – a nondiscretionary release from incarceration required by law after a criminal offender has served his or her sentence less diminution of confinement credits earned.

Maryland Rules – the rules adopted by the Court of Appeals that govern the operation of the judicial branch and court procedures.

Master, Juvenile – a person appointed by a circuit court and approved by the Chief Judge of the Court of Appeals to hear juvenile cases and make recommendations to the juvenile court.

Misdemeanor – any criminal offense that is not a common law felony or declared a felony under statute (*see* Felony).

Nolle prosequi – termination or dismissal of part or all of a charging document or charge by a State's Attorney that is made on the record and explained in open court.

Not criminally responsible – the term used to describe a defendant who committed a crime while having a mental disorder or mental retardation and lacked the substantial capacity to appreciate the criminality of that conduct or to conform the defendant's conduct to the requirements of law. Commonly referred to as the insanity defense, it actually is broader because of the inclusion of mental retardation as a qualifying condition.

Parole – a discretionary, conditional release from imprisonment granted by the Maryland Parole Commission.

Peremptory challenge – the right to have a juror dismissed before trial without stating a reason. This challenge is distinguished from a "challenge for cause" based on the potential juror admitting bias, acquaintanceship with one of the parties or an attorney, personal knowledge about the facts, or some other basis for believing the juror might not be impartial.

Petition – document filed in a juvenile court containing allegations that provide a basis for the court's assuming jurisdiction over a child (*e.g.*, that the child is delinquent). Also, a formal writing requesting a court to take some action in a matter (*e.g.*, petition for a writ of *certiorari* or a writ of *habeas corpus*).

Petit jury – *see* Jury (Petit)

Preliminary hearing – hearing requested by a defendant charged with a felony and held before a District Court judge to determine if there is probable cause that a criminal offense has been committed and if the defendant participated in the commission of the offense. There is no right to a preliminary hearing after a grand jury indictment.

Pretrial detention – confinement of a defendant prior to trial because the defendant is unable to post bail or a judge or District Court commissioner determines that the defendant is a risk to public safety or is unlikely to appear in court for trial.

Prima facie – Latin for "at first sight." A prima facie case presents enough evidence for the plaintiff to win the case excluding any defenses or additional evidence presented by the defendant.

Probable cause – the legal standard for issuance of a charging document or a search warrant. Probable cause means a reasonable ground for belief of facts, or more evidence for than against. It is a lesser standard than the proof beyond a reasonable doubt required for a conviction.

Probation, Adult – a disposition under which a court in lieu of or in addition to the sentence provided by law prescribes terms and rules for a defendant while not incarcerated.

Probation, Juvenile – a juvenile court disposition imposing restrictions and conditions on a child who has been adjudicated delinquent and who remains in the community.

Proof beyond a reasonable doubt – the legal standard required for a criminal conviction or an adjudication of delinquency. It is proof that would convince a person of the truth of a fact to an extent that the person would be willing to act without reservation in an important matter in the person's business or personal affairs. It is not proof beyond all possible doubt or to a mathematical certainty.

Pro se – a person who appears in court without a lawyer.

RAP sheet – report of arrests and prosecutions for a suspect.

Recidivism – a new conviction for an offender previously convicted of another crime resulting in a return to a correctional facility or to probation supervision.

Recidivism rate – a measure of subsequent criminal activity by individuals previously incarcerated by a correctional agency or under probation supervision.

Remediation – an attempt to alter offenders' crime-related behaviors and deficits by placing emphasis on learning social and coping skills, while de-emphasizing global personality changes. Remediation connotes the ability of offenders to learn new behaviors, to adopt specific coping strategies, and to develop compensatory strengths that will decrease their involvement in crime.

Robbery – the felony of taking or attempting to take anything of value by force or threat of force.

Shelter care – temporary care and services provided in a physically unrestricting setting to a child awaiting a juvenile court hearing.

Stet – a disposition by a State's Attorney to indefinitely postpone trial of a charge against a person accused of committing a criminal offense. Charges may be rescheduled for trial at the request of either party within a year of the stet order. After one year, the charges may be rescheduled only by court order for good cause.

Summons – a notification that a person is required to appear in court on a certain date and time.

Trial – a judicial proceeding, in accordance with the law of the State, either civil or criminal, to determine issues of fact and law between parties to a cause of action.

Under the influence per se – the criminal offense of driving or attempting to drive with an alcohol concentration of 0.08 or more grams of alcohol per 100 milliliters of blood or 210 liters of breath. The penalties for this offense are a fine and imprisonment.

Uniform Crime Reports – reports prepared annually by states that track crime rate and arrest data on a statewide basis. *Crime in Maryland, Uniform Crime Report* is prepared by the Maryland State Police and uses definitions consistent with FBI definitions. Data provided by each state report is submitted to the FBI and other national databases.

***Voir dire* –** French for "speak the truth." The process through which potential jurors are questioned by either the judge or a lawyer to determine their suitability for jury service.

Warrant, Arrest – a written order by a judicial officer directing a law enforcement officer to take a person into custody.

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