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MARYLAND'S CRIMINAL AND JUVENILE JUSTICE PROCESS

Maryland's Criminal and Juvenile Justice Process

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Department of Legislative Services
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Foreword

Crime rates have substantially decreased since the 1990s; however, 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 on the policies and procedures in effect at the end of the 2014 session of the General Assembly. The Judiciary, various departments of the Executive Branch of State government, and many individuals who work in the criminal justice system provided materials and reviewed the manuscript. Their assistance is greatly appreciated. In several instances, existing resources and documentation were substantially adapted or incorporated in the text.

This is the eighth of nine volumes of the 2014 Legislative Handbook Series prepared by the Office of Policy Analysis of the Department of Legislative Services prior to the start of the General Assembly term. Jennifer Botts, George Butler, Guy Cherry, Amy Devadas, Hannah Dier, Lindsay Eastwood, John Joyce, Karen Morgan, Lauren Nestor, Effie Rife, Claire Rossmark, Rebecca Ruff, and Susan Russell researched and wrote the material for this volume. Douglas Nestor and Shirleen Pilgrim provided additional writing and review. Christine Turner, Michelle Purcell, and Kelly Seely 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 2014

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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 procedures, trial, sentencing, and punishment under some form of supervision or incarceration. Developments pertaining to the abolition of the death penalty are also included, as are victims' rights. Although the primary focus is on the adult offender, juvenile justice is also addressed. 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 or ordinance.

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

Organization

The handbook is 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 reported to the Maryland State Police. The chapter also discusses adult and juvenile arrest trends. The chapter concludes with information on automated technologies, such as the Criminal Justice Information System, the Maryland Automated Fingerprint Identification System, 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 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 requests for a jury trial in cases originally brought in the District Court.

- Chapter 8. This chapter discusses the juvenile justice system, a separate system created to protect public safety while restoring order to the life of a young offender without a determination of guilt or the imposition of a fixed sentence. The specific procedures involved with juvenile court, from intake to final disposition, 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 and criminal responsibility are outlined in this chapter.

- Chapter 10. This 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, and sexual offenders. The chapter also discusses the elimination of the death penalty in Maryland.

- 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 is 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 the Patuxent Institution and its programs and services are discussed.

- Chapter 16. This chapter examines the four ways in which an inmate in a State correctional facility may be released from imprisonment before the completion of the term of confinement: (1) parole; (2) probation; (3) mandatory release; and (4) gubernatorial clemency.

- 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: (1) constitutional law; (2) statutory law; (3) the common law; (4) court rules (Maryland Rules); and (5) court decisions.

Constitutional Law

The U.S. Constitution, the Maryland Constitution, and the Maryland Declaration of Rights all contain law dealing with the areas discussed in this handbook. The Declaration of Rights contains Maryland's constitutional provisions that are similar to the U.S. Constitution's Bill of Rights. 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 an *ex post facto* law (*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 10 of this handbook for a discussion of sentencing. 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 articles 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 laws dealing with incarceration and punishment. The Public Safety Article contains laws concerning law enforcement, the militia, regulation of firearms, emergency services, and the Maryland State Police.

Common Law

The common law of Maryland is law based on prior court decisions drawn from the common law of England, as it existed on July 4, 1776, which the State adopted, in Article 5 of the Maryland Declaration 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.

In addition, "inchoate crimes" (incomplete crimes) are generally common law crimes. An attempt to commit a crime is an inchoate crime. Such crimes reflect steps taken toward the commission of another crime (the substantive crime) that are serious enough that they are considered criminal behavior worthy of punishment. 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. 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 Decisions

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 U.S. Supreme Court and other federal courts 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 constitutional law or on other law. If a decision is based on the U.S. Constitution, the General Assembly has no authority to reverse or modify that decision. 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 child abuse as well as any underlying crime (*e.g.*, murder, assault, sexual offenses).

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 establish court procedures. If there is a conflict between a statute and a rule, whichever provision was adopted last in time applies.

Felonies and Misdemeanors

In Maryland a crime is either a felony or a misdemeanor. Generally, felonies are the more serious of these two types of crimes. However, there is no clear line based on the length of incarceration for determining whether a crime is a felony or misdemeanor.

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 from a felony to a misdemeanor.

The following are the practical differences between a felony and a misdemeanor. First, unless a statute specifically provides otherwise, a felony must be tried in a circuit court, where a defendant has a right to a jury trial, and 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, generally speaking, has a maximum term of imprisonment of more than 90 days permits a defendant to 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 discussion of the right to a jury trial.

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. An individual is not qualified to be a registered voter if the individual has been convicted of a felony and is actually serving a court-ordered sentence of imprisonment, including any term of parole or probation. The prohibition on voting ends when the sentence is completed, except for convictions for buying or selling votes, for which a permanent prohibition exists. Convicted felons also may be disqualified from obtaining certain State-issued licenses.

Motor Vehicle Offenses

Most motor vehicle offenses are found in the Transportation Article. These offenses, which include drunk or 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). Vehicular manslaughter and drunk or drugged driving offenses that result in death or life-threatening injuries are found in the Criminal Law Article and are felonies. For a discussion of motor vehicle offenses, 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 years) 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 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 indicates 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 under the influence of alcohol. Many other offenses, such as murder, robbery, or motor vehicle theft, may be committed either to support addictions or while impaired by drugs or controlled dangerous substances. The available data suggests that overall crime rate reductions or increases tend to mirror respective declines or upward spikes in drug use.

The Governor's Office of Crime Control and Prevention is responsible for the development of Maryland's Comprehensive State Crime Control and Prevention Plan. A primary goal of the plan is to facilitate information sharing between all levels of the criminal justice system. The office also administers many of the State's law enforcement grants and performs strategic planning, statistical analysis, and best practices research.

Crime Rates

In 1975, Maryland enacted by law a program that requires 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.

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

- murder and non-negligent manslaughter;
- 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 more 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 2012, Maryland's crime rate was 3,226 victims for every 100,000 population, a 4% decrease from the 2011 rate of 3,355. The 2012 rate for violent crime was 477 victims per 100,000 of population, a 3% decrease from the 2011 rate of 494. Maryland property crime in 2012 occurred at a rate of 2,749 victims, while the rate in 2011 was 2,861 victims – a 4% decrease.

By comparison, in 2008, Maryland's overall crime rate was 4,146 victims for every 100,000 population. The 2008 violent crime rate was 628 victims per 100,000 population. Property crime in 2008 had a rate of 3,518 victims per 100,000 population.

Tracking National Crime Rates

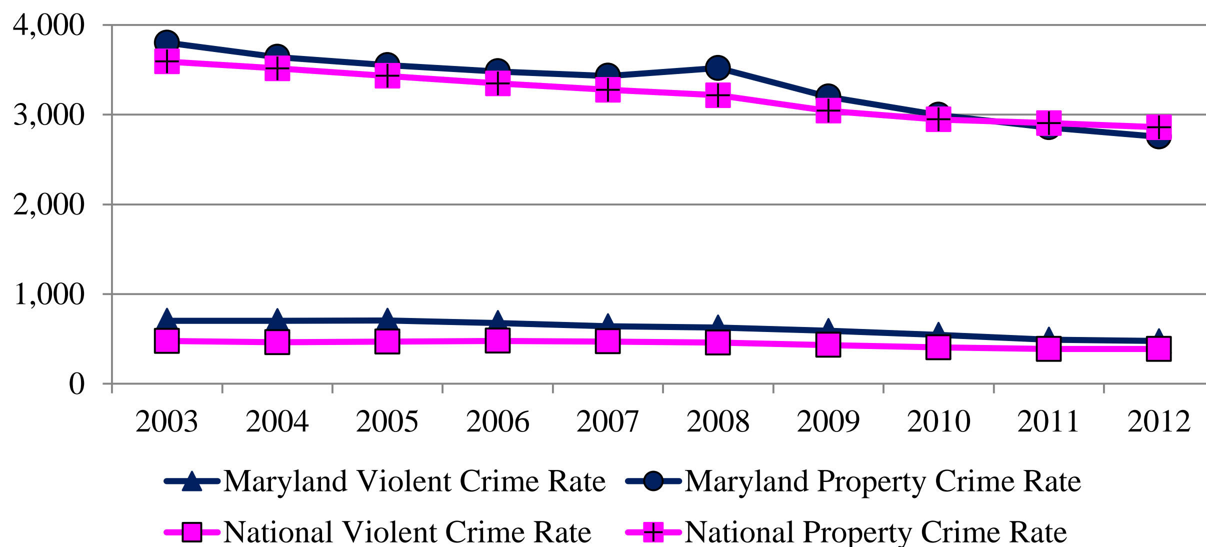
In June 2004, the national Criminal Justice Information System Advisory Policy Board approved discontinuing the use of a national Crime Index in the Uniform Crime Reporting program and its publications. The Crime Index, first published in *Crime in the United States* in 1960, was the title used for a simple aggregation of the seven main offense classifications (Part I offenses) in the summary reporting system. The Modified Crime Index was the number of Crime Index offenses plus arson.

For several years, the matter of reporting crime data was studied by the Bureau of Justice Statistics. It was concluded that the Crime Index and the Modified Crime Index were not true indicators of the degrees of criminality because they were always driven upward by the offense with the greatest number (typically larceny-theft). The sheer volume of those offenses overshadowed more serious but less frequently committed offenses, creating a bias against a jurisdiction with a large number of larceny-thefts but a relatively small number of other serious crimes such as murder and rape. Instead of a general national Crime Index, the FBI was directed to publish a violent crime total and a property crime total. However, Maryland's annual reports on crime continue to publish data based on the original crime indices (Part I and Part II offenses).

For most of the 10-year period, Maryland violent and property crime rates trended generally higher than the national rates for those types of crimes. However, in 2011 and 2012, the Maryland violent crime rate declined to being about equivalent to the national violent rate, while the Maryland property crime rate declined to being slightly less than the national property crime rate in 2012.

Exhibit 2.1 shows violent crime rates and property crime rates for Maryland and nationally from 2003 through 2012.

Exhibit 2.1
Maryland and National Crime Rate Trends
Offenses per 100,000 of Population
Calendar 2003-2012



Source: *2012 Uniform Crime Report*, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

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 13,259 in 2008 to 10,953 in 2012, an overall reduction of 17.9% during the five-year period. The low year for arrests during this period was 2011 with 9,112 arrests. Arrests for possession decreased from 44,421 in 2008 to 38,582 in 2012, a reduction of 12.5% for the five-year period.

Offense Trends

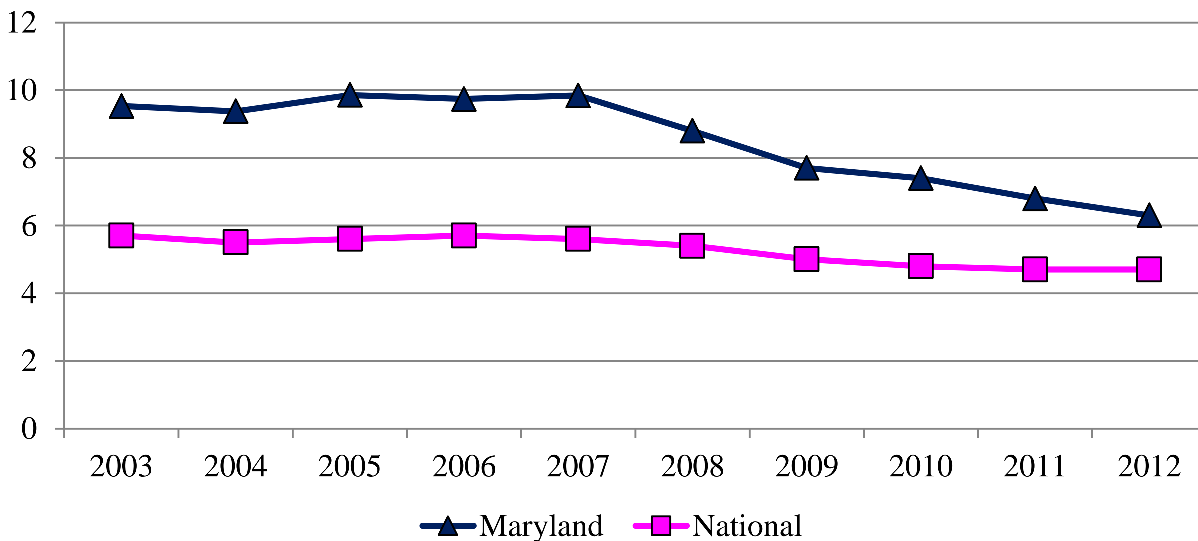
Calendar year trends in each of the eight reported offense areas are discussed in further detail below, showing offense trends in Maryland over a 10-year period

(2003 through 2012). Violent crimes include murder, rape, robbery, and aggravated assault. Property crimes include burglary, larceny-theft, and motor vehicle theft. In some instances, arrest totals are included in the text to provide an indication of the magnitude of arrests relative to the number of offenses within each category.

Murder

In 2012, a total of 372 murders was reported to law enforcement agencies in Maryland. As shown in Exhibit 2.2, Maryland's crime rate for murder of 6.3 offenses for every 100,000 of the population has continued to exceed the national rate (4.7 murders per 100,000) during the same year.

Exhibit 2.2
Maryland and National Murder Trends
Per 100,000 of Population
Calendar 2003-2012



Source: *2012 Uniform Crime Report*, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

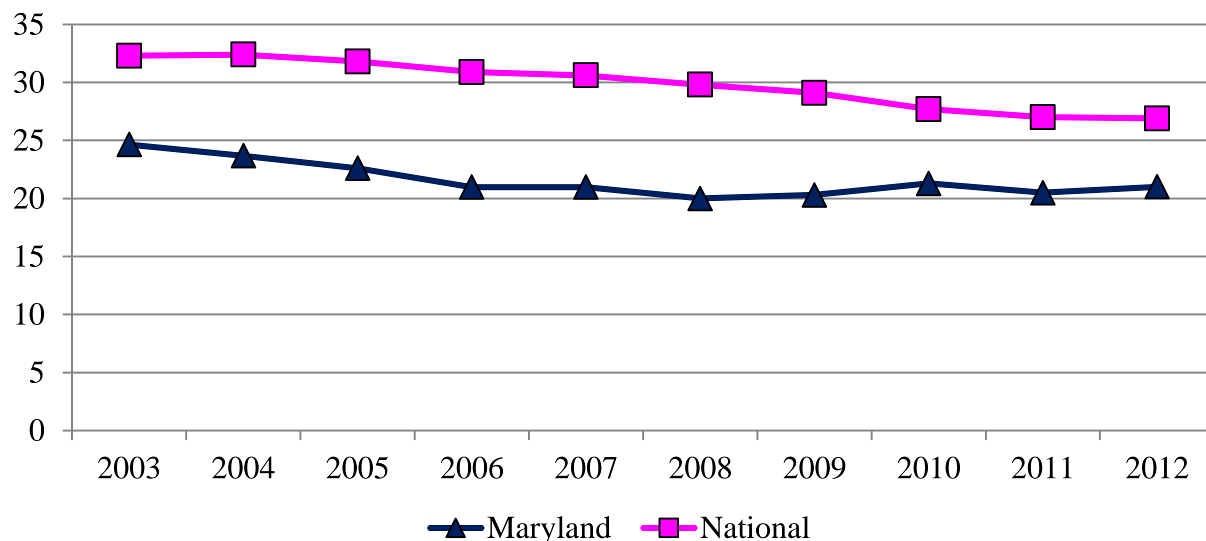
In 2012, drug-related murders were 3.0% of the total, which was the same as 2011, and an increase compared to a 2.0% ratio for these types of murders in 2008. Family-related murders accounted for 12.0% of the total, which was the same as 2008 and a 1.0% increase compared to 2011. Husband and wife or boyfriend/girlfriend murders

(those who had cohabitated) were 5.0% of the total. Handguns were used in 73.0% of the reported murders in 2012, which was a 2% increase compared to 2011. In 2012, most murders occurred in either Baltimore City (216 or 58.1%) or Prince George's County (63 or 16.9%). By comparison, in 2008, Baltimore City and Prince George's County had proportions of the total of 47.5% and 24.7%, respectively.

Rape

In 2012, the number of reported rape offenses (including attempted rapes) in Maryland totaled 1,236. As shown in Exhibit 2.3, the number of rape offenses for every 100,000 of the population had declined steadily from 2003 to 2008 and has remained relatively constant at 20 or 21 offenses per 100,000 persons since then. Even with a declining national rate for rape since 2003, Maryland's rate remained below the national rate during the reporting period.

Exhibit 2.3
Maryland and National Rape Trends
Per 100,000 of Population
Calendar 2003-2012



Source: *2012 Uniform Crime Report*, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

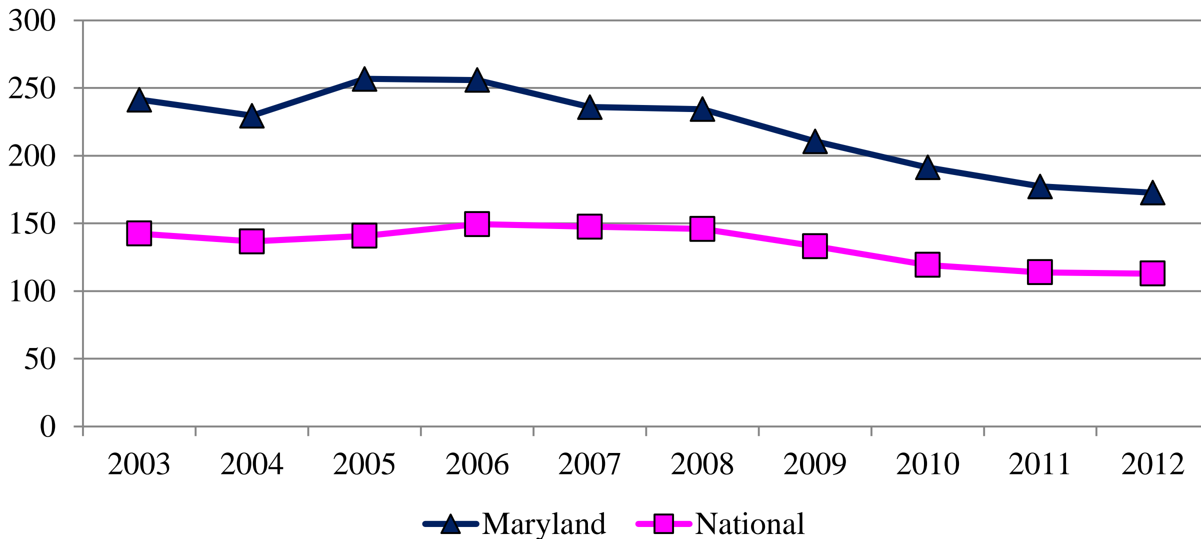
It should be noted that in 2013, the FBI crime reporting program initiated collection of data under a new definition for "forcible" rape within the Summary Based Reporting

System. The term "forcible" was removed, the definition was made gender-neutral and changed to "penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."

Robbery

Robbery is the taking, or attempted taking, of anything of value from the care, custody, or control of a person by force. After declining for several years, there was an increase in the number of reported robberies in 2005. Since 2008, the number of robberies has decreased from 13,203 incidents to 10,171, a decline of about 23%. During 2012, 52% of the robberies in the State were committed "on the street," while less than 1% were bank robberies. Of the total, 43% involved the use of firearms. In 2012, 3,652 persons were arrested for robbery. Maryland's 2012 crime rate for robbery of 172.8 offenses for every 100,000 of the population exceeded the national rate of about 112.9 offenses per 100,000 persons (see Exhibit 2.4).

Exhibit 2.4
Maryland and National Robbery Trends
Per 100,000 of Population
Calendar 2003-2012

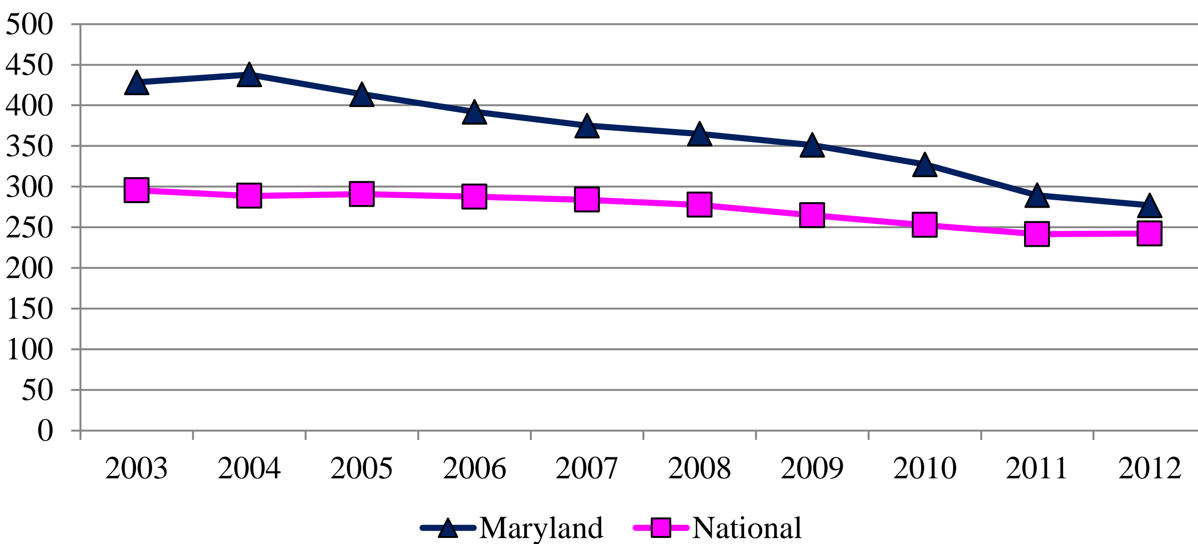


Source: *2012 Uniform Crime Report*, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

Aggravated Assault

Aggravated assault is the unlawful attack by one person upon another for the purpose of inflicting severe bodily injury. During 2012, there were 16,300 aggravated assaults reported in Maryland, representing a steady annual decline of 4.2% since 2004. In 2012, 2,275 (14.0%) of the aggravated assaults were committed with the use of a firearm, and 4,327 (27.0%) were committed with a knife or other cutting instrument. Arrests for aggravated assault totaled 7,269 in 2008. In 2012, Maryland's crime rate for aggravated assault was 277.0 offenses per 100,000 persons, while the national rate for this offense was about 242.3 (see Exhibit 2.5).

Exhibit 2.5
Maryland and National Aggravated Assault Trends
Per 100,000 of Population
Calendar 2003-2012

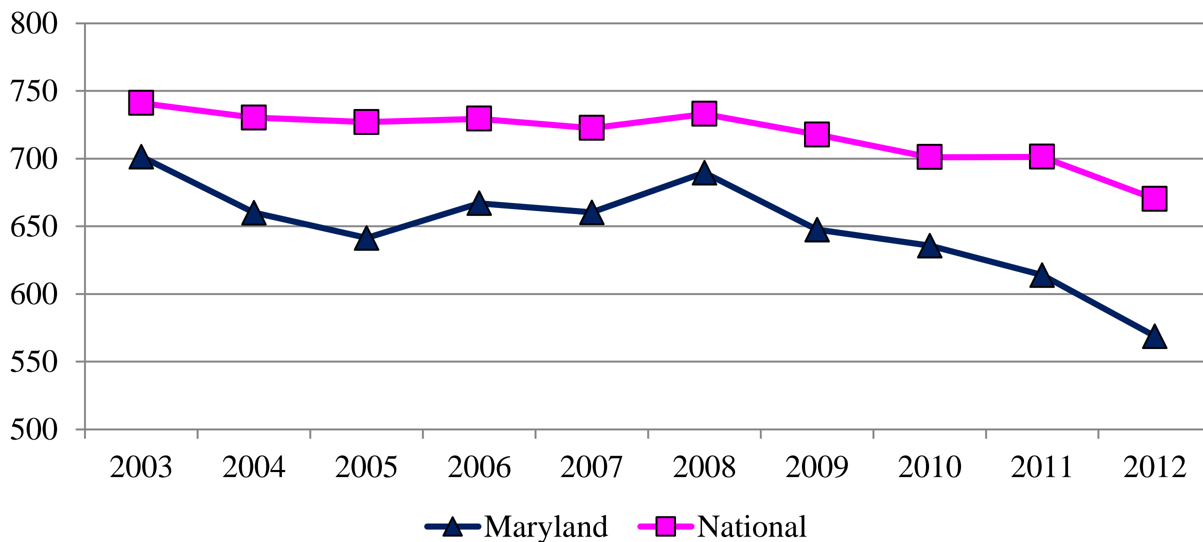


Source: *2012 Uniform Crime Report*, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

Burglary

The crime of burglary (also referred to as breaking and entering), is the unlawful entry of a property to commit a felony or theft. The overall incidence of burglary has declined by an average of about 2.8% annually, from 38,849 offenses in 2008 to 33,472 offenses in 2012. Approximately 64% of burglaries in 2012 involved forced entry, and 78.0% of the offenses were committed in a residence. The 2012 total dollar value loss reported was $71.4 million. In 2012, 7,380 individuals were arrested for burglary. Maryland's crime rate for burglary of 568.8 offenses per 100,000 persons was less than the national rate for this offense of 670.2 offenses per 100,000 population (see Exhibit 2.6).

Exhibit 2.6
Maryland and National Burglary Trends
Per 100,000 of Population
Calendar 2003-2012



Source: *2012Uniform Crime Report*, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

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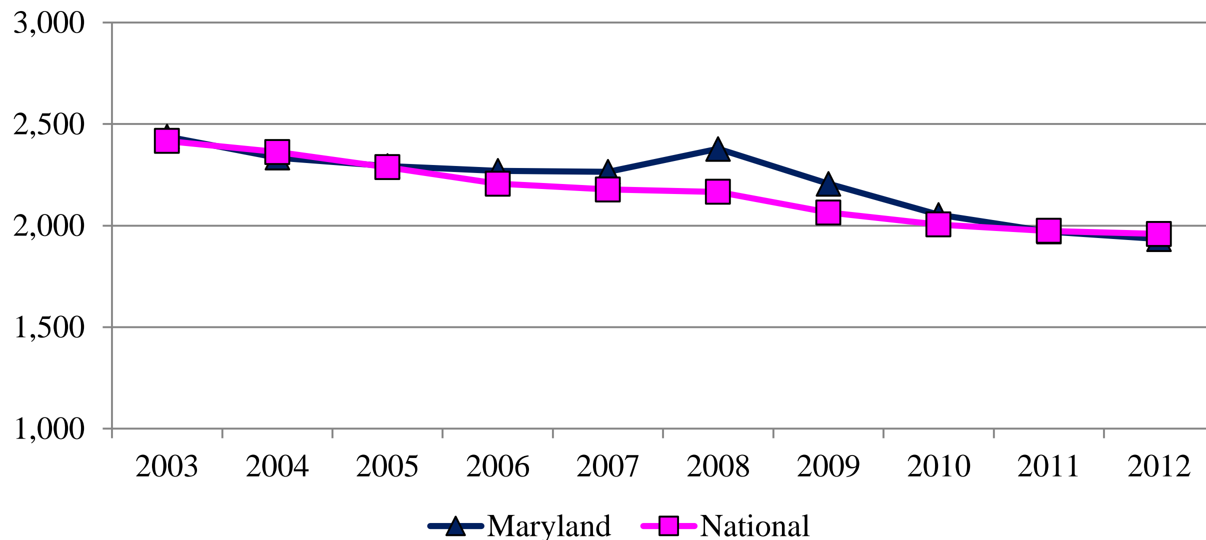
Larceny-theft

Larceny-theft is defined as the unlawful taking of property from the possession of another. From 2008 through 2012, the number of reported larceny-theft offenses declined from 133,983 incidents in 2008 to 113,772 reported cases in 2012, a total decline of about 15.1% during that five-year period. In 2012, the State's crime rate for these offenses was 1,933.4 offenses per 100,000 persons, and 25,339 persons were arrested for larceny-theft. In 2012, the national rate for this offense (1,959.3 offenses per 100,000 persons) was slightly higher than the Maryland rate (see Exhibit 2.7). Law enforcement agencies in the State reported a total value of approximately $95.0 million of stolen property, with the highest percentage having been theft from autos (27.0%).

Exhibit 2.7
Maryland and National Larceny-theft Trends
Per 100,000 of Population
Calendar 2003-2012



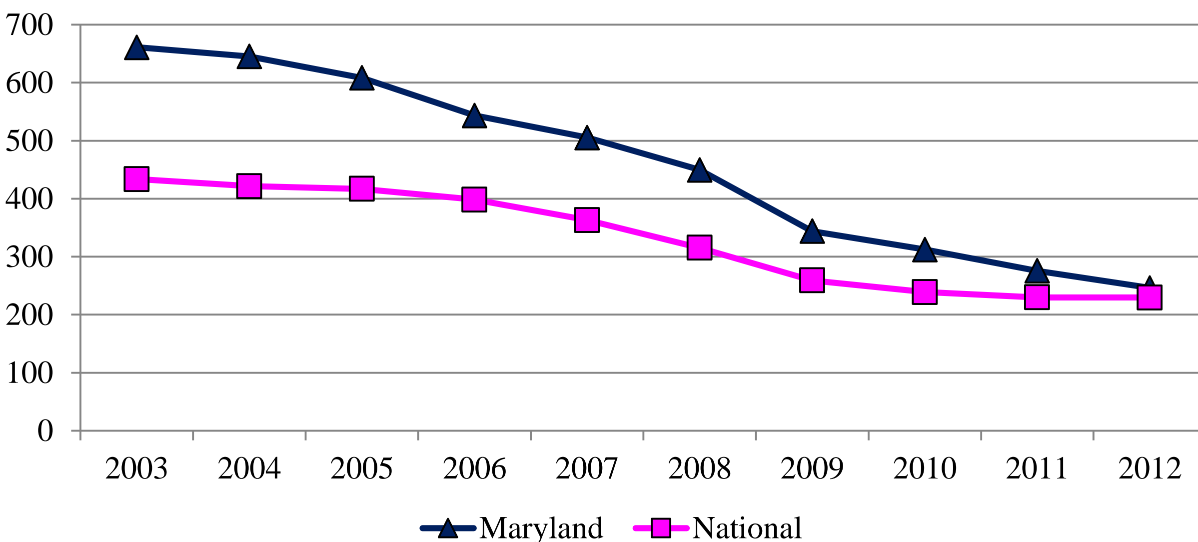
Source: *2012 Uniform Crime Report*, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

Motor Vehicle Theft

In 2012, 14,493 motor vehicle thefts were reported. This represents a significant decrease of nearly 43% from the 25,340 motor vehicle thefts reported in 2008 and a reduction of 1,574 reported cases compared to 2011. For more than half of the period from 2003 to 2012, Maryland's motor vehicle theft rate substantially exceeded the national motor vehicle theft rate. However, beginning in 2009, the State rate declined significantly and that decline has continued. In 2012, the rate of Maryland motor vehicle thefts declined to become nearly equivalent to the national rate.

In 2012, 1,870 persons were arrested in Maryland for motor vehicle theft. Of the vehicles reported stolen in 2012, 10,234 were automobiles (70.6%) and 1,992 were trucks or buses (13.7%). A total of 9,923 of the stolen vehicles were recovered (68.5%). In 2012, Maryland's crime rate for motor vehicle theft was 246.3 offenses per 100,000 persons, while the national rate for this offense in 2012 was 242.3 offenses per 100,000 persons (see Exhibit 2.8).

Exhibit 2.8
Maryland and National Motor Vehicle Theft Trends
Per 100,000 of Population
Calendar 2003-2012

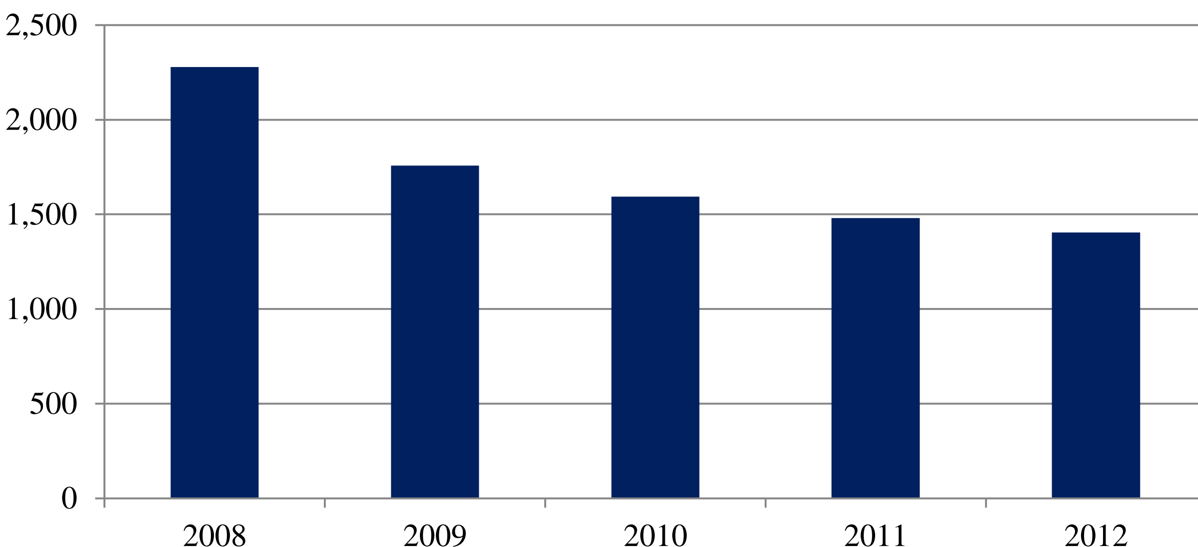


Source: *2012 Uniform Crime Report*, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

Arson

Arson is defined as the willful or malicious burning of a structure, vehicle, or aircraft of another, or an attempt to commit such an act. The number of arsons reported annually from 2003 to 2008 remained above 2,000. Since 2009, the number of reported arsons has been less than 2,000 annually. In 2012, there were 1,405 incidents of arson reported, a 5% decrease from 2011. The value of the resulting property damage in 2012 was estimated at about $17 million. In 2012, Maryland's crime rate for arson was 23.9 offenses per 100,000 persons and 375 persons were arrested for this crime. Although national arson data are included in trend and clearance tables, the FBI reports that sufficient data are not available to estimate national totals for this offense (see Exhibit 2.9).

Exhibit 2.9
Maryland Arson Trends
Calendar 2003-2012



Note: Arson is a separate offense and tracked and reported differently than other offenses. No comparison is made to national data because the FBI reports that there is insufficient data to estimate totals for this offense.

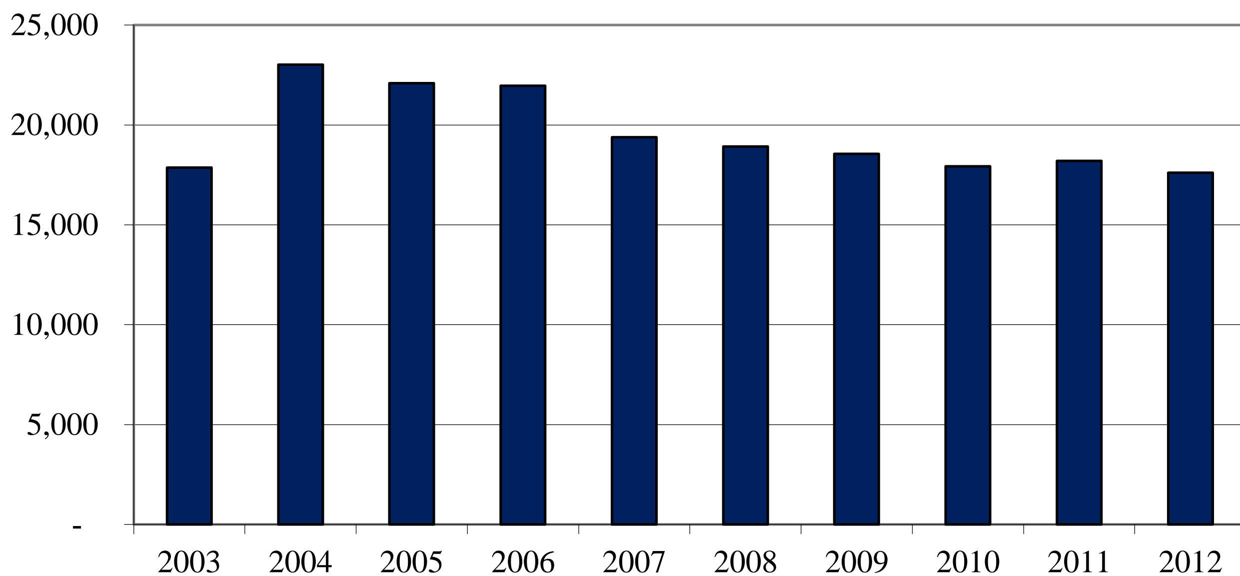
Source: *2012 Uniform Crime Report*, Maryland State Police; *Crime in the United States*, Federal Bureau of Investigation

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*. 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 intimate cohabitant. This includes an intimate same-sex relationship. (Same sex incidents were not included in the report data collected prior to 1996.)

In 2012, there were 17,615 reported incidents statewide characterized as domestic violence, while 18,209 incidents had been reported in 2011. The vast majority of such reports in any year involve an assault (approximately 92.4% or 16,269 assaults in 2012). Of the domestic violence assaults in 2012, 2,881 were reported as aggravated (about 18.0%). There was an average of about 22 domestic violence homicides per year from 2008 through 2012 (see Exhibit 2.10).

Exhibit 2.10
Domestic Violence – Trends
Calendar 2003-2012



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

Source: *2012 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 260,783 arrests for criminal offenses were reported during 2012, which is 2,310 fewer than in 2011, or a decline of less than 1%. Maryland's arrest rate for 2012 was 4,431.6 per 100,000 of population, a 2% decrease compared to 2011.

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 was an adult, an arrest would have been counted or when police or other official action is taken beyond an interview, warning, or admonishment.

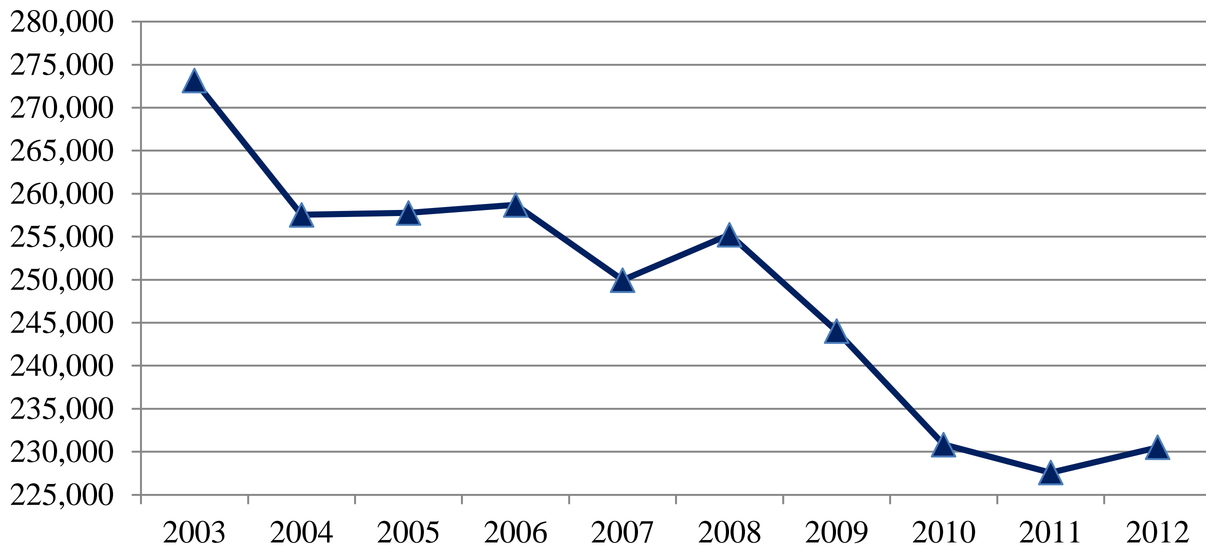
Arrest figures do not indicate the number of different individuals arrested or summoned because, as stated above, one person may be arrested several times during the month. However, arrest information is useful in measuring the extent of law enforcement activities in a given geographic area as well as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

During 2012, 18% of all reported arrests were for Crime Index offenses, compared to 17% in 2011. The majority of arrests were for larceny-theft, which accounted for 55% of the total and comprised the same percentage in 2011. About 50% of all Part II offenses were made up of arrests in the categories of drug abuse, driving under the influence of alcohol, violations of liquor laws, and assaults.

Aggregate Arrest Trends

The overall number of adult arrests in 2012 (230,526) was 2,943 more than adult arrests in 2011 (227,583), but 42,629 fewer than in 2003 (see Exhibit 2.11).

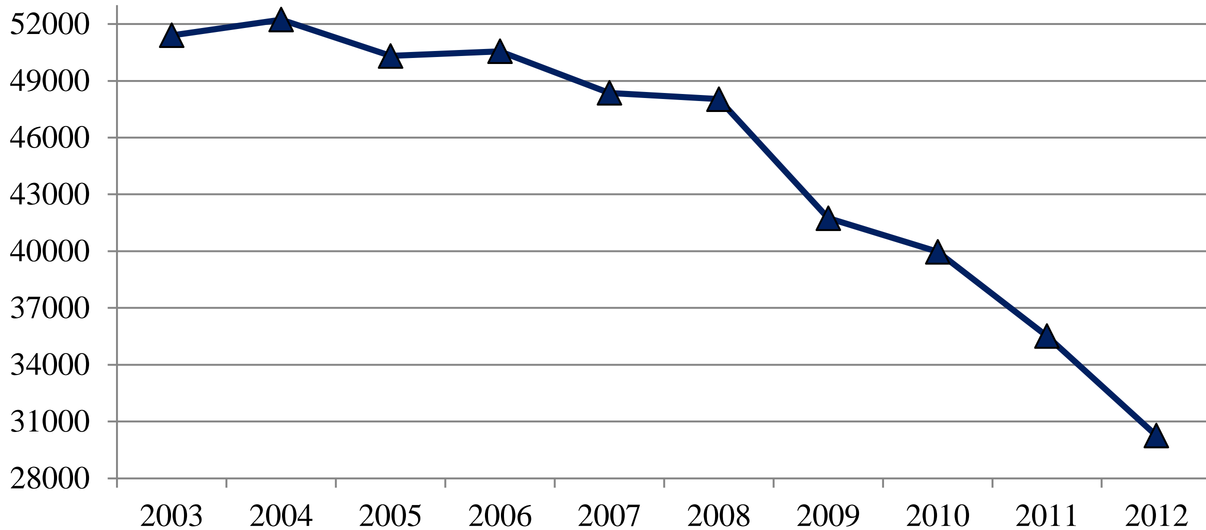
Exhibit 2.11
Adult Arrest Trends
Calendar 2003-2012



Source: *2012 Uniform Crime Report*, Maryland State Police

Juvenile arrests have also trended sharply downward from 2003 to 2012, from numbers greater than 50,000 arrests annually from 2003 through 2006 to just over 30,000 arrests annually by 2012 (see Exhibit 2.12).

Exhibit 2.12
Juvenile Arrest Trends
Calendar 2003-2012



Source: *2012 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. Local, State, and federal law enforcement entities are served, 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 the Report of Arrests and Prosecutions, 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.

The information management systems serving the department's correctional units 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 has also upgraded 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 Information Technology. The Information Technology Master Plan has also been updated to include the initial rollout of the Offender Case Management System as well as its interoperability with the Maryland Judiciary's case management system.

Law Enforcement Information Technology Initiatives

In recent years, the State has implemented several information technology initiatives aimed at both sharing and expediting the flow of criminal justice information across law enforcement agencies.

Maryland State Police Mobile Data Computers

After the initial investment of funding for the purchase of patrol car laptop computers, the Maryland State Police have expanded the program to provide mobile data computers to investigators as well as the patrol troopers. Today, over 1,200 of these units are deployed for field operations. This technology provides law enforcement officers with real time access to criminal justice and homeland security information. Mobile data computers are now standard equipment for most law enforcement agencies throughout the State. The computers save the officer a great deal of time on traffic stops and other criminal enforcement efforts. This initiative set the platform for other information technology initiatives such as the Electronic Traffic Information Exchange, automated accident reports, and race-based traffic stop data collection.

Electronic Traffic Information Exchange

In 2006, the Maryland State Police developed a software program called Delta Plus, which was designed to enable State and local law enforcement officers to issue electronic warnings and citations. The electronic citation component is called the Electronic Traffic Information eXchange (E-TIX). To date, over 128 police agencies using the system have

issued more than 3.8 million electronic citations statewide. There have been over 8.7 million documents (citations, warnings, and safety equipment repair orders) issued since inception.

Data obtained during the traffic stop, including the resulting citation, is transferred electronically to the District Court, thereby reducing the need for data entry by court personnel. The system has also reduced the amount of time required by law enforcement personnel to prepare and retrieve daily statistics and traffic stop reports. The Motor Vehicle Administration partnered with the State Police to develop the driver re-examination (eReferral) form for officers to submit request for re-examinations electronically. This project was completed October 1, 2013, and has yielded over 1,000 referrals from law enforcement in just nine months where the State had previously averaged approximately 600 paper referrals every year.

With the implementation of E-TIX, the State Police developed the Automated Crash Reporting System in partnership with the State Highway Administration. This module within Delta Plus has been deployed and is being required by the State Police as the only system to submit crash report data to the State effective January 1, 2015. To date over 18,000 reports have been entered by over 94 agencies throughout the State. Delta Plus has become the *de facto* standard for traffic data collection in Maryland. Delta Plus was developed by the State Police and remains a product maintained and supported by that agency.

Maryland Criminal Justice Dashboard

In 2008, the Governor's Office of Crime Prevention and Control, through the Information Technology and Communications Division in the Department of Public Safety and Correctional Services, developed the Criminal Justice Dashboard (previously referred to as the Local Law Enforcement or Law Enforcement Dashboard). The dashboard is a web-based application that allows authorized public safety personnel to access relevant, available State and national information on an individual in one place at one time. Criminal justice personnel and agencies view information on a subject's criminal background history, without the need to access the individual system databases containing that history.

Electronic records are displayed on the dashboard from a contributing agency's records systems based upon the technical capabilities of the agency. The division provides the support and guidance as necessary to extract the information that will minimize the impact to each participating agency without compromising security or production concerns. The information displayed is read-only, and cannot be altered, deleted, or changed. Entities contributing data to the dashboard are:

- Baltimore Central Booking and Intake Center;
- Baltimore Police Department;
- Department of Public Safety and Correctional Services;
- Court Services and Offender Supervision Agency for the District of Columbia;
- Maryland Department of Education;
- Department of Health and Mental Hygiene;
- Department of Juvenile Services;
- Department of Labor, Licensing, and Regulation;
- Department of Natural Resources;
- Department of State Police;
- High Intensity and Drug Trafficking Area program of the U.S. Office of National Drug Control Policy;
- Maryland Judiciary;
- Maryland Department of Transportation;
- U.S. Social Security Administration; and the
- Washington DC Metropolitan Police Department.

During 2013, enhancements to the dashboard included Community Supervision Global Positioning System monitoring, violent repeat offender search information, facial recognition search of some State and federal databases, and domestic-related crime alerts.

Chapter 3. Motor Vehicle Offenses and the Court System

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 these sanctions to a wide range of motor vehicle offenses.

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 *Volume II – Transportation Article* and *Volume III – Transportation Article* are known) is a misdemeanor, unless the offense is specifically classified to be a felony or is punishable only by a civil penalty. (Additionally, a motor vehicle offense under the Criminal Law Article that involves 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 term of imprisonment as well as a fine.

If an individual violates the Maryland Vehicle Law or any traffic law or ordinance of a local government, the individual is charged by a citation (*i.e.*, a ticket) issued by a police officer. A citation may be electronically issued or handwritten by the officer. A system for the electronic issuance of traffic citations, known as "e-citations" has been used by the Maryland State Police since 2007 and has also been adopted by many local police departments.

A police officer may issue a citation only if the officer has probable cause to believe that the person has committed an offense. A citation must include the violation charged. If the offense is punishable by incarceration, the defendant must appear for trial.

If the offense is not punishable by incarceration, the person charged may respond to the citation by paying a preset fine in an amount that the police officer includes in the citation. The amounts of the preset fines for nonjailable offenses are set by the Chief Judge of the District Court and include court costs. Payment of the preset fine amount allows a person to admit guilt without appearing for trial.

Each citation that is issued for a nonjailable offense contains a notice that the person charged may respond to the citation by requesting a trial or by requesting a hearing regarding disposition and sentencing for the offense instead of a trial. A request for such

a hearing, commonly referred to as a "guilty with an explanation" hearing, may be requested if the person does not dispute the facts as alleged in the citation and does not intend to compel the appearance of the police officer who issued the citation.

In 2011, State law ended the District Court practice of automatically scheduling a trial date when a person receiving a citation does not pay the preset fine for a nonjailable offense. Instead, a person must affirmatively respond, within 30 days after receipt of the citation by (1) paying the full amount of the preset fine; (2) requesting a hearing regarding disposition and sentencing for the offense instead of a trial; or (3) requesting a trial date. Failure to respond to the District Court results in the issuance of a notice by the District Court to the Motor Vehicle Administration and, on receipt of the notice, the administration may suspend the person's driver's license until the fine is paid.

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 drunk or drugged driving; 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. (However, motor vehicle offenses under the Criminal Law Article involving a homicide or life-threatening injury may be tried in the circuit courts or the District Court.) 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 citations filed in the District Court for fiscal 2008 through 2013, as well as the number of cases that were tried, the number of nontrial dispositions (*i.e.*, *nolle prosequi* dispositions, stet dispositions, or transfers to circuit courts as the result of jury trial requests by defendants), and the number of preset fines paid. Just about half of all motor vehicle citations result in an election by the defendant to pay the preset fine rather than appear in court. (Please note that the estimate does not reflect the number of drivers charged because multiple citations may be issued to the same driver in certain situations.)

Exhibit 3.1
Disposition of Motor Vehicle Citations – District Court
Fiscal 2008-2013

	Citations Filed	Cases Tried	Nontrial Dispositions	Preset Fines Paid
2008	1,130,405	305,289	247,763	529,390
2009	1,202,647	331,315	304,051	545,907
2010	1,182,913	334,257	313,048	525,349
2011	1,191,108	311,797	328,465	530,420
2012	1,167,620	251,724	344,011	536,637
2013	1,189,059	244,191	398,746	502,939

Source: District Court of Maryland

Administrative Process

In addition to the judicial process applicable to a traffic offense, 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, for processing the more than one million motor vehicle citations that are issued annually. Information concerning convictions for motor vehicle citations, whether occurring as a result of a trial or 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, including alcohol- or drug-related driving offenses. For certain alcohol- or drug-related driving violations, the administration is required to suspend the driver's license.

In addition, 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, a greater number of points are assessed. For example, speeding in excess of the posted speed limit by 10 miles per hour or more is a 2-point offense, while speeding by 30 miles per hour or more is a 5-point offense. Driving while impaired by alcohol is an 8-point offense, while driving under the influence of alcohol or while 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 the Driver Improvement Program (a driving review course) is required for a person who accumulates 5 to 7 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 restricted license. A restricted license issued under these circumstances generally limits an individual's driving to specified locations, such as work, school, or those involving health care or alcohol or drug treatment.

Automated Traffic Enforcement

For three types of traffic violations enforced through the use of automated cameras, red light violations, speeding violations, and violations relating to unlawfully failing to stop for a school vehicle, motorists may be charged with a civil violation if a citation is received by mail.

The State and local governments 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 monitoring systems) in residential districts with a maximum posted speed limit of 35 miles per hour and in school zones. In 2009, the use of speed monitoring systems was expanded statewide and authorization for those systems previously established in Montgomery County was

continued. Generally, a speed monitoring system may only operate weekdays from 6 a.m. to 8 p.m. within an established school zone on a designated roadway within a one-half mile radius of an elementary or secondary school that has a posted speed limit of at least 20 miles per hour.

Except in Montgomery County, local governments must hold public hearings and enact an ordinance or law authorizing installation of speed monitoring systems before they may be implemented. County governments that want to install speed monitoring systems within a municipal jurisdiction must give the municipal jurisdiction the opportunity to install the systems before proceeding with installation. In Prince George's County, procedures vary somewhat, in that municipal corporations must receive authorization from the county government before initiating proceedings to install a speed monitoring system. In addition, the authority to install speed monitoring systems in Prince George's County includes highways within the grounds of a higher education institution or highways within one-half mile of the property of a higher education institution.

Work zone speed control systems may be placed in highway work zones on certain highways where the speed limit is 45 miles per hour or greater. The Department of State Police, the State Highway Administration, and local police departments may place and administer work zone speed control systems.

The maximum fine for a speeding violation recorded by a speed monitoring system or a work zone speed control system is $40.

Media reports in the fall of 2012 that certain jurisdictions including Baltimore City and Baltimore County were erroneously issuing citations led to increased scrutiny of the speed cameras and the programs under which they are deployed. The scrutiny centered around two common criticisms of speed cameras: (1) that technical issues and insufficient review of recorded images resulted in erroneously generated citations; and (2) that the contracts with vendors were structured in such a manner as to establish an incentive to generate more citations and revenues, thereby casting doubt on the integrity or purpose of speed cameras.

In part to address concerns related to the cameras, legislation intended to reform the speed camera system was enacted in 2014. The laws require local jurisdictions that operate speed monitoring systems to ensure that citations are sworn to by duly authorized law enforcement officers, designate an employee or official to review citations and address questions or concerns, and designate a program administrator to oversee and administer the speed monitoring system program. The laws also (1) prohibit payments on a per-ticket basis to a contractor that administers or operates certain elements of the program and

(2) require contracts to provide for the payment of liquidated damages by contractors if more than 5% of violations issued are erroneous.

In 2011, the General Assembly authorized a local law enforcement agency, in consultation with a county board of education, to place school bus monitoring cameras on county school buses if authorized by the governing body of the local jurisdiction. Local law enforcement agencies may issue warnings or citations to vehicle owners or drivers for failing to stop for a school vehicle that has stopped with its alternately flashing red lights. The maximum fine for a violation is $250. A driver who receives a citation based on a recording by an automated system has the right to a hearing in the District Court to contest the citation.

Traffic violations recorded by automated systems are different from traditional violations observed and cited by police officers in important ways; namely that, in contrast to traditional violations, a violation recorded through an automated system is not considered a moving violation, does not result in the assessment of points against the driver's record, may not be disclosed to the driver's insurance company, and is a civil, not criminal, offense. However, 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.

Distracted Driving

According to the State Highway Administration, in 2012 in Maryland, 246 persons died and 28,515 persons were injured in distracted driver-involved crashes. While there are many forms of distracted driving, the sending of text messages while driving has been singled out as a particularly dangerous form because it involves all three categories of distraction – visual, manual, and cognitive. Indeed, according to the Virginia Tech Transportation Institute, text messaging creates a crash risk that is 23 times that of the risk of driving while not distracted.

The use of cell phones while driving has also been implicated in a rise in distracted driving-related crashes. In 2011, the National Transportation Safety Board recommended a national ban on the nonemergency use, while driving, of all portable devices not designed to support the driving task, including cell phones and text messaging devices. The recommendation applied to hands-free as well as handheld devices.

Most forms of text messaging while driving are prohibited in Maryland. Maryland also prohibits the use of handheld cell phones by drivers in most circumstances. In 2014, the General Assembly created a new offense establishing separate penalties for the use of a handheld telephone or the writing, sending, or reading of a text message or electronic mail while driving that directly results in the death or serious bodily injury of another.

Drunk and Drugged Driving

In General

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 actions of the person demonstrated that 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. 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 nor impaired by alcohol. However, a blood alcohol concentration of 0.02 or more is *prima facie* evidence that the person was driving with alcohol in the person's blood. This rule is used mainly to prove a violation of an alcohol restriction on a driver's license (such as, for drivers younger than age 21, all of whom are prohibited from consuming any 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 on 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 for the State the number of total highway deaths, the highway fatality rate, and the number and percentage of highway deaths in which driver involvement with alcohol or drugs was a contributing factor from calendar 2008 through 2012.

Exhibit 3.2
Maryland Highway Fatalities and Driver Alcohol or Drug Involvement
Calendar 2008-2012

	Traffic Fatalities	Fatality Rate (Fatalities per 100 Million Vehicle Miles)	Fatalities in Which Alcohol/Drugs Was a Contributing Factor	% in Which Alcohol/Drugs Was a Contributing Factor
2008	592	1.1	171	28.9%
2009	550	1.0	173	31.5%
2010	496	0.9	177	35.7%
2011	488	0.9	181	37.1%
2012	511	0.9	173	33.9%

Source: Motor Vehicle Administration, National Highway Traffic Safety Administration

Young Drivers and Impaired Driving

Young drivers from ages 16 through 20 are authorized to operate motor vehicles in Maryland, by virtue of a driver's license, a provisional license, or a learner's permit. According to the Motor Vehicle Administration, in fiscal 2013, out of 4,140,103 licensed drivers, 180,262 drivers, or about 4.4% of the Maryland driving population, were younger than the age of 21.

Statistics reveal the relatively high propensity for drivers younger than 21 to be involved in traffic accidents, including those where alcohol and/or drugs are contributing factors. According to national statistics maintained by the National Highway Traffic Safety Administration, for calendar 2012, 4,211 drivers between the ages of 16 and 20 were

involved in fatal crashes. Of those drivers, 18% had blood alcohol concentrations of at least 0.08.

To reduce or prevent incidences of alcohol driving violations, young drivers are subject to mandatory license suspensions and revocations that may not apply to drivers age 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 for two years.

Exhibit 3.3 shows the number of traffic accidents in Maryland from calendar 2008 to 2012 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, an average of 18 drivers from ages 16 through 20, impaired by alcohol and/or drugs were killed and 416 were injured in traffic accidents.

Exhibit 3.3

Maryland Drivers Age 16 to 20 with Alcohol and/or Drug Impairment

Crash Summary

Calendar 2008-2012

	2008	2009	2010	2011	2012	5 -yr. Avg. 16-20	5-yr. % 16-20 Impaired Crashes
Fatal Crashes	14	21	16	17	13	16	2.4
Injury Crashes	310	313	260	233	209	265	39.1
Property Damage Only	467	486	390	309	334	397	58.5
Total Crashes	791	820	666	559	556	678	100.0
Total Fatalities	14	22	17	19	16	18	
Total Number Injured	493	497	403	347	341	416	

Source: Motor Vehicle Administration

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 five 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, drugs, or a combination of drugs and alcohol, are punishable by a maximum $500 fine and/or imprisonment for two months. A person convicted of a second offense of driving while impaired by alcohol, drugs, or drugs and alcohol is subject to a fine of up to $500 and/or imprisonment for up to a year. A third or subsequent offense is punishable by a maximum fine of $3,000 and/or imprisonment for three years.

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 breath or blood test 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 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 resulting in a death or life-threatening injury. Manslaughter by vehicle or vessel – gross negligence 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 imprisonment and/or a $5,000 fine. Manslaughter by vehicle or vessel – criminal negligence is causing the death of another by operating, driving, or controlling a vehicle in a manner when the driver should be aware, but fails to perceive that his or her conduct

creates a substantial and unjustifiable risk that death will occur; and that failure to perceive is a gross deviation from the standard of care that would be exercised by a reasonable person. This offense is a misdemeanor punishable by a maximum of 3 years imprisonment 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 under the influence of alcohol," which is punishable by a maximum of five years imprisonment and/or a $5,000 fine. Homicide by vehicle while impaired by alcohol, drugs, or controlled dangerous substances is also a felony and is punishable by a maximum of three years imprisonment 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 and subject to three years imprisonment 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 and is punishable by a maximum of two years imprisonment and a $3,000 fine.

A violation of an alcohol restriction imposed by a court or the Motor Vehicle Administration on a driver's license is a misdemeanor punishable by up to two months imprisonment and/or a fine of $500.

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 for alcohol or drugs, the administration must suspend the driver's license for 120 days for a first administrative *per se* offense and one year for subsequent offenses. These longer suspension periods provide a disincentive to refuse to take a test. These sanctions are usually imposed prior to the criminal trial and apply even if the defendant is not convicted of the criminal offense.

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 the 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 a driver who had a test result of 0.15 or more or refuses a test unless the driver participates in the Ignition Interlock System 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 concentration or greater may participate in the Ignition Interlock System Program for one year instead of requesting a hearing on the administrative penalties, but only if the driver meets the following conditions:

- the driver's license is not currently suspended, refused, canceled, or revoked;
- the driver is not 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 surrenders a valid Maryland driver's license or certifies that he/she does not possess a license and elects in writing to participate in the Ignition Interlock System Program for one year.

Postconviction Administrative Sanctions

In addition to the administrative *per se* sanctions discussed above, 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 under the influence of alcohol or under the influence of alcohol *per se*, or while impaired by a controlled dangerous substance. If a driver is convicted of any alcohol- or drug-related driving offense more than once within a five-year period, the administration may impose up to a one-year driver's license suspension. If a driver is convicted of any alcohol- or drug-related driving offense within a five-year period after a conviction for driving under the influence of alcohol or while impaired by a controlled dangerous substance, the administration is required to impose a one-year driver's license suspension.

Subsequent offenders are also subject to license revocations by the administration. Participation in the administration's Ignition Interlock System Program 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 which treat drinking drivers are the Drinking Driver Monitor Program and the Ignition Interlock System Program.

Drinking Driver Monitor Program

The Drinking Driver Monitor Program is a specialized program within 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 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 and monitors compliance with the Ignition Interlock System Program if it has been ordered by the Medical Advisory Board or a court.

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, 17,979 people were assigned to the program in fiscal 2012, and 5,169 people successfully completed the program during the same period. As of April 2014, there were 86 monitors and 11,563 people in the program.

Ignition Interlock System Program

An ignition interlock system is a device that connects a motor vehicle ignition system to a breath analyzer to measure a driver's blood alcohol level and prevent the ignition from starting if the driver's blood alcohol level exceeds the device's calibrated setting. The device also periodically requires retesting of a driver after the motor vehicle is started. 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 System 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.

Additionally, any of the following drivers face a one-year mandatory license suspension if he or she fails to participate:

- a driver ordered by a criminal court to participate;

- a subsequent offender who is convicted of driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by alcohol and within the preceding five years was convicted a drunk or drugged driving offense;

- a driver younger than age 21 who violates the alcohol restriction on the driver's license or committed an alcohol-related driving offense; or

- a driver who is convicted of transporting a minor younger than age 16 while driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by alcohol.

Finally, a driver who is convicted of driving under the influence of alcohol or under the influence of alcohol *per se* and had a blood alcohol concentration of 0.15 or greater is subject to a mandatory indefinite license suspension until the driver successfully completes the Ignition Interlock System Program. According to the administration, as of April, 2014, there were 11,254 participants in the program.

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 police officer. This is followed by either a warrantless arrest or the issuance of a charging document. This chapter will discuss these procedures.

Arrest

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

For a police officer to be authorized to make an arrest, a judge or District Court commissioner typically must first issue a warrant based on a finding of probable cause. A police officer may, however, make a warrantless arrest when:

- a felony or misdemeanor is attempted or 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.*, illegally carrying a handgun or other weapon, theft, domestic abuse, stalking) even though the crime did not occur in the officer's presence.

Although rarely done, an individual who is not a police officer also has authority under the common law to make a "citizen's arrest" without a warrant 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, or an indictment.

A charging document must contain (1) the identity of the accused; (2) a concise and definite statement of the essential facts establishing 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 which official or entity files each type of charging document and the court in which each type of charging document is filed.

Exhibit 4.1
Summary of Charging Documents

Charging Document	Filed by	Where Filed
Citation	police officer	District Court
Statement of charges	judge or court commissioner	District Court
Information	State's Attorney	District Court or circuit court
Grand jury indictment	circuit court	circuit court

Source: Department of Legislative Services

Citation

A citation is issued to a defendant by a police officer and filed by the officer in the District Court. Citations are generally used to charge motor vehicle or other relatively minor offenses committed in the officer's presence. Citations may only be used to charge offenses that may be prosecuted in the District Court. The citation contains a command to the defendant to appear in court when notified to do so. For offenses chargeable by a citation, an arrest is generally not allowed. Under some circumstances, however, a police officer may make an arrest.

Citations that are issued 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. Instead of admitting guilt and paying a fine, the defendant may request a hearing on sentencing and disposition in lieu of trial or contest the citation and request a

trial date, with a time, and place to be established by the District Court by writ or trial notice. In any event, the defendant is required to respond to the citation. Otherwise, the defendant's driver's license is subject to suspension. See Chapter 3 of this handbook for a discussion of motor vehicle offenses.

Statement of Charges

Before the arrest of an alleged offender, a judicial officer may file a statement of charges with the District Court based on an application of a police officer or any other individual. The application contains an affidavit demonstrating probable cause that the defendant committed the crime charged. The judicial officer has the authority to determine whether the application establishes probable cause.

Although the judicial officer may be a judge, it is more likely that the officer will be a District Court commissioner. District Court commissioners are available 24 hours a day for judicial duties. A statement of charges may only be used for offenses that may be prosecuted in the District Court.

If a police officer makes a warrantless arrest, the officer must then apply for 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 within the jurisdiction of the circuit court;
- 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.

Grand Jury Indictment

Rather than filing an information, a State's Attorney may seek to have the accused charged by grand jury indictment when the charge is a 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 and additional alternates, as may be required under the Maryland Rules. An affirmative vote of 12 is required to indict. The frequency of meeting and the term length varies by jurisdiction. Grand jurors usually serve a predetermined amount of time. In Baltimore City, for example, grand juries usually meet five days a week for four months. The time of service may be extended to allow the grand jury to complete an investigation.

The selection process to form a pool of grand jurors is similar to the selection of petit jurors to form a pool for a jury trial. 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 drivers' license records). Members of the grand jury are interviewed, and circuit court jury commissioners select the foreperson.

Like petit jurors, grand jurors (1) may not be fired by their employers because of missing work time due to service on the jury; (2) may not be discriminated against due to race, color, religion, sex, national origin, or economic status; (3) are compensated for service as provided in State law (the compensation is $15 each day plus any additional amount provided by county law); and (4) may be excused or resummoned.

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 during the period after a defendant is arrested or charged, but before trial.

Police Procedures

On arrest, the police 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 Report of Arrests and Prosecutions (RAP sheet) to determine whether there is a prior criminal record. If the defendant is charged with a crime of violence or felony burglary or an attempt to commit those crimes, a DNA sample will also be taken from the defendant during booking. 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) each 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 it is determined that there was no probable cause, the defendant is released on personal recognizance with no other conditions of release. If it is determined that 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 of release set by the commissioner should be continued, amended, or revoked.

Right to Counsel

In General

Criminal defendants are advised of their right to legal representation on 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 is 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 advised 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 the right to counsel before the trial date, the case will be postponed to give the defendant an opportunity to obtain counsel and prepare a defense.

DeWolfe v. Richmond

In *DeWolfe v. Richmond,* No. 34 (September Term 2011), the Maryland Court of Appeals held that under the then-effective version of the Maryland Public Defender Act, no bail determination may be made by a District Court commissioner concerning an indigent defendant without the presence of counsel, unless representation by counsel is waived. In response, the General Assembly amended the Public Defender Act to specify that the Office of the Public Defender is required to provide legal representation to an

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[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 2013, 581 attorneys in the Office of Public Defender handled 231,579 criminal and 14,410 juvenile cases.

indigent defendant at a bail review hearing before a District Court or circuit court judge but is not required to represent an indigent criminal defendant at an initial appearance before a District Court commissioner.

On September 25, 2013, the Court of Appeals issued an opinion in the *Richmond* case holding that, under the Due Process component of Article 24 of the Maryland Declaration of Rights, an indigent defendant has a right to State-furnished counsel at an initial appearance before a District Court commissioner ("*Richmond II*"). The Court of Appeals issued a temporary stay of implementation of the *Richmond II* decision until June 5, 2014, to allow the General Assembly to respond during the next legislative session. Though a number of measures were introduced during the 2014 session to address this issue, none passed.

On July 1, 2014, the District Court launched the statewide appointed attorneys program to provide legal counsel to indigent defendants at the initial appearance before a District Court commissioner. Ten million dollars has been allocated in the fiscal 2015 budget for the purpose of the program. Any costs beyond the allotment are to be paid for by the county in which the representation is provided.

Charging by Citation

A police officer must issue a citation for possession of marijuana or any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment or for which the maximum penalty of imprisonment is 90 days or less, with the exception of certain offenses. An officer may charge a defendant by citation only if (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) the defendant complies with all lawful orders by the officer.

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 an amount set by the judicial officer.

Ineligibility for Personal Recognizance

A defendant is by law ineligible for release on personal recognizance if charged with (1) a crime punishable by 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 registered with the sex offender registry maintained by the Department of Public Safety and Correctional Services and defendants charged:

- with a crime punishable by 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;
- with violating certain provisions of a domestic violence protective order; and
- with certain crimes involving firearms, if the defendant has previously been convicted of one of those crimes.

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

Conditions of Release

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

- committing 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;

- subjecting the defendant to 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; and

- for good cause shown, imposing one or more statutorily authorized conditions reasonably necessary to stop or prevent intimidation of a victim or witness or a violation of certain laws relating to obstruction of justice.

Basis for Pretrial Release Determinations

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer is required to take into account the following information, if available: (1) the nature and circumstances of the offense; (2) the nature of the evidence against the defendant and the potential sentence upon conviction; (3) the defendant's prior record and history with regard to appearing in court as required; (4) the defendant's employment status and history, family ties, financial resources, reputation, character and mental condition, and length of residence in the community and the State; (5) the potential danger of the defendant to himself or herself, the victim, or others; (6) recommendations of the State's Attorney and any agency that conducts a pretrial release investigation; (7) information provided by the defendant or the defendant's counsel; and (8) any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim,

another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

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 the defendant failed to appear in court, or any outstanding warrants. The databases include the Criminal Justice Information System, the National Crime Information Center, the Maryland Interagency Law Enforcement System, the Unified Court System, Motor Vehicle Administration records, Warrants, and the National Law Enforcement Telecommunications System. 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.

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% 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 by the judicial officer. If 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% 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. Except in Baltimore City, each county is responsible for operating and funding its detention center, although the State does provide assistance for both capital and operating expenses. The State operates and funds the Baltimore City Detention Center within Department of Public Safety and Correctional Services.

In fiscal 2014, of the 11,484 persons confined in these detention centers, 7,543 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.

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 there is probable cause to believe that the defendant committed the felony. Examples of these felonies include 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 since the grand jury has already made the determination that there is probable cause to believe the defendant committed the offense.

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. In both the District Court and the circuit courts, the State's Attorney must provide to the defendant any "exculpatory evidence," that is, material or information that tends to exculpate the defendant or negate or mitigate the guilt or punishment of the defendant as to the offense charged and all material or information in any form that tends to impeach a State's witness. In the circuit courts, and upon written request in the District Court, the State's Attorney must also provide (1) all written and oral statements of the defendant and any co-defendant; (2) statements of witnesses whom the State intends to call at trial; (3) information regarding pretrial identification of the defendant by a State's witness; (4) information regarding searches, seizures, eavesdropping, or electronic surveillance; (5) information about any expert witnesses the State intends to call to testify; (6) expert witness reports, including the results of any physical or mental examination, scientific test, experiment, or comparison; (7) the opportunity to inspect, copy, and photograph all documents, computer-generated evidence, recordings, photographs, or other

tangible things that the State intends to use at a hearing or trial; and (8) the opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant.

In circuit court, the State's Attorney must also provide (1) the prior criminal record of the defendant and any co-defendant; (2) the name and, subject to some exceptions, the address of each witness the State intends to call to testify; and (3) material and information that tends to impeach a State's witness, such as prior convictions, prior inconsistent statements, inducements for cooperation or testimony, a medical or psychiatric condition or addiction that might impair the witness's ability to testify truthfully or accurately, a prior failure to identify the defendant or a co-defendant, or the fact that the witness has taken but did not pass a polygraph examination.

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 (1) being fingerprinted or photographed; (2) providing handwriting or voice samples; (3) appearing in a lineup; or (4) trying on articles of clothing. On motion and for good cause shown, the defendant may be ordered to permit the taking of bodily materials or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or to submit to reasonable physical or mental examination. The defendant must also provide, upon request in District Court and without the necessity of a request in circuit court, information about any expert witnesses the defense intends to call to testify and any documents, computer-generated evidence, recordings, photographs, or other tangible things that the defense intends to use at a hearing or trial. In a circuit court case, the defendant must also provide information about defense witnesses, character witnesses, and alibi witnesses.

If discovery is not provided as required, the party who is entitled to receive the discovery 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, the 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: (1) the circuit courts and (2) 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 a circuit court or the 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 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, the Maryland Constitution affords a defendant the right to a trial by jury in any misdemeanor or felony case with a potential sentence of 90 days or more, and the District Court is divested of jurisdiction if the defendant requests a jury trial.

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[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.

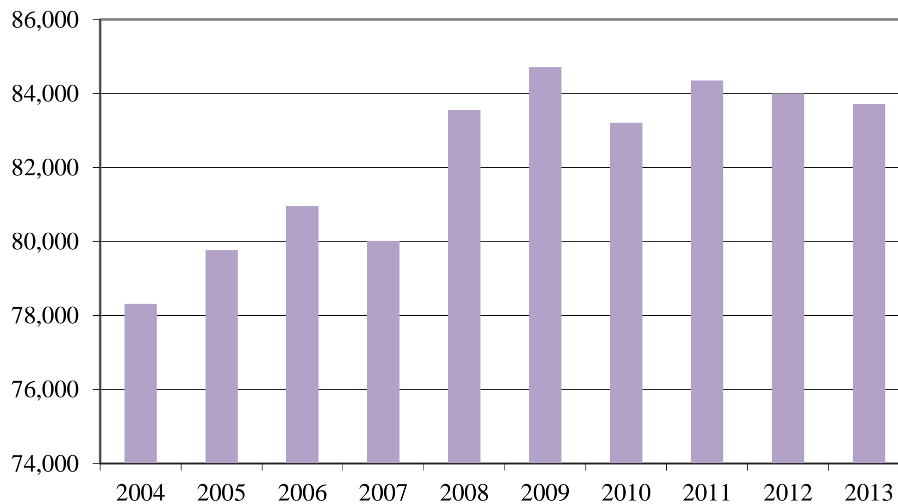
[2] Misdemeanor possession of drugs is the exception to this rule. Exclusive jurisdiction over this offense, which carries a maximum penalty of a four-year term of imprisonment and a $25,000 fine, is in the District Court.

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 2004 through 2013. Since 2004, annual filings have increased from approximately 78,000 to almost 84,000, an increase of over 7% for the period.

Exhibit 6.1
Circuit Court Criminal Filings
Fiscal 2004-2013

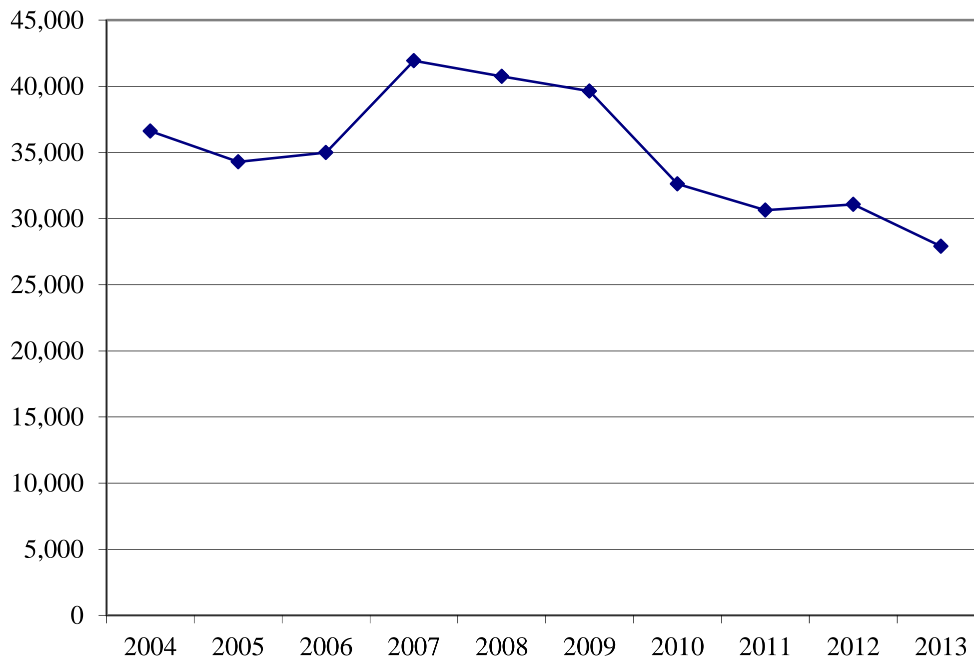


Source: Annual Reports of the Maryland Judiciary

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 and reopened from fiscal 2004 through 2013. During this period, after reaching a peak of over 42,000 in 2007, the number of cases has fallen off to about 30,000 in each of the last three years. See Chapter 8 of this handbook for a discussion of the juvenile justice system.

Exhibit 6.2
Circuit Court Juvenile Cases
Original and Reopened
Fiscal 2004-2013



Source: Annual Reports of the Maryland Judiciary

The District Court

The District Court 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.

Criminal Jurisdiction

The District Court 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

- certain felonies involving theft, bad checks, credit card offenses, forgery, insurance fraud, false workers' compensations claims, identity fraud, manslaughter by motor vehicle or vessel, homicide by motor vehicle or vessel while intoxicated or while impaired by alcohol, drugs or a controlled dangerous substance, counterfeiting, aggravated cruelty to animals, dog fighting, cockfighting, unauthorized access to computers and related materials, exploitation of a vulnerable adult, second degree assault on a law enforcement officer, and voting equipment offenses.

The District Court's jurisdiction is concurrent with that of 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 a circuit court or the District Court.

Criminal Caseload

Exhibit 6.3 shows the number of criminal cases, excluding motor vehicle cases[3], filed in the District Court statewide and by county from fiscal 2004 through 2013. Statewide, from fiscal 2004 through 2013, filings have fluctuated between approximately 214,000 and 197,000.

A comparison of the number of criminal cases filed by county in fiscal 2004 through 2012 indicates a significant and consistent decline of approximately 43.8% in criminal cases filed in the District Court in Baltimore City, although it remains by far the local jurisdiction with the most criminal cases filed. On the other hand, approximately 12 counties have experienced double digit percentage increases in criminal case filings in the District Court from fiscal 2004 through 2013.

In fiscal 2013, cases not prosecuted, *nolle prosequi* cases, accounted for 40.2% of the criminal cases terminated in District Court, and cases that had prosecution suspended, stet cases, accounted for 12.1% of the District Court caseload.

[3] In fiscal 2013, 604,633 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
Criminal Cases* Filed in the District Court
Fiscal 2004-2013

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	FY 04-13 Percentage Change
District 1											
Baltimore City	93,677	84,255	78,605	69,465	66,873	58,895	61,720	55,068	54,587	52,636	-43.8%
District 2											
Dorchester	1,482	1,689	1,530	1,797	1,606	1,522	1,595	1,693	1,712	1,722	16.1%
Somerset	1,050	1,097	1,127	1,349	1,212	1,007	993	1,050	1,141	988	-5.9%
Wicomico	3,344	3,334	3,531	3,880	3,996	3,977	4,307	4,458	4,517	4,733	41.5%
Worcester	6,066	5,448	5,291	4,999	4,417	4,065	4,521	4,396	4,707	5,119	-15.6%
District 3											
Caroline	1,071	1,027	1,225	1,219	1,353	1,395	1,525	1,648	1,524	1,401	30.8%
Cecil	3,367	3,059	3,344	3,844	3,868	3,784	3,594	4,056	4,530	4,469	32.7%
Kent	706	686	659	660	767	764	728	752	678	710	0.5%
Queen Anne's	1,384	1,175	1,234	1,479	1,372	1,461	1,866	1,743	1,475	1,419	2.5%
Talbot	1,335	1,403	1,499	1,405	1,412	1,430	1,554	1,522	1,432	1,429	7.0%
District 4											
Calvert	2,492	2,649	2,728	2,720	3,013	2,994	3,584	3,459	3,559	3,438	37.9%
Charles	4,296	4,367	4,673	5,042	5,613	5,276	5,737	6,830	6,331	5,443	26.6%
St. Mary's	2,899	3,282	3,223	3,360	3,423	3,233	3,467	3,359	3,044	3,024	4.3%
District 5											
Prince George's	19,590	20,606	21,134	21,781	23,641	28,305	30,089	31,724	32,090	30,431	55.3%

District 6											
Montgomery	13,755	14,228	16,626	16,548	16,241	17,517	19,945	19,604	22,766	18,971	37.9%
District 7											
Anne Arundel	13,738	14,007	13,595	12,911	14,294	14,982	14,701	15,638	15,508	16,476	19.9%
District 8											
Baltimore	18,634	17,745	18,277	18,659	19,211	19,850	22,344	21,472	20,873	20,153	8.1%
District 9											
Harford	4,788	5,114	5,244	5,497	5,479	5,528	5,978	6,072	5,968	5,683	18.6%
District 10											
Carroll	3,199	2,956	3,006	3,037	3,118	3,012	3,422	3,457	3,577	3,767	17.7%
Howard	3,956	3,795	4,039	4,126	4,294	4,296	5,481	4,945	5,435	5,120	29.4%
District 11											
Frederick	3,927	3,867	3,864	4,058	4,249	4,260	4,625	4,249	3,884	4,132	5.2%
Washington	4,899	4,891	4,835	4,731	4,690	4,674	5,202	4,920	4,809	4,897	-0.0%
District 12											
Allegany	3,481	3,281	3,617	3,471	3,313	3,249	3,984	4,289	3,870	3,734	7.2%
Garrett	1,185	1,192	1,250	1,264	1,265	1,155	1,317	1,048	1,185	1,154	-2.6%
State	**214,321**	**205,153**	**204,156**	**197,302**	**198,720**	**196,631**	**212,279**	**207,452**	**209,202**	**200,949**	**-6.2%**

* Does not include motor vehicle cases.

Source: Annual Reports of the Maryland Judiciary

Domestic Violence Protective Orders and Peace Orders

The District Court also has jurisdiction over domestic violence protective orders and peace orders. Although these cases are civil proceedings, they are closely related to the criminal justice process and criminal jurisdiction of the District Court.

Domestic Violence Protective Orders

The categories of persons eligible to petition for a domestic violence protective order include spouses, cohabitants, and certain relatives. If the court finds that a petitioner for a protective order has been abused, the court may order various forms of relief intended to protect the petitioner, including ordering the abuser to refrain from abusing or contacting the petitioner or to vacate the family home, awarding temporary custody of and emergency support for any minor child of the parties, awarding temporary use and possession of any jointly owned vehicle, directing the parties to participate in counseling, and ordering the abuser to surrender any firearms in the abuser's possession.

Exhibit 6.4 shows the number of domestic violence protective order cases filed in the District Court statewide and by county from fiscal 2004 through 2013. Statewide there has been an 11.3% increase in the number of civil domestic violence protective order cases filed in the District Court from fiscal 2004 to 2013. During the same period, almost all of the individual counties had an increase in the number of civil domestic violence protective order cases filed.

Exhibit 6.4
Domestic Violence Cases Filed in the District Court
Fiscal 2004-2013

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	FY 04-13 Percentage Change
District 1											
Baltimore City	4,220	4,152	4,190	4,049	4,085	4,258	4,265	4,292	4,410	4,526	7.2%
District 2											
Dorchester	159	154	161	181	197	164	191	157	145	153	-3.7%
Somerset	72	85	88	91	97	126	88	105	103	82	13.8%
Wicomico	491	529	511	560	475	623	514	475	426	422	-14.0%
Worcester	149	162	187	206	239	212	229	230	217	201	34.8%
District 3											
Caroline	110	128	158	159	176	205	226	197	201	185	68.1%
Cecil	363	358	385	443	536	564	607	585	535	518	42.6%
Kent	38	33	33	35	36	35	60	41	71	88	131.5%
Queen Anne's	167	192	181	212	192	187	232	216	176	220	31.7%
Talbot	144	110	160	151	203	179	150	149	158	115	-20.1%
District 4											
Calvert	289	303	329	424	403	380	350	349	347	389	34.6%
Charles	573	593	611	787	708	661	716	738	769	809	41.1%
St. Mary's	364	469	418	445	424	457	514	414	389	435	19.5%
District 5											
Prince George's	4,912	5,085	5,225	5,437	5,315	5,236	5,141	5,068	5,276	5,295	7.7%

Exhibit 6.4 (Continued)

District 6											
Montgomery	1,537	1,712	1,820	1,810	1,937	2,029	2,034	2,044	2,202	2,178	41.7%
District 7											
Anne Arundel	1,971	1,998	1,922	1,845	2,111	1,979	2,185	2,064	2,161	2,365	19.9%
District 8											
Baltimore	3,972	3,780	3,685	3,758	3,725	3,667	3,476	3,555	3,455	3,359	-15.4%
District 9											
Harford	621	743	648	715	767	769	798	764	833	838	34.9%
District 10											
Carroll	294	292	279	304	335	300	349	318	363	416	41.4%
Howard	524	593	626	610	658	602	646	614	592	559	6.6%
District 11											
Frederick	575	643	700	658	736	784	709	679	679	697	21.2%
Washington	890	991	1,000	979	976	1,093	1,015	1080	1125	1,186	33.2%
District 12											
Allegany	360	344	348	346	378	385	431	405	422	365	1.3%
Garrett	139	178	148	165	135	159	165	155	148	132	-5.0%
State	**22,934**	**23,627**	**23,813**	**24,370**	**24,844**	**25,054**	**25,091**	**24,694**	**25,203**	**25,533**	**11.3%**

Source: Annual Reports of the Maryland Judiciary

Peace Orders

Legislation enacted in 1999 created a new form of civil relief entitled a "peace order." An individual who is not in one of the familial relationships with the abuser that would qualify the individual for relief under the domestic violence statute, but who shows a legitimate reason to fear harm, may petition for a peace order requiring another individual to refrain from threatening or committing abuse, end all contact with the petitioner, and to stay away from the petitioner's home, place of employment, or school. Unlike a protective order, however, a peace order may not order any individual to vacate the home or to surrender firearms, nor may it award temporary child custody, emergency child support, or use and possession of a jointly owned vehicle. Exhibit 6.5 shows the number of peace order cases filed in the District Court statewide and by county from fiscal 2004 through 2013. Statewide there has been a 39.7% increase in the number of peace order filings in the District Court from fiscal 2004 to 2013, from 14,705 cases to 20,547.

Exhibit 6.5
Peace Order Cases Filed in the District Court
Fiscal 2004-2013

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	FY 04-12 Percentage Change
District 1											
Baltimore City	2,296	2,370	2,231	2,613	2645	2,748	3,020	3,302	3,640	3,543	58.5%
District 2											
Dorchester	113	128	105	101	122	93	105	105	92	168	48.6%
Somerset	84	91	87	93	97	83	84	60	79	66	-21.4%
Wicomico	289	245	239	334	293	348	349	373	363	387	33.9%
Worcester	104	83	112	165	152	161	158	166	166	163	56.7%
District 3											
Caroline	70	65	98	98	142	151	163	117	109	102	45.7%
Cecil	187	177	243	238	288	316	324	268	236	223	19.2%
Kent	54	53	51	23	28	45	29	59	71	77	42.5%
Queen Anne's	84	102	104	115	149	121	124	125	148	131	55.9%
Talbot	98	64	116	76	153	144	145	100	105	115	17.3%
District 4											
Calvert	219	244	257	279	351	333	291	281	267	291	32.8%
Charles	503	577	610	694	695	593	654	642	741	778	54.6%
St. Mary's	299	374	445	334	370	296	370	303	258	302	1.0%
District 5											
Prince George's	2,851	3,067	3,347	3,598	3828	3,871	4,287	4,182	4,255	4,214	47.8%

District 6											
Montgomery	1,299	1,479	1,633	1,769	2075	2,142	2,274	2,160	2,168	2,168	66.8%
District 7											
Anne Arundel	1,213	1,308	1,438	1,384	1563	1,465	1,712	1,630	1,718	1,954	61.0%
District 8											
Baltimore	2,327	2,035	1,797	2,000	2313	2,362	2,256	2,260	2,440	2,661	14.3%
District 9											
Harford	482	462	503	484	553	609	578	532	587	548	13.6%
District 10											
Carroll	288	323	349	404	371	412	450	447	513	489	69.7%
Howard	397	422	408	436	418	450	531	366	509	416	4.7%
District 11											
Frederick	548	517	460	544	606	570	626	514	620	628	14.5%
Washington	608	586	851	652	646	642	701	729	841	866	42.4%
District 12											
Allegany	171	166	148	185	239	200	242	225	208	190	11.1%
Garrett	121	148	134	130	157	125	153	90	68	67	-44.6%
State	**14,705**	**15,086**	**15,766**	**16,749**	**18,254**	**18,280**	**19,626**	**19,036**	**20,202**	**20,547**	**37.7%**

Source: Annual Reports of the Maryland Judiciary

Alternative "Problem-Solving" Court Programs

In an effort to relieve overcrowded dockets, expedite cases, and provide a multidisciplinary and integrated approach to resolve the core issues facing those accused of certain types of crimes that have a high potential for recidivism, several different "problem-solving" court programs have been established for specific types of cases: (1) a drug treatment court program known as "drug court"; (2) a mental health treatment program known as "mental health court"; and (3) a truancy reduction pilot program known as "truancy court."

As part of the annual appropriation to the Judiciary, the Office of Problem-Solving Courts, a department in the Administrative Office of the Courts, disseminated over $3.8 million via grants to local drug and mental health court programs in fiscal 2013.

Drug Court Programs

The State operates over 40 drug courts in the circuit courts and the District Court for adult and juvenile offenders. A drug court is a specialized docket that handles 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: (1) probation or diversion from prosecution in exchange for a plea of guilty; or (2) 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.

Exhibit 6.6 describes the operational adult, juvenile, and family/dependency drug courts in Maryland as well as the number of drug court participants served in fiscal 2011 through 2013.

Exhibit 6.6
Drug Courts in Maryland

County	Location	Type of Program	Total Served FY 2011	Total Served FY 2012	Total Served FY 2013
Anne Arundel	Circuit Court	Adult	157	140	113
	Circuit Court	Juvenile	42	59	47
	District Court	Adult/DUI	324	343	354
Baltimore City	Circuit Court	Adult	747	791	717
	Circuit Court	Family	190	162	163
	Circuit Court	Juvenile	53	46	24
	District Court	Adult	578	556	375
Baltimore County	Circuit Court	Juvenile	85	98	99
	Circuit Court	Family	-	30	29
Caroline	Circuit Court	Juvenile	21	9	14
	Circuit Court	Adult	-	-	20
Carroll	Circuit Court	Adult	96	92	81
Cecil	Circuit Court	Adult	66	75	96
Charles	Circuit Court	Juvenile	39	30	27
	Circuit Court	Family	13	22	45
Dorchester	District Court	Adult	26	27	31
Frederick	Circuit Court	Adult	53	53	50
Harford	Circuit Court	Family	14	14	30
	Circuit Court	Juvenile	53	43	45
	District Court	Adult	27	30	36
	District Court	DUI	24	37	27
Howard	District Court	Adult	26	44	27
	District Court	DUI	44	28	44

Exhibit 6.6 (Continued)

Montgomery	Circuit Court	Adult	112	120	101
	Circuit Court	Juvenile	21	6	19
Prince George's	Circuit Court	Adult	124	110	97
	Circuit Court	Juvenile	69	60	67
	District Court	Adult	35	36	24
Somerset	Circuit Court	Juvenile	12	12	10
St. Mary's	Circuit Court	Juvenile	36	43	40
	Circuit Court	Adult	34	37	45
Talbot	District Court	Adult	12	3	-
	Circuit Court	Problem-Solving	20	23	34
	Circuit Court	Juvenile	13	4	0
Washington	Circuit Court	Juvenile	24	29	30
Wicomico	Circuit Court	Adult	65	65	51
	District Court	Adult	50	54	41
Worcester	Circuit/District Ct.	Adult	68	83	68
	Circuit Court	Juvenile	13	17	22
	Circuit Court	Family	14	12	7
Total			**3,400**	**3,443**	**3,140**

Source: Maryland Judiciary

Mental Health Court Programs

There are currently three mental health courts in the District Court, located in Baltimore City and Harford and Prince George's counties. The mental health court is a specialized docket designed to address the needs of individuals with psychiatric disabilities who have been charged with a criminal offense. Similar to the drug courts, this program coordinates various treatment services in an effort to promote rehabilitation and reduce recidivism and incarcerations. In fiscal 2013, Maryland served approximately 830 persons in mental health court programs.

Truancy Reduction Court Programs

During the 2004 session, the General Assembly authorized a Truancy Reduction Pilot Program in Dorchester, Somerset, Wicomico, and Worcester counties. In 2007 the program was extended to Prince George's and Harford counties. Chapter 718 of 2009 repealed the sunset date of the program and established permanent truancy courts in Dorchester, Harford, Prince George's, Somerset, Wicomico, and Worcester counties. Chapters 48 and 49 of 2011 authorized the establishment of a truancy court in Talbot County and in 2014 Chapter 152 authorized a truancy court in Kent County. The program addresses the issue of truancy by intervening to determine and address the causes of poor school attendance.

In a county with a truancy court, a school official may file a civil petition with the circuit court alleging that a child who is required to attend school has failed to attend without lawful excuse. The court then intervenes to create a plan and coordinate the necessary social services to address the causes of truancy. The court may order the student to complete community service or to receive substance abuse treatment, for example. Participants are eligible for graduation from the program after remaining in the program for 90 days with no unexcused absences. In Maryland, approximately 120 students were participating in the program as of June 30, 2013.

Chapter 7. Criminal Trials

This chapter will discuss several aspects of criminal trials. Please note that the provisions describing the procedures used in jury trials only apply in the circuit courts and not in the District Court. The District Court does not conduct any jury trials. See Chapter 6 for a discussion of the circuit courts and the District Court.

Court Rules

Generally, both the General Assembly and the Court of Appeals have authority under the Maryland Constitution to establish criminal trial procedures. However, trial procedures in the circuit courts and the District Court are primarily governed by the Maryland Rules of Procedure adopted by the Court of Appeals. The court 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: (1) court or bench trials where a trial judge is the "trier of fact" who decides issues of fact and renders a verdict and (2) jury trials where a jury is the "trier of fact" that decides issues of fact and renders a verdict. If a guilty verdict is rendered in either type of trial, the trial judge determines the sentence. See Chapter 10 of this handbook for a discussion of sentencing.

Exhibit 7.1 shows the number of criminal cases tried in circuit courts from fiscal 2002 through 2013. As indicated in the exhibit, data from certain counties and Baltimore City was unavailable for certain years. The majority of counties have experienced an increase in the number of cases tried. However, according to the available data, in fiscal 2002, 3,014 cases were tried statewide as compared to 2,469 cases in 2013, a 17.2% decline.

Exhibit 7.1
Circuit Court Criminal Cases Tried
Fiscal 2002-2013

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Percentage Change
First Circuit													
Dorchester	14	29	29	23	52	108	19	76	54	65	78	78	457.1%
Somerset	14	5	24	13	23	39	47	79	52	48	50	31	121.4%
Wicomico	89	123	100	121	164	235	235	199	198	174	104	89	0.0%
Worcester	640	722	474	488	249	127	73	138	117	175	130	150	-76.6%
Second Circuit													
Caroline	48	34	27	142	*	*	*	153	*	*	*	*	n/a
Cecil	37	44	60	44	55	132	181	192	159	166	314	113	205.4%
Kent	16	16	10	12	34	98	99	88	48	32	18	27	68.8%
Queen Anne's	29	26	15	27	30	42	71	155	87	125	132	152	424.1%
Talbot	60	38	61	33	54	141	100	98	83	92	97	93	55.0%
Third Circuit													
Baltimore	169	26	83	*	*	*	*	*	*	*	*	*	n/a
Harford	71	53	57	67	67	162	159	209	250	189	276	232	226.8%
Fourth Circuit													
Allegany	40	24	27	20	37	32	35	23	38	41	39	29	-27.5%
Garrett	10	17	10	13	29	97	27	29	47	18	42	33	230.0%
Washington	148	137	122	129	107	77	58	67	96	88	69	58	-60.8%

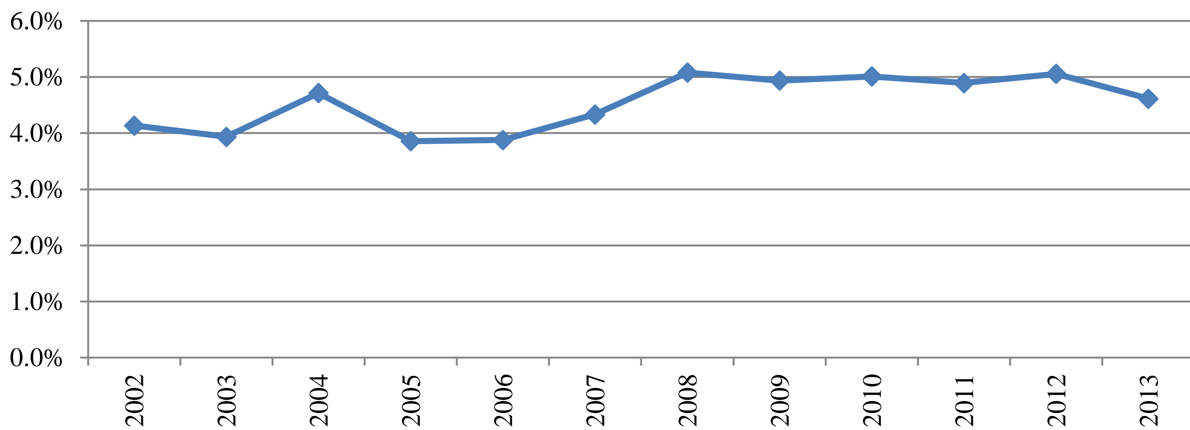
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Percentage Change
Fifth Circuit													
Anne Arundel	443	351	387	138	*	207	512	208	179	152	128	90	-79.7%
Carroll	140	206	272	274	386	171	145	245	290	292	248	281	100.7%
Howard	139	172	149	164	150	153	175	326	178	211	223	232	66.9%
Sixth Circuit													
Frederick	24	28	22	26	25	205	199	127	95	50	58	48	100.0%
Montgomery	213	186	168	278	249	70	245	281	295	382	327	292	37.1%
Seventh Circuit													
Calvert	20	15	15	7	24	38	33	34	21	22	30	24	20.0%
Charles	23	30	29	35	41	*	*	158	*	*	778	77	234.8%
Prince George's	161	123	115	222	255	333	323	237	255	283	289	340	111.2%
St. Mary's	32	28	44	46	51	48	35	29	27	22	20	27	-15.6%
Eighth Circuit													
Baltimore City	434	375	789	751	877	894	*	461	*	*	*	*	*
State	**3,014**	**2,808**	**3,362**	**3,073**	**2,959**	**2,850**	**2,451**	**3,612**	**2,569**	**2,627**	**3,450**	**2,496**	**-17.2%**

*Data unavailable.

Source: Annual Reports of Maryland Judiciary

A relatively small number of criminal cases filed in the circuit courts result in a trial. The vast majority of the criminal cases filed in the circuit courts 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 2002 through 2013. The ratio of trials to dispositions is the number of criminal trials divided by the number of criminal dispositions. Overall, the proportion of cases disposed of by trial has held fairly steady, with between 3.9% and 5.1% of criminal cases disposed of through trial in fiscal 2002 through 2013.

Exhibit 7.2
Percent of Circuit Court Criminal Dispositions through Trial
Fiscal 2002-2013



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. The right to an impartial jury involves a process known as "*voir dire*" which 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 on 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 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 on 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 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 Evidentiary Burden and Standard of Proof

In a criminal case, a defendant is presumed to be innocent, and the State has the evidentiary burden of proving the defendant's guilt. The State has the burden of introducing evidence that is sufficient to authorize a finding by the trier of fact on the matter in issue, unless contradicted or explained, which is called a "*prima facie*" case. In order to establish a *prima facie* case, the State 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 or common law elements of the offense charged. If the State fails to establish a *prima facie* case, the trial judge enters a judgment for an acquittal or a dismissal of the charge.

The State may not compel a defendant to testify in violation of the Fifth Amendment to the U.S. Constitution in the State's attempt to meet its evidentiary burden. Furthermore, a defendant is not obligated to present any evidence unless the defendant raises an affirmative defense.[3] The Fifth Amendment to the U.S. Constitution also prohibits the trier

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[1] Reasons for exclusion include the inability to speak or comprehend English and specified criminal convictions and pending charges. See § 8-103 of the Courts and Judicial Proceedings Article.

[2] See § 8-420 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 the defendant's 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.

of fact from drawing 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.

At the conclusion of the trial, the trier of fact determines whether the State has met the evidentiary burden of establishing the defendant's guilt "beyond a reasonable doubt." This reasonable doubt standard of proof is constitutionally mandated by the due process clause of the Fourteenth Amendment to the U.S. Constitution and the Maryland Constitution.

Direct and Cross-examination of Witnesses

In a criminal trial, the State presents its evidence first through witness examination, exhibits, and stipulations. The initial questioning of the State's witnesses by the prosecutor is known as direct examination. Generally, direct examination questions must be open-ended, allowing the witness to present the information to the trier of fact. Direct examination questions must be relevant and limited to proving the elements of the claim made by the prosecution. After the direct examination of a State's witness is concluded, the attorney representing the defendant may cross-examine the witness to bring out additional information or to test the knowledge or credibility 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.

Similarly, if the defendant chooses to present evidence at the conclusion of the State's case, the defendant's attorney generally conducts a direct examination of the defendant's witness followed by cross-examination of the witness by the prosecutor.

Jury Instructions

Jury instructions are statements of the law read by the trial judge to the jury. The purpose of jury instructions is to inform and instruct the jury as to the law and to aid members 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 from the Maryland Pattern Jury Instructions adopted by the Court of Appeals; 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's counsel 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 retires to the jury room to deliberate. A judge may appoint, or instruct a jury 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:

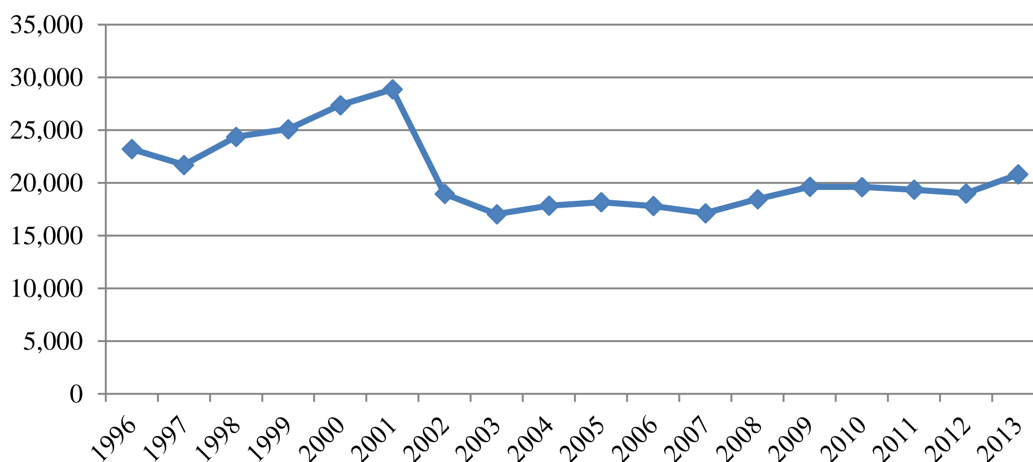
- to obtain a postponement, often so the defendant can obtain counsel or complete payment of counsel fees;
- to remove the case from an individual judge who is unknown to defense counsel or whose sentences are thought to be unduly severe;
- to delay the anticipated incarceration of a defendant released on bail or on his or her 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 a jurisdiction where criminal cases are not tried in the 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, or soon after, a jury request is made in the District Court. Baltimore County has since discontinued the practice due to scheduling difficulties. Also, several jurisdictions require defendants requesting a jury trial to appear immediately at the circuit court for an initial appearance, at which time they are advised of their rights and a trial date is set, often for the next designated or reserved day for jury trials.

Exhibit 7.3 shows the number of District Court jury trial requests made from fiscal 1996 through 2013. From fiscal 1997 through 2001, a steady increase in the number of jury trial requests occurred with 28,870 jury trial requests in fiscal 2001. Since fiscal 2002, the number of jury trial requests has fluctuated between 17,000 and 21,000. In fiscal 2013, there were 20,822 jury trial requests, the highest number of requests since fiscal 2001.

Exhibit 7.3
District Court Requests
Fiscal 1996-2013



Source: Annual Reports of the Maryland Judiciary

Chapter 8. Juvenile Justice Process

With certain exceptions, persons younger than 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.

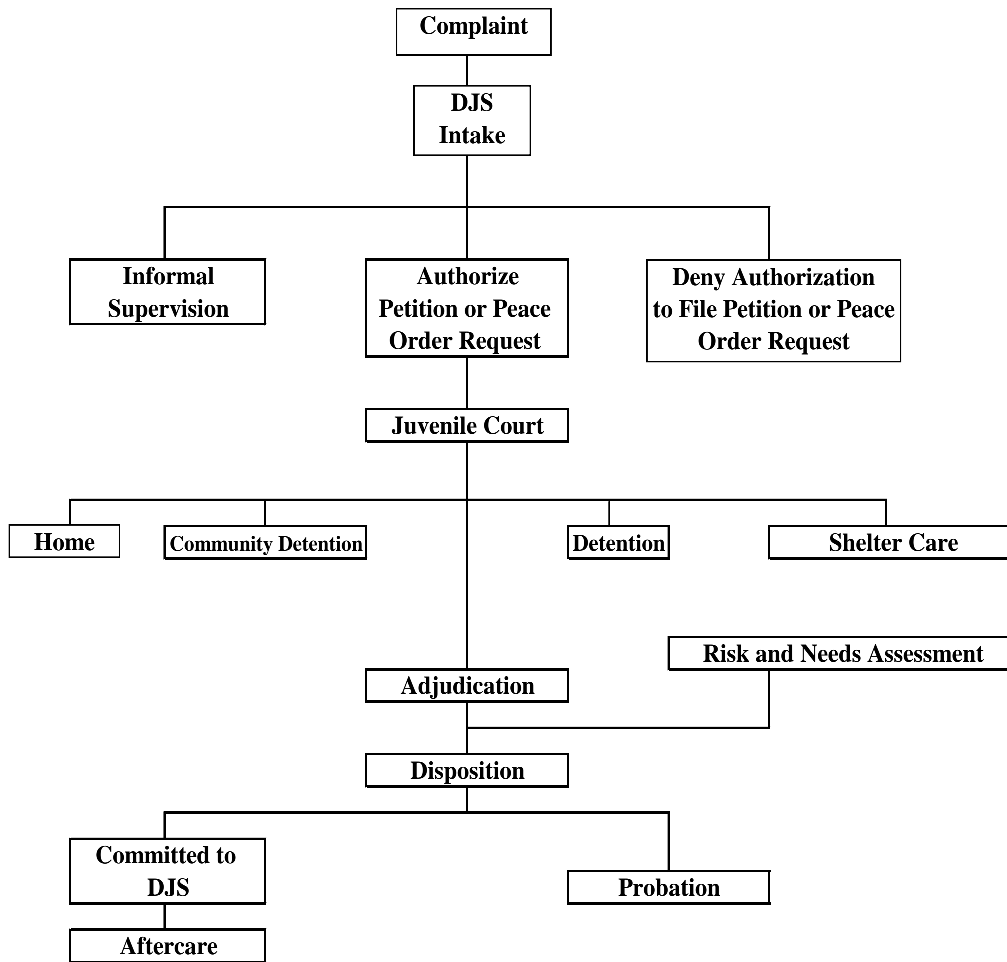
The terminology used in the juvenile system differs from that used in the criminal system. For example, juveniles do not commit crimes. Rather, they commit "delinquent acts," which are acts that would be crimes if committed by an adult. Juveniles are "adjudicated delinquent" instead of convicted, and 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."

In addition to children who have committed delinquent acts, the juvenile justice system also governs "children in need of supervision," which are children who require guidance, treatment, or rehabilitation and (1) are required by law to attend school but are habitually truant; (2) are habitually disobedient, ungovernable, and beyond the control of the custodian; (3) act in a manner that may injure or endanger themselves or others; or (4) have committed an offense applicable only to children.

The Department of Juvenile Services currently administers Maryland's juvenile programs. The department's goals include keeping supervised and committed youth safe while holding youth accountable for their actions and reducing violence against children through collaboration with law enforcement and other agency partners. 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 accounted for almost 90% of the total number of complaints in fiscal 2013.[1]

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 after 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 to determine 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 or a child in need of supervision. 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.

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[1] In fiscal 2013, 27,510 cases were referred to the Department of Juvenile Services for intake.

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

The intake officer may deny authorization to file a petition alleging that a child is delinquent or in need of supervision 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 2013, intake officers denied authorization to file a petition for lack of jurisdiction in 173 cases (less than 1% of total cases).

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 intake officer may deny authorization to file a petition or peace order request and resolve the case 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 2013, 8,272 cases (30% 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 for delinquency to the State's Attorney. If authorization to file a peace order request or a petition alleging that a child is need of supervision 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 (1) referrals to other agencies; (2) completion of community service; (3) regular counseling; (4) supervision by the Department of Juvenile Services; (5) family counseling; (6) substance abuse treatment; and (7) 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 in the county in which the delinquent act occurred.

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 2013, informal supervision was conducted in 4,895 cases (17.8% 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 to 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 or a peace order request or both in the juvenile court.

In fiscal 2013, intake officers authorized 14,170 petitions (51.5% of total cases) for formal processing in juvenile court.

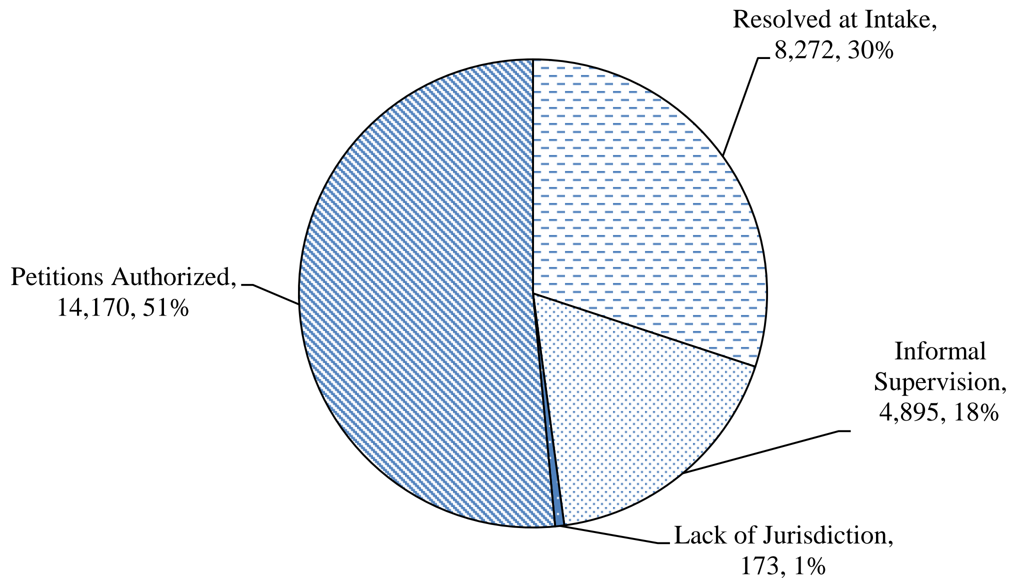
Exhibit 8.2 shows the distribution of 27,510 intake determinations for fiscal 2013.

Detention and Shelter Care Prior to Hearing

If the filing of a petition 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 whereabouts of the child.

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 2013



Source: Department of Juvenile Services

Juvenile Court – 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. Petitions alleging that a child is in need of supervision are filed by the intake officer.

Jurisdiction

Generally, the juvenile court has jurisdiction over any child alleged to be delinquent or in need of supervision. 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." A reverse waiver is not permitted in certain circumstances, such as when the child was previously convicted in an unrelated case excluded from the jurisdiction of the juvenile court or when the alleged crime is murder in the first degree and the accused child was 16 or 17 years of age when the alleged crime was committed.

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.

Lead Testing

After a petition has been filed, but before adjudication, the juvenile court may order a child to undergo blood lead level testing. The results of the test are required to be provided to the child, the child's parent or guardian, the child's attorney, and the State's Attorney.

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. An allegation that a child is in need of supervision must be established by a preponderance of the evidence.

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 or 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, on 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 or certain offenses involving leaving the scene of a traffic accident or fleeing and eluding a police officer.

At disposition, the court is prohibited from committing children who have been adjudicated delinquent for the commission of certain nonviolent offenses to the Department of Juvenile Services for out-of-home placement unless specified conditions are met.

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 out-of-home 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, and considers factors including the type of treatment and level of security that is needed.

Placement options include (1) family foster care for children whose families cannot appropriately care for them; (2) group homes; (3) independent living programs; (4) residential treatment centers; and (5) treatment facilities providing secure confinement. The department operates four youth centers, which provide vocational programming in addition to other services, as well as three other committed residential facilities in Maryland. Additionally, the department contracts with private providers both in-state and out-of-state to provide services to youth under its care. Exhibit 8.3 lists all State-operated juvenile facilities.

In fiscal 2013 there were 1,770 committed placements to the department. The average length of stay in committed placement was 172.5 days.

Exhibit 8.3
Department of Juvenile Services
State-operated Facilities
Fiscal 2013

Facility Name	Location	Type of Facility	Average Daily Population	Rated Capacity
Green Ridge	Allegany	Youth Center	39	40
Thomas J.S. Waxter	Anne Arundel	Detention	30	42
Baltimore City Juvenile Justice Center	Baltimore City	Detention	84	120
Charles H. Hickey, Jr.	Baltimore County	Detention	47	72
William Donald Schaefer House	Baltimore City	Secure Residential	15	19
Backbone Mountain	Garrett	Youth Center	42	48
Meadow Mountain	Garrett	Youth Center	39	40
Savage Mountain	Garrett	Youth Center	36	36
J. DeWeese Carter	Kent	Secure Residential	12	14
Alfred D. Noyes	Montgomery	Detention	46	57
Cheltenham	Prince George's	Detention	95	115
Western MD Children's Center	Washington	Detention	22	24
Lower Eastern Shore Children's Center	Wicomico	Detention	22	24
Victor Cullen	Frederick	Secure Treatment Center	47	48

Source: Department of Juvenile Services

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 Orders

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.[2] The peace order may order the child to (1) refrain from committing or threatening to commit a prohibited act; (2) end all contact with the victim; (3) stay away from the victim's home, place of employment, or school; or (4) 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

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[2] In fiscal 2013, the juvenile court issued 100 peace orders.

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 a criminal proceeding. The first is in determining whether a defendant is competent to stand trial (*i.e.*, whether the defendant is mentally able to participate in the proceedings). The second is in determining 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 Defendant

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 2013, there were 1,441 court-ordered evaluations 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 a few jurisdictions, the screener is permitted by the department to give a definitive opinion regarding competency or criminal responsibility without the necessity of an additional evaluation. This opinion is then forwarded to the courts, which makes a finding regarding the defendant's competency or criminal responsibility.

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[1] Although Chapter 119 of 2009 replaced references in State law to "mental retardation" with the term "intellectual disability," the bill did not apply to the Criminal Procedure Article, which contains the provisions pertaining to findings of incompetency to stand trial and not criminally responsible. Thus, since the term "mental retardation" is still used in this area of 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.

In fall 2007, the Prince George's County District Court established a mental health court. In order to accommodate an increase in court orders for evaluation, the Mental Health Administration assigned a psychologist to the court to conduct the evaluations. Evaluations were completed at the jail, in the community, or at the hospital. In fiscal 2013, approximately 186 evaluations were conducted for the mental health court. For additional discussion on mental health courts, see Chapter 6 of this handbook.

Postscreening Evaluation of Defendant

The Department of Health and Mental Hygiene determines which facility will conduct the postscreening evaluations. The postscreening evaluation may take place at one of four 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 a diagnosis of mental retardation, the defendant may be evaluated at the jail, in the community, or at the Secure Evaluation and Therapeutic Treatment Program operated by the Developmental Disabilities Administration on the campus of Clifton T. Perkins Hospital. Usually, defendants with a primary diagnosis of mental disorder who are charged with a violent crime receive postscreening evaluation at Perkins Hospital, which is the only maximum-security hospital in the State. Defendants charged with other offenses are evaluated at one of the four regional hospitals that conduct forensic evaluations.

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.

The results of the postscreening evaluation are forwarded to the court for a final determination as to the defendant's competency or criminal responsibility. Exhibit 9.1 shows the process for the pretrial evaluation of defendants.

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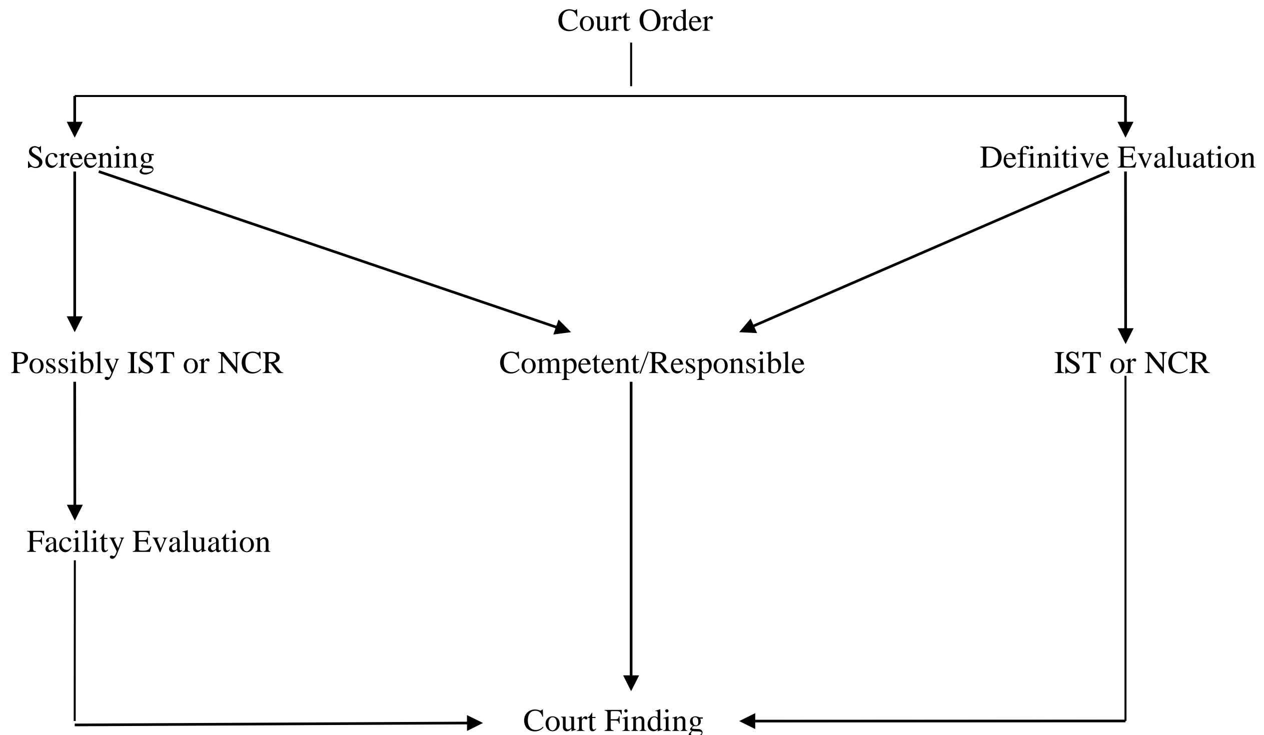
[3] The four regional psychiatric hospitals that conduct forensic evaluations are Spring Grove Hospital, Springfield Hospital, Eastern Shore Hospital Center, and the Thomas B. Finan Center.

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



Source: Department of Health and Mental Hygiene

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 concerns the current mental ability of the defendant to participate in the proceedings.

The issue of competency may be raised by the judge, prosecuting attorney, defense counsel, or the defendant. However, ultimately the trial judge determines whether a defendant is competent to stand trial. 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 proceeding and to assist in the defense.

Prior to making this determination, the court may order the department to conduct an evaluation of the defendant on a finding of good cause to do so. If, after completing its evaluation, the department opines that a defendant is incompetent to stand trial, the department will provide an opinion in a supplemental report as to whether the defendant, as a result of a mental disorder or mental retardation, would present a danger to self or the person or property of another if released to the community. The department may also propose services that would permit the individual to become competent or maintain the individual safely in the community. If appropriate, these conditions may be incorporated into a Pretrial Release Order while the defendant awaits trial.

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 may 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 a mental disorder or mental retardation; or (3) not substantially likely to become competent to stand trial in the foreseeable future. Defendants found incompetent to stand trial due to mental retardation are placed in facilities operated by the Developmental Disabilities Administration. Defendants found incompetent to stand trial due to a mental disorder are placed in facilities operated by the Mental Health Administration.

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. The court is also required to 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 a report from the department setting forth new facts or circumstances relevant to the determination. The department will send a report as soon as, in its opinion,

the individual is no longer incompetent to stand trial or is no longer a danger to self or others as a result of the mental disorder or mental retardation. According to the department, many individuals are returned to court within three to six months of initial commitment.

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. Most courts convene a "status" conference at six-month intervals to review the status of the case, which coincides with departmental reporting requirements. The defendant is not required to be present at the conference. At the conference, the department submits a report that includes detailed information regarding the clinical presentation of the individual and an opinion regarding the defendant's competency, dangerousness, and restorability to competency.

At a competency review hearing, if the court finds that the defendant is incompetent to stand trial due to a mental disorder 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, on a finding 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.

If the defendant is found incompetent to stand trial due to mental retardation, the court must 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 due to a mental disorder or mental retardation, the court may release the defendant on bail or recognizance and may order the defendant to obtain treatment as a condition of release. The department will usually make recommendations for conditions necessary to ensure the safety of the defendant and the public. Either the department's Community Forensic Aftercare Program or the jurisdiction's Pretrial Release Office will monitor the pretrial release order. 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. Likewise, the court may convene periodic status hearings to assess the defendant's compliance with the conditions of pretrial release, competency to stand trial, and dangerousness.

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 (1) the defendant is no longer incompetent to stand trial; (2) the defendant is no longer a danger because of a mental disorder or mental retardation; or (3) 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. The plan shall include, if appropriate, mental health treatment; vocational, rehabilitative, or support services; housing; case management services; alcohol or substance abuse treatment; and other clinical services.

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 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;

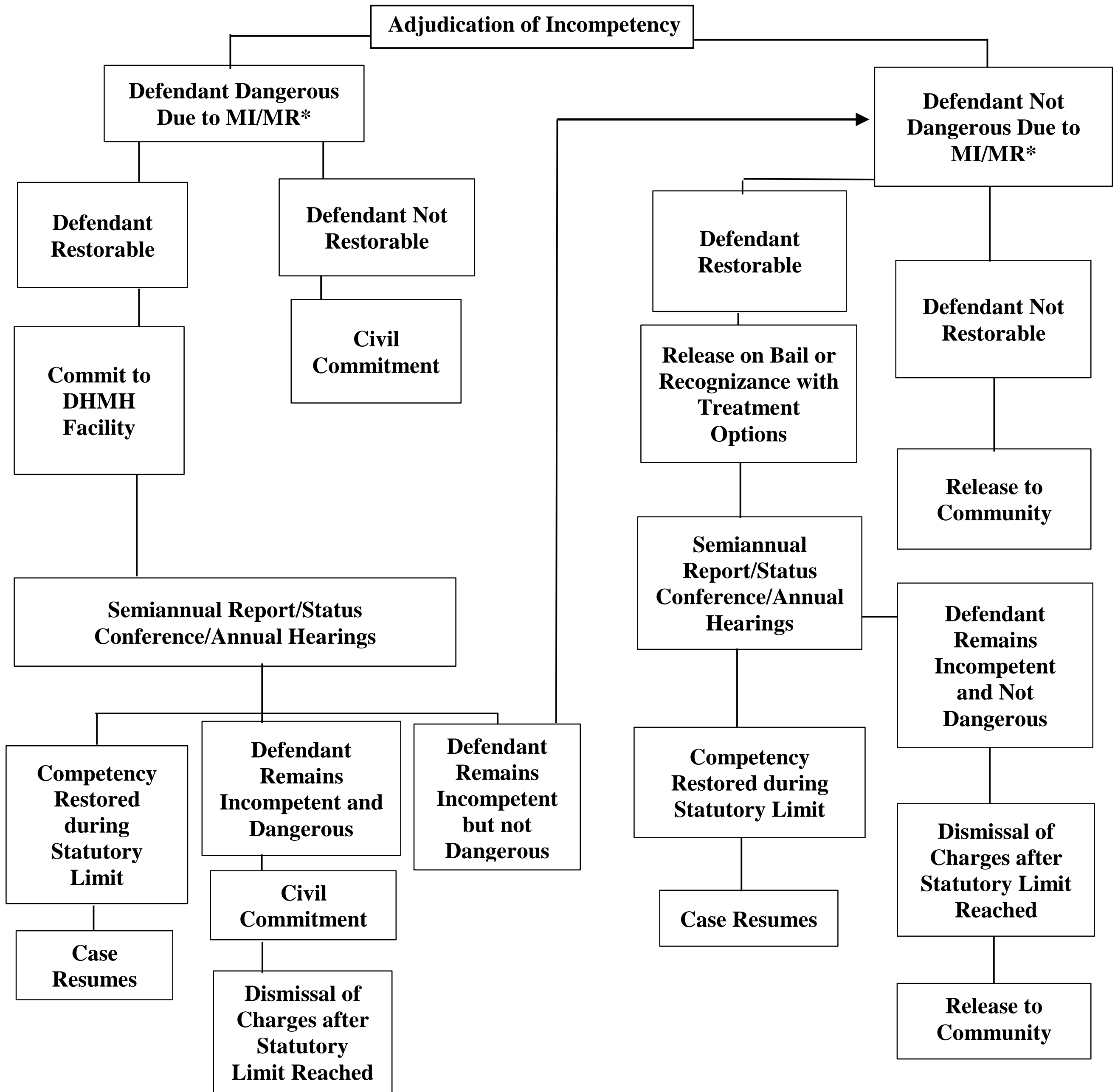
- after the lesser of the expiration of three years or the maximum sentence for the most serious offense charged, if the defendant is charged with an offense not covered above; or

- at any time if the court finds that resuming the criminal proceeding would be unjust because so much time has passed, if notice and an opportunity to be heard have 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.

Exhibit 9.2
Incompetent to Stand Trial



DHMH: Department of Health and Mental Hygiene
MI: mental illness
MR: mental retardation

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, the law recognizes that a person should be found not criminally responsible if the person commits a criminal act because a mental disorder or mental retardation hinders the person's ability to comply with the law or understand that what he or she was doing was criminal. The plea of not criminally responsible is often referred to as the insanity defense. Unlike the issue of competency to stand trial, the focus of the 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. The department conducts the evaluation of criminal responsibility only when the defendant is found to be competent and affirms the plea of not criminally responsible which was entered by the defense attorney when the defendant's competency was in doubt. If a competent defendant voluntarily and intelligently withdraws the plea, the department does not proceed with the evaluation of criminal responsibility. *Treece v. State,* 313 Md. 665, 547 A.2d 1054 (1988).

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[4] that the defendant is not criminally responsible for committing the act.

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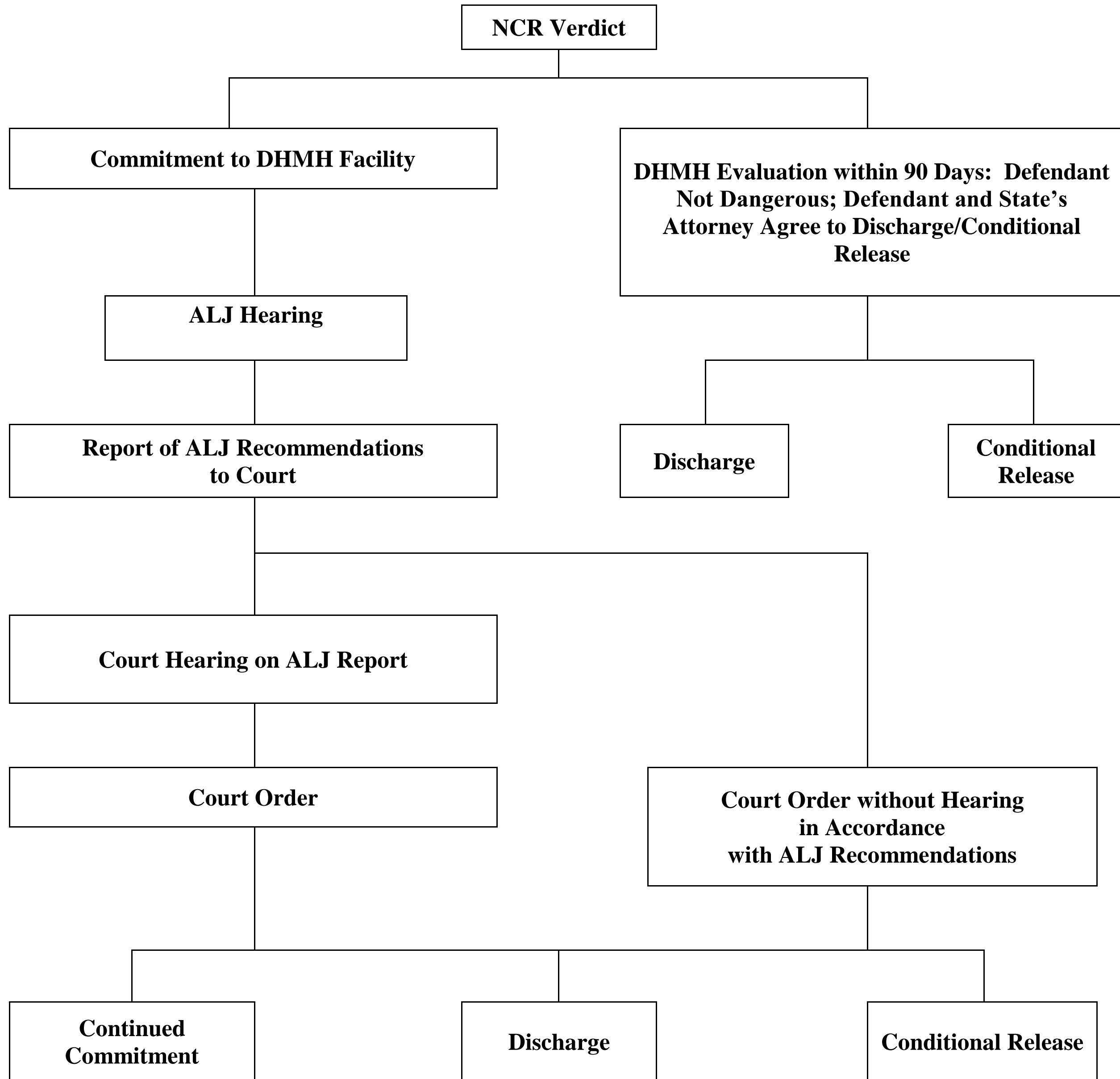
[4] This is the usual standard of proof in civil cases. It means that the defendant must show that it was more likely than not that the defendant was not criminally responsible. It is a lesser standard than the reasonable doubt standard that the State must show in order to obtain a conviction.

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 the procedure following a not criminally responsible verdict.

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 of Defendants Found to be Not Criminally Responsible

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 to self or to the person or property of others due to a mental disorder or mental retardation if released from commitment with or without conditions. Within 50 days after the finding of not criminally responsible and 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 from the Office of Administrative Hearings on the issue of whether the individual is eligible for discharge or conditional release from inpatient confinement or requires continued commitment to the Department of Health and Mental Hygiene.

At the hearing, the formal rules of evidence do not apply. The defendant is entitled to be present at the hearing and to have legal representation. An assistant Public Defender is assigned to each facility and represents most of the defendants. In addition, the department and the State's Attorney are entitled to participate in the hearing. The department, through the hospital, will present its opinion regarding the defendant's eligibility for discharge. Within 10 days after the hearing, the administrative law judge must submit a written report to the court with a summary of the evidence presented at the hearing and a recommendation as to whether the committed person is eligible for conditional release or discharge. Any party may file exceptions to the administrative law judge's recommendations within 10 days after receiving the report.

The court may hold a hearing on its own initiative within 30 days after the court receives the administrative law judge's report. The court must hold a hearing within this 30-day timeframe if timely exceptions are filed, unless the committed person and the State's Attorney waive the hearing. The committed person is entitled to be present at the hearing and to have legal representation. Within 15 days after a judicial hearing ends or is waived, the court must determine whether the evidence indicates that the committed person has proven by a preponderance of the evidence that he or she is eligible for release (with or without conditions), and order the continued commitment, conditional release, or discharge from commitment of the defendant.

If timely exceptions are not filed and the court determines that the administrative law judge's recommendations are supported by the evidence and that a judicial hearing is not necessary, the court must enter an order in accordance with the administrative law judge's recommendations within 30 days after receiving the administrative law judge's report. The court may not enter an order that is not in accordance with the administrative law judge's recommendations unless the court holds a hearing or the hearing is waived.

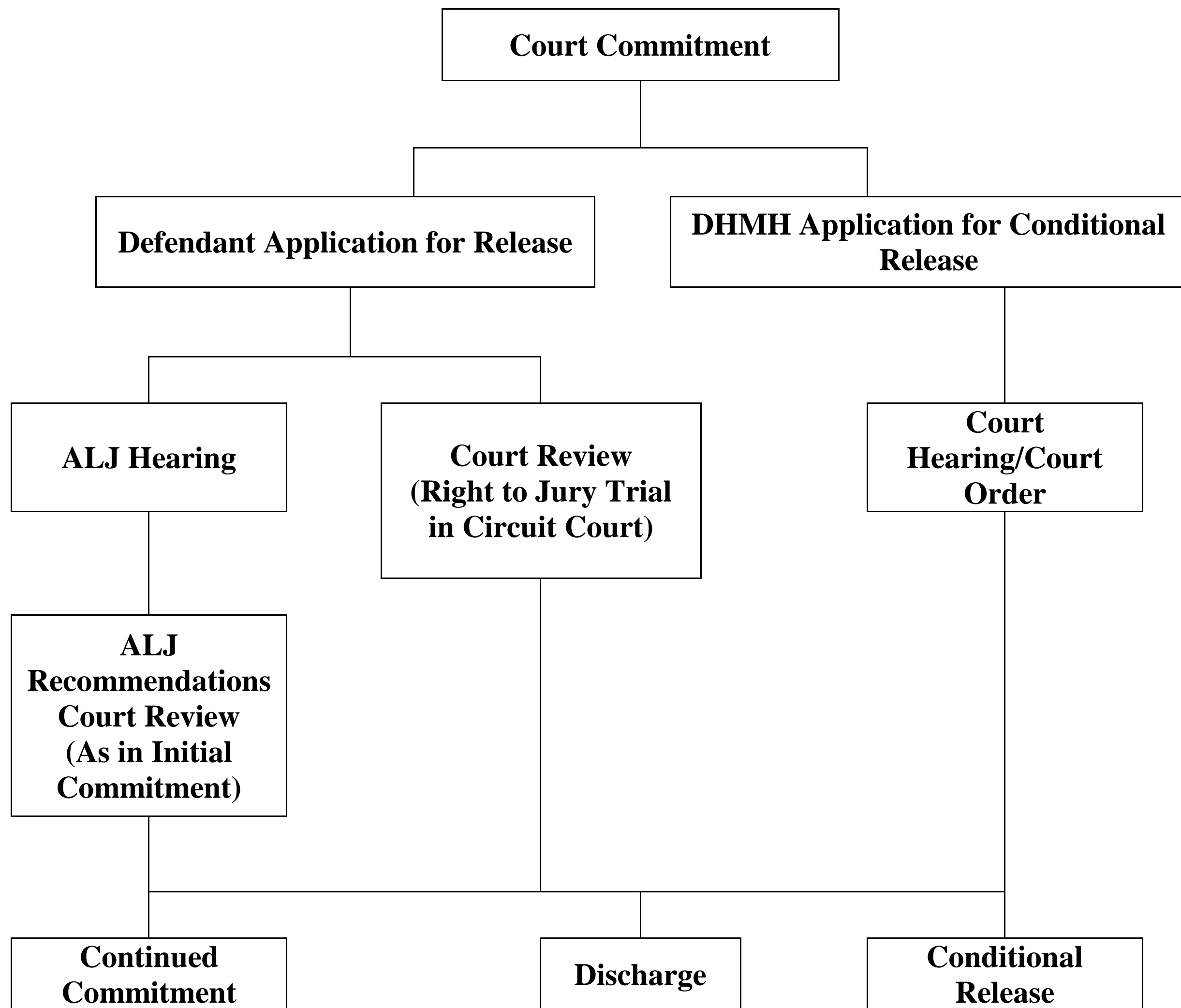
Usual conditions of release include provisions for housing (*e.g.,* residential rehabilitation housing, supervised housing, etc.), mental health treatment, daytime activities (*e.g.,* psychosocial programs, vocational training, etc.), and alcohol or substance abuse treatment. A conditional release continues for the period ordered by the court, not to exceed five years, unless extended by the court for an additional term not to exceed five years on application to the court for a change in conditional release made by the department, the State's Attorney, or the defendant.

The court must notify the Criminal Justice Information System Central Repository whenever it orders conditional release or discharge of a committed person.

If the court orders continued commitment, the defendant may apply for release not earlier than one year after the initial release hearing ends or is waived, and not more than once a year thereafter. However, the committed defendant may file an application for release at any time outside of these time restrictions if the defendant's application is accompanied by an affidavit of a physician or psychologist stating that there has been an improvement in the defendant's mental condition since the last hearing. 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 may request a bench trial before the committing court or a jury trial. If the committing court was the District Court and the individual requests a jury trial, the trial will be held in the circuit court of that jurisdiction.

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 may hold a hearing on the application or may issue an order either continuing commitment or allowing the conditional release. See Exhibit 9.4 for procedures relating to the continued commitment of defendants.

Exhibit 9.4
Not Criminally Responsible – Continued Commitment



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 all cases of individuals on conditional release. A director, 3 social workers, and 1 secretary staff this program. The number of defendants monitored on conditional release is approximately 750.

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 apprehension 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. The individual is usually returned to the facility from which the individual had been released.

Unless all parties agree to an extension or the administrative law judge finds good cause, a hearing must be held within 10 days after 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 the 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 the 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 under § 11-104 of the Criminal Procedure Article 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 a discussion of victims' rights, see Chapter 12 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. 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 firearm in a felony or crime of violence; (2) use of a firearm in a drug trafficking crime; (3) possession of a firearm if the person was previously convicted of a federal charge or an offense in another state that would constitute a disqualifying crime of violence or drug crime if committed in Maryland; (4) volume drug dealing and being a drug kingpin; (5) drug dealing as a subsequent offense; (6) crimes of violence as a subsequent offense; and (7) 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 younger than age 13. In addition, first degree murder carries a mandatory life sentence that may be either with or without the possibility of parole. Certain subsequent drunk and drug-impaired driving offenders are also subject to mandatory sentences. See Chapter 3 of this handbook for additional discussion of drunk and impaired 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, an 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 discussion of common law crimes.

Sentencing Guidelines

Maryland was one of the first states to initiate a sentencing guideline system. After first being piloted in four jurisdictions, the guidelines have been in effect statewide since 1983. Maryland's voluntary guidelines were originally designed by circuit court judges for circuit court judges. 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 offenders who have committed similar offenses and have similar criminal histories.

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

- 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 commission oversees the State's voluntary sentencing guidelines. It consists of 19 members, including members of the Judiciary, members who are active in the Maryland criminal justice system, members of the Senate of Maryland and House of Delegates, public representatives, and a chairman appointed by the Governor. Using data collected from the sentencing guidelines worksheets, the commission monitors circuit court sentencing practices and adopts changes to the guidelines consistent with legislative intent when necessary. During the legislative session, the commission prepares statements

containing fiscal and statistical information on proposed legislation affecting sentencing and corrections practice. The commission, in conjunction with consultants at Applied Research Services Inc., developed a sentencing/correctional simulation model to help project the potential impact of proposed changes to the sentencing guidelines on Maryland's correctional population. The model is designed to estimate the impact of changes in operating policies, sentencing practices, post-release practices, and external system pressures on the system. The responsibilities of the commission include reporting annually to the General Assembly regarding changes made to the sentencing guidelines and reviewing judicial compliance with the sentencing guidelines.

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 also supports 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 sentencing guidelines can be found in the *Code of Maryland Regulations*. The commission's instruction and sample case manual is published on the Internet.

Maryland's voluntary sentencing guidelines apply to criminal cases prosecuted in the circuit courts, with the exception of the following sentencing matters: (1) prayers for a jury trial and appeals from the District Court (unless a pre-sentence investigation is ordered); (2) crimes that carry no penalty of incarceration; and (3) violations of public laws and municipal ordinances. The guidelines determine whether an individual should be incarcerated and if so, provide a sentence length range. For each offense category (person, drug, and property) there is a separate grid or matrix, and there is a recommended sentence range 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 drug and property offenses, the offense score is determined by the seriousness of the offense (seriousness category). 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 younger than 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, has a juvenile record or prior criminal record as an adult, and has any prior adult parole or probation violations.

The guideline sentence range represents only nonsuspended time. The actual sentence accounts for credit for time served, suspended time, length of probation, any 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. Sentencing 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 the departure.

When the guidelines were originally drafted by the study group, it was expected that two-thirds of sentences would fall within the recommended sentencing ranges and when sentencing practice resulted in departures from the recommended range in more than one-third of the cases, the guidelines would be revised. Since that time, the commission has adopted the goal of 65.0% as the benchmark standard for guidelines compliance. The rate of compliance with the guidelines in fiscal 2013 was 75.8% for all offenses – compared to 79.3% in fiscal 2009. Compliance was highest for sentences for offenses against persons (79.2%), followed by sentences for property offenses (75.6%) and sentences for drug offenses (74.5%).

Probation

Probation is a disposition that allows an offender to remain in the community, frequently requiring compliance with certain standards and special conditions of supervision imposed by the court. A court has broad authority to impose reasonable conditions to fit each case. A standard condition of probation, for example, prohibits the offender from engaging in any further criminal activity. Additional conditions may require an offender to participate in drug or alcohol treatment, refrain from the use of drugs or alcohol, participate in counseling (common in domestic violence and sexual offense cases), pay restitution, or 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.

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. A court may not impose probation before judgment for specified alcohol- and/or drug-related driving offenses if the defendant has previously been convicted of or been granted probation before judgment for an alcohol- and/or drug-related driving offense within 10 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 younger than 16 years of age. Generally, a court is prohibited from imposing probation before judgment for a second or subsequent controlled dangerous substance crime. However, a court may impose probation before judgment for a second offense of possession of a controlled dangerous substance if (1) the defendant has been convicted once previously of or received probation before judgment once previously for possession of a controlled dangerous substance; (2) the court requires the defendant to graduate from drug court or successfully complete a substance abuse treatment program as a condition of probation; and (3) the defendant graduates from drug court or successfully completes a substance abuse treatment program as required.

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 court has entered a judgment of conviction. Following that judgment, 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. If 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. In general, a term of probation following judgment may not exceed five years if probation is ordered by a circuit court or three years if ordered by the District Court. A longer term of probation may be ordered for a sexual crime involving a minor, for the purpose of making restitution, or for commitment to the Department of Health and Mental Hygiene for substance abuse treatment.

Supervised Probation

If a court grants probation, the court may order the probation to be supervised or unsupervised. For minor or non-violent first-time offenses, a court may not order supervised probation. 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 Maryland Department of Public Safety and Correctional Services. An offender placed on supervised probation is required to pay a monthly fee of $50 to the department unless exempted by law.

The department supervises probationers and parolees who are serving sentences in the community. As of April 2014, approximately 658 parole and probation agents and 81 drinking driver monitors were responsible for the supervision of approximately 60,313 offenders – 40,147 under probation supervision, 11,670 being monitored by the Drinking Driving Monitor Program, 3,926 under mandatory release supervision, and 5,686 under parole supervision. In addition, another 51 community supervision 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 community supervision 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 123 cases, but caseload size varies within the department's specialized programs such as the sexual offender and the Violence Prevention Initiative caseloads which average 30 and 27 offenders, respectively.

The Drinking Driver Monitor Program is a specialized program for persons sentenced to probation for drunk or drugged driving. See Chapter 3 of this handbook for further discussion of this program.

Earned Compliance Credit Program

Pursuant to legislation enacted in 2012, the Department of Public Safety and Correctional Services established a program of earned compliance credits. The purpose is to create a reduction in the period of active supervision for a "supervised individual" and to develop policies and procedures for implementation. With certain exceptions, a "supervised individual" means an individual placed on probation by a court or one who is serving a period of parole or mandatory release supervision after release from a correctional facility. An "earned compliance credit" is a 20-day reduction from the period of active supervision of the supervised individual for every month that a supervised individual:

- exhibits full compliance with the conditions, goals, and treatment as part of probation, parole, or mandatory release supervision, as determined by the department;
- has no new arrests;
- has not violated any conditions of "no contact" requirements;
- has complied with court-ordered payments for restitution, fines, and fees relating to the offense for which earned compliance credits are being accrued; and
- has completed any community supervision requirements included in the conditions of the supervised individual's probation, parole, or mandatory release supervision.

A supervised individual whose period of active supervision has been completely reduced as a result of earned compliance credits must remain on "abatement" until the expiration

of the individual's sentence, unless consenting to continued active supervision or unless violating a condition of probation, parole, or mandatory release supervision, including failure to make a required payment of restitution. If a supervised individual violates a condition of probation while on abatement, a court may order the person to be returned to active supervision. "Abatement" means an end to active supervision without alteration of the legal expiration date of the case or affecting the supervised individual's obligation to obey all laws, report as instructed, and obtain written permission from the department before relocating outside the state.

Interstate Compact for Adult Offender Supervision

According to the Bureau of Justice Statistics, there are approximately 4.8 million adult men and women under federal, State, or local probation or parole jurisdiction. Of that number, more than 230,000 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.

Maryland became a member of the existing compact in 2001. The Uniform Act for Out-of-State Parolee Supervision was first enacted in 1937 and has been revised through the years. The existing 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.

Death Penalty

Historic Application

Prior to October 1, 2013, persons charged with first degree murder, if found guilty, were subject to penalties of life imprisonment, life imprisonment without parole, or death. Decisions to seek the death penalty were made by local State's Attorneys. The State was required to provide a person charged with first degree murder with written notice of an intention to seek the death penalty at least 30 days prior to trial. A defendant who was younger than age 18 at the time of the murder or who proved by a preponderance of the evidence that he/she was intellectually disabled at the time of the murder,\ was exempt from the death penalty.

A separate sentencing proceeding was required to be conducted as soon as practicable after completion of a trial to determine whether the death penalty was to be imposed. A court or jury, in considering the imposition of the death penalty, first considered whether any of 10 aggravating circumstances existed beyond a reasonable doubt. If the presence of one or more aggravating circumstances was found, the court or jury then considered whether one or more of eight mitigating circumstances existed and whether the aggravating circumstances outweighed the mitigating circumstances by a preponderance of the evidence. If a court or jury found the existence of aggravating circumstances and that they outweighed the mitigating circumstance, or no mitigating circumstance was found, a death sentence could then be imposed. If a death sentence was imposed, the case was automatically reviewed by the Court of Appeals.

Executions in the State were halted following the December 2006 decision by the Court of Appeals in *Evans v. State*, 396 Md. 256 (2006). In that case, the court heard arguments on an appeal of a death sentence by Vernon Evans, Jr. The Court of Appeals upheld Evans' claim that the regulatory procedures for carrying out the death sentence, including execution by lethal injection, were adopted without the public input required by law. As a result, imposition of the death penalty in Maryland was halted pending either exemption of the death penalty from the Administrative Procedure Act or adoption of formal regulations after opportunity for public hearing and comment. In July 2009, the Department of Public Safety and Correctional Services began promulgation of regulations to implement the death penalty. However, due to concerns regarding the drugs administered, participation of medical personnel, and lack of specifics, the Administrative, Executive, and Legislative Review Committee formally requested that the department delay final adoption of the death penalty procedure regulations so that the committee could conduct a more detailed study of the issues. In October 2009, the committee placed the regulations on hold for further study, and the regulations were withdrawn by operation of law. In November 2010, the department resubmitted proposed death penalty regulations which were also later withdrawn due to the unavailability of sodium thiopental, an ingredient of the lethal injection drug cocktail.

During the 2009 session, the General Assembly passed legislation altering the application of the death penalty in Maryland. Chapter 186 of 2009 restricted death penalty eligibility only to cases in which the State presented the court or jury with (1) biological or DNA evidence that links the defendant with the act of murder; (2) a videotaped, voluntary interrogation, and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder. The 2009 statute prohibited the sentencing of a defendant to death if the State relied solely on evidence provided by eyewitnesses in the case.

Repeal of the Death Penalty

Effective October 1, 2013, Chapter 156 of 2013 repealed the death penalty and all provisions relating to it, including those relating to its administration and post-death sentence proceedings. A person found guilty of murder in the first degree must be sentenced to imprisonment for life or imprisonment for life without the possibility of parole. If the State had already properly filed a notice of intent to seek a death sentence, that notice was considered withdrawn. In such instance, the State was also considered to have properly filed notice to seek a sentence of life imprisonment without the possibility of parole. Finally, the Act authorized the Governor to change a sentence of death into a sentence of life without the possibility of parole. Four inmates remain on Maryland's death row.

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 either "Megan's Law" or "Jessica's Law" in memory of children who have been sexually assaulted and murdered by convicted sex offenders.

The federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), conditioned receipt of federal grant assistance on conformity by the states with various aspects of sex offender registration provisions, including registration of specified juvenile offenders, collection of specific information from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. Failure to comply with SORNA puts a state at risk of losing 10% of Byrne Justice Assistance grants, which all states use to pay for crime fighting efforts including drug task forces, anti-gang units, police overtime, and other law enforcement activities.

In 2010, Maryland's sex offender registration laws were substantially revised in an effort to comply with SORNA and increase penalties for certain sex offenses committed against minors. Among the enacted provisions, sexual offenders are now sorted into three separate tiers, replacing the four former categories of sexual offenders. A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life. A sex offender is required to register in each county where the offender habitually lives. The term "habitually lives" includes any place where a person visits for longer than five hours per visit more than five times within a 30-day period. A sex offender who is homeless is required to register in person within a specified period of time with the local

law enforcement unit in the county where the registrant habitually lives and to reregister weekly while habitually living in the county.

Sex offender registration provisions are applied retroactively to a person who is under the custody and supervision of a supervising authority on October 1, 2010; was subject to registration on September 30, 2010; is convicted of any felony on or after October 1, 2010, and has a prior conviction for an offense for which sex offender registration is required; or is convicted on or after October 1, 2010, of sexual solicitation of a minor, regardless of whether the victim was a minor. The term of retroactive registration for a Tier I or II sex offender must be calculated from the date of release.

In *Doe v. Department of Public Safety & Correctional Services* (*Doe I*), 430 Md. 535 (2013), a plurality of the Court of Appeals held that the retroactive application of the Maryland sex offender registration statute to an individual who committed a sexual offense before October 1, 1995, and was convicted on or after October 1, 1995, violated the *ex post facto* prohibition in Article 17 of the Maryland Declaration of Rights independent of the prohibition against *ex post facto* laws in Article 1 of the federal Constitution. Two judges of the court concurred in the judgment but, reading Article 17 in conjunction with Article 1 of the federal Constitution, concluded that the 2009 and 2010 amendments to the sex offender registration statute changed it "from [one] of civil regulation to an element of the punishment of offenders," thus precluding retroactive application of that law to that individual.

In *Department of Public Safety & Correctional Services v. Doe* (September Term 2013) (Opinion filed June 30, 2014), the Court of Appeals further held that where SORNA includes a provision regarding the resolution of conflicts between the federal law and State constitutions, an individual to whom the registration requirement would be applied retroactively cannot be required to register involuntarily as a sex offender in the State. Moreover, the court concluded that where the court has declared the retroactive application of the State's sex offender registry to be unconstitutional as articulated in *Doe I*, the State must remove the individual's information from the registry.

After the ruling, the department began the process of removing 866 offenders from the State's sex offender registry. Notifications were made to law enforcement and local State's Attorneys' offices so that victim notification could be done and to the offender once the removal was completed.

Lifetime Supervision

Lifetime supervision of the following sexual offenders is required for a crime committed on or after October 1, 2010:

- a sexually violent predator;
- a person convicted of first or second degree rape, first degree sexual offense, or certain circumstances of second degree sexual offense;
- a person convicted of attempted first or second degree rape, first degree sexual offense, or the same form of second degree sexual offense cited above;
- sexual abuse of a minor if the violation involved penetration of a child younger than the age of 12;
- a person required to register with the person's supervising authority because the person was at least 13 years old but not older than 18 years old at the time of the act; or
- a person convicted more than once arising out of separate incidents of a crime that requires registration.

For a person who is required to register because the person was at least 13 years old but not older than the age of 18 at the time of the act, the term of lifetime sexual offender supervision begins when the person's obligation to register in juvenile court begins and expires when the person's obligation to register expires, unless the juvenile court finds, after a hearing, that there is a compelling reason for the supervision to continue and thus orders the supervision to continue for a specified time. A court is authorized to sentence a person convicted of a third degree sex offense involving an aggravating factor or with a mentally disabled victim to lifetime supervision and require a risk assessment before that sentence is imposed.

A person subject to lifetime supervision is prohibited from knowingly or willfully violating the conditions of the supervision, with possible imprisonment and/or monetary fines as sanctions. The sentencing court must hear and adjudicate a petition for discharge from lifetime sexual offender supervision. The court may not deny a petition for discharge without a hearing. Further, the court may not discharge a person unless the court makes a finding on the record that the petitioner is no longer a danger to others. The judge who originally imposed the lifetime sexual offender supervision must hear the petition. If the

judge has been removed from office, has died or resigned, or is otherwise incapacitated, another judge may act on the matter.

The sentencing court or juvenile court must impose special conditions of lifetime sexual offender supervision at the time of sentencing or imposition of the registration requirement in juvenile court and advise the person of the length, conditions, and consecutive nature of that supervision. Before imposing the special conditions, the court must order a presentence investigation. Allowable special conditions, including global positioning satellite tracking or equivalent technology and required participation in a sexual offender treatment program, are cited in statute. A victim or a victim's representative must be notified of hearings relating to lifetime sexual offender supervision.

Under Maryland law, when the victim is younger than age 13, there is a mandatory minimum, nonsuspendable and nonparolable 25-year sentence for a person at least 18 years old who is convicted of first degree rape or first degree sexual offense. A 15-year nonparolable minimum sentence is required under the same circumstances for second degree rape or second degree sexual offense. The maximum imprisonment for such an offense was set at life in 2010.

Juveniles

A police record concerning a child is confidential and must be maintained separately from those of adults. Unless certain exemptions apply, the contents may not be divulged, except by court order upon a showing of good cause. However, a person who has been adjudicated delinquent for an act that would constitute first or second degree rape or first or second degree sexual assault if committed by an adult must register with a supervising authority at the time the juvenile court's jurisdiction terminates (usually at age 21), for inclusion on the State's sex offender registry if (1) the person was at least 13 years old at the time the qualifying delinquent act was committed; (2) the State's Attorney or the Department of Juvenile Services requests that the person be required to register; (3) the court determines by clear and convincing evidence after a hearing (90 days prior to the time the juvenile court's jurisdiction is terminated) that the person is at significant risk of committing a sexually violent offense or an offense for which registration as a child sexual offender is required; and (4) the person is at least 18 years old. In addition, a person must register with the Department of Juvenile Services for inclusion in the registry of juvenile sex offenders if the person was adjudicated delinquent for an act committed when the person was a minor at least 14 years old and that, if committed by an adult, would constitute a first degree sexual offense or a specified second or third degree sexual offense. A juvenile registrant must appear in person at a location designated by the Department of Juvenile Services every three months to (1) update and verify the information included in the

registry and (2) allow the Department of Juvenile Services to take a digital image of the juvenile registrant.

Sexual Offender Advisory Board

The Sexual Offender Advisory Board, created initially in 2006, has several specified reporting requirements including (1) the review of technology for the tracking of offenders; (2) reviewing the effectiveness of the State's laws concerning sex offenders; (3) reviewing the laws of other jurisdictions regarding sex offenders; (4) reviewing practices and procedures of the Parole Commission and the Division of Parole and Probation regarding supervision and monitoring of sex offenders; (5) reviewing developments in the treatment and assessment of sex offenders; and (6) developing standards for conditions of lifetime supervision based on current and evolving best practices in the field of sex offender management.

The board's duties also include developing criteria for measuring a person's risk of reoffending, studying the issue of civil commitment of sexual offenders, and considering ways to increase cooperation among states with regard to sexual offender registration and monitoring.

Home Detention

Over the last 28 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 an average day, 213 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 are authorized to have a home detention program: Allegany, Anne Arundel, Baltimore, Carroll, Cecil, Dorchester, Frederick, Garrett, 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 Department of Public Safety and Correctional Services may approve an inmate committed to the custody of the department for participation in the State home detention

program. In addition, the department 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

Budget problems have made the expense of growing prison populations an important issue nationwide. Many states have tried to modify their sentencing and release policies, particularly with respect to nonviolent drug offenders, to control incarceration costs.

In Maryland, the evaluation of nonviolent offenders for drug or alcohol dependency and the diversion of such defendants to treatment services may be made as an alternative to incarceration. These provisions allow for the 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. The Maryland Substance Abuse Treatment Fund was established in 2004 as a nonlapsing fund to be used for evaluation and treatment of criminal defendants for drug or alcohol abuse problems. Finally, each county is 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. Therapeutic assistance for substance abuse is available in every jurisdiction in Maryland. The circuit courts' Family Support Services Coordinator in each county can refer parties to resources equipped to help those with substance abuse problems. In addition to substance abuse assessments, courts have access to addictions counselors, substance abuse programs, and self-help groups who can provide treatment and/or information to individuals. The court can make referrals for treatment in appropriate cases.

Chapter 11. Judicial Review

A person convicted of a crime has a number of alternatives for seeking review of a conviction or a sentence. The options include (1) review at the trial court level (motion for new trial, motion for revision of sentence, and petition for writ of actual innocence); (2) appeal to a circuit court for a trial *de novo* (if the trial was in the District Court); (3) review of a sentence by a three-judge panel; (4) *in banc* review; (5) appellate review by the Court of Special Appeals; (6) appellate review by the Court of Appeals; (7) petition under the Postconviction Procedure Act; (8) *habeas corpus* (both State and federal); (9) *coram nobis*; and (10) 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 a 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 required sentence; and
- a decision granting a defendant's motion to exclude evidence in certain felony drug cases and crimes of violence cases.

Review by Trial Court

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. Grounds for seeking a new trial include:

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

A motion for a new trial also may be granted on the ground that newly discovered evidence exists that could not have been discovered by due diligence within 10 days after the original verdict. In general, this motion must be filed within one year after the date on which the court imposed a sentence or the date on which the court received a mandate (*i.e.*, ruling) from the Court of Special Appeals or Court of Appeals, whichever is later. However, a motion for a new trial on the ground of newly discovered evidence may be filed at any time if 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 also 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 seeking a revision within 90 days after imposition of the sentence. The court may not, however, revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant, and 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.

A 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.

Writ of Actual Innocence

A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may also file a petition for a writ of actual innocence at any time in the circuit court of the county in which the conviction was imposed if the person claims that there is newly discovered evidence that creates a substantial or significant possibility that the outcome in the case may have been different and the evidence could not have been discovered in time to move for a new trial. The State must be notified of the petition and may file a response. A victim or the victim's representative must be notified, as well, and has the right to attend the hearing on the petition. In ruling on such a petition, a court may (1) dismiss the petition without a

hearing; (2) set aside the verdict; (3) resentence; (4) grant a new trial; or (5) correct the sentence, as the court considers appropriate.

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 after the verdict. 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 the appeal to the circuit court, 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 this right to review.

After a hearing, the panel may increase, modify, or reduce the sentence. The panel may decide that the sentence should remain unchanged with or without a hearing. A majority of the members of the review panel is necessary to make a decision. The panel has 30 days after the filing date of the motion to render a decision.

Except in one instance, there is no right to appeal a decision made by the review panel. Should the panel increase the sentence, a defendant may then appeal on the limited grounds that the sentence was not within statutory or constitutional limits or that the panel acted from ill will, prejudice, or other impermissible considerations.

In Banc Hearing

The Maryland Constitution allows any party, including the 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.

An *in banc* hearing provides an inexpensive form of judicial review that 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 constitutional right to an *in banc* hearing does not, however, 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.

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 a writ of *certiorari*. The criminal defendant who sought *in banc* review, however, 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 is required to 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 is required to open a proceeding under the Uniform Postconviction Procedure Act discussed below.

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

The 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.

If the State is unable to produce scientific identification evidence that should have been preserved, the court must hold a hearing to determine whether the failure to produce evidence was the result of intentional and willful destruction. If the court determines that the State's failure to produce evidence was the result of intentional and willful destruction, the court must order a postconviction hearing to be conducted, and at the hearing infer that the results of the postconviction DNA testing would have been favorable to the petitioner.

An appeal to the Court of Appeals may be taken from a court's order relating to these provisions.

State Appellate Court Review

In General

There are two appellate courts in Maryland: (1) the Court of Special Appeals and (2) 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 circuit 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 the District Court and appeals to a circuit court, however, may not subsequently appeal to the Court of Special Appeals. Rather, the defendant may file a petition for a 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 petition for a writ of *certiorari*.

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 defendant's sentence legally permissible?
- Was the evidence legally sufficient to convict the defendant?

When an appellate court is called on 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 the jury or the 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 three-judge panels to hear cases, although in exceptional cases the court may decide by majority vote to sit *in banc*, or as a whole. The concurrence of a majority of a panel is necessary for a decision in a case. The types of cases heard by the Court of Special Appeals include:

- *First appeal of right* – A person convicted of a crime first tried in a circuit court is entitled to a direct appeal to the Court of Special Appeals for a review of the trial. 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 might 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.

Court of Appeals

The Court of Appeals is composed of seven judges. Although the Maryland 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 in 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 a case from the docket of the Court of Special Appeals.

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 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: (1) a proceeding under the Uniform Postconviction Procedure Act; (2) a *habeas corpus* review; (3) and a writ of error *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.)

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. 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 on 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. The petition must be filed in the circuit court for the county where the conviction took place. 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 error *coram nobis*. The writ is available only to a person who has no other statutory or common law mechanism for attacking a 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 or law 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 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. The failure to seek an appeal in a criminal case may not be construed as a waiver of the right to file a petition for writ of error *coram nobis*.

Coram nobis has largely disappeared as a postconviction remedy, but the one situation in which it remains important is when a defendant is no longer on parole or probation. The defendant has no remedy in this situation under the Uniform Postconviction Procedure Act or under *habeas corpus* because both those remedies are available only to a defendant in custody. *Coram nobis* may be used by a defendant who is not in custody and faces subsequent offender penalties on a new charge or who faces collateral consequences as a result of a conviction.

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 the 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 the state court will be considered for review by the federal courts.

Governor's Power of Pardon and Commutation

In addition to the other remedies discussed in this chapter, the defendant may 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 certain 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, on request and if practicable, has the right to be notified of, to attend, and to be heard at a criminal justice proceeding, as these rights are implemented and the related 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 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 the victim after the indictment or information is filed and a notification request form by which the victim may request notice of various proceedings. The pamphlets are prepared by the State Board of Victim Services. 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.

Victims can request to be notified using traditional methods by filing the victim notification request form or by electronic methods. The Maryland Court of Appeals has established a system of electronic filing and case management known as the Maryland Electronic Courts system. A victim or victim's representative who wishes to be notified electronically must follow Maryland Electronic Courts system protocol to request notices by electronic mail, notify the prosecuting attorney, and request additional notice available through the State's Victim Information and Notification Everyday vendor. A victim or victim's representative who has completed Maryland Electronic Courts system protocol is considered to have complied with Article 47 of the Maryland Declaration of Rights and statutory provisions that require a victim or victim's representative to request notice.

If a victim or a victim's representative files a completed notification request form with the State's Attorney, the State's Attorney must send a copy of the completed form to the clerk of the circuit court or juvenile court (if the jurisdiction has not implemented the Maryland Electronic Courts system) or electronically file the form with the clerk of the

circuit court or the juvenile court (if the jurisdiction has implemented the Maryland Electronic Courts system).

Unless notice is provided by the Maryland Electronic Courts system, once a victim has filed the notification request form or followed Maryland Electronic Courts system protocol, the State's Attorney is required to notify the victim of (1) all court proceedings; (2) the terms of any plea agreement; and (3) 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. If the victim or victim's representative has followed Maryland Electronic Courts system protocol, the clerk must electronically transmit the form or the registration information for the victim or the victim's representative through the Maryland Electronic Courts system. 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.

In a 2008 decision, the Court of Appeals concluded that a trial court could not vacate an altered sentence because a victim who had completed a victim notification request form was not notified of the reconsideration hearing in which the defendant's sentence was reduced. See *Hoile v. State*, 404 Md. 591, 948 A.2d 30 (2008). In response, the legislature passed Chapter 573 of 2009, which requires the prosecuting attorney at a hearing on a motion for revision, modification, or reduction of a sentence, to state on the record that proceeding without the appearance of the victim or the victim's representative is justified because (1) the victim or representative has been notified and waived the right to attend the hearing; (2) the victim or representative cannot be located; or (3) the victim has not filed a notification request. If such a statement is not made, or the court is not satisfied with the statement, the court may postpone the hearing.

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 the victim's 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;
- to apply for, and have the court appoint, a qualified interpreter if the victim or victim's representative is deaf or cannot readily understand or communicate the spoken English language;
- if practicable and on request of the victim or the victim's representative, to personally, or through a representative, address the judge before the imposition of a sentence or other disposition, or conversely, to choose not to address the court and to make this decision without coercion;
- 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 advance notification of, and to present oral or written testimony at, a license suspension hearing held as a result of a fatal vehicular accident if the victim's representative has filed a victim's representation notification form;
- to advance notification of a hearing related to lifetime sexual offender supervision if the victim or victim's representative has requested notification or filed a notification request form or, if applicable, have the notice provided by the Maryland Electronic Courts system;
- to advance notification of a hearing on a request for shielding of all court records relating to an interim, temporary, or final peace or protective order that has been denied or dismissed or to the entry of which the respondent consented, and the right to appear at the hearing and object to the shielding;
- to receive a copy of a petition for expungement of a juvenile record of a case in which the person was a victim and to file an objection to the expungement petition (both of these rights also extend to a family member of a victim who is listed in the court file as having attended the adjudication for the case in which the person is seeking expungement);
- to advance notification of, and to attend, a hearing on a petition for writ of actual innocence;

- to notification of certain subsequent proceedings following conviction or adjudication and sentencing or disposition of a defendant or child respondent, including appeals to the Court of Special Appeals or Court of Appeals, sentence review, or a hearing on a request to have a sentence modified or vacated;

- to request that the inmate be prohibited from having any contact with the victim as a condition of parole, mandatory supervision, work release, or other administrative release;

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

- to submit a victim impact statement and recommendation to be considered by the Maryland Parole Commission when an inmate is considered for commutation of sentence, pardon, or remission of sentence;

- to file an application for leave to appeal to the Court of Special Appeals from an interlocutory order or appeal to the Court of Appeals from a final order that denies or fails to consider specified statutory rights of the victim of a 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;

- to be free from discrimination by an insurance provider based solely on information about the individual's status as a victim of a crime of violence; and

- not to 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 delinquent act by a child.

If a court finds that a victim's right was not considered or was denied, the court may grant the victim relief so long as the remedy does not violate a criminal defendant's or child respondent's constitutional right to be free from double jeopardy. The court is not permitted to provide a remedy that modifies a sentence of incarceration of a defendant or commitment of a child respondent unless the victim requests relief from a violation of the victim's right within 30 days of the alleged violation.

A circuit court may order, either on its own motion or by request of the State's Attorney, 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.

A judge may prohibit release of the addresses or phone numbers of victims or witnesses. In addition, the Secretary of State operates address confidentiality programs specifically for victims of human trafficking or domestic violence which prevent access to the victim's address information under the Public Information Act.

Violation of No Contact Order

A court may prohibit a defendant from contacting the alleged victim. This restriction may be imposed as a condition of pretrial or post-trial release. A court may issue a bench warrant for the arrest of a defendant who violates a condition of pretrial release. Once the defendant is presented before a court, the court may revoke the defendant's pretrial release or continue the defendant's pretrial release with or without conditions. However, a police officer is authorized to make a warrantless arrest if the officer has probable cause to believe that a person charged with committing a sexual crime against a minor is in violation of a condition of pretrial or posttrial release that prohibits the person from contacting the victim. Violators are guilty of a misdemeanor, punishable by up to 90 days imprisonment.

Victim Services

Police Training

The Police Training Commission operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. State law requires the commission to require police training schools to provide specific instruction on victim services during entry-level police training and at least every three years for in-service level police training. The curriculum must include special training, attention to, and study of (1) the contact with and treatment of victims of crimes and delinquent acts; (2) the notices, services, support, and rights available to victims and victims' representatives under State law; and (3) the notification of victims of identity fraud and related crimes of their rights under federal law.

Board of Victim Services

The State Board of Victim Services in 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.

Governor's Office of Crime Control and Prevention Programs

The Governor's Office of Crime Control and Prevention is responsible for establishing or helping to establish programs designed to serve victims of domestic violence and their children, victims of sexual assault, and the survivors of homicide victims. Each of these programs must be designed to provide access to these services in all areas of the State.

The domestic violence program is designed to provide shelter or help finding shelter, counseling, information, referral, and rehabilitation for victims of domestic violence and their children. The office is responsible for (1) supervising the program; (2) setting standards of care and admission policies; (3) monitoring the operation of the

program and evaluating its effectiveness; (4) adopting rules and regulations setting fees for services and governing the operation of each program; and (5) regularly consulting with the federally recognized State domestic violence coalition regarding domestic violence programs and policies, practices, and procedures that impact victims of domestic violence and their children.

The sexual assault crisis programs established by the Governor's Office of Crime Control and Prevention are required to provide specialized support services to adult and minor alleged victims of sexual assault and include a hotline and counseling service. The office is authorized to award grants to public or private nonprofit organizations to operate sexual assault crisis programs. The office is also required to either establish and operate child advocacy centers or contract with public or private nonprofit organizations to operate child advocacy centers.

The Governor's Office of Crime Control and Prevention must also help establish and expand programs for survivors of homicide victims in the State that (1) provide or facilitate referrals to appropriate counseling, legal, mental health, and advocacy services for survivors of homicide victims, including specialized support services to adult and minor survivors and (2) provide a toll-free telephone number and assistance to exercise the rights to which the survivors are entitled by law. The office is also required to award grants to public or private nonprofit organizations to operate programs for survivors of homicide victims.

Special Funds

An offender convicted of a crime is required to pay two costs: (1) court costs and (2) 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 in Exhibit 12.1.

Exhibit 12.1
Distribution of Court-imposed Costs to Special Funds for Victim Services

	Court Costs		Criminal Injuries Compensation Costs		
	District Court $22.50	**Circuit Courts $80**	**District Court $35**	**Circuit Courts $45**	**Nonincarcerable Motor Vehicle Offenses $3**
State Victims of Crime Fund			$12.50	$22.50	$250,000 of the first $500,000 collected per year
Victim and Witness Protection and Relocation Fund	$125,000 annually		$2.50	$2.50	
Criminal Injuries Compensation Fund	$500,000 annually		Remainder ($20)	Remainder ($20)	$250,000 of the first $500,000 collected per year plus any remaining revenue in excess of $500,000

Source: Department of Legislative Services

State Victims of Crime Fund

The State Victims of Crime Fund is a special continuing, nonlapsing fund that receives funding primarily from the Criminal Injuries Compensation costs described above. The State Board of Victim Services administers the fund to (1) carry out Article 47 of the Maryland Declaration of Rights and other laws designed to help crime victims; (2) assist other agencies and persons providing services to crime victims; and (3) support child advocacy centers established by the Governor's Office of Crime Control and Prevention, which provide support services to victims. Grants by the board and administrative costs are paid from the fund. Grants must be equitably distributed among all purposes of the fund.

Victim and Witness Protection and Relocation Fund

The Victim and Witness Protection and Relocation Fund is used to implement 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 in 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. The membership of the board must include a family member of a homicide victim. 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. In general, a claim must be filed with the board within three years after the occurrence of the crime or delinquent act or the death of the victim. However, in the case of child abuse, a claim may be filed until the date the child who was the subject of abuse reaches the age of 25 or, if the board determines that there was good cause for failure to file a claim by that date, at any time. A claim filed with the board is subject to review under the Administrative Procedure Act.

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.

Exhibit 12.2 shows money received by the fund and awards made each year for the previous five fiscal years. Federal grants received under the Victims of Crime Act are based on the amount of State payments made during the previous fiscal year.

Exhibit 12.2
Criminal Injuries Compensation Fund Money Received and Awards

	Money Received		Awards		
Fiscal Year	Court Costs	VOCA Grant*	Applications Made	Awards Paid	Total Amount of Awards Paid
2009	$3,592,304	$2,300,000	1,718	382	$6,543,978
2010	3,503,376	2,719,000	1,644	950	7,337,078
2011	3,407,032	2,443,000	1,656	1,005	8,221,883**
2012	3,425,909	2,400,000	1,512	676	4,161,220
2013	3,319,787	698,512	1,339	662	2,821,560

* Federal Victims of Crime Act grants.
** Though the board issued awards totaling $8,221,883 in fiscal 2011, due to a budget shortfall, only $5,197,159 of that amount was disbursed during the fiscal year.

Source: Department of Public Safety and Correctional Services

Restitution

In General

A victim may seek restitution if, as a direct result of a crime or delinquent act, the victim (1) incurred personal injury resulting in out-of-pocket expenses; (2) incurred property damage; or (3) received other benefits paid by a governmental entity or board as a result of a crime. If the victim is deceased, a minor, or disabled, a legal representative may seek restitution on the victim's behalf. 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 a victim 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 by the victim.

A victim who alleges that the victim's right to restitution was not considered or was improperly denied may file a motion requesting relief within 30 days of the denial or alleged failure to consider. If the court finds that the victim's right to restitution was not considered or was improperly denied, the court may enter a judgment of restitution.

If a judgment of restitution is entered, the court may order the restitution to be paid 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. With limited exceptions, payment of restitution to a victim has priority over any payments to any other person or governmental unit. The Department of Public Safety and Correctional Services or the Department of Juvenile Services must collect restitution and may assess a fee not exceeding 2% of the amount of the judgment on the defendant, juvenile, or juvenile's parent to pay for the administrative costs of collecting payments. The applicable department then forwards the property or payments to the appropriate party in accordance with the judgment of restitution.

The Department of Public Safety and Correctional Services 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.

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% to the unpaid amount.

A judgment of restitution does not preclude the property owner or victim who suffered personal physical or mental injury, out-of-pocket loss of earnings, or support from bringing a civil action to recover damages from the restitution obligor. A civil verdict made in these cases must be reduced by the amount paid under the criminal judgment of restitution.

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, individuals who suffer physical injury as a direct result of a crime, 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. If a victim has filed a notification request, the commission must notify the victim at least 90 days before entering into a predetermined parole release agreement with an inmate. A victim is also entitled to notification when an inmate is being considered for a pardon, commutation, or remission of sentence. If practicable, a victim is to be notified in advance or as soon as possible of an inmate's escape, recapture, transfer, release, or death.

If the victim has requested the hearing to be open to the public, the victim is entitled to testify orally at a parole hearing. The Maryland Parole Commission may restrict the number of individuals allowed to attend a parole hearing because of physical space limitations or safety concerns and may deny admittance to a dangerous or disruptive individual. On the written request of the chief law enforcement official responsible for an ongoing criminal 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 Department of Public Safety and Correctional Services complete an updated victim impact statement. The department must complete the updated statement and provide it to the commission at least 30 days before the parole hearing.

At least 30 days before the parole hearing, a victim may make a written recommendation on the advisability of parole and may request that the inmate be prohibited from contacting the victim as a condition of parole, mandatory supervision, work release, or other administrative release. A victim may also request a meeting with a commission member at any time. The commission is required to consider any information received from a victim when making its decision. For a 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 Maryland Parole Commission. The membership of the board must include a member of a victims' rights organization.

The Patuxent Board of Review is required to give the victim or victim's representative an opportunity to comment in writing or present oral testimony on any action before the board and must promptly notify the victim or the victim's representative of any decisions regarding parole and before granting work release or a leave of absence. For further discussion of the Patuxent Institution, see Chapter 15 of this handbook.

HIV Testing of Offenders

The law 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 human immunodeficiency virus (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 (1) not reporting a crime; (2) testifying falsely about a crime; (3) withholding testimony about a crime; or (4) not appearing at proceedings related to a 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. By committing the act of wrongdoing that made the witness unavailable, the defendant effectively waives the Sixth Amendment right to confrontation that would otherwise make such statements inadmissible.

Notoriety of Crimes Contracts

The "Son of Sam" statutes were enacted to prohibit a defendant from profiting from crime by writing a book or contracting to reenact the crime for press or media. The law requires a person who makes a notoriety of crimes contract with a defendant to submit the contract to the Attorney General and pay to the Attorney General any money that would be owed to the defendant under the contract. Any money paid to the Attorney General is used to settle claims of the victim of the crime or is paid to the State Victims of Crime Fund.

Maryland law formerly required a defendant to produce a notoriety of crimes contract. The constitutionality of these provisions was brought into question by the Court of Appeals in the 1994 case of *Curran v. Price*. While the court declined to rule on the constitutionality of the "notoriety of crimes contracts" in its entirety, parts of the statute are presumably unenforceable based on *dicta* in the case. The Court of Appeals held that a defendant could not be compelled to produce a notoriety of crimes contract under the law because it would implicate the defendant's constitutional privilege against self-incrimination by implicitly acknowledging the commission of a crime. This decision, however, did not impact the requirement that the other party produce the contract and the potential imposition of a severe penalty on the other party for failure to do so. There have been no further opinions on the statutes since the *Curran* case.

Chapter 13. 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 one 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.

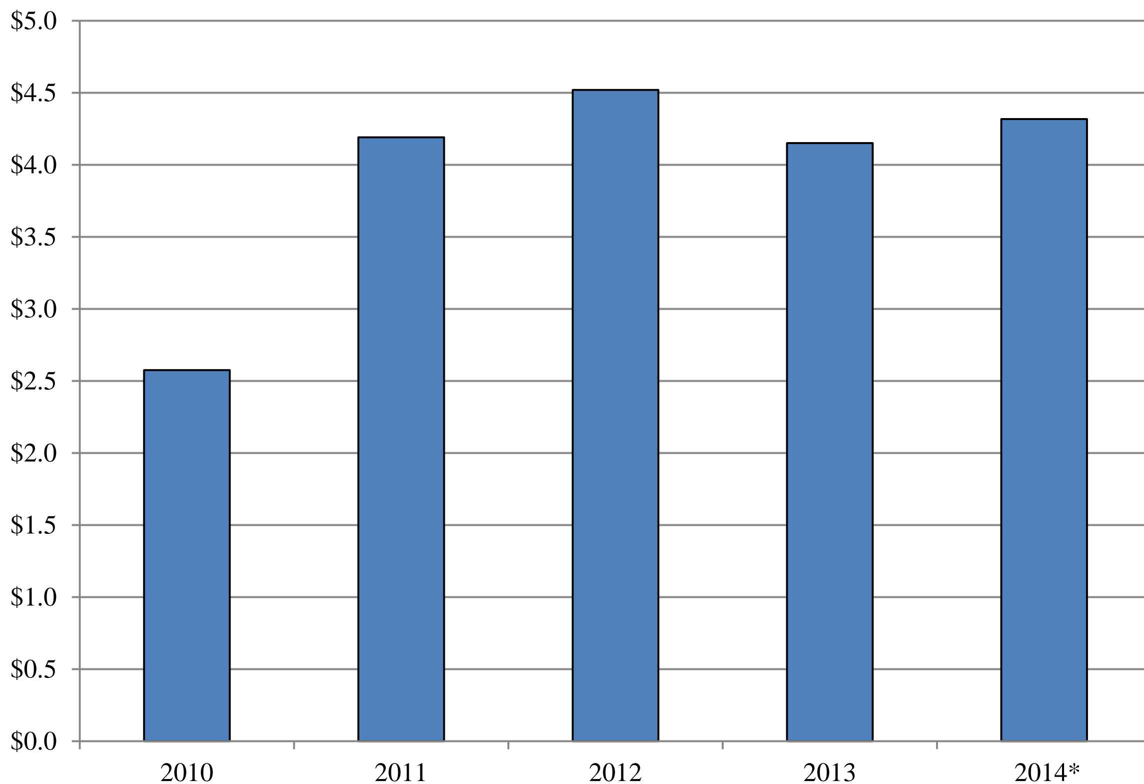
The State provides grants to the counties for each inmate sentenced to at least one year in a local correctional facility and for each inmate who is sentenced to the State correctional system but is awaiting transfer from a local detention center. The State pays the counties $45 per day for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive $45 per day for each day that an inmate who has been sentenced to the custody of the Department of Public Safety and Correctional Services remains confined in a local facility awaiting transfer. The State does not provide funding to the counties for local pretrial detention time (*e.g.*, days that inmates are confined in local correctional facilities before sentencing).

In addition, the State reimburses local jurisdictions for medical expenses exceeding $25,000 for each inmate confined in a local correctional facility, regardless of whether the inmate has been sentenced. In fiscal 2013, the State paid $651,148 to the counties for this purpose.

Exhibit 13.1 shows the amount of State payments to local correctional facilities since fiscal 2010. (Funding levels were significantly lower in fiscal 2010 due to cost containment.)

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 Department of Public Safety and Correctional Services, regardless of the sentence length or status.

Exhibit 13.1
State Payments to Local Correctional Facilities
Fiscal 2010-2014
($ in Millions)



* Working appropriation.

** Legislative appropriation.

Source: Department of Public Safety and Correctional Services

Local Detention Center Construction Program

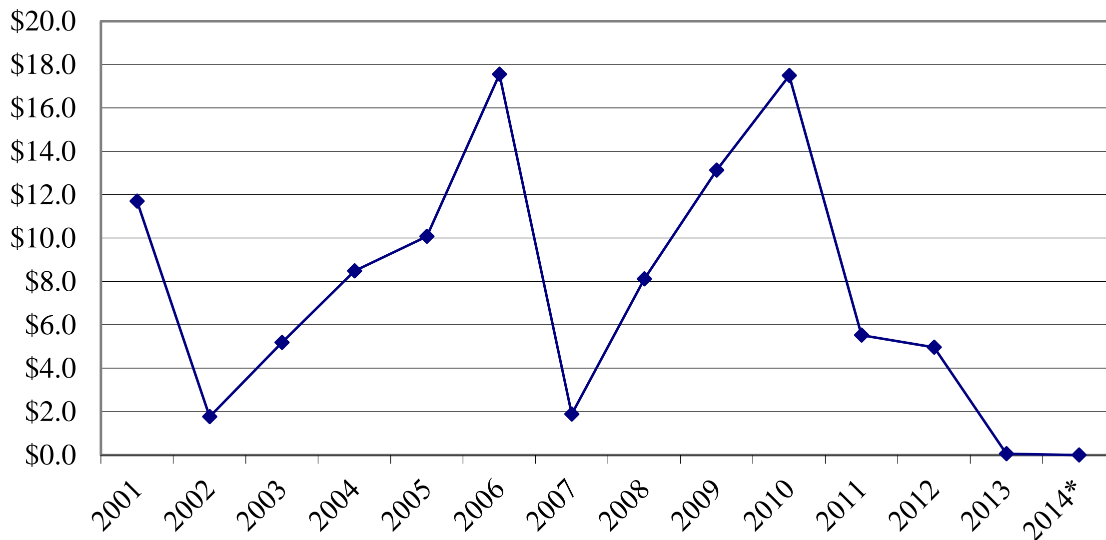
The State operates a Local Detention Center Construction Program that provides financial assistance to the counties for the planning, improvement, and construction of local detention centers and work release and other correctional facilities.

Subdivisions apply to the Department of Public Safety and Correctional Services for inclusion in the construction program, which provides either 100% or 50% 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% 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- and 12-month sentences due to changes in sentencing guidelines, then the State provides 100% 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 more than $105 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 2015. The provision of less funding in recent years for the local jails and detention centers capital program is in part reflective of significant declines in local correctional populations. It is also indicative of recent constraints in the State's capital budget, as well as constraints in county budgets. This local constraint limits counties' abilities to provide the necessary fund match for proposed projects.

Exhibit 13.2
Local Correctional Facilities
Capital Appropriation
Fiscal 2001-2015
($ in Millions)



* Working appropriation.

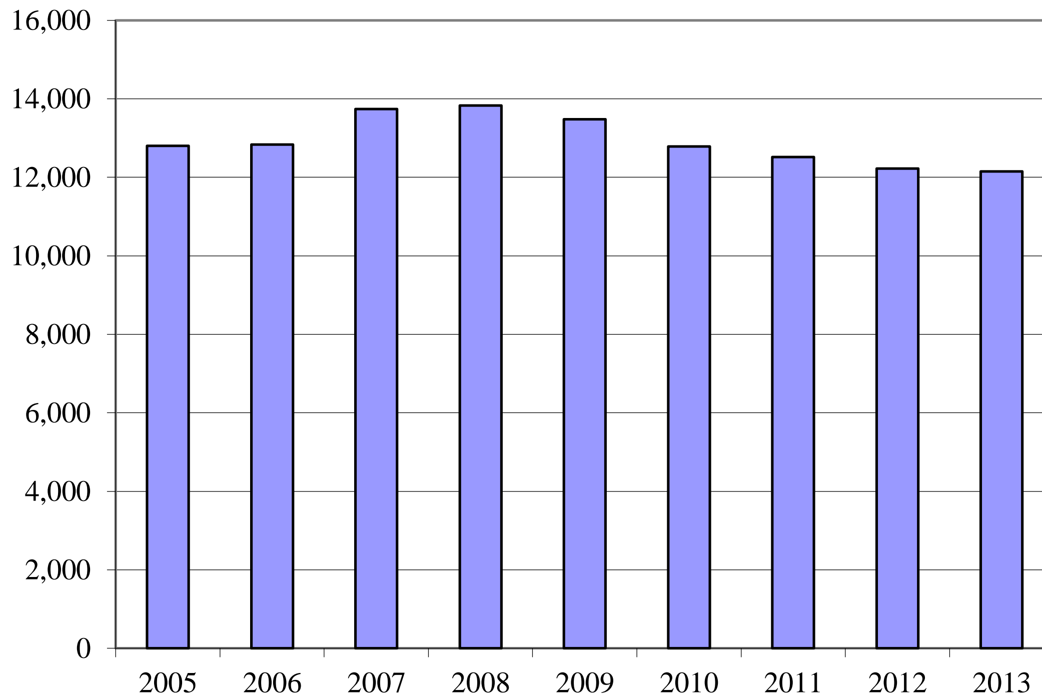
** Legislative appropriation.

Source: Department of Legislative Services

Local Correctional Facility Population

The average daily population of local correctional facilities has been in decline since peaking at 13,827 in fiscal 2008, as shown in Exhibit 13.3. Between fiscal 2008 and 2013, the local jail inmate population declined by approximately 12%. Offenders under the jurisdiction of Baltimore City annually account for nearly 30% of the local correctional facility population. These offenders, however, are housed in State-operated detention facilities.

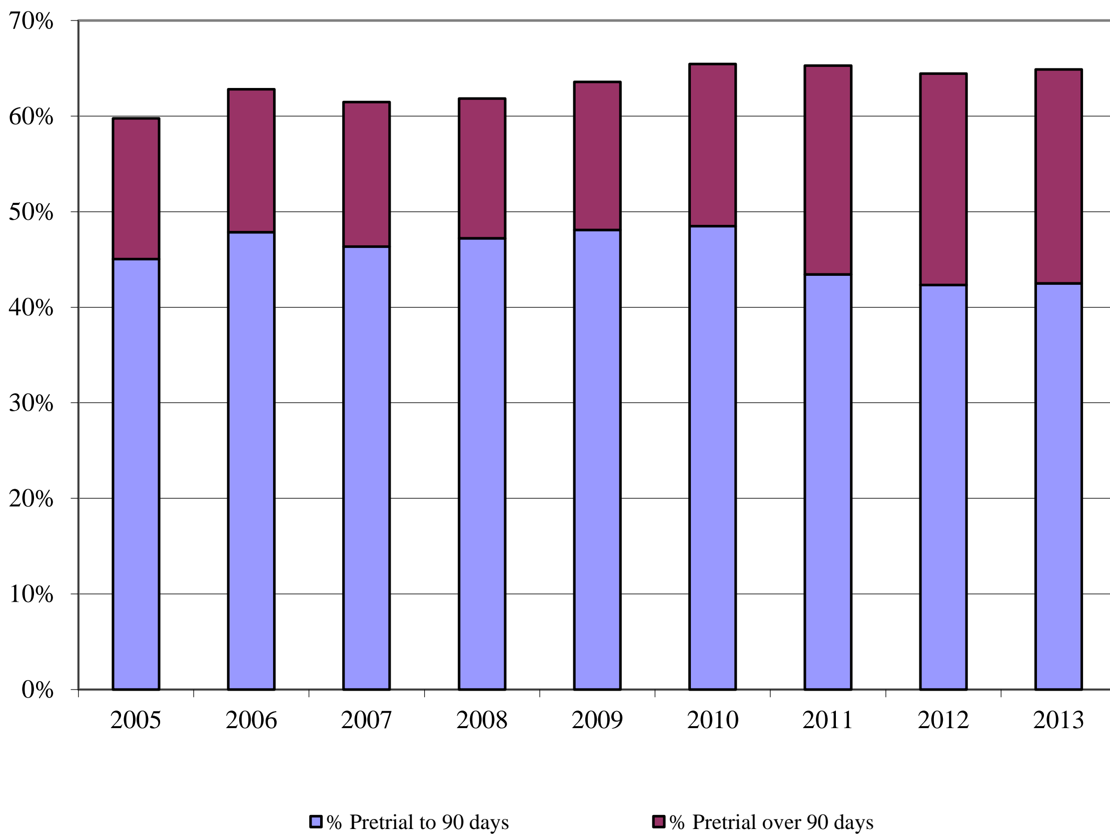
Exhibit 13.3
Local Correctional Facilities
Average Daily Population
Fiscal 2005-2013



Source: Local jurisdiction figures furnished to the Department of Public Safety and Correctional Services

As shown in Exhibit 13.4, since fiscal 2005, inmates awaiting trial have accounted for more than 60% of the average daily population of local correctional facilities. The majority of pretrial inmates have been detained for less than 90 days; however, since fiscal 2010 there has been an increase in the number of inmates held beyond 90 days.

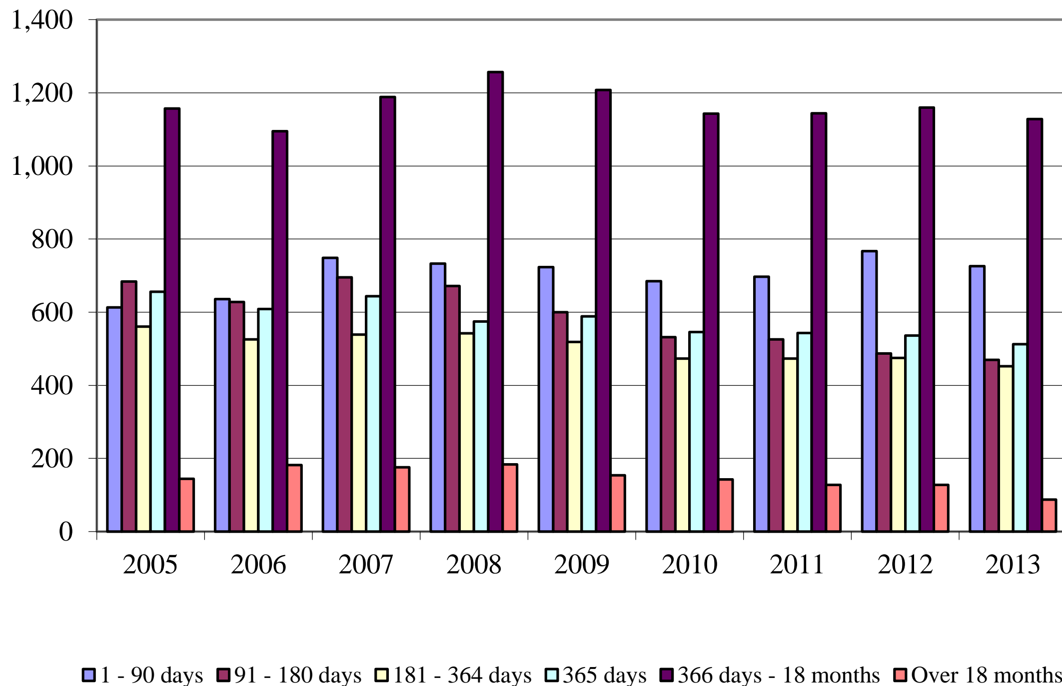
Exhibit 13.4
Local Correctional Facilities
Percentage Pretrial Inmates
Fiscal 2005-2013



Source: Local jurisdiction figures furnished to the Department of Public Safety and Correctional Services

Exhibit 13.5 shows the number of inmates in local correctional facilities by the length of sentence from fiscal 2005 to 2013. The majority of inmates receive sentences of 12 to 18 months; however, inmates with sentences of less than 90 days have been increasing in recent years.

Exhibit 13.5
Locally Sentenced Inmates
Last Day Population
Fiscal 2005-2013



Source: Local jurisdiction figures furnished to the 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 a 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 had been established in Baltimore City, Montgomery and Cecil counties. Action taken during the 2010 legislative session altered the statute to eliminate the mandate requiring the use of State funding to support all Community Adult Rehabilitation Center operations. Local jurisdictions continue to maintain the authority to construct and operate these facilities; however the State has not provided funding since 2011. The Department of Public Safety and Correctional Services maintains a contractual agreement for the use of bed space in Baltimore City. Community Adult Rehabilitation Center services in Baltimore City are provided by Threshold, Inc., which has the capacity to serve 32 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 2013, an average of 283 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

State Correctional and Detention Facilities

The Department of Public Safety and Correctional Services Regional Operations has the responsibility for operating 20 State correctional facilities, including the Patuxent Institution, and three Baltimore City detention facilities whose combined average daily population is more than 24,000 inmates. More than 7,000 State correctional officers maintain order in these institutions and ensure inmates' health, safety, welfare, and secure confinement. See Chapter 15 of this handbook for a discussion of Patuxent Institution.

The department implemented a major reorganization during fiscal 2012. As a result of the reorganization, the Division of Correction, the Division of Parole and Probation, the Patuxent Institution, and the Division of Pretrial Detention and Services no longer exist within the department by those names as separate budgetary units. The department is now divided into three geographic regions of the State – the Northern Region, the Central Region, and the Southern Region – and other specific operational functions.

Inmate Classification

Reception

The Department of Public Safety and Correctional Services Regional Operations has two 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 sentenced to State prison. 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 in the division's automated offender database, the Offender Case Management System, which replaced the Offender Based State Correctional Information System in 2014. A program to apply diminution credits and calculate release dates is part of the system. 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.

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 assigns a risk score that is translated to the least restrictive security level necessary to control the inmate's behavior. 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 once 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 Department of Public Safety and Correctional Services Regional Operations uses four 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. The Maryland Correctional Institution for Women and the Maryland Reception, Diagnostic and Classification Center are multi-level security (administrative) institutions.

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
State Correctional Facilities
Inmate Custody Factors

Factors	Pre-release	Minimum	Medium	Maximum
Observation	Minimal but appropriate to the situation	Periodic	Periodic	Periodic
Institutional Day Movement	Observed	Observed	Indirectly controlled and periodically observed	Indirectly observed and supervised
Institutional Night Movement	Observed	Indirectly controlled and periodically observed	Indirectly controlled and periodically observed	Indirectly controlled and periodically observed
Institutional Meal Movement	Observed	Observed	Observed, supervised or may be escorted	Observed, supervised or may be escorted
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
Institutional Visits	Contact and periodically supervised	Contact and supervised	Contact or noncontact and direct observation	Contact or noncontact and direct observation

Exhibit 14.1 (Continued)

Factors	Pre-release	Minimum	Medium	Maximum
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 (except for a pregnant inmate's transportation during labor, delivery, or postpartum; or if there is a life-threatening medical condition which requires immediate medical care), and 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 (except for a pregnant inmate's transportation during labor, delivery, or postpartum; or if there is a life-threatening medical condition which requires immediate medical care), and escorted by at least two armed officers or as determined by shift commander
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
Family Leaves	Unescorted and accountable to staff, intrastate only	Not eligible	Not eligible	Not eligible
Compassionate Leaves	Unescorted and accountable to staff, intrastate only	Not eligible	Not eligible	Not eligible

Source: Department of Public Safety and Correctional Services

Maximum Security

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. Maximum security facilities include:

- Jessup Correctional Institution, Jessup (Anne Arundel County);
- Patuxent Institution, Jessup (Anne Arundel County);
- North Branch Correctional Institution, Cumberland (Allegany County); and
- Western Correctional Institution, Cumberland (Allegany County).

Medium Security

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 maximum security.

The 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); and
- Roxbury Correctional Institution, Hagerstown (Washington 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);
- Central Maryland Correctional Facility, Sykesville (Carroll County);
- Jessup Pre-Release Unit (Anne Arundel County);
- Dorsey Run Correctional Facility, Jessup (Anne Arundel County);
- Baltimore City Correctional Center;
- Metropolitan Transition Center, Baltimore (Baltimore City);
- Maryland Correctional Training Center/Emergency Housing Unit Building, Hagerstown (Washington County); and
- 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); and
- Maryland Correctional Training Center/Harold E. Donald Building, Hagerstown (Washington County).

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 days 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 the Maryland Correctional Institution – Hagerstown for medium security in the North Region, Western Correctional Institution for maximum security in the North Region, Eastern Correctional Institution for medium security in the South Region, and the Maryland Reception, Diagnostic, and Classification Center for medium and maximum security in the Central Region.

Average inmate populations for State correctional facilities 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 2013.

Exhibit 14.2
Average Daily Population by Region
Fiscal 2013

North Region Operations – Corrections

	Security Classification	Average Population	Cost Per Inmate
Maryland Correctional Institution – Hagerstown	Medium	1,982	$32,592
Maryland Correctional Training Center	Medium	2,497	26,258
North Branch Correctional Institution	Maximum	1,424	35,754
Patuxent Institution[1]	Multilevel	949	49,944
Roxbury Correctional Institution	Medium	1,677	28,030
Western Correctional Institution	Maximum	1,653	32,444
Total		**10,182**	

North Region Operations – Community Supervision

	Average Population
Parolees	1,529
Mandatory Supervision Releasees	874
Probationers	18,947
Drinking Driver Monitor Program	7,809
Total	**29,159**

[1] Patuxent Institution houses Operation's programmed inmates as well as the division's Central Mental Health Unit.

Exhibit 14.2 (continued)

South Region Operations – Corrections

	Security Classification	Average Population	Cost Per Inmate
Brockbridge Correctional Facility	Minimum	392	$58,339
Dorsey Run Correctional Facility	N/A	N/A	N/A
Eastern Correctional Institution	Medium	3,385	31,224
Eastern Pre-Release Unit[2]	Pre-Release	160	33,971
Jessup Correctional Institution	Maximum	1,736	37,956
Jessup Pre-Release Unit	Minimum	509	33,358
Maryland Correctional Institution – Jessup	Medium	1,044	37,202
Maryland Correctional Institution for Women[2]	Multilevel	757	48,424
Corrections *Inmates*		747	
Federal *Inmates*		10	
Southern Maryland Pre-Release Unit	Pre-Release	166	30,677
Total		**8,149**	

South Region Operations – Community Supervision

	Average Population
Parolees	2,771
Mandatory Supervision Releasees	1,808
Probationers	28,230
Drinking Driver Monitor Program	10,078
Total	**42,887**

[2] Annual cost per inmate is captured and reported as part of the per inmate cost at the larger institutions, Eastern Correctional Institution, Maryland Correctional Institution for Women, and the Central Home Detention Program.

Exhibit 14.2 (continued)

Central Region Operations – Corrections

	Security Classification	Average Population	Cost Per Inmate
Baltimore City Correctional Center	Minimum	491	$27,654
Baltimore Pre-Release Unit	Pre-Release	156	31,980
Central Maryland Correctional Facility	Minimum	460	30,649
Maryland Reception, Diagnostic and Classification Center	Multilevel	772	45,920
Metropolitan Transition Center	Minimum	607	66,766
Total		**2,486**	

Central Region Operations – Detention

	Security Classification	Average Population	Cost Per Inmate
Chesapeake Detention Facility	Maximum	413	$50,051
Baltimore City Detention Center	Maximum	2,580	31,611
Central Booking and Intake Facility	Maximum	925	57,219
Total		**3,918**	

Central Region Operations – Community Supervision

	Average Population	Cost Per Inmate
Contract Care	29	
Central Home Detention Program[3]	268	$27,372
Detention Residents	39	
Corrections Residents	229	
Community Supervision Residents	0	
Pretrial Release Services	1,341	
Parolees	3,371	
Mandatory Supervision Releasees	3,378	
Probationers	26,067	
Drinking Driver Monitor Program	4,859	
Total	**39,313**	

[3] Annual cost per inmate is captured and reported as part of the per inmate cost at the larger institutions, Eastern Correctional Institution, Maryland Correctional Institution for Women, and the Central Home Detention Program.

Exhibit 14.2 (continued)

Operations Population in Nonagency Housing

	Security Classification	Average Population	Cost Per Inmate
Other Federal/State Custody	Variable	66	Variable
Local Jail Backup	Multilevel	129	$45 per day[4]
Total		**1,203**	

Alternatives to Incarceration and Intermediate Sanctions

As an alternative to incarceration, the Department of Public Safety and Correctional Services administers a home detention program for nonviolent offenders, using electronic monitoring and community supervision with drug treatment and rehabilitative programs as appropriate punishment for low-risk offenders.

Central Home Detention

The Community Supervision Services oversees the operation of the Central Home Detention Unit. Home detention allows offenders to live in an approved private home and to be supervised by electronic monitoring equipment and intensive 24-hour oversight by correctional officers, community supervision agents, and other staff. The majority of offenders who participate in the Central Home Detention Unit Program are Department of Public Safety and Correctional Services inmates who reside in Baltimore City and adjacent counties, are assigned to pre-release custody status, and are low-risk offenders who have less than 10 months remaining on their sentences. Other participants include pretrial detainees, probationers, and parolees.

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 and/or community supervision agents 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.

[4] Counties receive $45 per day for each day that an inmate who has been sentenced to Operations is housed in a local facility.

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.

Participants may be granted permission or be required to participate in Public Service Detail, substance abuse treatment, school, self-help programs, and obtain gainful employment in the community.

In the past few fiscal years, over 73% of enrolled inmates have successfully completed the program. In fiscal 2012, 1,116 inmates participated in home detention and 779 successfully completed the program; and in fiscal 2013, 909 inmates enrolled in the home detention program and 695 successfully completed it.

The program also provides implementation and oversight for offenders who are assigned to GPS tracking as a condition of community supervision. Community Supervision may utilize GPS tracking as an alternative to incarceration for offenders charged with a violation of parole or mandatory release supervision.

Programs and Services

There are many programs and services that are offered to inmates ranging from substance abuse education to parenting that are coordinated by the Programs and 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 2013, the Programs and Services Unit processed 531 administrative remedy appeals and conducted 23 correctional institution audits, as well as coordinated 92 alien deportation hearings. The unit also coordinated the transfer of 541 inmates to residential addiction treatment programs, transferred 17 interstate corrections compact inmates to Maryland, and conducted biannual reviews of 60 interstate corrections compact inmates housed in Maryland. Finally, the unit issued the Case Management Manual which serves to streamline many processes and provides field staff with easy access to policy and criteria specific to available programs and services.

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' participation. However, the unit 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 Programming Contract

The second protocol available to case managers is a Mutual Agreement Programming contract. If eligible, a Mutual Agreement Programming contract is signed by the inmate and representatives of the unit. 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 (1) good conduct; (2) performance of industrial, agricultural, or administrative tasks; (3) participation in vocational, educational, or other training courses; and (4) involvement in special projects. The number of inmates in fiscal 2013 that were released on shortened sentences based on diminution credits averaged over 350 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. However, the agency has discontinued the practice

of granting double-celling diminution credits for inmates whose crimes were committed on or after July 1, 2007.

Inmate Services and Programming

Academic, Vocational, and Library Programs

A variety of programs are provided to assist inmates in improving their academic and vocational skills. State law requires mandatory education for all inmates entering the correctional system without a high school diploma or GED certificate who have at least 18 months remaining on their sentences. As of fiscal 2010, the Department of Labor, Licensing, and Regulation, in conjunction with the agency and regional correctional operations, has assumed responsibility 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 2013, 692 inmates earned their high school diplomas (GED), with a pass rate of 73.5%. Additionally, 1,677 inmates completed adult literacy courses, 875 completed occupational courses, and 690 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 agreements with the Department of Human Resources, the Department of Health and Mental Hygiene, and the Social Security Administration to allow social workers to apply, prior to release, for benefits for offenders who qualify. This ensures that offenders will be able to continue their medications and medical or mental health treatment on release.

Transition Programs

The Department of Public Safety and Correctional Services Operations released more than 8,000 inmates in fiscal 2013. In cooperation with local government and other State agencies, the Office of the Deputy Secretary for Operations has implemented a comprehensive set of reentry programs and services to support the development of a discharge 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. The division conducts an assessment of reentry needs at intake, regardless of the length of sentence. The inmate identification card has been altered to make it an acceptable secondary source of identification in order to help inmates get a Motor Vehicle Administration identification card on release. An agreement has also been reached with the Division of Vital Records and the Social Security Administration in order to provide inmates with birth certificates and Social Security cards on release.

Religious Services

The Programs and Services Unit within the Office of the Deputy Secretary for Operations provides worship and study activities for 35 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 2013, inmates submitted between 6,000 and 8,000 requests for chaplain assistance per quarter in such matters as obtaining religious literature and devotional items, family relations, spiritual counsel, and working through life developmental crises.

Volunteer Services

Approximately 2,000 volunteers registered with the agency and provided approximately 125,000 hours of service in fiscal 2013. About 50% 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, the Girl Scouts of Central Maryland 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 America's Vet Dog program, offered at four institutions.

Victim Services

Victims Services Unit staff coordinates 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. Deputy Secretary for Operations 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. See Chapter 12 of this handbook for a discussion of victims' rights.

Health Care Services

The Department of Public Safety and Correctional Services provides comprehensive medical, dental, and mental health services for all inmates in State facilities, including pretrial detainees and Patuxent Institution inmates. Services are provided through contractual health care providers who deliver primary, secondary, and chronic-care services through a Managed Care Program for all facilities. Spending for inmate medical care was approximately $161 million in fiscal 2013. Although the inmate health care provided to those under the supervision and custody of the department is outsourced to various health care 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 and now under the Office of the Deputy Secretary for Operations, 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 promotes inmate/detainee responsibility for participation in health care. It reduces the misuse of a 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 2013, 18,036 inmates and detainees were tested through reception, 17,236 inmates were tested through annual testing, and no inmates tested positive for active tuberculosis.

HIV/AIDS

The Office of Treatment Services works collaboratively with the social work office in providing HIV testing for the department's inmates, both male and female. Departmental policy was altered in fiscal 2009 to follow a mandatory testing policy, with opt-out provisions. Every inmate is advised at both intake and prior to release of the department's intent to test for HIV, unless the inmate specifically requests not to be tested.

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

In fiscal 2013, 12,988 inmates elected to be tested for HIV infection. Of those tested, 70 inmates were HIV positive. As of July 2013, the total number of inmates in the department with HIV infection was 466. Of that number, 104 have full-blown AIDS. The department stages and manages inmates diagnosed with HIV infection through its Managed Care Program.

Medical Parole/Compassionate Release

The department participates in a medical parole program that affords early release for inmates with a 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.

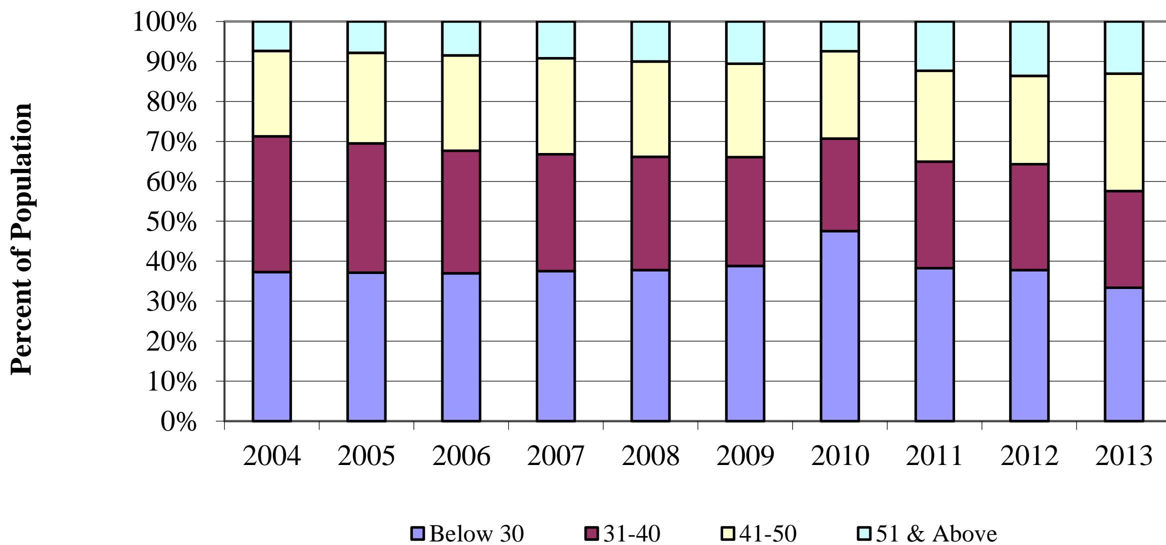
Palliative Care Unit

Inmates who are not approved for medical parole that have terminal illnesses are medically managed in the department's regional infirmary beds that are available to provide palliative/hospice care. Staff members in all regional infirmaries are trained in the palliative hospice care process, advanced directives, and multidisciplinary patient case conference. Additionally, clinical pharmacology staff facilitates pain management as part of the team management of these inmate cases.

Inmate Characteristics

The average age of the prison population is increasing. In July 2013, the average age of inmates was 36.7 years, and there has been a gradual increase in the segment of inmates over 40. As Exhibit 14.3 shows, the percentage of inmates over the age of 40 has increased from 28.8% in July 2004 to 42.4% in July 2013. 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.

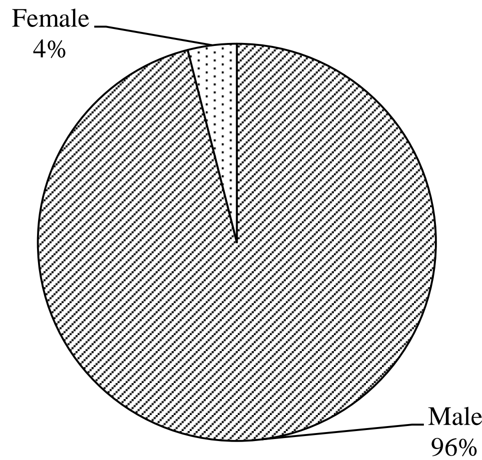
Exhibit 14.3
Department of Public Safety and Correctional Services
Inmate Population by Age
Fiscal 2004-2013



Source: Department of Public Safety and Correctional Services

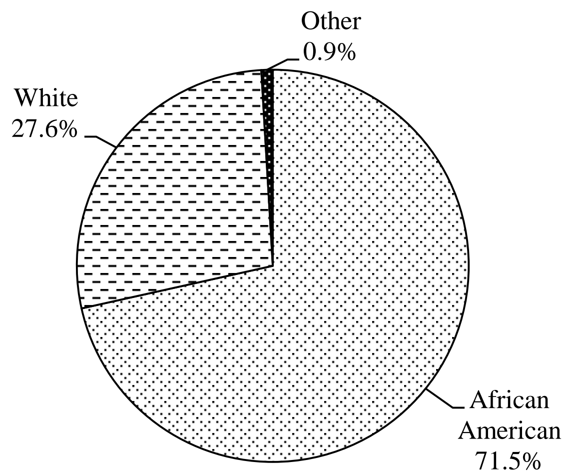
Exhibits 14.4 and 14.5 contain sex and race data for the inmate population. As of July 2013, 96.0% of the population was male and 4.0% was female. African Americans composed 71.5% of the inmate population, whites composed 27.6% of the population, and all other races made up 0.9% of the population.

Exhibit 14.4
Department of Public Safety and Correctional Services
Sex Data for the Inmate Population
Fiscal 2013



Source: Department of Public Safety and Correctional Services

Exhibit 14.5
Department of Public Safety and Correctional Services
Race Data for the Inmate Population
Fiscal 2013



Source: Department of Public Safety and Correctional Services

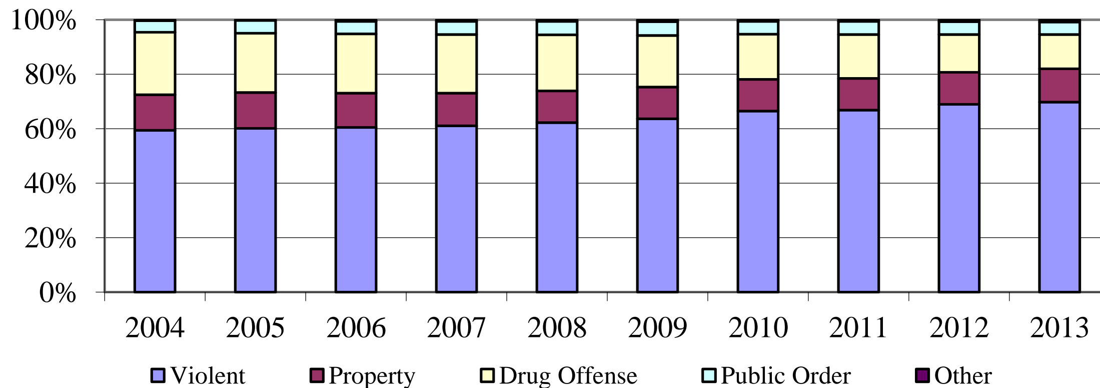
Size of Inmate Population

Historically the number of intakes entering into the correctional system has exceeded the number of releases, causing the inmate population to expand significantly between 1980 and 2000. In 7 of the last 10 fiscal years, however, the number of releases has exceeded intakes, contributing to the slight decline and steadying of the sentenced inmate population, which has averaged slightly fewer than 22,500 since July 2006. There has been an average of over 13,000 inmates coming into the correctional system each year over the past 10 fiscal years. In fiscal 2013, about 48.2% of the inmates were convicted in Baltimore City courts.

Offenses of Inmate Population

Concurrent with fluctuations in the total prison population since 2000, the offenses for which the prison population is incarcerated has shifted. Exhibit 14.6 illustrates the various categories of offenses as a percentage of the total population of State inmates from fiscal 2004 through 2013. The percentage of the prison population incarcerated for violent offenses has consistently increased for more than a decade, rising 9.8% between fiscal 2004 and 2013, while the number of inmates incarcerated for drug offenses has been declining since 2004. In July 2013, nearly 70.0% of the standing population had a violent crime listed as the most serious offense. In comparison, offenders held for drug offenses accounted for approximately 12.6%. Offenders incarcerated for property related offenses have remained relatively stable as a percentage of the total population during the same time period.

Exhibit 14.6
Offense Distribution for State Inmates
Fiscal 2004-2013



Source: Department of Public Safety and Correctional Services

Part of the reason for the significant and growing proportion of offenders with violent offenses is that these offenders are more likely to receive longer sentences and have fewer avenues for early release than inmates classified as nonviolent offenders.

Prison Construction

As seen in Exhibit 14.7, from fiscal 1991 through 2015 the State has funded capital projects for the Department of Public Safety and Correctional Services correctional facilities totaling $786 million.

In 1997, the General Assembly authorized funds to build a new maximum security prison next to the Western Correctional Institution near Cumberland. The North Branch Correctional Institution is a maximum security, 1,424-bed, single-cell institution. With the latest in correctional technology, it is completely self-contained and separate from the Western Correctional Institution. In response to the lost bed space from closing the Maryland House of Correction in 2007 and spurred by the availability of federal funding, the General Assembly authorized funds in 2009 to build a new 1,120-bed minimum security facility in the Jessup correctional complex. Dorsey Run Correctional Facility opened in 2013 at a total cost of over $50 million, $20 million of which was federal funds.

An investigation by the U.S. Department of Justice in 2000, and a subsequent memorandum of agreement in 2007, has resulted in a multi-year commitment to construct a new 60-bed youth detention center and an 512-bed women's detention center in Baltimore City. These projects will require a total of over $125 million to complete and are anticipated to open in 2015 and 2018, respectively.

Exhibit 14.7
Capital Construction Projects
Summary of Capital Projects
Fiscal 1996-2015

State Correctional Facilities	Year Opened	Cost ($ in Millions)	2013 Operating Capacity
Baltimore City Detention Center	1993	$41.2	2,580
Youth Detention Center, Baltimore City	2016	18.8	60
Brockbridge Correctional Facility	1966	9.3	392
Central Booking and Intake Facility	1996	6.1	925
Central Maryland Correctional Facility, Sykesville	1960	12.8	460
Chesapeake Detention Facility, Baltimore	1988	0.8	413
Dorsey Run Correctional Facility, Jessup	2013	50.7	200
Eastern Correctional Institution, Westover	1987	7.0	3,385
Jessup Correctional Institution	1981	70.5	1,736
Jessup Pre-Release Unit	1990	8.2	509
Maryland Correctional Institution for Women, Jessup	1997	44.3	757
Maryland Correctional Institution, Hagerstown	1991	21.3	1,982
Maryland Correctional Institution, Jessup	1981	5.5	1,044
Maryland Correctional Training Center, Hagerstown	1966	83.5	2,497
Maryland House of Correction, Jessup (Deconstruction)	1879	7.3	N/A
Metropolitan Transition Center, Baltimore	1811	16.0	607
North Branch Correctional Institution, Cumberland	2003	180.3	1,424
Patuxent Institution, Jessup	1990	57.7	949
Roxbury Correctional Institution, Hagerstown	1983	2.7	1,677
Western Correction Institution, Cumberland	1996	142.4	1,653
Total		**$786.4**	**24,995**

Source: Department of Public Safety and Correctional Services

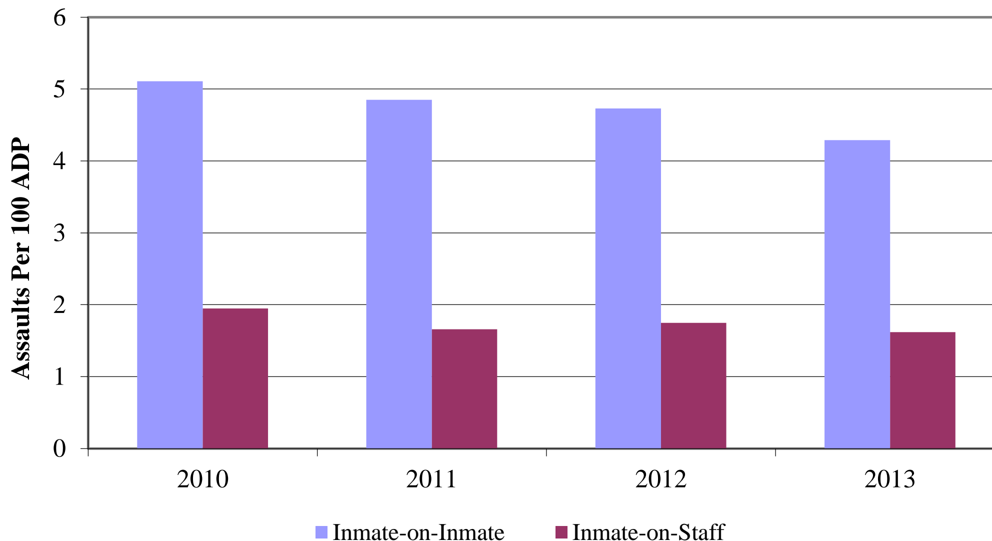
Violence, Drug Abuse, and Rule Violations

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 overall inmate assaults for fiscal 2010 through 2013. The rate of inmate-on-inmate assaults has decreased by 16.0% since fiscal 2010. The rate of inmate-on-staff assaults has also declined by 16.9% during the same four-year period.

Exhibit 14.8
Assaults on Inmates and Staff
Fiscal 2010-2013



ADP: average daily population

Source: Department of Public Safety and Correctional Services

Inmate Drug Testing

A factor contributing to prison violence is use and trafficking of drugs among inmates. The agency has an inmate drug testing policy to address the use of alcohol or other drugs by inmates and the importation of these into the State prisons by staff or visitors. Employees and visitors are subject to challenge and search on 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 increase sanctions for violators.

Employee Drug Testing

The Department of Public Safety and Correctional Services Regional Operations has about 9,000 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 State correctional and detention facilities, including 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 2013, staff heard an average of 12,014 cases for all three correctional regions.

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 deems to be 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.

A decision by an administrative law judge of the Office of Administrative Hearings is reviewed by the Secretary of Public Safety and Correctional Services for affirmation, reversal, or modification. The Secretary's decision 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% 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 to 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 State correctional facilities or to supervision under Community Supervision Services within three years of release from the Department of Public Safety and Correctional Services. Excluded are 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 the rate of recidivism for department inmates who were released in 2009 after serving a sentence ranged from 17.3% the first year after release to a cumulative total of 40.5% after the third year (see Exhibit 14.9).

Exhibit 14.9
Department of Public Safety and Correctional Services
Recidivism Rates for Fiscal 2009 Releases
Cumulative Totals and Percentages

Return Type	Total Released	First Year		Second Year		Third Year	
	11,418						
Return to Community Supervision		880	7.7%	1,679	14.7%	2,289	20.0%
Return to Corrections		1,101	9.6%	1,863	16.3%	2,330	20.4%
Total Returned		**1,981**	**17.3%**	**3,542**	**31.0%**	**4,619**	**40.5%**

Source: Department of Public Safety and correctional Services, July 2009

Chapter 15. Incarceration at the Patuxent Institution

The Patuxent Institution is an independent agency within the Department of Public Safety and Correctional Services. It is positioned in the department's Northern Region, but receives inmates from all three departmental regions. The director of the Patuxent Institution is appointed by the Secretary of Public Safety and Correctional Services and serves at the pleasure of the Secretary. The institution has 465 employees and an appropriation of $51.1 million for fiscal 2014.

The institution operates a maximum security correctional treatment facility with a 1,113 bed capacity (1,004 men and 109 women) and an average daily population of 949 for fiscal 2013. 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 department's general population who participate in specialized programs offered at the institution or for whom the other departmental facilities do not have adequate housing.

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 the practice of indeterminate sentences led to the statutory repeal of the designation and the practice. 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 1994 from one of rehabilitating eligible persons to one of remediating youthful eligible persons. The remediation model focuses on educational and vocational programs and substance abuse treatment rather than the psychological programs emphasized by the rehabilitation model. This statutory change also established the

institution's youth program to address the increasing number of youthful offenders, including juvenile offenders who are convicted in adult criminal courts. The focus on youthful offenders was also due to 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) inmates from the department's general population. The programs discussed below focus on these categories of inmates.

Eligible Person Remediation Program

The institution has an eligible person remediation program for general population 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 2013, 83 offenders were evaluated for the program and 43 were admitted. The program maintained an average daily population of 268 offenders during fiscal 2013. 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 program, the evaluation team must find that the 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.

An inmate who is found ineligible after evaluation is returned to another facility within the department. An inmate who is admitted may withdraw from the institution at any time and be transferred to another departmental facility. An inmate who withdraws may not apply for readmission within three years of the withdrawal.

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 facility housing general population inmates.

In fiscal 2013, the institution evaluated 46 youthful offenders, and 26 were admitted. In fiscal 2013, the youth program maintained an average daily population of 136 offenders.

Treatment Teams

The Patuxent Institution contains four treatment teams. The eligible person remediation, youth, reentry, and female programs each have one treatment team. A treatment team consists of appropriate treatment staff from a variety of disciplines, including social work, psychology, and psychiatry.

An individualized treatment plan developed for each eligible person or youthful offender is carried out by the treatment 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.

Level System

The institution has a graded system consisting of four levels. The system 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 level and be accorded additional privileges and responsibilities. While the system assigns a minimum time commitment to each level, no maximum time is assigned. An inmate may stay at a level as long as required for progress and promotion or until it is clear that the inmate is not receiving benefits at the assigned level. Failure to complete requirements of a treatment plan may result in demotion to a lower level 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 2013, the board heard 390 cases, and 367 of those cases were annual reviews.

Conditional Release

Inmates who have completed the level system 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 treatment 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.

There are two categories of conditional release: (1) work release status in which inmates work and reside at the institution's reentry facility (most restrictive); and (2) community parole which allows an offender to live independently outside the institution (least restrictive).

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 general population 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, provided the requirements described above are met. In practice, however, the board does not grant release prior to an inmate meeting the mandatory minimum sentence.

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 2013, the board granted conditional release in 14 instances (six work release leaves and eight releases on community parole).

In fiscal 2013, the board denied one request 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 general population 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 another State correctional facility.

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 2013, the board revoked the conditional release status of one offender.

Community Reentry Facility

The institution operates a reentry facility in Baltimore City. The facility provides housing for a maximum of 28 inmates on 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.

General Population Inmates and Mental Health Services

In fiscal 2013, the institution's capacity for men was 1,004 inmates, of whom 249 were general population inmates. These inmates are housed at the institution for one of seven reasons: (1) to receive mental health treatment; (2) to alleviate crowding throughout the State correctional system; (3) to participate in the Regimented Offender Treatment Center program; (4) to participate in a program designed for inmates who are awaiting placement in either the eligible person or youth program; (5) to undergo assessment or evaluation; (6) to work in the Maryland Correctional Enterprise's Sign Shop; or (7) to participate in the Parole Violator 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

Patuxent Institution served as the administrative headquarters for mentally ill offenders in the State correctional system from 1992 until 2003. In 2003, administrative responsibility was shifted to the department. However, Patuxent continues to serve as the central location for all departmental inmates with acute mental illness.

Correctional Mental Health Center – Jessup

The Correctional Mental Health Center, housed at Patuxent, is the inpatient mental health unit for the department. The center has a capacity of 192 beds and includes an acute unit and a sub-acute unit which attempt to stabilize mentally ill inmates so they may be returned to a general population facility. An inmate with a chronic mental illness, however, could spend his or her entire sentence at the center. In fiscal 2013, the center maintained an average daily population of 132 inmates. In that same period, 128 inmates were released.

The step-down and mental health transition unit can accommodate a maximum of 64 beds. Inmates in this unit participate in either the step-down program or the mental health transition program. The step-down program was created to address the needs of 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 program, offenders are placed in a structured environment to assist with the development of life skills that will enable them to return to another institution within the department. In fiscal 2013, the step-down program served an average daily population of 23 inmates and transferred 29 inmates back to the general corrections population. The mental health transition program 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 8 to 12 months of release and who want to participate in their own aftercare planning are referred to this program. In fiscal 2013, the mental health transition program served an average daily population of 20 inmates and discharged 28 inmates into the community.

Other Programs

Regimented Offender Treatment Center

In 1994, the Regimented Offender Treatment Center was established at Patuxent, 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 2013, 344 offenders were admitted to the Regimented Offender Treatment Center program for men, and 234 completed the program.

Until 2005, the treatment center included a program for women. However, an increase in the level of substance abuse services available to female inmates at the Maryland Correctional Institute for Women combined with the challenges involved in transferring female inmates to Patuxent for these services led to the decision to relocate substance abuse services for female inmates to the Maryland Correctional Institute for Women. The vacated housing units are used to house female offenders awaiting parole violation hearings.

Due to difficulties in maintaining adequate staffing levels, the Regimented Offender Treatment Center program was subcontracted in April 2006 to a private treatment organization named 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 the Park Heights Community in Baltimore City and in Landover, Maryland.

Risk Assessment Team

In fiscal 2012, the Risk Assessment Team completed its seventh full year of service. The team provides the Maryland Parole Commission and the Governor's Office of Legal Counsel with risk assessments of offenders with life sentences who are considered for parole, sentence commutation, or clemency. The assessments are completed by licensed clinical psychologists who have specific training in the assessment of violence and recidivism risk.

Patuxent Assessment Unit

The Patuxent Assessment Unit, which began in February of 2011, is a 64-bed unit which more thoroughly evaluates newly committed inmates with mental health issues or significant difficulty adjusting to incarceration, in order to place them into appropriate programs and institutions. Programming and housing recommendations are made after a 30-day evaluation. During fiscal 2013, 410 evaluations were completed.

Parole Violator Program

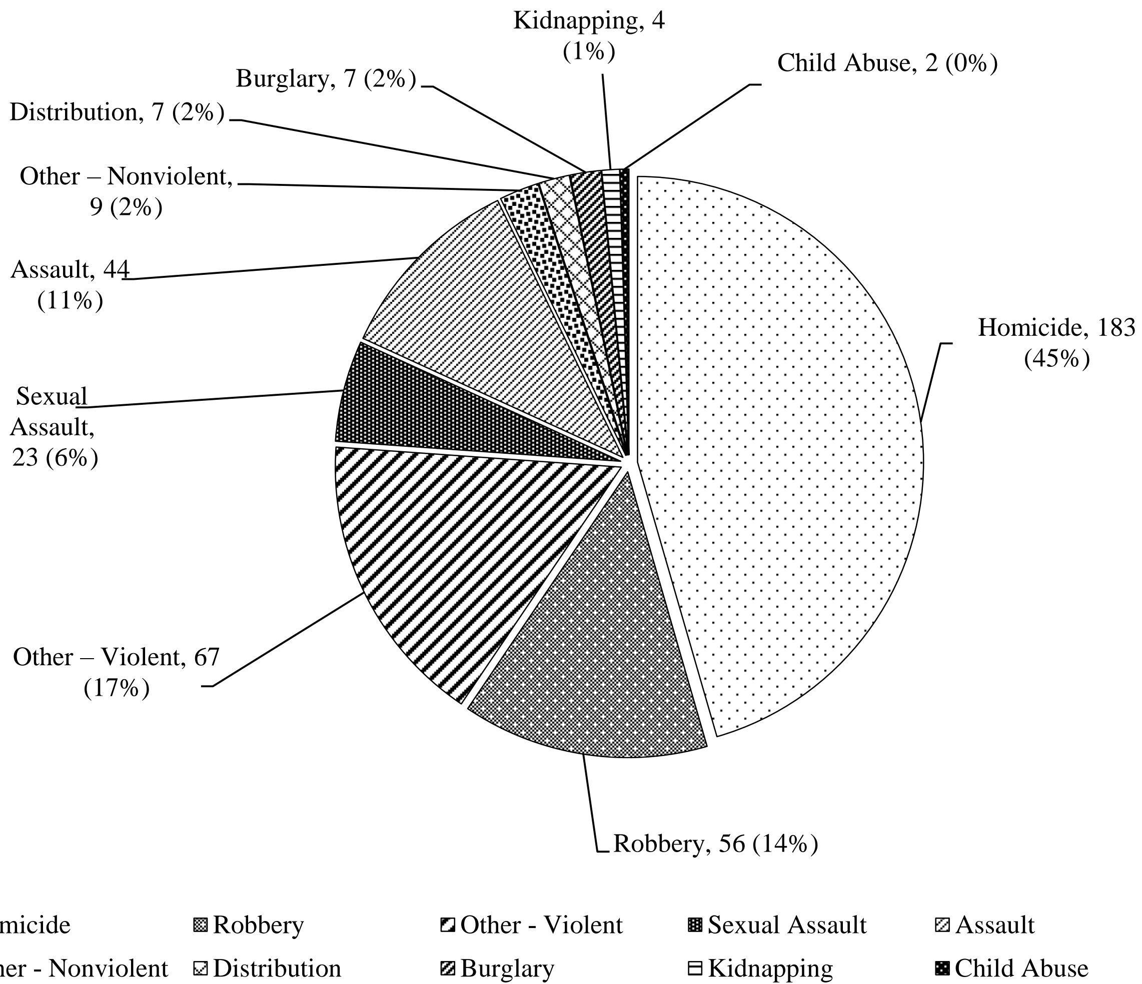
The Parole Violator Program, implemented in fiscal 2010, provides services addressing the needs of male inmates who have violated their parole. The program emphasizes skill development to prevent relapse and facilitate an inmate's transition back into society. Seventy-nine offenders completed the program during fiscal 2013.

Statistics/Fiscal Information

Exhibit 15.1 shows the percentage of the institution's inmates by offense committed for fiscal 2013.

The average annual cost per inmate at Patuxent was estimated to be $52,003 in fiscal 2013, as compared to $37,956 at the Jessup Correctional Institution, which is another maximum security facility. The higher cost (37%) of incarceration at Patuxent reflects the unique mission of the facility and services not directly provided by other departmental facilities, such as diagnostic services, intensive mental health services, conditional release decisionmaking, and conditional release supervision.

Exhibit 15.1
Patuxent Institution Statutory Programs
Inmates by Offenses
Fiscal 2013



Note: Numbers within graph represent the number of inmates in the Eligible Persons Program and the Patuxent Youth Program 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: (1) expiration of sentence; (2) release on mandatory supervision; (3) parole; or (4) gubernatorial pardon or commutation of sentence. This chapter will discuss each of these methods.

An inmate may also be released from imprisonment on probation, which is discussed in Chapter 10 of this handbook.

Expiration of Sentence

An inmate may be released on expiration of the inmate's sentence. Release of an inmate on expiration of sentence is mandatory and not subject to discretion. Unlike release on mandatory supervision or parole, release on expiration of sentence is not subject to any condition or supervision.

Release on Mandatory Supervision

Release on mandatory supervision is a conditional release from confinement that results from the application of diminution credits, discussed below, and applies only to inmates in State correctional facilities sentenced to a term of confinement exceeding 18 months. Inmates in State correctional facilities serving a term of 18 months 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.

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

State law establishes the types of diminution credits that an inmate may be allowed. These are commonly 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 an inmate's time while confined and prove useful after release. An inmate serving a sentence for a crime of violence or a drug felony, such as drug distribution, is awarded good conduct

credits at the rate of 5 days per month. Other inmates are awarded good conduct credits at the rate of 10 days per month. An inmate may earn a maximum of 20 days total diminution credits per month. Credits may be forfeited or restricted through misbehavior in the institution.

As a result of legislation enacted in 2010, an inmate serving a sentence in a State or local correctional facility for the following offenses is prohibited from earning diminution credits: (1) first or second degree rape or sexual offense against a victim under 16 years of age; and (2) third degree sexual offense committed against a child under the age of 16 by a person previously convicted of that offense.

Certain sexual offenders are subject to extended supervision, and some of these offenders are subject to lifetime supervision. A person imprisoned for a violation of lifetime sexual offender supervision is not entitled to diminution credits.

Individuals on mandatory supervision are supervised by the Department of Public Safety and Correctional Services until the expiration of the term and are subject to the same terms and conditions as inmates released on parole. See the discussion of parole below.

If an inmate is sentenced to imprisonment for a crime of violence committed between June 1, 2002, and October 1, 2003, or any crime after October 1, 2003, 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. An inmate convicted of a crime of violence committed on or after October 1, 2009, may not be released by expiration of sentence or placed on mandatory supervision with the application of credits before the inmate is eligible for parole.

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 State correctional facilities and local detention centers. 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 11 hearing officers.

Parole Eligibility

Inmates sentenced to serve 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:

- An inmate 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) and is not eligible for parole until the inmate served that mandatory minimum sentence. Diminution credits, discussed above, may not be applied towards this minimum requirement.

- Any of the following inmates who do not receive a mandatory minimum sentence are required to serve at least one-half of their sentences for violent crimes before becoming eligible for parole: (1) inmates convicted of violent crimes committed on or after October 1, 1994; (2) inmates convicted of child abuse in the first degree committed on or after October 1, 2006; and (3) inmates convicted of sexual abuse of a child under the age of 13 or a continuing course of conduct with a child committed on or after October 1, 2007.

- 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 life imprisonment without the possibility of parole, must serve a minimum of 25 years less diminution credits before becoming eligible for parole and may generally be paroled only with approval of the Governor. However, pursuant to legislation enacted in 2011, if the Maryland Parole Commission or the

Patuxent Board of Review decides to grant parole to an inmate who has served 25 years *without* application of diminution credits and the Secretary of Public Safety and Correctional Services approves the decision, the decision must be transmitted to the Governor, who may disapprove the decision in writing within 180 days. If the Governor does not disapprove the decision to grant parole within that timeframe, the decision to grant parole becomes effective.

- 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 or pardons the individual.

- Offenders who are age 65 or older who have served at least 15 years of a sentence for a crime of violence may apply for and be granted parole.

- Inmates who are so debilitated or incapacitated by a medical or mental condition, disease, or syndrome as to be physically incapable of presenting a danger to society may be released on medical parole.

Parole Hearings

If an inmate is eligible for a parole 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 a discussion of victims' rights.

The commission may grant parole, deny parole, or decide to rehear the case at a future date. The hearing officer must verbally inform the inmate of the hearing officer's recommendation immediately after the hearing and submit a written report of findings and recommendations to the Department of Public Safety and Correctional Services, the commission, and the inmate within 21 days after the hearing. After receiving the recommendation, a parole commissioner is required to review the written recommendations of the hearing officer. The commissioner may either approve or disapprove the hearing officer's recommendation. If the recommendation is approved, the decision is sent to the inmate and to the department. If the recommendation is disapproved, the decision is sent to a two-commissioner panel for the issuance of a final decision.

The inmate and the department have five days after receipt of the hearing officer's written decision to file with the commission a written exception to the hearing officer's

recommendations. If an exception is not filed, 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 of the commission or panel is final.

Decisions of a two-commissioner panel must be unanimous. When the members of a two-commissioner panel disagree, the chairperson of the commission must convene a three-member panel to hear the case. Decisions by more than two commissioners are by majority vote.

The commission also reviews cases and makes recommendations to the Governor concerning parole of an inmate serving a sentence of life imprisonment. In addition, the commission 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 of the inmate 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 a 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, supervised probation (see Chapter 10 of this handbook for a discussion of probation), or under mandatory supervision is assigned to a community supervision agent within the Department of Public Safety and Correctional Services.

Based on an assessment of an offender's risk to the community and other factors, which is updated periodically, offenders are actively supervised at one of four levels of supervision: high, moderate, low-moderate, and low. Additionally, based on specific risk assessment factors, certain offenders are supervised within the containment supervision model for sexual offenders and the Violence Prevention Initiative containment model of intensive supervision. An offender is required to pay a monthly supervision fee of $50 to the department unless exempted by the sentencing court or the Maryland Parole Commission. The department and the local detention center must notify an individual orally and in writing about how to apply for an exemption from the supervision fee and the criteria used in determining whether to grant an exemption.

As of June 2013, approximately 670 community supervision agents were responsible for the supervision of approximately 62,500 offenders. Of these offenders, 39,994 were under probation supervision; 12,538 offenders were being monitored by the Drinking Driving Monitor Program; 4,185 were under mandatory release supervision; and 5,588 were under parole supervision. Another 53 agents 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. In addition, 22 agents are assigned to the Community Surveillance and Enforcement Program. The Community Surveillance and Enforcement Program is responsible for providing electronic monitoring and oversight for qualifying inmates who have been assigned to the program by the department, as well as parolees in home detention. Community supervision agents assigned to the Community Surveillance and Enforcement Program are responsible for placing identified sexual and violent offenders under global positioning system surveillance; apprehending offenders who violate the terms of the program; serving retake warrants on alleged probation, parole, and mandatory supervision release violators; and returning probation, parole, and mandatory supervision release violators to custody to await revocation hearings. In addition, Community Surveillance and Enforcement Program agents are authorized to serve violation of probation warrants issued by the courts.

Chapters 554 and 555 of 2011 created the Swift and Certain Sanctions Pilot Program, under which the Department of Public Safety and Correctional Services was required to develop, by October 1, 2012, a pilot program in two counties that creates a system of graduated administrative sanctions for violations of conditions of parole by releasees from the department. Beginning in 2013, by October 1 of each year, the department must report to the General Assembly on the status of the pilot program, the percentage of departmental programs that use evidence-based practices, and the number of individuals incarcerated for technical violations and new offenses while on parole. The Acts were set to terminate September 30, 2015, but Chapter 182 of 2014 extended the termination date for two years to September 30, 2017. Chapter 182 also expanded the program to include Baltimore City and individuals under mandatory release.

The Department of Public Safety and Correctional Services is authorized to issue a certificate of completion to an individual supervised by the department under conditions of parole, probation, or mandatory supervision on or after July 1, 2014, so long as the individual (1) has completed all special and general conditions, including payment of all required restitution, fines, fees, and other payment obligations and (2) is no longer under the jurisdiction of the department.

Revocation of Parole

Any 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 Department of Public Safety and Correctional Services (if this power is delegated to the department in a particular case) must decide whether to issue a subpoena or a 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 may concur with a no action recommendation[1], authorize a subpoena, or issue a retake warrant. The commission may, in its discretion, consult with the parole agent or other responsible person if additional information concerning the offender is necessary. The decision whether to issue a subpoena or warrant is within the sole discretion of the commission.

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) determine that there is probable cause to hold the parolee for a revocation hearing or (2) 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. If possible, the hearing will take place within 60 days after arrest on the retake warrant. The individual is entitled to counsel and, if the commission is notified five days in advance of

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[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.

the revocation hearing and if the commission agrees, 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. The commission may also 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 or mandatory supervision release for a violent crime committed on or after October 1, 1994, whose release is revoked due to the commission of a new violent crime may not receive credit for street time. Uncredited time spent on parole is added to the expiration date of the original sentence.

The violator may seek judicial review of a decision to revoke parole in a circuit court within 30 days of receiving the commission's written decision. The circuit court decides the case on the record made before the commission.

Earned Compliance Credits

Pursuant to legislation enacted in 2012, the Department of Public Safety and Correctional Services must establish a program to implement earned compliance credits, which create a reduction in the period of active supervision for a "supervised individual" and to develop policies and procedures for the implementation of the program. With certain exceptions, a "supervised individual" means an individual placed on probation by a court or serving a period of parole or mandatory release supervision after release from a correctional facility. An "earned compliance credit" is a 20-day reduction from the period of active supervision of the supervised individual for every month that a supervised individual:

- exhibits full compliance with the conditions, goals, and treatment as part of probation, parole, or mandatory release supervision, as determined by the department;
- has no new arrests;

[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 lesser standard than the criminal standard of proof "beyond a reasonable doubt."

- has not violated any conditions of no contact requirements;
- is current on court ordered payments for restitution, fines, and fees relating to the offense for which earned compliance credits are being accrued; and
- is current in completing any community supervision requirements included in the conditions of the supervised individual's probation, parole, or mandatory release supervision.

A supervised individual whose period of active supervision has been completely reduced as a result of earned compliance credits must remain on "abatement" until the expiration of the individual's sentence, unless consenting to continued active supervision or unless violating a condition of probation, parole, or mandatory release supervision including failure to pay a required payment of restitution. If a supervised individual violates a condition of probation while on abatement, a court may order the person to be returned to active supervision. The term "abatement" means an end to active supervision of a supervised individual without effect on the legal expiration date of the case or the supervised individual's obligation to obey all laws, report as instructed, and obtain written permission from the department before relocating residence outside the State.

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 or commute a sentence, 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

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[3] A reprieve is the withdrawal of a sentence for an interval of time whereby the execution of the sentence is suspended. A reprieve was typically used to defer execution of a death penalty. It is not a method of release from incarceration.

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 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 2010 through 2013, the number of pardons reached 109.[4] During the same period, commutations reached three.

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[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.

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 lead to the war on drugs. A sharp, sudden rise in heroin overdose cases statewide since 2012 spurs studies and debate. 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 registered sex offender gives rise to stricter registration laws for convicted sex offenders and community notification of their location. A number of mass shootings by seemingly mentally unstable persons leads to the introduction of legislative initiatives by both supporters of greater gun control laws and supporters of "gun rights." This inevitably leads to a piecemeal approach to solving the crime problem.

Although crime rates across the nation and in the State continue to decline, Maryland continues to experience (1) overloaded court dockets; (2) overworked law enforcement officers, parole and probation agents, and correctional officers; (3) overcrowded correctional facilities (despite additional construction); and (4) 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 through an expansion of job skill opportunities, educational programming, psychological and health sessions, and drug treatment within facilities. The department also implemented a major reorganization during fiscal 2012. As a result of the reorganization, the Division of Correction, the Division of Parole and Probation, the Patuxent Institution, and the Division of Pretrial Detention and Services no longer exist within the department by those names as separate budgetary units. The department is now divided into three geographic regions of the State – the Northern Region, the Central Region, and the Southern Region – and other specific operational functions. Yet the extent to which current policies related to criminal justice, corrections, and law enforcement have been effective in deterring crime is unclear.

Four years ago, the future of the death penalty in Maryland was uncertain. With the halt of executions in the State in 2006 when the Maryland Court of Appeals held that regulatory procedures for carrying out the death sentence had been adopted without

required public input and the 2009 enactment of significant restrictions on the application of the death penalty, the eventual fate of death penalty provisions in the State was unclear. However, following significant debate during the 2013 legislative session, Chapter 156 of 2013 repealed the death penalty and all provisions relating to it, including those relating to its administration and post-death sentence proceedings. Although the Act authorized the Governor to change a sentence of death to a sentence of life without the possibility of parole, as of this writing, four inmates remain on Maryland's death row.

An Administration bill in 2013 significantly modified and expanded the regulation of firearms, firearms dealers, and ammunition in the State and made significant changes to related mental health restrictions on the possession of firearms.

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.

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 is 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), 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 – money or other security posted with the court by an individual charged with a criminal offense, conditioned on the appearance of the individual before the court at a later date.

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 – a coordinated program designed to ensure the receipt of services needed to facilitate successful reentry into society for inmates incarcerated in a State correctional facility who are within two years of an estimated release date.

***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 U.S. 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.

Child in need of supervision – a child who requires guidance, treatment, or rehabilitation and (1) is required by law to attend school and is habitually truant; (2) is habitually disobedient, ungovernable, and beyond the control of the person having custody of him; (3) deports himself so as to injure or endanger himself or others; or (4) has committed an offense applicable only to children.

Circuit court – a trial court of general jurisdiction, also having jurisdiction to hear appeals from the District Court. Jury trials are available in a circuit court.

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 compared 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*.

Court of Special Appeals – intermediate State appellate court, having 13 members who generally sit in panels of 3. 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.

Detention – temporary confinement in a secure setting for a child awaiting a juvenile court hearing.

Detention, Community – an alternative to 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 who are selected to determine whether probable cause exists that a criminal offense has been committed by a certain person and, if so, 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 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 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.

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 that 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 is actually 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 that 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.

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.

Writ of actual innocence – a procedure by which a person who has been convicted of a crime may seek relief from the court if the person claims that there is newly discovered evidence that creates a substantial or significant possibility that the outcome in the case may have been different and the evidence could not have been discovered in time to move for a new trial.

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