SENATE BILL 1

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(PRE-FILED)

By: **The President (Department of Legislative Services - Code Revision)**
Requested: July 1, 2000
Introduced and read first time: January 10, 2001
Assigned to: Judicial Proceedings

Committee Report: Favorable
Senate action: Adopted
Read second time: January 30, 2001

CHAPTER 10

AN ACT concerning

Criminal Procedure

FOR the purpose of adding a new article to the Annotated Code of Maryland, to be designated and known as the "Criminal Procedure Article", to revise, restate, and recodify the laws relating to law enforcement procedures, the arrest process, warrantless arrests, and fresh pursuit both in-State and out-of-state; revising, restating, and recodifying certain provisions relating to the determination of incompetency and criminal responsibility in criminal cases, pretrial procedures, charging procedures and documents, venue and other procedural matters, release from incarceration, pretrial release, trial and sentencing procedures, the State Commission on Criminal Sentencing Policy, and sentence review; revising, restating, and recodifying certain provisions relating to the Uniform Postconviction Procedure Act, extradition, expungement of police and court records, certain provisions relating to the Criminal Justice Information System, the rights of victims and witnesses from pretrial to postconviction, restitution, registration of certain offenders, the Criminal Injuries Compensation Board, the State Board of Victim Services, treatment and help for victims and witnesses, the State Victims of Crime Fund, and the Victim and Witness Relocation Fund, the forfeiture of property involved in controlled dangerous substance violations and violations of gambling and gun laws; defining certain terms; providing for the construction and application of this Act; providing for the continuity of certain units and the terms of certain officials; providing for the continuity of the status of certain transactions, employees, rights, duties, titles, interests, licenses, registrations, certifications, and permits; providing for the termination of certain provisions of this Act; and generally relating to laws of the State relating to criminal procedure.

BY repealing
Article 27 - Crimes and Punishments

Section 12B and 12C and the subheading "Bail or Recognizance - Violation of"; 36C; 264; 297 and 297A; 467B and the subheading "Recording or Broadcasting Criminal Trials"; 551 and the subheading "Search Warrants"; 586 through 590, inclusive, and the subheading "Venue"; 591 through 594A, inclusive, and the subheading "Procedure"; 594B through 594C-2, inclusive, and the subheading "Arrests"; 594D and 594D-1 and the subheading "District Court Judges - Powers as to Warrants and Writs"; 595 through 602, inclusive, and the subheading "Fresh Pursuit"; 602A and the subheading "Fresh Pursuit - Intrastate"; 602B and 602C and the subheading "Police Mutual Aid Agreements"; 605, 607, 612 through 615, inclusive; 616 1/2 through 616 1/2B, inclusive; 618; 623A and the subheading "Handicapped Defendants"; 624 and 625 and the subheading "Process Against Corporations, etc. in Criminal Cases"; 633, 634, 635, 638A through 638C, and 639, inclusive; 640 through 642, inclusive; 643A and 643C; 645A through 645J, inclusive, and the subheading "Post Conviction Procedure"; 645JA through 645JG, inclusive, and the subheading "Review of Criminal Sentences"; 735 through 741, inclusive, and the subtitle "IV. Criminal Records"; 742 through 755, inclusive, and the subtitle "V. Criminal Justice Information System"; 766 through 771, inclusive, and the subheading "Pretrial Procedures"; 772 through 778, inclusive, and the subheading "Trial Procedures"; 780 through 781, inclusive, and the subheading "Sentencing Procedures"; 783A through 789, inclusive, and the subheading "Postsentencing Procedures"; 790 through 795, inclusive, and the subheading "Sexual Offenses"; 798 through 804, inclusive, and the subheading "Domestic Violence"; 805A through 813, inclusive, and the subheading "Restitution"; 815 through 832, inclusive, and the subheading "Criminal Injuries Compensation"; 835 and 836 and the subheading "Victims and Witnesses - Services" and the sub-subheading "Victim and Witness Protection and Relocation Program"; 837 through 844, inclusive, and the sub-subheading "Board of Victim Services"; 847 through 851, inclusive, and the subheading "Victims and Witnesses - Treatment and Assistance"; and 854 through 857, inclusive, and the subheading "Miscellaneous Provisions"

Annotated Code of Maryland
(1996 Replacement Volume and 2000 Supplement)

BY repealing
Article 41 - Governor - Executive and Administrative Departments
Section 2-201 through 2-228, inclusive, and the subtitle "Subtitle 2. Extradition"; 2-301 through 2-306, inclusive, and the subtitle "Uniform Act for Extradition of Persons of Unsound Mind"; 2-401 and 2-404; 21-101 through 21-108, inclusive, and the title "Title 21. State Commission on Criminal Sentencing Policy"
Annotated Code of Maryland
(1997 Replacement Volume and 2000 Supplement)

BY repealing
Article 75 - Pleadings, Practice and Process at Law

Section 85 and 86
Annotated Code of Maryland
(1998 Replacement Volume and 2000 Supplement)

BY repealing
Article 87 - Sheriffs
Section 6 and 7
Annotated Code of Maryland
(1998 Replacement Volume and 2000 Supplement)

BY repealing
Article - Family Law
Section 4-501
Annotated Code of Maryland
(1999 Replacement Volume and 2000 Supplement)

BY repealing
Article - Health - General
Section 12-101 through 12-122, inclusive, and the title "Title 12. Incompetency and Criminal Responsibility in Criminal Cases"
Annotated Code of Maryland
(2000 Replacement Volume)

BY adding
New Article - Criminal Procedure
Section 1-101 through 13-206, inclusive, and the various titles
Annotated Code of Maryland

BY adding to
Article 2B - Alcoholic Beverages
Section 16-509
Annotated Code of Maryland
(1998 Replacement Volume and 2000 Supplement)

BY adding to
Article 27 - Crimes and Punishments
Section 612
Annotated Code of Maryland
(1996 Replacement Volume and 2000 Supplement)

BY adding to
Article - Courts and Judicial Proceedings
Section 1-609, 2-107, 3-815(j), and 7-409
Annotated Code of Maryland
(1998 Replacement Volume and 2000 Supplement)

BY repealing and reenacting, with amendments,

Article - Courts and Judicial Proceedings
Section 5-106(b)
Annotated Code of Maryland
(1998 Replacement Volume and 2000 Supplement)

BY adding to
Article - Estates and Trusts
Section 11-109
Annotated Code of Maryland
(1991 Replacement Volume and 2000 Supplement)

BY adding to
Article - Family Law
Section 4-501 through 4-503.2, inclusive, to be under the amended part "Part I. Definitions; General Provisions"
Annotated Code of Maryland
(1999 Replacement Volume and 2000 Supplement)

BY adding to
Article - Health - General
Section 10-1301 through 10-1306, inclusive, to be under the new subtitle "Subtitle 13. Uniform Act for the Extradition of Persons of Unsound Mind"
Annotated Code of Maryland
(2000 Replacement Volume)

BY adding to
Article - Health Occupations
Section 8-509
Annotated Code of Maryland
(2000 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the following Section(s) of the Annotated Code of Maryland be repealed:

Article 27 - Crimes and Punishments
Section 12B and 12C and the subheading "Bail or Recognizance - Violation of"; 36C; 264; 297 and 297A; 467B and the subheading "Recording or Broadcasting Criminal Trials"; 551 and the subheading "Search Warrants"; 586 through 590, inclusive, and the subheading "Venue"; 591 through 594A, inclusive, and the subheading "Procedure"; 594B through 594C-2, inclusive, and the subheading "Arrests"; 594D and 594D-1 and the subheading "District Court Judges - Powers as to Warrants and Writs"; 595 through 602, inclusive, and the subheading "Fresh Pursuit"; 602A and

the subheading "Fresh Pursuit - Intrastate"; 602B and 602C and the subheading "Police Mutual Aid Agreements"; 605, 607, 612 through 615, inclusive; 616 1/2 through 616 1/2B, inclusive; 618; 623A and the subheading "Handicapped Defendants"; 624 and 625 and the subheading "Process Against Corporations, etc. in Criminal Cases"; 633, 634, 635, 638A through 638C, and 639, inclusive; 640 through 642, inclusive; 643A and 643C; 645A through 645J, inclusive, and the subheading "Post Conviction Procedure"; 645JA through 645JG, inclusive, and the subheading "Review of Criminal Sentences"; 735 through 741, inclusive, and the subtitle "IV. Criminal Records"; 742 through 755, inclusive, and the subtitle "V. Criminal Justice Information System"; 766 through 771, inclusive, and the subheading "Pretrial Procedures"; 772 through 778, inclusive, and the subheading "Trial Procedures"; 780 through 781, inclusive, and the subheading "Sentencing Procedures"; 783A through 789, inclusive, and the subheading "Postsentencing Procedures"; 790 through 795, inclusive, and the subheading "Sexual Offenses"; 798 through 804, inclusive, and the subheading "Domestic Violence"; 805A through 813, inclusive, and the subheading "Restitution"; 815 through 832, inclusive, and the subheading "Criminal Injuries Compensation"; 835 and 836 and the subheading "Victims and Witnesses - Services" and the sub-subheading "Victim and Witness Protection and Relocation Program"; 837 through 844, inclusive, and the sub-subheading "Board of Victim Services"; 847 through 851, inclusive, and the subheading "Victims and Witnesses - Treatment and Assistance"; and 854 through 857, inclusive, and the subheading "Miscellaneous Provisions"

Article 41 - Governor - Executive and Administrative Departments
Section 2-201 through 2-228, inclusive, and the subtitle "Subtitle 2. Extradition"; 2-301 through 2-306, inclusive, and the subtitle "Uniform Act for Extradition of Persons of Unsound Mind"; 2-401 and 2-404; 21-101 through 21-108, inclusive, and the title "Title 21. State Commission on Criminal Sentencing Policy"

Article 75 - Pleadings, Practice and Process at Law
Section 85 and 86

Article 87 - Sheriffs
Section 6 and 7

Article - Family Law
Section 4-501

Article - Health - General
Section 12-101 through 12-122, inclusive, and the title "Title 12. Incompetency and Criminal Responsibility in Criminal Cases"

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

ARTICLE - CRIMINAL PROCEDURE

TITLE 1. DEFINITIONS; GENERAL PROVISIONS.

SUBTITLE 1. DEFINITIONS.

1-101. DEFINITIONS.

(A) IN GENERAL.

IN THIS ARTICLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language added as the standard introductory language to a definition section.

(B) CHARGING DOCUMENT.

(1) "CHARGING DOCUMENT" MEANS A WRITTEN ACCUSATION ALLEGING THAT A DEFENDANT HAS COMMITTED A CRIME.

(2) "CHARGING DOCUMENT" INCLUDES A CITATION, AN INDICTMENT, AN INFORMATION, A STATEMENT OF CHARGES, AND A WARRANT.

REVISOR'S NOTE: This subsection is new language added to provide a convenient reference to any document containing allegations that a defendant has committed a crime. It is based on Md. Rule 4-102(a).

(C) CORRECTIONAL FACILITY.

"CORRECTIONAL FACILITY" HAS THE MEANING STATED IN § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

REVISOR'S NOTE: This subsection is new language added to provide a definition of the term "correctional facility" for this article.

The comprehensive term, which was first defined for the Correctional Services Article, includes the former references to a "jail", "prison", "detention center", "penal institution", "reformatory", "institution", "lock-up", "community correctional facility", "work release facility", "pre-release facility", and various other similar terms. *See* General Revisor's Note to the Correctional Services Article.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that this definition does not explicitly cover adults who are detained or confined after a plea of nolo contendere or probation before judgment.

(D) COUNTY.

"COUNTY" MEANS A COUNTY OF THE STATE OR BALTIMORE CITY.

REVISOR'S NOTE: This subsection is new language added to indicate that a reference in this article to a "county" includes Baltimore City, unless the reference specifically provides otherwise.

Article 1, § 14(a) provides that "county" includes Baltimore City "unless such construction would be unreasonable". Since the word "unreasonable" in that section has been interpreted in various ways, the Criminal Procedure Article Review Committee decided that an explicit definition of "county" should be included in this article.

Former Art. 27, § 743(d), which defined "county" to include Baltimore City but applied only to the subtitle concerning the Criminal Justice Information System, is therefore deleted as unnecessary.

(E) CRIME OF VIOLENCE.

"CRIME OF VIOLENCE" HAS THE MEANING STATED IN ARTICLE 27, § 643B(A) OF THE CODE.

REVISOR'S NOTE: This subsection is new language added to conform the definition of "crime of violence" in this article to the definition in Art. 27, § 643B(a) while avoiding the possibility of unintended language variations if that definition is amended in the future.

(F) DEPARTMENT.

"DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 792(a)(4).

This defined term is applied throughout this article to provide a convenient, brief reference to the Department of Public Safety and Correctional Services.

(G) INMATE.

"INMATE" HAS THE MEANING STATED IN § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

REVISOR'S NOTE: This subsection is new language added to provide uniformity throughout this article when referring to a person who is actually or constructively detained or confined in a correctional facility.

The comprehensive term, which was first defined for the Correctional Services Article, includes the former references to "felon", "convict",

"prisoner", "persons confined", and various other similar terms. *See* General Revisor's Note to the Correctional Services Article.

(H) LOCAL CORRECTIONAL FACILITY.

"LOCAL CORRECTIONAL FACILITY" HAS THE MEANING STATED IN § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

REVISOR'S NOTE: This subsection is new language added to provide uniformity throughout this article when referring to a place in which inmates in counties or municipal corporations are detained.

(I) MANAGING OFFICIAL.

"MANAGING OFFICIAL" HAS THE MEANING STATED IN § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

REVISOR'S NOTE: This subsection is new language added to provide uniformity throughout this article when referring to the person who manages a correctional facility.

The comprehensive term, which was first defined for the Correctional Services Article, includes the former references to "jailer", "warden", and various other similar terms.

(J) NOLO CONTENDERE.

"NOLO CONTENDERE" MEANS A PLEA STATING THAT THE DEFENDANT WILL NOT CONTEST THE CHARGE BUT DOES NOT ADMIT GUILT OR CLAIM INNOCENCE.

REVISOR'S NOTE: This subsection is new language added to explain the meaning of "nolo contendere".

(K) NOLLE PROSEQUI.

"NOLLE PROSEQUI" MEANS A FORMAL ENTRY ON THE RECORD BY THE STATE THAT DECLARES THE STATE'S INTENTION NOT TO PROSECUTE A CHARGE.

REVISOR'S NOTE: This subsection is new language added to explain the meaning of "nolle prosequi".

(L) PERSON.

"PERSON" MEANS AN INDIVIDUAL, RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, REPRESENTATIVE OF ANY KIND, PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY.

REVISOR'S NOTE: This subsection is new language added to provide an express definition of the term "person" for this article.

The definition of "person" in this subsection does not include a

governmental entity or unit. The Court of Appeals of Maryland has held consistently that the word "person" in a statute does not include the State, its agencies, or subdivisions unless an intention to include these entities is made manifest by the legislature. *See, e.g., Unnamed Physician v. Commission on Medical Discipline*, 285 Md. 1, 12-14 (1979).

As to the term "personal representative", *see* Art. 1, § 5.

Former Art. 27, § 854(a)(3), which defined "person" to mean a natural person, a firm, corporation, partnership, association, or other legal entity but applied only to provisions regarding notoriety of crimes contracts, is deleted as unnecessary.

(M) SECRETARY.

"SECRETARY" MEANS THE SECRETARY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the full title, "Secretary of the Department of Public Safety and Correctional Services".

Former Art. 27, § 743(j), which defined "Secretary" to mean the Secretary of Public Safety and Correctional Services but applied only to the subtitle concerning the Criminal Justice Information System, is therefore deleted as unnecessary.

The first clause of former Art. 27, § 815(g), which defined "Secretary" to mean the Secretary of Public Safety and Correctional Services but applied only to the subheading concerning criminal injuries compensation, is therefore deleted as unnecessary. As to the rest of former Art. 27, § 815(g), which authorized the Secretary to have a designee, *see* § 11-805(c) of this article.

(N) STATE.

"STATE" MEANS:

(1) A STATE, POSSESSION, TERRITORY, OR COMMONWEALTH OF THE UNITED STATES; OR

(2) THE DISTRICT OF COLUMBIA.

REVISOR'S NOTE: This subsection is new language added to provide an express definition of the term "state" for this article.

This definition conforms to the definition of "state" in other revised articles of the Code. *See, e.g.*, CS § 1-101(n), PUC § 1-101(v), and IN § 1-101(kk).

(O) STATE CORRECTIONAL FACILITY.

"STATE CORRECTIONAL FACILITY" HAS THE MEANING STATED IN § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

REVISOR'S NOTE: This subsection is new language added to provide a convenient, comprehensive term for referring to any place of confinement for inmates that is operated by the State.

This term, which was first defined for the Correctional Services Article, includes the former references to the Patuxent Institution, the Baltimore City Detention Center, and the centralized booking facility in Baltimore City that is operated by the Division of Pretrial Detention and Services in the Department of Public Safety and Correctional Services.

SUBTITLE 2. GENERAL PROVISIONS.

1-201. RECORDING OR BROADCASTING CRIMINAL PROCEEDINGS.

(A) PROHIBITED.

(1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON MAY NOT RECORD OR BROADCAST ANY CRIMINAL MATTER, INCLUDING A TRIAL, HEARING, MOTION, OR ARGUMENT, THAT IS HELD IN TRIAL COURT OR BEFORE A GRAND JURY.

(2) THIS PROHIBITION APPLIES TO THE USE OF TELEVISION, RADIO, AND PHOTOGRAPHIC OR RECORDING EQUIPMENT.

(B) EXCEPTIONS.

SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO THE USE OF ELECTRONIC OR PHOTOGRAPHIC EQUIPMENT APPROVED BY THE COURT:

(1) TO TAKE THE TESTIMONY OF A CHILD VICTIM UNDER § 11-303 OF THIS ARTICLE; OR

(2) TO PERPETUATE A COURT RECORD.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION MAY BE HELD IN CONTEMPT OF COURT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 467B.

In subsection (a) of this section, the introductory language of former Art. 27, § 467B, which was the standard introductory language to a definition provision, is deleted as unnecessary. The former definitions have been revised as parts of the substantive provisions.

Also in subsection (a) of this section, the former definitions of "extended coverage" and "proceedings" are revised as part of the substantive prohibition because the definitions were used only once in the former law. As a result, the terms "extended coverage" and "proceeding" are deleted as unnecessary.

In subsection (b) of this section, the former reference to "[i]nvestiture or ceremonial proceedings, in which the local administrative judge may regulate the presence and use of cameras, recorders, and broadcasting equipment" is deleted as unnecessary because the reference does not concern a criminal proceeding and thus is beyond the scope of this section. Accordingly, in subsection (a) of this section, the former definition of "local administrative law judge" to mean "the county administrative judge in the circuit court and the district administrative judge in the District Court" is deleted as unnecessary because it was used only in this provision in the former law.

In subsection (b)(1) of this section, the reference to taking "the testimony of a child victim under § 11-303 of this article" is added to reflect that closed circuit television may be used in the courtroom under certain circumstances to take the testimony of a child victim.

The scope of this section is limited to media coverage of criminal proceedings. Maryland Rule 16-109, however, allows recording or broadcasting of court proceedings in civil actions in the trial courts of the State and in appellate courts. *See* the Rules Order of May 4, 1984, for Maryland Rule 1209 (now Maryland Rule 16-109) making the experiment of extended media coverage permanent for civil actions in the trial courts.

Defined term: "Person" § 1-101

1-202. INTERPRETERS FOR CRIMINAL PROCEEDINGS.

(A) WHEN APPOINTMENT REQUIRED.

THE COURT SHALL APPOINT A QUALIFIED INTERPRETER TO HELP A DEFENDANT IN A CRIMINAL PROCEEDING THROUGHOUT ANY CRIMINAL PROCEEDING WHEN THE DEFENDANT IS:

(1) DEAF; OR

(2) CANNOT READILY UNDERSTAND OR COMMUNICATE THE ENGLISH LANGUAGE AND CANNOT UNDERSTAND A CHARGE MADE AGAINST THE DEFENDANT OR HELP PRESENT THE DEFENSE.

(B) COMPENSATION AND EXPENSES.

THE COURT SHALL GIVE AN INTERPRETER APPOINTED UNDER THIS SECTION:

(1) COMPENSATION FOR SERVICES IN AN AMOUNT EQUAL TO THAT PROVIDED FOR INTERPRETERS OF LANGUAGES OTHER THAN ENGLISH; AND

(2) REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF SERVICES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 623A(a)(1) and (b).

In subsection (a) of this section, the former reference to a criminal proceeding in "any court in this State" is deleted as surplusage.

Also in subsection (a) of this section, the former reference to "deaf-mute" is deleted as included in the reference to "deaf".

Also in subsection (a) of this section, the former reference to a defendant who "[b]ecause of hearing, speaking, or other impairment" cannot readily understand or communicate the English language is deleted as unnecessary in light of the general reference to a defendant who "cannot readily understand or communicate the English language and cannot understand a charge made against the defendant or help present the defense".

As to the appointment and compensation of interpreters generally, *see* § 9-114 of the Courts Article.

1-203. SEARCH WARRANTS.

(A) IN GENERAL.

(1) A CIRCUIT COURT JUDGE OR DISTRICT COURT JUDGE MAY ISSUE FORTHWITH A SEARCH WARRANT WHENEVER IT IS MADE TO APPEAR TO THE JUDGE, BY APPLICATION AS DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT:

(I) A MISDEMEANOR OR FELONY IS BEING COMMITTED BY A PERSON OR IN A BUILDING, APARTMENT, PREMISES, PLACE, OR THING WITHIN THE TERRITORIAL JURISDICTION OF THE JUDGE; OR

(II) PROPERTY SUBJECT TO SEIZURE UNDER THE CRIMINAL LAWS OF THE STATE IS ON THE PERSON OR IN OR ON THE BUILDING, APARTMENT, PREMISES, PLACE, OR THING.

(2) AN APPLICATION FOR A SEARCH WARRANT SHALL BE:

(I) IN WRITING;

(II) SIGNED AND SWORN TO BY THE APPLICANT; AND

(III) ACCOMPANIED BY AN AFFIDAVIT THAT:

1. SETS FORTH THE BASIS FOR PROBABLE CAUSE AS DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION; AND

2. CONTAINS FACTS WITHIN THE PERSONAL KNOWLEDGE OF THE AFFIANT THAT THERE IS PROBABLE CAUSE.

(3) THE SEARCH WARRANT SHALL:

(I) BE DIRECTED TO A DULY CONSTITUTED POLICE OFFICER AND AUTHORIZE THE POLICE OFFICER TO SEARCH THE SUSPECTED PERSON, BUILDING, APARTMENT, PREMISES, PLACE, OR THING AND TO SEIZE ANY PROPERTY FOUND SUBJECT TO SEIZURE UNDER THE CRIMINAL LAWS OF THE STATE; AND

(II) NAME OR DESCRIBE, WITH REASONABLE PARTICULARITY:

1. THE PERSON, BUILDING, APARTMENT, PREMISES, PLACE, OR THING TO BE SEARCHED;

2. THE GROUNDS FOR THE SEARCH; AND

3. THE NAME OF THE APPLICANT ON WHOSE APPLICATION THE SEARCH WARRANT WAS ISSUED.

(4) (I) THE SEARCH AND SEIZURE UNDER THE AUTHORITY OF A SEARCH WARRANT SHALL BE MADE WITHIN 15 CALENDAR DAYS AFTER THE DAY THAT THE SEARCH WARRANT IS ISSUED.

(II) AFTER THE EXPIRATION OF THE 15-DAY PERIOD, THE SEARCH WARRANT IS VOID.

(B) RETURN OF PROPERTY WRONGFULLY TAKEN.

(1) A CIRCUIT COURT JUDGE OR DISTRICT COURT JUDGE SHALL CAUSE PROPERTY TAKEN UNDER A SEARCH WARRANT TO BE RESTORED TO THE PERSON FROM WHOM IT WAS TAKEN IF, AT ANY TIME, ON APPLICATION TO THE JUDGE, IT APPEARS THAT:

(I) THE PROPERTY TAKEN IS NOT THE SAME AS THAT DESCRIBED IN THE SEARCH WARRANT;

(II) THERE IS NO PROBABLE CAUSE FOR BELIEVING THE EXISTENCE OF THE GROUNDS ON WHICH THE SEARCH WARRANT WAS ISSUED; OR

(III) THE PROPERTY WAS TAKEN UNDER A SEARCH WARRANT ISSUED MORE THAN 15 CALENDAR DAYS BEFORE THE SEIZURE.

(2) THE JUDGE MAY RECEIVE AN ORAL MOTION MADE IN OPEN COURT AT ANY TIME MAKING APPLICATION FOR THE RETURN OF SEIZED PROPERTY IF THE APPLICATION FOR RETURN IS BASED ON ANY GROUND DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

(3) IF THE JUDGE GRANTS THE ORAL MOTION DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, THE ORDER OF THE COURT SHALL BE IN WRITING AND A COPY OF THE ORDER SHALL BE SENT TO THE STATE'S ATTORNEY.

(4) COURT COSTS MAY NOT BE ASSESSED AGAINST THE PERSON FROM WHOM THE PROPERTY WAS TAKEN IF:

(I) THE JUDGE DENIES THE ORAL MOTION AND REQUIRES THE PERSON FROM WHOM THE PROPERTY WAS TAKEN TO PROCEED FOR RETURN OF THE SEIZED PROPERTY BY PETITION AND AN ORDER TO SHOW CAUSE TO THE POLICE AUTHORITY SEIZING THE PROPERTY; AND

(II) IT IS LATER ORDERED THAT THE PROPERTY BE RESTORED TO THE PERSON FROM WHOM IT WAS TAKEN.

(5) IF THE JUDGE FINDS THAT THE PROPERTY TAKEN IS THE SAME AS THAT DESCRIBED IN THE SEARCH WARRANT AND THAT THERE IS PROBABLE CAUSE FOR BELIEVING THE EXISTENCE OF THE GROUNDS ON WHICH THE SEARCH WARRANT WAS ISSUED, THE JUDGE SHALL ORDER THE PROPERTY TO BE RETAINED IN THE CUSTODY OF THE POLICE AUTHORITY SEIZING IT OR TO BE OTHERWISE DISPOSED OF ACCORDING TO LAW.

(C) RETURN OF PROPERTY RIGHTFULLY TAKEN.

(1) THIS SUBSECTION DOES NOT APPLY TO CONTRABAND OR OTHER PROPERTY PROHIBITED BY LAW FROM BEING RECOVERABLE.

(2) PROPERTY SEIZED UNDER A SEARCH WARRANT ISSUED UNDER SUBSECTION (A) OF THIS SECTION MAY BE RETURNED TO THE PERSON TO WHOM THE PROPERTY BELONGS WITHOUT THE NECESSITY OF THAT PERSON BRINGING AN ACTION FOR REPLEVIN OR ANY OTHER PROCEEDING AGAINST THE UNIT WITH CUSTODY OF THE PROPERTY IF:

(I) THE CRIMINAL CASE IN WHICH THE PROPERTY WAS SEIZED IS DISPOSED OF BECAUSE OF A NOLLE PROSEQUI, DISMISSAL, OR ACQUITTAL;

(II) THE STATE DOES NOT APPEAL THE CRIMINAL CASE IN WHICH THE PROPERTY WAS SEIZED; OR

(III) THE TIME FOR APPEAL HAS EXPIRED.

(D) RETURN OF PROPERTY RIGHTFULLY TAKEN AND WRONGFULLY WITHHELD.

(1) A CIRCUIT COURT JUDGE OR DISTRICT COURT JUDGE SHALL CAUSE PROPERTY RIGHTFULLY TAKEN UNDER A SEARCH WARRANT TO BE RESTORED TO THE PERSON FROM WHOM IT WAS TAKEN IF, AT ANY TIME, ON APPLICATION TO THE JUDGE, THE JUDGE FINDS THAT THE PROPERTY IS BEING WRONGFULLY WITHHELD AFTER THERE IS NO FURTHER NEED FOR RETENTION OF THE PROPERTY.

(2) THE JUDGE MAY RECEIVE AN ORAL MOTION MADE IN OPEN COURT AT ANY TIME MAKING APPLICATION FOR THE RETURN OF SEIZED PROPERTY IF THE APPLICATION FOR RETURN IS BASED ON THE GROUND THAT THE PROPERTY, ALTHOUGH RIGHTFULLY TAKEN UNDER A SEARCH WARRANT, IS BEING WRONGFULLY WITHHELD AFTER THERE IS NO FURTHER NEED FOR RETENTION OF THE PROPERTY.

(3) IF THE JUDGE GRANTS THE ORAL MOTION DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, THE ORDER OF THE COURT SHALL BE IN WRITING AND A COPY OF THE ORDER SHALL BE SENT TO THE STATE'S ATTORNEY.

(4) COURT COSTS MAY NOT BE ASSESSED AGAINST THE PERSON FROM WHOM THE PROPERTY WAS TAKEN IF:

(I) THE JUDGE DENIES THE ORAL MOTION AND REQUIRES THE PERSON FROM WHOM THE PROPERTY WAS TAKEN TO PROCEED FOR RETURN OF THE SEIZED PROPERTY BY PETITION AND AN ORDER TO SHOW CAUSE TO THE POLICE AUTHORITY WRONGFULLY WITHHOLDING THE PROPERTY; AND

(II) IT IS LATER ORDERED THAT THE PROPERTY BE RESTORED TO THE PERSON FROM WHOM IT WAS TAKEN.

(E) SEALING AFFIDAVITS.

(1) THIS SUBSECTION APPLIES TO CRIMINAL INVESTIGATIONS CONDUCTED BY A LAW ENFORCEMENT UNIT, GRAND JURY, OR STATE'S ATTORNEY UNDER ARTICLE 10, § 39A OF THE CODE INTO ALLEGED CRIMINAL ACTIVITIES IN VIOLATION OF:

(I) ARTICLE 27, § 286, § 286A, § 286B, § 286C, § 287, OR § 287A OF THE CODE, RELATING TO CONTROLLED DANGEROUS SUBSTANCES;

(II) ARTICLE 27, § 407, § 408, § 409, § 410, OR § 411 OF THE CODE, RELATING TO MURDER; OR

(III) ARTICLE 27, § 419A OR § 419B OF THE CODE, RELATING TO PORNOGRAPHY.

(2) NOTWITHSTANDING ANY PROVISION OF THE MARYLAND RULES, A CIRCUIT COURT JUDGE OR DISTRICT COURT JUDGE, ON A FINDING OF GOOD CAUSE, MAY ORDER THAT AN AFFIDAVIT PRESENTED IN SUPPORT OF A SEARCH AND SEIZURE WARRANT BE SEALED FOR A PERIOD NOT EXCEEDING 30 DAYS.

(3) A FINDING OF GOOD CAUSE REQUIRED BY PARAGRAPH (2) OF THIS SUBSECTION IS ESTABLISHED BY EVIDENCE THAT:

(I) THE CRIMINAL INVESTIGATION TO WHICH THE AFFIDAVIT IS RELATED IS OF A CONTINUING NATURE AND LIKELY TO YIELD FURTHER INFORMATION THAT COULD BE OF USE IN PROSECUTING ALLEGED CRIMINAL ACTIVITIES; AND

(II) THE FAILURE TO MAINTAIN THE CONFIDENTIALITY OF THE INVESTIGATION WOULD:

1. JEOPARDIZE THE USE OF INFORMATION ALREADY OBTAINED IN THE INVESTIGATION;

2. IMPAIR THE CONTINUATION OF THE INVESTIGATION; OR

3. JEOPARDIZE THE SAFETY OF A SOURCE OF INFORMATION.

(4) AFTER THE ORDER SEALING THE AFFIDAVIT EXPIRES, THE AFFIDAVIT SHALL BE:

(I) UNSEALED; AND

(II) DELIVERED WITHIN 15 DAYS:

1. TO THE PERSON FROM WHOM THE PROPERTY WAS TAKEN; OR

2. IF THAT PERSON IS NOT ON THE PREMISES AT THE TIME OF DELIVERY, TO THE PERSON APPARENTLY IN CHARGE OF THE PREMISES FROM WHICH THE PROPERTY WAS TAKEN.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 551.

Throughout this section, the reference to the defined term "person" is substituted for the former reference to "individual" to conform to the terminology used throughout this subtitle.

In the introductory language of subsections (a)(1) and (b)(1) and in subsection (d)(1) of this section, the references to a "circuit court judge" and a "District Court judge" are substituted for the former references to a "judge of any of the circuit courts in the counties of this State", a "judge of the District Court", a "judge of the circuit court of any county", and "a judge of the circuit court of any county or judge of the District Court" for consistency with terminology used throughout this article. Similarly, in subsection (e)(2) of this section, the reference to "a circuit court judge or District Court judge" is substituted for the former reference to "a judge of the District Court or circuit court".

In subsection (a)(1)(ii) of this section, the former reference to property "situated or located" on the person of an individual is deleted as surplusage.

In subsection (a)(3) of this section, the former reference to "policeman" is deleted as included in the reference to "police officer".

In subsection (b)(4)(i) of this section, the reference to a judge who "denies

the oral motion" is substituted for the former reference to a judge who "rejects the proffer on" an oral motion for clarity. Similarly, in subsection (d)(4)(i) of this section the same reference is substituted for the former reference to a judge who "rejects the proffer of" an oral motion.

In subsection (b)(5) of this section, the phrase "[i]f the judge finds" is substituted for the former phrase "[i]f ... it appears" to clarify to whom it must appear that property was rightfully seized.

Also in subsection (b)(5) of this section, the reference to the "police authority" is substituted for the former reference to "the person" to conform to the terminology used throughout this section.

In subsection (c) of this section, as to the right of the State to appeal from a final judgment entered in the District Court, *see* CJ § 12-401.

In subsections (c)(2) and (e)(1) of this section, the reference to "unit" is substituted for the former reference to "agency" to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

In subsection (d)(4)(i) of this section, the reference to the "police" authority is added for clarity.

In subsection (e) of this section, the references to sections of the Code "relating to controlled dangerous substances", "relating to murder", and "relating to pornography" are added for clarity.

In subsection (e)(4) of this section, the former reference to a person who is not "present" on the premises is deleted as surplusage.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the terminology in subsections (b), (c), and (d) of this section is inconsistent concerning persons and property. Subsection (c)(2) of this section refers to the person "to whom property belongs". Subsections (b)(1) and (d)(4) of this section refer to the person "from whom it [*i.e.*, property] was taken" and "from whom the property was taken".

Defined terms: "Nolle prosequi" § 1-101

"Person" § 1-101

1-204. WITNESS COMPENSATION.

A WITNESS ATTENDING COURT HAS THE RIGHT TO COMPENSATION AS PROVIDED IN § 9-202 OF THE COURTS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 777.

There are no changes.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the compensation provided in § 9-202 of the Courts Article ranges from 50 cents to $5 per day, plus travel expenses of up to 12 cents per mile. The General Assembly may wish to increase the compensation or repeal CJ § 9-202 and this section.

1-205. PROCESS ACROSS COUNTY LINES.

(A) IN GENERAL.

A COURT IN A COUNTY WHERE A CRIME IS COMMITTED MAY ISSUE PROCESS AGAINST A PERSON CHARGED WITH THE CRIME EVEN IF:

(1) THE PERSON IS NOT A RESIDENT OF THE COUNTY; OR

(2) THE PERSON IS A RESIDENT OF THE COUNTY BUT LEAVES THE COUNTY.

(B) SHERIFFS.

(1) PROCESS ISSUED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE DIRECTED TO THE SHERIFF OF THE COUNTY WHERE THE PERSON RESIDES.

(2) THE SHERIFF SHALL SERVE AND RETURN THE PROCESS AS IF ISSUED BY A COURT OF THE SHERIFF'S COUNTY.

(3) A COURT THAT ISSUED PROCESS UNDER SUBSECTION (A) OF THIS SECTION MAY FINE A SHERIFF WHO NEGLECTS THE PROCESS OR DELAYS SERVING AND RETURNING THE PROCESS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 75, § 85.

In subsection (a) of this section, the reference to "[a] court in a county where a crime is committed" is substituted for the former reference to "the court before which such presentment or indictment shall be found" for clarity.

Also in subsection (a) of this section, the former reference to "offense" is deleted as included in the reference to "crime".

In subsection (a)(1) and (2) of this section, the references to being a "resident" are substituted for the former references to being an "inhabitant" for consistency with the reference in subsection (b) of this section of a county where the person "resides".

In subsection (a)(2) of this section, the reference to the authority of a court to issue process against a person charged with a crime even if the person "leaves the county" is substituted for the former reference to a person who

"shall remove after the commission thereof and shall be presented or indicted in the county where the crime or offense shall have been committed" for brevity and clarity.

Defined terms: "County" § 1-101

"Person" § 1-101

1-206. DEFENDANT TO HAVE COPY OF PROCESS.

WHENEVER PROCESS IS SERVED ON A DEFENDANT IN A CRIMINAL CASE, THE PROCESS SERVER SHALL LEAVE WITH THE DEFENDANT A COPY OF THE PROCESS.

REVISOR'S NOTE: This section formerly was Art. 75, § 86.

The only changes are in style.

1-207. REMISSION OF FINES AND FORFEITURES.

(A) FINES OR FORFEITURES.

THE GOVERNOR MAY REMIT ALL OR PART OF A FINE OR FORFEITURE.

(B) RECOGNIZANCE.

A DEFENDANT OR SURETY APPLYING FOR THE REMISSION OF ALL OR PART OF A RECOGNIZANCE THAT HAS BEEN FORFEITED:

(1) MAY APPLY TO A COURT TO ORDER THE REMISSION IN ACCORDANCE WITH TITLE 4 OF THE MARYLAND RULES; AND

(2) NEED NOT APPLY TO THE GOVERNOR TO ORDER THE REMISSION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 2-401.

In item (1) of this section, the reference to a defendant or surety who "may" apply to a court to order a remission is substituted for the former reference to a defendant or surety who "shall" apply to a court to harmonize with the language of item (2) of this section, which states that a defendant or surety "need not" apply to the Governor.

1-208. PAYMENT OF COSTS FOR NOLLE PROSEQUI.

THE GOVERNOR MAY NOT GRANT A NOLLE PROSEQUI UNLESS THE APPLICANT FOR THE NOLLE PROSEQUI PAYS THE COST OF PROSECUTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 2-404.

The reference to the "applicant" is substituted for the former reference to "the person applying for the same" for brevity.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that this section, which concerns the grant of a nolle prosequi by the Governor, is obsolete and is a possible candidate for repeal.

Defined term: "Nolle prosequi" § 1-101

TITLE 2. LAW ENFORCEMENT PROCEDURES; ARREST PROCESS.

SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.

2-101. DEFINITIONS.

(A) IN GENERAL.

IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 594B(h)(1)(i) and (m)(1)(i).

The reference to "title" is substituted for the former reference to "subsection" because the definitions in this section are used throughout this title.

(B) EMERGENCY.

"EMERGENCY" MEANS A SUDDEN OR UNEXPECTED HAPPENING OR AN UNFORESEEN COMBINATION OF CIRCUMSTANCES THAT CALLS FOR IMMEDIATE ACTION TO PROTECT THE HEALTH, SAFETY, WELFARE, OR PROPERTY OF A PERSON FROM ACTUAL OR THREATENED HARM OR FROM AN UNLAWFUL ACT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 594B(h)(1)(ii) and (m)(1)(ii).

The reference to a "person" is substituted for the former reference to an "individual" to conform to the terminology used throughout this article.

Defined term: "Person" § 1-101

(C) POLICE OFFICER.

"POLICE OFFICER" MEANS A PERSON WHO IN AN OFFICIAL CAPACITY IS AUTHORIZED BY LAW TO MAKE ARRESTS AND IS:

(1) A MEMBER OF THE DEPARTMENT OF STATE POLICE;

(2) A MEMBER OF THE POLICE DEPARTMENT OF BALTIMORE CITY;

(3) A MEMBER OF THE BALTIMORE CITY SCHOOL POLICE FORCE;

(4) A MEMBER OF THE POLICE DEPARTMENT, BUREAU, OR FORCE OF A COUNTY;

(5) A MEMBER OF THE POLICE DEPARTMENT, BUREAU, OR FORCE OF A MUNICIPAL CORPORATION;

(6) A MEMBER OF THE MASS TRANSIT ADMINISTRATION POLICE FORCE, MARYLAND PORT ADMINISTRATION POLICE FORCE, OR MARYLAND TRANSPORTATION AUTHORITY POLICE FORCE;

(7) A MEMBER OF THE UNIVERSITY OF MARYLAND POLICE FORCE OR MORGAN STATE UNIVERSITY POLICE FORCE;

(8) A SPECIAL POLICEMAN WHO IS APPOINTED TO ENFORCE THE LAW AND MAINTAIN ORDER ON OR PROTECT PROPERTY OF THE STATE OR ANY OF ITS UNITS;

(9) A MEMBER OF THE DEPARTMENT OF GENERAL SERVICES SECURITY FORCE;

(10) THE SHERIFF OF A COUNTY AND WHOSE USUAL DUTIES INCLUDE THE MAKING OF ARRESTS;

(11) A REGULARLY EMPLOYED DEPUTY SHERIFF OF A COUNTY WHO IS COMPENSATED BY THE COUNTY AND WHOSE USUAL DUTIES INCLUDE THE MAKING OF ARRESTS;

(12) A MEMBER OF THE NATURAL RESOURCES POLICE FORCE OF THE DEPARTMENT OF NATURAL RESOURCES;

(13) AN AUTHORIZED EMPLOYEE OF THE INVESTIGATIVE SERVICES UNIT OF THE COMPTROLLER'S OFFICE;

(14) A MEMBER OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION PARK POLICE;

(15) A MEMBER OF THE HOUSING AUTHORITY OF BALTIMORE CITY POLICE FORCE;

(16) A MEMBER OF THE CROFTON POLICE DEPARTMENT;

(17) A MEMBER OF THE WMATA METRO TRANSIT POLICE, SUBJECT TO THE JURISDICTIONAL LIMITATIONS UNDER ARTICLE XVI, § 76 OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT, WHICH IS CODIFIED AT § 10-204 OF THE TRANSPORTATION ARTICLE;

(18) A MEMBER OF THE INTERNAL INVESTIGATIVE UNIT OF THE DEPARTMENT; OR

(19) A MEMBER OF THE STATE FOREST AND PARK SERVICE POLICE FORCE OF THE DEPARTMENT OF NATURAL RESOURCES.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 594B(g), except as it included in the definition of a "police officer" the "State Fire Marshal or a full-time investigative and inspection assistant".

In item (5) of this subsection, the reference to a "municipal corporation" is substituted for the former reference to an "incorporated city or town" to conform to Md. Constitution, Art. XI-E.

Also in item (5) of this subsection, the former exception for "Baltimore City, which is a `qualifying municipality', as defined in § 66(a)(7) and § 69 of Article 88B of this Code" is deleted because Baltimore City is not considered a municipal corporation and thus would not seem to be covered by this item. Article 88B, § 66(a)(7) defines "qualifying municipality" as any municipality whose expenditures for police protection exceed $5,000 and which employs at least one qualified full-time policeman. This would seem to cover Baltimore City, except for the fact that it is not considered a municipality. Further, the Baltimore City Police Department is specifically covered in item (2)(ii) of this subsection. Finally, the reference to Art. 88B, § 69 is deleted as erroneous, because that section does not define a qualifying municipality; rather, that section deals with administration of the State Aid for Police Protection Fund.

In item (6) of this subsection, the former phrase "of the Department of Transportation" is deleted because the phrase is not part of the official title of the Maryland Port Administration Police Force.

In item (8) of this subsection, the former reference to a person who is "given the powers of" a special policeman is deleted as included in the reference to a person who is "appointed" as a special policeman. *See* Art. 41, § 4-901, which refers to the Governor appointing special policemen.

Also in item (8) of this subsection, the former reference to a special policeman who is "employed and compensated by the State" is deleted as misleading and unnecessary. Under Art. 41, § 4-909, each person appointed as a special policeman is deemed to be an employee of the entity requesting the appointment. Therefore, a special policeman appointed to protect State property is deemed to be an employee of the State. The fact that such a special policeman is compensated by the State is unnecessary in the revision because under Art. 41, § 4-909, a special policeman is compensated by the entity requesting the appointment on whatever terms are contracted.

Also in item (8) of this subsection, the reference to a special policeman who is appointed to maintain order on "or" protect property is substituted for the former reference to a special policeman who is appointed to maintain order "and" protect property for clarity.

In item (12) of this subsection, the reference to a member of the Natural

Resources Police "Force" is added to use the official name of the entity. For provisions on the Natural Resources Police Force, *see* NR §§ 1-201 through 1-210.

In item (13) of this subsection, the reference to an "authorized employee" is substituted for the former reference to a "member" of the Investigative Services Unit of the Comptroller's Office to conform to terminology used elsewhere in the revised Code. *See* TG § 2-107 for provisions on the Investigative Services Unit.

Former Art. 27, § 594B(g)(17), which defined "police officer" in part to mean "[s]ubject to subsections (i) and (l)(7) of this section, the State Fire Marshal or a full-time investigative and inspector assistant of the Office of the State Fire Marshal", is deleted to avoid confusion and needless cross-references. The authority of the State Fire Marshal and full-time investigative and inspection assistants to make specified arrests is fully set forth in § 2-208 of this title and is unchanged from the former law. No substantive change is intended.

Defined terms: "County" § 1-101

"Department" § 1-101

2-102. AUTHORITY OF POLICE OFFICERS -- IN GENERAL.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO AN EMPLOYEE OF THE DEPARTMENT OF STATE POLICE TO WHOM THE SECRETARY OF STATE POLICE ASSIGNS THE POWERS CONTAINED IN ARTICLE 88B, § 4 OF THE CODE.

(B) IN GENERAL.

(1) SUBJECT TO THE LIMITATIONS OF PARAGRAPH (3) OF THIS SUBSECTION, A POLICE OFFICER MAY MAKE ARRESTS, CONDUCT INVESTIGATIONS, AND OTHERWISE ENFORCE THE LAWS OF THE STATE THROUGHOUT THE STATE WITHOUT LIMITATIONS AS TO JURISDICTION.

(2) THIS SECTION DOES NOT AUTHORIZE A POLICE OFFICER WHO ACTS UNDER THE AUTHORITY GRANTED BY THIS SECTION TO ENFORCE THE MARYLAND VEHICLE LAW BEYOND THE POLICE OFFICER'S SWORN JURISDICTION.

(3) A POLICE OFFICER MAY EXERCISE THE POWERS GRANTED BY THIS SECTION WHEN:

(I) 1. THE POLICE OFFICER IS PARTICIPATING IN A JOINT INVESTIGATION WITH OFFICIALS FROM ANOTHER STATE, FEDERAL, OR LOCAL LAW ENFORCEMENT UNIT, AT LEAST ONE OF WHICH HAS LOCAL JURISDICTION;

2. THE POLICE OFFICER IS HELPING ANOTHER POLICE OFFICER;

3. THE POLICE OFFICER IS ACTING AT THE REQUEST OF A POLICE OFFICER OR STATE POLICE OFFICER; OR

4. AN EMERGENCY EXISTS; AND

(II) THE POLICE OFFICER IS ACTING IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE POLICE OFFICER'S EMPLOYING UNIT TO CARRY OUT THIS SECTION.

(4) THE POWERS GRANTED BY THIS SECTION ARE IN ADDITION TO THE POWERS GRANTED BY ARTICLE 27, § 298 OF THE CODE AND TO THE POWERS OF FRESH PURSUIT GRANTED BY SUBTITLE 3 OF THIS TITLE.

(C) REQUIRED NOTIFICATIONS.

(1) A POLICE OFFICER WHO ACTS UNDER THE AUTHORITY GRANTED BY THIS SECTION SHALL NOTIFY THE FOLLOWING PERSONS OF AN INVESTIGATION OR ENFORCEMENT ACTION:

(I) 1. THE CHIEF OF POLICE, IF ANY, OR CHIEF'S DESIGNEE, WHEN IN A MUNICIPAL CORPORATION;

2. THE POLICE COMMISSIONER OR POLICE COMMISSIONER'S DESIGNEE, WHEN IN BALTIMORE CITY;

3. THE CHIEF OF POLICE OR CHIEF'S DESIGNEE, WHEN IN A COUNTY WITH A COUNTY POLICE DEPARTMENT, EXCEPT BALTIMORE CITY;

4. THE SHERIFF OR SHERIFF'S DESIGNEE, WHEN IN A COUNTY WITHOUT A COUNTY POLICE DEPARTMENT;

5. THE SECRETARY OF NATURAL RESOURCES OR SECRETARY'S DESIGNEE, WHEN ON PROPERTY OWNED, LEASED, OPERATED BY, OR UNDER THE CONTROL OF THE DEPARTMENT OF NATURAL RESOURCES; OR

6. THE RESPECTIVE CHIEF OF POLICE OR CHIEF'S DESIGNEE, WHEN ON PROPERTY OWNED, LEASED, OPERATED BY, OR UNDER THE CONTROL OF THE MARYLAND TRANSPORTATION AUTHORITY, MARYLAND AVIATION ADMINISTRATION, OR MARYLAND PORT ADMINISTRATION; AND

(II) THE DEPARTMENT OF STATE POLICE BARRACK COMMANDER OR COMMANDER'S DESIGNEE, UNLESS THERE IS AN AGREEMENT OTHERWISE WITH THE DEPARTMENT OF STATE POLICE.

(2) WHEN THE POLICE OFFICER PARTICIPATES IN A JOINT INVESTIGATION WITH OFFICIALS FROM ANOTHER STATE, FEDERAL, OR LOCAL LAW ENFORCEMENT UNIT, THE POLICE OFFICER SHALL GIVE THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION REASONABLY IN ADVANCE.

(D) IMMUNITIES AND EXEMPTIONS; EMPLOYEE STATUS.

A POLICE OFFICER WHO ACTS UNDER THE AUTHORITY GRANTED BY THIS SECTION:

(1) HAS ALL THE IMMUNITIES FROM LIABILITY AND EXEMPTIONS AS A STATE POLICE OFFICER IN ADDITION TO ANY OTHER IMMUNITIES AND EXEMPTIONS TO WHICH THE POLICE OFFICER IS OTHERWISE ENTITLED; AND

(2) REMAINS AT ALL TIMES AND FOR ALL PURPOSES AN EMPLOYEE OF THE EMPLOYING UNIT.

(E) EFFECT OF SECTION.

(1) THIS SECTION DOES NOT IMPAIR A RIGHT OF ARREST OTHERWISE EXISTING UNDER THE CODE.

(2) THIS SECTION DOES NOT DEPRIVE A PERSON OF THE RIGHT TO RECEIVE A CITATION FOR A TRAFFIC VIOLATION AS PROVIDED IN THE MARYLAND VEHICLE LAW OR A CRIMINAL VIOLATION AS PROVIDED BY LAW OR THE MARYLAND RULES.

REVISOR'S NOTE: Subsections (a) through (d) of this section are new language derived without substantive change from former Art. 27, § 594B(m)(1)(i), (iii), and (iv), and (2) through (6).

Subsection (e) of this section is new language derived without substantive change from former Art. 27, § 594B(k) and (l).

Subsection (a) of this section is revised as a scope provision because the intent of former Art. 27, § 594B(m)(1)(iii), seemed to be to exclude State Police officers from those officers who were covered by the substantive provisions of former § 594B(m), which is revised as this section.

In subsection (a) of this section, the reference to "an employee of the Department of State Police to whom the Secretary of the State Police assigns the powers contained in Article 88B, § 4 of the Code" is substituted for the former provision that defined "State Police officer", for clarity. This revised provision is based on the definitions of "employee" and "police employee" in Art. 88B, § 2. As for the authority of State Police officers in general and specifically in incorporated municipalities, *see* Art. 88B, § 4(b) and (c).

In subsection (b)(1) of this section, the former reference to a police officer "of this State" is deleted in light of the definition of "police officer" in § 2-101 of this subtitle.

In subsection (b)(2) of this section, the reference to a police officer "who [is acting] under the authority granted by this section" is substituted for the former reference to a police officer's authority to enforce the Maryland Vehicle Law "[u]nder this subsection" for clarity.

In subsection (b)(3)(ii) of this section, as for the substitution of the phrase "carry out" for the former term to "implement", *see* General Revisor's Note to article.

Subsection (c) of this section is revised to clarify that the police officer acting under the authority of this section must notify the listed entities.

In subsection (c)(1)(i)1 of this section, the reference to a "municipal corporation" is substituted for the former reference to an "incorporated municipality" to conform to Md. Constitution, Art. XI-E.

In subsection (c)(1)(i)3 of this section, the exception for "Baltimore City" is added for clarity because Baltimore City is included in the standard definition of "county". However, Baltimore City is covered in subsection (c)(1)(i)2 of this section.

In subsection (c)(2) of this section, the reference to a police officer who "participates in a joint investigation with officials from another State, federal, or local law enforcement unit" is substituted for the former reference to a police officer who is "acting under the authority granted in paragraph (3)(i)1 of this subsection" for specificity and to eliminate an unnecessary cross-reference.

In the introductory language of subsection (d) of this section, the reference to a police officer who "acts" under the authority granted by this section is substituted for the former reference to a police officer who "uses" that authority for consistency with language used throughout this section.

As for authority granted to the State Police, *see* Art. 88B, § 4.

As for the substitution of the term "unit" for the former reference to "agency", *see* General Revisor's Note to article.

Defined terms: "County" § 1-101

"Emergency" § 2-101

"Person" § 1-101

"Police officer" § 2-101

"State" § 1-101

2-103. SAME -- SERVICE OF ARREST WARRANTS.

(A) "PRIMARY LAW ENFORCEMENT OFFICER" DEFINED.

IN THIS SECTION, "PRIMARY LAW ENFORCEMENT OFFICER" MEANS:

(1) THE CHIEF OF POLICE, IF ANY, OR THE CHIEF'S DESIGNEE, IN A MUNICIPAL CORPORATION;

(2) THE CHIEF OF POLICE OR THE CHIEF'S DESIGNEE IN A COUNTY WITH A COUNTY POLICE DEPARTMENT;

(3) THE SHERIFF OR THE SHERIFF'S DESIGNEE IN A COUNTY WITHOUT A POLICE DEPARTMENT;

(4) THE POLICE COMMISSIONER OR THE POLICE COMMISSIONER'S DESIGNEE IN BALTIMORE CITY;

(5) THE SECRETARY OF NATURAL RESOURCES OR THE SECRETARY'S DESIGNEE ON ANY PROPERTY OWNED, LEASED, OPERATED BY, OR UNDER THE CONTROL OF THE DEPARTMENT OF NATURAL RESOURCES;

(6) THE RESPECTIVE CHIEF OF POLICE OR CHIEF'S DESIGNEE ON PROPERTY OWNED, LEASED, OPERATED BY, OR UNDER THE CONTROL OF THE MARYLAND AVIATION ADMINISTRATION, THE MARYLAND PORT ADMINISTRATION, OR THE MARYLAND TRANSPORTATION AUTHORITY; OR

(7) THE SECRETARY OF THE STATE POLICE.

(B) SERVICE OF WARRANTS.

A POLICE OFFICER MAY ARREST A PERSON THROUGHOUT THE STATE WITHOUT LIMITATIONS AS TO JURISDICTION IF:

(1) A WARRANT HAS BEEN ISSUED AGAINST THE PERSON;

(2) THE POLICE OFFICER IS PARTICIPATING IN A JOINT OPERATION CREATED BY AN AGREEMENT BETWEEN THE PRIMARY LAW ENFORCEMENT OFFICERS;

(3) THE ARREST OCCURS WITHIN ONE OF THE PARTICIPATING JURISDICTIONS IN ACCORDANCE WITH THE AGREEMENT; AND

(4) THE POLICE OFFICER IS ACTING IN ACCORDANCE WITH REGULATIONS THAT THE POLICE OFFICER'S EMPLOYING UNIT ADOPTS TO CARRY OUT THIS SECTION.

(C) IMMUNITIES AND STATUS OF POLICE OFFICER.

A POLICE OFFICER WHO ACTS UNDER THE AUTHORITY GRANTED BY THIS SECTION:

(1) HAS ALL THE IMMUNITIES FROM LIABILITY AND EXEMPTIONS AS A STATE POLICE OFFICER IN ADDITION TO ANY OTHER IMMUNITIES AND EXEMPTIONS TO WHICH THE POLICE OFFICER IS OTHERWISE ENTITLED; AND

(2) REMAINS AT ALL TIMES AND FOR ALL PURPOSES AN EMPLOYEE OF THE EMPLOYING UNIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594C-2.

In subsection (a) of this section, the former cross-reference to the

definition of "police officer" is deleted as unnecessary.

In subsections (b)(4) and (c)(2) of this section, the reference to the employing "unit" is substituted for the former reference to the employing "agency" for consistency with the terminology used throughout this article. *See* General Revisor's Note to article.

In subsection (b)(4) of this section, as for the substitution of the phrase "carry out" for the former term "implement", *see* General Revisor's Note to article.

Defined terms: "County" § 1-101

"Person" § 1-101

"Police officer" § 2-101

2-104. AUTHORITY OF FEDERAL LAW ENFORCEMENT OFFICERS.

(A) "FEDERAL LAW ENFORCEMENT OFFICER" DEFINED.

IN THIS SECTION, "FEDERAL LAW ENFORCEMENT OFFICER" MEANS AN OFFICER WHO MAY:

(1) MAKE AN ARREST WITH OR WITHOUT A WARRANT FOR VIOLATIONS OF THE UNITED STATES CODE; AND

(2) CARRY FIREARMS IN THE PERFORMANCE OF THE OFFICER'S DUTIES.

(B) IN GENERAL.

(1) SUBJECT TO THE LIMITATIONS OF PARAGRAPH (2) OF THIS SUBSECTION, A FEDERAL LAW ENFORCEMENT OFFICER MAY:

(I) MAKE ARRESTS AS SET FORTH IN SUBTITLE 2 OF THIS TITLE; AND

(II) EXECUTE ARREST AND SEARCH AND SEIZURE WARRANTS ISSUED UNDER THE LAWS OF THE STATE.

(2) A FEDERAL LAW ENFORCEMENT OFFICER MAY EXERCISE THE POWERS GRANTED BY THIS SUBSECTION WHEN:

(I) THE FEDERAL LAW ENFORCEMENT OFFICER IS PARTICIPATING IN A JOINT INVESTIGATION WITH OFFICIALS FROM A STATE OR LOCAL LAW ENFORCEMENT UNIT;

(II) THE FEDERAL LAW ENFORCEMENT OFFICER IS HELPING A POLICE OFFICER;

(III) THE FEDERAL LAW ENFORCEMENT OFFICER IS ACTING AT THE REQUEST OF A LOCAL POLICE OFFICER OR STATE POLICE OFFICER; OR

(IV) AN EMERGENCY EXISTS.

(C) REQUIRED NOTIFICATIONS.

(1) A FEDERAL LAW ENFORCEMENT OFFICER WHO ACTS UNDER THE AUTHORITY GRANTED BY THIS SECTION SHALL NOTIFY THE FOLLOWING PERSONS OF AN INVESTIGATION OR ENFORCEMENT ACTION:

(I) 1. THE CHIEF OF POLICE, IF ANY, OR CHIEF'S DESIGNEE, WHEN IN A MUNICIPAL CORPORATION;

2. THE POLICE COMMISSIONER OR POLICE COMMISSIONER'S DESIGNEE, WHEN IN BALTIMORE CITY;

3. THE CHIEF OF POLICE OR CHIEF'S DESIGNEE, WHEN IN A COUNTY WITH A COUNTY POLICE DEPARTMENT, EXCEPT BALTIMORE CITY;

4. THE SHERIFF OR SHERIFF'S DESIGNEE, WHEN IN A COUNTY WITHOUT A COUNTY POLICE DEPARTMENT;

5. THE SECRETARY OF NATURAL RESOURCES OR SECRETARY'S DESIGNEE, WHEN ON PROPERTY OWNED, LEASED, OPERATED BY, OR UNDER THE CONTROL OF THE DEPARTMENT OF NATURAL RESOURCES; OR

6. THE RESPECTIVE CHIEF OF POLICE OR CHIEF'S DESIGNEE, WHEN ON PROPERTY OWNED, LEASED, OPERATED BY, OR UNDER THE CONTROL OF THE MARYLAND TRANSPORTATION AUTHORITY OR MARYLAND PORT ADMINISTRATION; AND

(II) THE DEPARTMENT OF STATE POLICE BARRACK COMMANDER OR COMMANDER'S DESIGNEE, UNLESS THERE IS AN AGREEMENT OTHERWISE WITH THE DEPARTMENT OF STATE POLICE.

(2) WHEN THE FEDERAL LAW ENFORCEMENT OFFICER PARTICIPATES IN A JOINT INVESTIGATION WITH OFFICIALS FROM A STATE OR LOCAL LAW ENFORCEMENT UNIT, THE FEDERAL LAW ENFORCEMENT OFFICER SHALL GIVE THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION REASONABLY IN ADVANCE.

(D) LEGAL STATUS; IMMUNITY FROM LIABILITY.

A FEDERAL LAW ENFORCEMENT OFFICER WHO ACTS UNDER THE AUTHORITY GRANTED BY THIS SECTION:

(1) HAS THE SAME LEGAL STATUS AS A POLICE OFFICER;

(2) HAS THE SAME PROTECTIONS AS A POLICE OFFICER UNDER § 2-608 OF THE COURTS ARTICLE WITH REGARD TO CHARGING DOCUMENTS AGAINST POLICE OFFICERS; AND

(3) HAS THE SAME IMMUNITY FROM LIABILITY DESCRIBED IN § 5-611 OF THE COURTS ARTICLE.

(E) EFFECT OF SECTION.

THIS SECTION DOES NOT IMPOSE LIABILITY ON OR REQUIRE INDEMNIFICATION BY THE STATE OR A LOCAL SUBDIVISION FOR AN ACT PERFORMED BY A FEDERAL LAW ENFORCEMENT OFFICER UNDER THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594B(h)(1)(i) and (iii) through (8).

In subsection (b)(1)(i) of this section, the cross-reference to "Subtitle 2 of this title" is substituted for the former reference to "this section". The former cross-reference was to Art. 27, § 594B, most of which, including the powers of arrest, is revised in Subtitle 2 of this title. Thus, the former cross-reference is slightly broader than the revised cross-reference. No substantive change is intended.

Subsection (c) of this section is revised to clarify that a federal law enforcement officer acting under the authority of this section must notify the listed entities.

In subsection (c)(1)(i)1 of this section, the reference to a "municipal corporation" is substituted for the former reference to an "incorporated municipality" to conform to Md. Constitution, Art. XI-E.

In subsection (c)(1)(i)3 of this section, the exception for "Baltimore City" is added for clarity because Baltimore City is included in the standard definition of "county". However, Baltimore City is covered in subsection (c)(1)(i)2 of this section.

In subsection (c)(2) of this section, the reference to a federal law enforcement officer who "participates in a joint investigation with officials from a State or local law enforcement unit" is substituted for the former reference to a federal law enforcement officer who is "acting under the authority granted in paragraph (3)(i) of this subsection" for specificity and to eliminate an unnecessary cross-reference.

In subsection (d)(1) and (2) of this section, the former references to a police officer "of this State" are deleted in light of the definition of "police officer" in § 2-101 of this subtitle.

In the introductory language of subsection (d) of this section, the reference to a federal law enforcement officer who "acts under the authority granted by this section" is substituted for the former reference to an officer who "exercises the powers set forth in this subsection", for consistency with language used throughout this section.

The Criminal Procedure Article Review Committee notes, for consideration

by the General Assembly, that in subsection (c)(1)(i)6 of this section there is no mention of property owned, leased, operated by, or under the control of the Maryland Aviation Administration, unlike a similar provision in this subtitle dealing with notification of an investigation or enforcement action. *See* § 2-102(c)(1)(i)6.

Defined terms: "County" § 1-101

"Emergency" § 2-101

"Person" § 1-101

"Police officer" § 2-101

2-105. MUTUAL AID AGREEMENTS.

(A) "GOVERNING BODY" DEFINED.

IN THIS SECTION, "GOVERNING BODY" MEANS:

(1) THE COUNTY EXECUTIVE AND COUNTY COUNCIL OF A CHARTER COUNTY WITH A COUNTY EXECUTIVE;

(2) THE COUNTY COUNCIL OF A CHARTER COUNTY WITH NO COUNTY EXECUTIVE;

(3) THE BOARD OF COUNTY COMMISSIONERS OF A COUNTY; OR

(4) THE MAYOR AND COUNCIL, BY WHATEVER NAME KNOWN, OF A MUNICIPAL CORPORATION.

(B) AUTHORITY BEYOND BOUNDARIES OF COUNTY OR MUNICIPAL CORPORATION.

BY ACTION AS IN THE REGULAR ROUTINE FOR LEGISLATIVE ENACTMENT, THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION MAY DETERMINE THE CIRCUMSTANCES UNDER WHICH THE POLICE OFFICERS AND OTHER OFFICERS, AGENTS, AND EMPLOYEES OF THE COUNTY OR MUNICIPAL CORPORATION, TOGETHER WITH ALL NECESSARY EQUIPMENT, MAY LAWFULLY GO OR BE SENT BEYOND THE BOUNDARIES OF THE COUNTY OR MUNICIPAL CORPORATION TO ANY PLACE WITHIN OR OUTSIDE THE STATE.

(C) ACTIONS CONSIDERED TO BE FOR PUBLIC AND GOVERNMENTAL PURPOSE; IMMUNITIES.

(1) THE ACTS DONE BY THE POLICE OFFICERS OR OTHER OFFICERS, AGENTS, OR EMPLOYEES OF A COUNTY OR MUNICIPAL CORPORATION UNDER THE AUTHORITY OF SUBSECTION (B) OF THIS SECTION AND THE EXPENDITURES MADE BY THE COUNTY OR MUNICIPAL CORPORATION ARE CONSIDERED TO BE FOR A PUBLIC AND GOVERNMENTAL PURPOSE.

(2) WHEN A COUNTY OR MUNICIPAL CORPORATION IS ACTING THROUGH ITS POLICE OFFICERS OR OTHER OFFICERS, AGENTS, OR EMPLOYEES FOR

A PUBLIC OR GOVERNMENTAL PURPOSE BEYOND ITS BOUNDARIES UNDER THIS SECTION OR OTHER LAWFUL AUTHORITY, THE COUNTY OR MUNICIPAL CORPORATION HAS THE SAME IMMUNITIES FROM LIABILITY THAT THE COUNTY OR MUNICIPAL CORPORATION HAS WHEN ACTING THROUGH ITS POLICE OFFICERS OR OTHER OFFICERS, AGENTS, OR EMPLOYEES FOR A PUBLIC OR GOVERNMENTAL PURPOSE WITHIN ITS BOUNDARIES.

(3) WHEN THE POLICE OFFICERS OR OTHER OFFICERS, AGENTS, OR EMPLOYEES OF A COUNTY OR MUNICIPAL CORPORATION ARE ACTING BEYOND THE BOUNDARIES OF THE COUNTY OR MUNICIPAL CORPORATION WITHIN THE STATE UNDER THIS SECTION OR OTHER LAWFUL AUTHORITY, THE POLICE OFFICERS AND OTHER OFFICERS, AGENTS, AND EMPLOYEES OF THE COUNTY OR MUNICIPAL CORPORATION HAVE THE SAME IMMUNITY FROM LIABILITY DESCRIBED IN § 5-612 OF THE COURTS ARTICLE AND EXEMPTIONS FROM LAWS, ORDINANCES, AND REGULATIONS, AND THE SAME PENSION, RELIEF, DISABILITY, WORKERS' COMPENSATION, AND OTHER BENEFITS AS THOSE PERSONS HAVE WHILE PERFORMING THEIR DUTIES WITHIN THE BOUNDARIES OF THE COUNTY OR MUNICIPAL CORPORATION.

(D) COUNTY -- MUNICIPAL CORPORATION AGREEMENTS IN ALLEGANY COUNTY.

IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, ALLEGANY COUNTY AND A MUNICIPAL CORPORATION IN THAT COUNTY MAY MAKE A RECIPROCAL AGREEMENT TO PROVIDE POLICE OFFICERS AND OTHER OFFICERS, EMPLOYEES, AND AGENTS, TOGETHER WITH ALL NECESSARY EQUIPMENT.

(E) AUTHORITY TO ENTER INTO RECIPROCAL AGREEMENTS FOR EMERGENCIES.

(1) THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION OR THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION MAY MAKE A RECIPROCAL AGREEMENT FOR THE PERIOD THAT IT CONSIDERS ADVISABLE WITH THE DISTRICT OF COLUMBIA OR A COUNTY, MUNICIPAL CORPORATION, OR THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, WITHIN OR OUTSIDE THE STATE, AND ESTABLISH AND CARRY OUT A PLAN TO PROVIDE MUTUAL AID BY PROVIDING ITS POLICE OFFICERS AND OTHER OFFICERS, EMPLOYEES, AND AGENTS, TOGETHER WITH ALL NECESSARY EQUIPMENT, IN AN EMERGENCY.

(2) A COUNTY, MUNICIPAL CORPORATION, OR THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION MAY NOT MAKE A RECIPROCAL AGREEMENT UNLESS THE AGREEMENT PROVIDES THAT EACH PARTY SHALL:

(I) WAIVE ANY AND ALL CLAIMS THAT ARE AGAINST THE OTHER PARTIES TO THE AGREEMENT AND THAT MAY ARISE OUT OF THEIR ACTIVITIES OUTSIDE THEIR RESPECTIVE JURISDICTIONS UNDER THE AGREEMENT; AND

(II) INDEMNIFY AND HOLD HARMLESS THE OTHER PARTIES TO THE AGREEMENT FROM ALL CLAIMS BY THIRD PARTIES THAT ARE FOR PROPERTY

DAMAGE OR PERSONAL INJURY AND THAT MAY ARISE OUT OF THE ACTIVITIES OF THE OTHER PARTIES TO THE AGREEMENT OUTSIDE THEIR RESPECTIVE JURISDICTIONS UNDER THE AGREEMENT.

(F) LIABILITY INSURANCE.

THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION IN THE STATE MAY OBTAIN OR EXTEND THE NECESSARY PUBLIC LIABILITY INSURANCE TO COVER CLAIMS THAT ARISE OUT OF MUTUAL AID AGREEMENTS MADE WITH ANOTHER COUNTY OR MUNICIPAL CORPORATION OUTSIDE THE STATE.

(G) AUTHORITY TO ENFORCE LAWS.

THE POLICE OFFICERS AND OTHER OFFICERS, AGENTS, AND EMPLOYEES COMING INTO THE STATE UNDER A RECIPROCAL AGREEMENT UNDER THIS SECTION, MAY ENFORCE THE LAWS OF THE STATE TO THE SAME EXTENT AS AUTHORIZED LAW ENFORCEMENT OFFICERS OF A COUNTY OR MUNICIPAL CORPORATION IN THE STATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 602B.

Subsection (a) of this section is revised as a definition of "governing body" to provide a shorthand method to refer to the entities included in the term "governing body" for purposes of this section. It is based on the list in the first sentence of former Art. 27, § 602B(a) of enumerated entities that may authorize police and others to go or be sent beyond the territorial limits of the jurisdiction.

In subsections (b), (c)(1) and (2), and (g) of this section, the defined term "police officers" is substituted for the former references to "policemen" to use a gender-neutral term and for consistency with language used throughout this section. Similarly, in subsection (e)(1) of this section, the defined term "police officer" is substituted for the former reference to "police" to conform to the terminology used throughout this section.

In subsections (b) and (c)(2) and (3) of this section, the reference to "boundaries" is substituted for the former references to the "territorial limits" of a county or municipal corporation for brevity.

In subsection (b) of this section, the former phrase "as the case may be", which modified "county or municipal corporation", is deleted as surplusage.

In subsection (c)(1) of this section, the phrase "under the authority of subsection (b) of this section" is substituted for the former phrase "[i]n such event" for clarity and specificity.

Also in subsection (c)(1) of this section, the word "conclusively", which formerly modified "deemed", is deleted as surplusage.

Defined terms: "County" § 1-101

"Emergency" § 2-101

"Person" § 1-101

"Police officer" § 2-101

2-106. KEEPING CUSTODY OF ARRESTED PERSONS.

(A) DISTRICT COURT COMMISSIONER IN ANOTHER JURISDICTION.

(1) A PEACE OFFICER, WHO IS APPOINTED IN THE JURISDICTION IN WHICH A PERSON IS ARRESTED, MAY KEEP CUSTODY OF THE ARRESTED PERSON IN ANOTHER JURISDICTION IN WHICH A DISTRICT COURT COMMISSIONER IS LOCATED TO BRING THE PERSON BEFORE THE DISTRICT COURT COMMISSIONER IN THE OTHER JURISDICTION.

(2) THE PEACE OFFICER HAS THE SAME POWER TO KEEP CUSTODY OF THE ARRESTED PERSON UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT THE PEACE OFFICER HAS IN THE JURISDICTION FOR WHICH THE PEACE OFFICER IS APPOINTED AND THE ARREST IS MADE.

(B) PERSON ARRESTED IN ANOTHER JURISDICTION.

(1) A PEACE OFFICER, WHO IS APPOINTED IN THE JURISDICTION FOR WHICH A CHARGING DOCUMENT IS ISSUED FOR A PERSON WHO IS ARRESTED IN ANOTHER JURISDICTION, MAY OBTAIN CUSTODY OF THE ARRESTED PERSON IN THE OTHER JURISDICTION TO BRING THE PERSON BEFORE A DISTRICT COURT COMMISSIONER IN THE JURISDICTION IN WHICH THE CHARGING DOCUMENT IS ISSUED.

(2) THE PEACE OFFICER HAS THE SAME POWER TO KEEP CUSTODY OF THE ARRESTED PERSON UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT THE PEACE OFFICER HAS IN THE JURISDICTION FOR WHICH THE PEACE OFFICER IS APPOINTED.

(C) EFFECT OF SECTION.

THIS SECTION DOES NOT AFFECT OR EXTEND THE TIME PERIOD FOR BRINGING AN ARRESTED PERSON BEFORE A JUDICIAL OFFICER AFTER ARREST.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 602C.

In subsection (a)(1) of this section, the reference to keeping custody of an arrested person "in another jurisdiction in which a District Court commissioner is located" is substituted for the former reference to maintaining custody to bring the person "before a District Court commissioner beyond the boundaries of the jurisdiction for which the peace officer was appointed and in which the arrest was made" for brevity.

Also in subsection (a)(1) of this section, the phrase "in this State", which

formerly modified "peace officer", is deleted as implicit.

In subsection (c) of this section, the reference to "bringing" an arrested person before a judicial officer after arrest is substituted for the former reference to "taking" an arrested person for consistency with terminology used in subsections (a)(1) and (b)(1) of this section.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the meaning of the term "peace officer", which is used throughout this section, is vague. In practice, "peace officer" generally includes a greater range of personnel than just those who have been certified by the Police Training Commission, such as mall security guards. The General Assembly may wish to clarify the term "peace officer" or replace it with a more precise term, *e.g.* "law enforcement officer", to avoid the erroneous implication that this section applies to personnel who have not been certified by the Commission.

Defined term: "Person" § 1-101

2-107. DUTY TO SEMICONSCIOUS OR UNCONSCIOUS SUSPECTS.

(A) DUTY OF OFFICER FINDING SEMICONSCIOUS OR UNCONSCIOUS PERSON.

(1) BEFORE A LAW ENFORCEMENT OFFICER MAY CHARGE WITH A CRIME A PERSON WHO IS FOUND BY THE LAW ENFORCEMENT OFFICER IN A SEMICONSCIOUS OR UNCONSCIOUS CONDITION, THE LAW ENFORCEMENT OFFICER SHALL MAKE A DILIGENT EFFORT TO DETERMINE WHETHER THE PERSON:

(I) SUFFERS FROM EPILEPSY, DIABETES, A CARDIAC CONDITION, OR ANOTHER TYPE OF ILLNESS THAT CAUSES SEMICONSCIOUSNESS OR UNCONSCIOUSNESS; AND

(II) IS CARRYING THE IDENTIFICATION BRACELET, TAG, OR CARD DESCRIBED IN SUBSECTION (B) OF THIS SECTION.

(2) IF THE LAW ENFORCEMENT OFFICER DETERMINES THAT THE PERSON SUFFERS FROM AN ILLNESS THAT CAUSES SEMICONSCIOUSNESS OR UNCONSCIOUSNESS, AND THE PERSON IS CARRYING THE IDENTIFICATION BRACELET, TAG, OR CARD DESCRIBED IN SUBSECTION (B) OF THIS SECTION, THE LAW ENFORCEMENT OFFICER SHALL:

(I) NOTIFY THE PERSON'S PHYSICIAN IMMEDIATELY; OR

(II) HAVE THE PERSON IMMEDIATELY TRANSPORTED TO:

1. A PHYSICIAN; OR

2. A FACILITY WHERE THE SERVICES OF A PHYSICIAN ARE AVAILABLE.

(B) IDENTIFICATION OF PERSONS.

A PERSON WHO SUFFERS FROM EPILEPSY, DIABETES, A CARDIAC CONDITION, OR OTHER TYPE OF ILLNESS THAT CAUSES TEMPORARY BLACKOUTS, SEMICONSCIOUS PERIODS, OR COMPLETE UNCONSCIOUSNESS MAY WEAR AN IDENTIFICATION BRACELET OR METAL TAG OR CARRY AN IDENTIFICATION CARD THAT IS ENGRAVED, STAMPED, OR IMPRINTED WITH THE PERSON'S NAME, TYPE OF ILLNESS, PHYSICIAN'S NAME, AND REQUIRED MEDICATION.

(C) FALSIFICATION OF IDENTIFICATION OR MISREPRESENTATION OF ILLNESS PROHIBITED; PENALTY.

(1) A PERSON MAY NOT WILLFULLY AND KNOWINGLY FALSIFY IDENTIFICATION DESCRIBED IN SUBSECTION (B) OF THIS SECTION.

(2) A PERSON MAY NOT DELIBERATELY MISREPRESENT AN ILLNESS THAT CAUSES BLACKOUTS, SEMICONSCIOUSNESS, OR UNCONSCIOUSNESS AS DESCRIBED IN SUBSECTION (B) OF THIS SECTION.

(3) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $500.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594C-1.

In the introductory language of subsection (a)(1) of this section, the former reference to all law enforcement officers "in this State" is deleted as implicit.

In the introductory language of subsection (a)(2) of this section, the reference to suffering from an "illness" is substituted for the former reference to an "affliction" for consistency with language used in subsections (a)(1)(i) and (b) of this section.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (b) of this section, which authorizes persons with specified conditions to carry medical alert devices, may be unnecessary. The Committee believes that absent this provision the affected persons would still be able to carry the specified devices. Thus, the purpose of this provision is unclear.

Defined term: "Person" § 1-101

SUBTITLE 2. WARRANTLESS ARRESTS.

2-201. EFFECT OF SUBTITLE.

(A) OTHER RIGHTS OF ARREST.

THIS SUBTITLE DOES NOT IMPAIR A RIGHT OF ARREST OTHERWISE EXISTING UNDER THE CODE.

(B) RIGHT TO RECEIVE CITATIONS.

THIS SUBTITLE DOES NOT DEPRIVE A PERSON OF THE RIGHT TO RECEIVE A CITATION FOR:

(1) A TRAFFIC VIOLATION AS PROVIDED IN THE MARYLAND VEHICLE LAW; OR

(2) A CRIMINAL VIOLATION AS PROVIDED BY LAW OR THE MARYLAND RULES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594B(k) and (l).

In subsection (a) and the introductory language of subsection (b) of this section, the references to this "subtitle" are substituted for the former references to this "section". This subtitle is derived from parts of former Art. 27, § 594B; other parts of the former section are revised in Subtitle 1 of this title. However, the provisions on arrests without a warrant are included in this subtitle. Former § 594B(k) and (l) seemed to relate to these provisions on arrests without a warrant and are therefore included in this subtitle. No substantive change is intended.

Defined term: "Person" § 1-101

2-202. WARRANTLESS ARRESTS -- IN GENERAL.

(A) CRIME COMMITTED IN PRESENCE OF POLICE OFFICER.

A POLICE OFFICER MAY ARREST WITHOUT A WARRANT A PERSON WHO COMMITS OR ATTEMPTS TO COMMIT A FELONY OR MISDEMEANOR IN THE PRESENCE OR WITHIN THE VIEW OF THE POLICE OFFICER.

(B) PROBABLE CAUSE TO BELIEVE CRIME COMMITTED IN PRESENCE OF OFFICER.

A POLICE OFFICER WHO HAS PROBABLE CAUSE TO BELIEVE THAT A FELONY OR MISDEMEANOR IS BEING COMMITTED IN THE PRESENCE OR WITHIN THE VIEW OF THE POLICE OFFICER MAY ARREST WITHOUT A WARRANT ANY PERSON WHOM THE POLICE OFFICER REASONABLY BELIEVES TO HAVE COMMITTED THE CRIME.

(C) PROBABLE CAUSE TO BELIEVE FELONY COMMITTED.

A POLICE OFFICER WITHOUT A WARRANT MAY ARREST A PERSON IF THE POLICE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT A FELONY HAS BEEN COMMITTED OR ATTEMPTED AND THE PERSON HAS COMMITTED OR ATTEMPTED TO

COMMIT THE FELONY WHETHER OR NOT IN THE PRESENCE OR WITHIN THE VIEW OF THE POLICE OFFICER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594B(a), (b), and (c).

In subsection (c) of this section, the reference to "the" felony is substituted for the former second reference to "a" felony to clarify that the felony referred to in the first instance in this section is the same felony referred to in the second instance. *See Williams v. State*, 14 Md. App. 619 (1972); *Simms v. State*, 4 Md. App. 160 (1968).

Defined terms: "Person" § 1-101

"Police officer" § 2-101

2-203. SAME -- COMMISSION OF SPECIFIED CRIMES.

(A) IN GENERAL.

A POLICE OFFICER WITHOUT A WARRANT MAY ARREST A PERSON IF THE POLICE OFFICER HAS PROBABLE CAUSE TO BELIEVE:

(1) THAT THE PERSON HAS COMMITTED A CRIME LISTED IN SUBSECTION (B) OF THIS SECTION; AND

(2) THAT UNLESS THE PERSON IS ARRESTED IMMEDIATELY, THE PERSON:

(I) MAY NOT BE APPREHENDED;

(II) MAY CAUSE PHYSICAL INJURY OR PROPERTY DAMAGE TO ANOTHER; OR

(III) MAY TAMPER WITH, DISPOSE OF, OR DESTROY EVIDENCE.

(B) SPECIFIED CRIMES.

THE CRIMES REFERRED TO IN SUBSECTION (A)(1) OF THIS SECTION ARE:

(1) MANSLAUGHTER BY AUTOMOBILE, MOTOR VEHICLE, LOCOMOTIVE, ENGINE, CAR, STREETCAR, TRAIN, VESSEL, OR OTHER VEHICLE UNDER ARTICLE 27, § 388 OF THE CODE;

(2) MALICIOUS BURNING UNDER ARTICLE 27, § 8(A) OF THE CODE OR AN ATTEMPT TO COMMIT THE CRIME;

(3) MALICIOUS MISCHIEF UNDER ARTICLE 27, § 111 OF THE CODE OR AN ATTEMPT TO COMMIT THE CRIME;

(4) A THEFT CRIME WHERE THE VALUE OF THE PROPERTY OR SERVICES STOLEN IS LESS THAN $500 UNDER ARTICLE 27, §§ 342 AND 342A OF THE CODE OR AN ATTEMPT TO COMMIT THE CRIME;

(5) THE CRIME OF GIVING OR CAUSING TO BE GIVEN A FALSE ALARM OF FIRE UNDER ARTICLE 27, § 156 OF THE CODE;

(6) INDECENT EXPOSURE UNDER ARTICLE 27, § 335A OF THE CODE;

(7) A CRIME THAT RELATES TO CONTROLLED DANGEROUS SUBSTANCES UNDER ARTICLE 27, §§ 276 THROUGH 302 OF THE CODE OR AN ATTEMPT TO COMMIT THE CRIME;

(8) THE WEARING, CARRYING, OR TRANSPORTING OF A HANDGUN UNDER ARTICLE 27, § 36B OF THE CODE; AND

(9) CARRYING OR WEARING A CONCEALED WEAPON UNDER ARTICLE 27, § 36 OF THE CODE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594B(e) and (f).

In subsection (a)(2)(ii) of this section, the reference to causing "physical injury or property damage to another" is substituted for the former reference to causing "injury to the person or damage to the property of one or more other persons" for brevity and consistency with § 2-204(a)(1)(iii)2 of this subtitle.

In the introductory language of subsection (b) and in subsection (b)(7) of this section, the former phrases "as they may be amended from time to time" and "as they shall be amended from time to time" are deleted in light of Art. 1, § 21.

In subsection (b)(4) of this section, the reference to "services" is added to conform to language in Art. 27, § 342(f)(2).

Also in subsection (b)(4) of this section, the reference to "Art. 27, §§ 342 and 342A" is substituted for the former reference to "Art. 27, §§ 342 through 344" because the other sections that the phrase "through 344" connotes, namely, §§ 343 and 344, are not relevant to this provision. Section 343 concerns defenses and presumptions, while § 344 concerns charging documents for theft and the ways in which bad check crimes may be considered theft crimes. In addition, the reference to "$500" is substituted for the former reference to "$300" to reflect the change made by Ch. 288, Acts of 2000.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (b)(1) of this section is redundant. Section 2-202(c)(1) of this subtitle allows a warrantless arrest for any felony under specified conditions. Subsection (b)(1) of this section

names several felonies that are subject to warrantless arrest, unlike the rest of subsection (b), which specifies a variety of misdemeanors that may be subject to warrantless arrest. The General Assembly may wish to repeal subsection (b)(1).

Former Art. 27, § 594B(f)(1)(v), which referred to the crime specified in Art. 27, § 287 relating to possession of devices that are usable for administering controlled substances by hypodermic injection, is deleted as included in subsection (b)(7) of this section.

Former Art. 27, § 594B(f)(2)(iv), which referred to breaking into a building or boat with intent to steal, is deleted because former Art. 27, § 33A, which specified the underlying crime, was repealed by Ch. 712, Acts of 1994.

Defined terms: "Person" § 1-101

"Police officer" § 2-101

2-204. SAME -- FOR DOMESTIC ABUSE.

(A) IN GENERAL.

A POLICE OFFICER WITHOUT A WARRANT MAY ARREST A PERSON IF:

(1) THE POLICE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT:

(I) THE PERSON BATTERED THE PERSON'S SPOUSE OR ANOTHER PERSON WITH WHOM THE PERSON RESIDES;

(II) THERE IS EVIDENCE OF PHYSICAL INJURY; AND

(III) UNLESS THE PERSON IS ARRESTED IMMEDIATELY, THE PERSON:

1. MAY NOT BE APPREHENDED;

2. MAY CAUSE PHYSICAL INJURY OR PROPERTY DAMAGE TO ANOTHER; OR

3. MAY TAMPER WITH, DISPOSE OF, OR DESTROY EVIDENCE; AND

(2) A REPORT TO THE POLICE WAS MADE WITHIN 48 HOURS OF THE ALLEGED INCIDENT.

(B) SELF-DEFENSE.

IF THE POLICE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT MUTUAL BATTERY OCCURRED AND ARREST IS NECESSARY UNDER SUBSECTION (A) OF THIS SECTION, THE POLICE OFFICER SHALL CONSIDER WHETHER ONE OF THE PERSONS ACTED IN SELF-DEFENSE WHEN DETERMINING WHETHER TO ARREST THE PERSON WHOM THE POLICE OFFICER BELIEVES TO BE THE PRIMARY AGGRESSOR.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594B(d).

In subsection (a)(1)(i) of this section, the reference to "another person" is substituted for the former reference to "other individual" to conform to the terminology used throughout this section.

In subsection (a)(1)(iii)2 of this section, the reference to causing "physical injury or property damage to another" is substituted for the former reference to causing "injury to the person or damage to the property of one or more other persons" for brevity.

In subsection (b) of this section, the reference to one of the "persons" is substituted for the former reference to one of the "parties" for consistency with terminology used throughout this section.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(1)(i) of this section, a police officer may arrest a person without a warrant if the person "battered" the person's spouse or another person with whom the person resides. The General Assembly may wish to substitute the word "assaulted" for "battered" to conform to the terminology of Art. 27, § 12.

Defined terms: "Person" § 1-101

"Police officer" § 2-101

2-205. SAME -- FOR STALKING.

A POLICE OFFICER WITHOUT A WARRANT MAY ARREST A PERSON IF:

(1) THE POLICE OFFICER HAS PROBABLE CAUSE TO BELIEVE THE PERSON HAS ENGAGED IN STALKING UNDER ARTICLE 27, § 124 OF THE CODE;

(2) THERE IS CREDIBLE EVIDENCE OTHER THAN THE STATEMENTS OF THE ALLEGED STALKING VICTIM TO SUPPORT THE PROBABLE CAUSE UNDER ITEM (1) OF THIS SECTION; AND

(3) THE POLICE OFFICER HAS REASON TO BELIEVE THAT THE ALLEGED STALKING VICTIM OR ANOTHER PERSON IS IN DANGER OF IMMINENT BODILY HARM OR DEATH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594B(p).

Defined terms: "Person" § 1-101

"Police officer" § 2-101

2-206. WARRANTLESS ARRESTS DURING STATE OF EMERGENCY.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES DURING A PUBLIC CRISIS, DISASTER, RIOTING, CATASTROPHE, OR SIMILAR PUBLIC EMERGENCY, AS THESE TERMS ARE DEFINED IN ARTICLE 41, § 2-101(B)(1) OF THE CODE, AND WHEN PUBLIC SAFETY IS IMPERILED, OR ON REASONABLE APPREHENSION OF IMMEDIATE DANGER OF PUBLIC SAFETY BEING IMPERILED.

(B) IN GENERAL.

DURING A TIME DESCRIBED IN SUBSECTION (A) OF THIS SECTION, THE AUTHORITY TO MAKE AN ARREST WITHOUT A WARRANT GRANTED TO POLICE OFFICERS UNDER THIS TITLE IS GRANTED TO A PERSON WHO:

(1) IS SERVING UNDER A PROCLAMATION OF A STATE OF EMERGENCY ISSUED BY THE GOVERNOR, AS PROVIDED IN ARTICLE 41, § 2-101(C) OF THE CODE, AS:

(I) A MEMBER OF A LAW ENFORCEMENT UNIT THAT IS LISTED IN § 2-101(C) OF THIS TITLE; OR

(II) A MEMBER OF THE MILITIA CALLED INTO ACTION BY THE GOVERNOR, AS PROVIDED IN ARTICLE 41, § 2-101(E) OF THE CODE;

(2) IS SERVING AS A MEMBER OF THE MILITIA ORDERED INTO ACTIVE SERVICE BY THE GOVERNOR UNDER ARTICLE 65, § 8 OF THE CODE; OR

(3) IS A MEMBER OF THE ARMED FORCES OF THE UNITED STATES UNDER ORDERS TO AID CIVIL AUTHORITIES OF THE STATE IN ENFORCING LAW AND ORDER, SUBJECT TO SUBSECTION (C) OF THIS SECTION.

(C) EFFECT OF SECTION.

THE GRANT OF AUTHORITY UNDER SUBSECTION (B)(3) OF THIS SECTION DOES NOT LIMIT OR IMPAIR ANY POWER OR DUTY OF A MEMBER OF THE ARMED FORCES OF THE UNITED STATES OR AUTHORIZE ANY ACTION INCOMPATIBLE WITH FEDERAL LAW OR REGULATIONS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594C.

In subsection (b)(1) of this section, the reference to a proclamation "of a state of emergency" is added for clarity. *See* Art. 41, § 2-101(c).

Defined terms: "Person" § 1-101

"Police officer" § 2-101

2-207. AUTHORITY OF CORRECTIONAL AND OTHER EMPLOYEES.

(A) CORRECTIONAL EMPLOYEES MONITORING INMATES ON HOME DETENTION.

CORRECTIONAL EMPLOYEES ASSIGNED BY THE COMMISSIONER OF CORRECTION TO MONITOR INMATES ON HOME DETENTION UNDER TITLE 3,

SUBTITLE 4 OF THE CORRECTIONAL SERVICES ARTICLE HAVE THE SAME POWERS TO ARREST INMATES IN THE HOME DETENTION PROGRAM AS ARE SET FORTH IN THIS TITLE FOR POLICE OFFICERS.

(B) PAROLE AND PROBATION EMPLOYEES SUPERVISING OFFENDERS ON HOME DETENTION.

PAROLE AND PROBATION EMPLOYEES ASSIGNED BY THE DIRECTOR OF PAROLE AND PROBATION TO SUPERVISE OFFENDERS ON HOME DETENTION UNDER § 6-108 OF THE CORRECTIONAL SERVICES ARTICLE HAVE THE SAME POWERS TO ARREST THESE OFFENDERS AS ARE SET FORTH IN THIS TITLE FOR POLICE OFFICERS.

(C) CORRECTIONAL OFFICERS IN STATE CORRECTIONAL FACILITIES.

CORRECTIONAL OFFICERS DESIGNATED BY THE COMMISSIONER OF CORRECTION UNDER § 3-216 OF THE CORRECTIONAL SERVICES ARTICLE HAVE THE SAME POWERS TO ARREST PERSONS ON THE PROPERTY OF A CORRECTIONAL FACILITY OF THE DIVISION OF CORRECTION AS ARE SET FORTH IN THIS TITLE FOR POLICE OFFICERS.

(D) CORRECTIONAL OFFICERS IN LOCAL CORRECTIONAL FACILITIES.

CORRECTIONAL OFFICERS DESIGNATED BY THE MANAGING OFFICIAL OF A LOCAL CORRECTIONAL FACILITY UNDER § 11-802 OF THE CORRECTIONAL SERVICES ARTICLE HAVE THE SAME POWERS TO ARREST PERSONS ON THE PROPERTY OF THE FACILITY AS ARE SET FORTH IN THIS TITLE FOR POLICE OFFICERS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594B(n), (o), (q), and (r).

In subsection (b) of this section, the reference to supervising offenders "on home detention under § 6-108 of the Correctional Services Article" is substituted for the former erroneous cross-reference to "§ 6-106 of the Correctional Services Article" for clarity. *See* CS § 6-108.

In subsections (c) and (d) of this section, the reference to "persons" is substituted for the former reference to "individuals" to conform to the terminology used throughout this article.

In subsection (c) of this section, the reference to a "correctional facility of" the Division of Correction is substituted for the former reference to a "facility under the jurisdiction of" the Division for consistency with terminology used in the Correctional Services Article. *See* General Revisor's Note to the Correctional Services Article.

Defined terms: "Correctional facility" § 1-101

"Managing official" § 1-101

"Person" § 1-101

"Police officer" § 2-101

2-208. AUTHORITY OF STATE FIRE MARSHAL AND ASSISTANTS.

(A) WARRANTLESS ARREST POWERS FOR COMMISSION OF SPECIFIED FELONIES.

(1) THE STATE FIRE MARSHAL OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT OF THE OFFICE OF THE STATE FIRE MARSHAL MAY ARREST A PERSON WITHOUT A WARRANT IF THE STATE FIRE MARSHAL OR ASSISTANT HAS PROBABLE CAUSE TO BELIEVE:

(I) A FELONY THAT IS A CRIME LISTED IN PARAGRAPH (2) OF THIS SUBSECTION HAS BEEN COMMITTED OR ATTEMPTED; AND

(II) THE PERSON TO BE ARRESTED HAS COMMITTED OR ATTEMPTED TO COMMIT THE FELONY WHETHER OR NOT IN THE PRESENCE OR WITHIN THE VIEW OF THE STATE FIRE MARSHAL OR ASSISTANT.

(2) THE POWERS OF ARREST SET FORTH IN PARAGRAPH (1) OF THIS SUBSECTION APPLY ONLY TO THE CRIMES LISTED IN THIS PARAGRAPH AND TO ATTEMPTS, CONSPIRACIES, AND SOLICITATIONS TO COMMIT THESE CRIMES:

(I) MURDER UNDER ARTICLE 27, § 410 OF THE CODE;

(II) SETTING FIRE TO A DWELLING OR OCCUPIED STRUCTURE UNDER ARTICLE 27, § 6 OF THE CODE;

(III) SETTING FIRE TO A STRUCTURE UNDER ARTICLE 27, § 7 OF THE CODE;

(IV) A CRIME THAT RELATES TO DESTRUCTIVE DEVICES UNDER ARTICLE 27, § 139C OF THE CODE; AND

(V) MAKING A FALSE STATEMENT OR RUMOR AS TO A DESTRUCTIVE DEVICE UNDER ARTICLE 27, § 151A OF THE CODE.

(B) WARRANTLESS ARREST POWERS FOR COMMISSION OF SPECIFIED CRIMES.

(1) THE STATE FIRE MARSHAL OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT OF THE OFFICE OF THE STATE FIRE MARSHAL MAY ARREST A PERSON WITHOUT A WARRANT IF THE STATE FIRE MARSHAL OR ASSISTANT HAS PROBABLE CAUSE TO BELIEVE:

(I) THE PERSON HAS COMMITTED A CRIME LISTED IN PARAGRAPH (2) OF THIS SUBSECTION; AND

(II) UNLESS THE PERSON IS ARRESTED IMMEDIATELY, THE PERSON:

1. MAY NOT BE APPREHENDED;

2. MAY CAUSE PHYSICAL INJURY OR PROPERTY DAMAGE TO ANOTHER; OR

3. MAY TAMPER WITH, DISPOSE OF, OR DESTROY EVIDENCE.

(2) THE CRIMES REFERRED TO IN PARAGRAPH (1) OF THIS SUBSECTION ARE:

(I) A CRIME THAT RELATES TO A DEVICE THAT IS CONSTRUCTED TO REPRESENT A DESTRUCTIVE DEVICE UNDER ARTICLE 27, § 151C OF THE CODE;

(II) MALICIOUS BURNING IN THE FIRST OR SECOND DEGREE UNDER ARTICLE 27, § 8(A) OF THE CODE;

(III) BURNING THE CONTENTS OF A TRASH CONTAINER UNDER ARTICLE 27, § 9A OF THE CODE;

(IV) MAKING A FALSE ALARM OF FIRE UNDER ARTICLE 27, § 156 OF THE CODE;

(V) A CRIME THAT RELATES TO BURNING OR ATTEMPTING TO BURN PROPERTY AS PART OF A RELIGIOUS OR ETHNIC CRIME UNDER ARTICLE 27, § 470A(B)(4) OF THE CODE;

(VI) A CRIME THAT RELATES TO INTERFERENCE, OBSTRUCTION, OR FALSE REPRESENTATION OF FIRE AND SAFETY PERSONNEL UNDER ARTICLE 27, § 11D OF THE CODE; AND

(VII) THREATENING ARSON OR ATTEMPTING, CAUSING, AIDING, COUNSELING, OR PROCURING ARSON IN THE FIRST OR SECOND DEGREE OR MALICIOUS BURNING IN THE FIRST OR SECOND DEGREE UNDER THE SUBHEADING "ARSON AND BURNING" IN ARTICLE 27 OF THE CODE.

(C) OTHER WARRANTLESS ARREST POWERS.

(1) THE STATE FIRE MARSHAL OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT IN THE OFFICE OF THE STATE FIRE MARSHAL MAY ACT UNDER THE AUTHORITY GRANTED BY § 2-102 OF THIS TITLE TO POLICE OFFICERS AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(2) WHEN ACTING UNDER THE AUTHORITY GRANTED BY § 2-102 OF THIS TITLE, THE STATE FIRE MARSHAL OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT IN THE OFFICE OF THE STATE FIRE MARSHAL HAS THE POWERS OF ARREST SET FORTH IN §§ 2-202, 2-203, AND 2-204 OF THIS SUBTITLE.

(D) REQUIRED NOTIFICATIONS.

(1) THE STATE FIRE MARSHAL OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT IN THE OFFICE OF THE STATE FIRE MARSHAL WHO ACTS

UNDER THE AUTHORITY GRANTED BY THIS SECTION SHALL NOTIFY THE FOLLOWING PERSONS OF AN INVESTIGATION OR ENFORCEMENT ACTION:

(I) 1. THE CHIEF OF POLICE, IF ANY, OR CHIEF'S DESIGNEE, WHEN IN A MUNICIPAL CORPORATION;

2. THE POLICE COMMISSIONER OR POLICE COMMISSIONER'S DESIGNEE, WHEN IN BALTIMORE CITY;

3. THE CHIEF OF POLICE OR CHIEF'S DESIGNEE, WHEN IN A COUNTY WITH A COUNTY POLICE DEPARTMENT, EXCEPT BALTIMORE CITY;

4. THE SHERIFF OR SHERIFF'S DESIGNEE, WHEN IN A COUNTY WITHOUT A COUNTY POLICE DEPARTMENT;

5. THE SECRETARY OF NATURAL RESOURCES OR SECRETARY'S DESIGNEE, WHEN ON PROPERTY OWNED, LEASED, OPERATED BY, OR UNDER THE CONTROL OF THE DEPARTMENT OF NATURAL RESOURCES; OR

6. THE RESPECTIVE CHIEF OF POLICE OR CHIEF'S DESIGNEE, WHEN ON PROPERTY OWNED, LEASED, OPERATED BY, OR UNDER THE CONTROL OF THE MARYLAND TRANSPORTATION AUTHORITY, MARYLAND AVIATION ADMINISTRATION, OR MARYLAND PORT ADMINISTRATION; AND

(II) THE DEPARTMENT OF STATE POLICE BARRACK COMMANDER OR COMMANDER'S DESIGNEE, UNLESS THERE IS AN AGREEMENT OTHERWISE WITH THE DEPARTMENT OF STATE POLICE.

(2) WHEN THE STATE FIRE MARSHAL OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT IN THE OFFICE OF THE STATE FIRE MARSHAL PARTICIPATES IN A JOINT INVESTIGATION WITH OFFICIALS FROM ANOTHER STATE, FEDERAL, OR LOCAL LAW ENFORCEMENT UNIT, THE STATE FIRE MARSHAL OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT IN THE OFFICE OF THE STATE FIRE MARSHAL SHALL GIVE THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION REASONABLY IN ADVANCE.

(E) IMMUNITIES AND EXEMPTIONS; EMPLOYEE STATUS.

A STATE FIRE MARSHAL OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT IN THE OFFICE OF THE STATE FIRE MARSHAL WHO ACTS UNDER THE AUTHORITY GRANTED BY THIS SECTION:

(1) HAS THE SAME IMMUNITIES FROM LIABILITY AND EXEMPTIONS AS A STATE POLICE OFFICER IN ADDITION TO ANY OTHER IMMUNITIES AND EXEMPTIONS TO WHICH THE STATE FIRE MARSHAL OR FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT IS OTHERWISE ENTITLED; AND

(2) REMAINS AT ALL TIMES AND FOR ALL PURPOSES AN EMPLOYEE OF THE EMPLOYING UNIT.

(F) EFFECT OF SECTION.

(1) THIS SECTION DOES NOT IMPAIR A RIGHT OF ARREST OTHERWISE EXISTING UNDER THE CODE.

(2) THIS SECTION DOES NOT DEPRIVE A PERSON OF THE RIGHT TO RECEIVE A CITATION FOR A TRAFFIC VIOLATION AS PROVIDED IN THE MARYLAND VEHICLE LAW OR A CRIMINAL VIOLATION AS PROVIDED BY LAW OR THE MARYLAND RULES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594B(e), (k), (l), (i)(1) and (2), and (m)(7)(i) and (4), (5), and (6), as they related to the State Fire Marshal and full-time investigative and inspection assistants in the Office of the State Fire Marshal.

Subsection (a)(1) of this section is revised to repeat the provisions of § 2-202(c) of this subtitle for clarity and to eliminate the former cross-reference to "subsection (c) of [Art. 27, § 594B]". Similarly, subsection (b)(1) of this section is revised to repeat the provisions of § 2-203 of this subtitle for clarity and to eliminate the former cross-reference to "subsection (e) of [Art. 27, § 594B]".

In subsection (b) of this section, the former reference to "Art. 27, § 9", which contains the prohibition against making a threat of arson, is deleted as included in item (b)(2)(vii) of this section.

Also in subsection (b) of this section, the former reference to "Art. 27, § 111B" is deleted as erroneous because § 111B concerns throwing missiles into an occupied vehicle and no longer concerns crimes related to fire.

In subsection (c) of this section, the former reference to the grant of the power of arrest set forth in former subsections (a) through (e) of this section "for any criminal violation of the Code" is deleted as misleading in light of the fact that former subsections (d) and (e) did not apply to any criminal violation of the Code, but instead only to domestic abuse crime and certain other specified crimes.

Subsections (d) and (e) of this section are revised in this section as well as in § 2-102 of this subtitle, which concerns police officers, to clarify that these provisions also apply to the State Fire Marshal and certain assistants. Under the former law, the State Fire Marshal and a full-time investigative and inspection assistant were covered by these provisions because those persons were defined as "police officers".

Subsection (d) of this section is revised to clarify that the State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal who acts under the authority of this section must notify the listed entities.

In subsection (d)(1)(i)1 of this section, the reference to a "municipal corporation" is substituted for the former reference to an "incorporated municipality" to conform to Md. Constitution, Art. XI-E.

In subsection (d)(1)(i)3 of this section, the exception for "Baltimore City" is added for clarity because Baltimore City is included in the standard definition of "county". However, Baltimore City is covered in subsection (c)(1)(i)2 of this section.

In subsection (d)(2) of this section, the reference to the State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal who "participates in a joint investigation with officials from another State, federal, or local law enforcement unit" is substituted for the former reference to a police officer who is "acting under the authority granted in paragraph (3)(i)1 of this subsection" for specificity and to eliminate an unnecessary cross-reference.

In the introductory language of subsection (d) of this section, the reference to the State Fire Marshal or a full-time investigative and inspection assistant in the Office of the State Fire Marshal who "acts" under the authority granted by this section is substituted for the former reference to a police officer who "uses" that authority for consistency with language used throughout this section.

As for authority granted to the State Police, *see* Art. 88B, § 4.

As for the substitution of the term "unit" for the former reference to "agency", *see* General Revisor's Note to article.

Former Art. 27, § 594B(i)(3), which stated that the State Fire Marshal or a certain assistant does not have certain arrest powers, except as provided in subsection (l)(7) [the correct cross-reference to (m)(7)(i)], is deleted as unnecessary. Subsection (c) of this section revises former subsection (m)(7)(i). The fact that the State Fire Marshal or a certain assistant does not have certain arrest powers absent the conditions stated in subsection (c) of this section is implicit in this revision.

Former Art. 27, § 594B(m)(7)(ii), which stated that the powers of arrest established in former subsection (m)(7)(i) are in addition to the powers of arrest established under former § 594B(i), is deleted as implicit in this revised section, which contains the provisions of both former subsection (m)(7)(i) and subsection (i).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the General Assembly may wish to extend the authority of the State Fire Marshal and investigative and inspection assistants under this section to include the making of warrantless arrests if there is probable cause to believe that there has been murder committed in perpetration of arson under Art. 27, § 408 or murder committed in perpetration of any murder under Art. 27, § 409 (murder in a burning

barn, tobacco house, etc.).

Defined terms: "County" § 1-101

"Person" § 1-101

"Police officer" § 2-101

2-209. AUTHORITY OF PRINCE GEORGE'S COUNTY FIRE INVESTIGATORS.

(A) WARRANTLESS ARREST POWERS FOR COMMISSION OF SPECIFIED FELONIES.

(1) A FIRE INVESTIGATOR OF THE PRINCE GEORGE'S COUNTY FIRE DEPARTMENT MAY ARREST A PERSON WITHOUT A WARRANT IF THE FIRE INVESTIGATOR HAS PROBABLE CAUSE TO BELIEVE:

(I) A FELONY THAT IS A CRIME LISTED IN PARAGRAPH (2) OF THIS SUBSECTION HAS BEEN COMMITTED OR ATTEMPTED; AND

(II) THE PERSON TO BE ARRESTED HAS COMMITTED OR ATTEMPTED TO COMMIT THE FELONY WHETHER OR NOT IN THE PRESENCE OR WITHIN THE VIEW OF THE FIRE INVESTIGATOR.

(2) THE POWERS OF ARREST SET FORTH IN PARAGRAPH (1) OF THIS SUBSECTION APPLY ONLY TO:

(I) THE CRIMES LISTED IN THIS PARAGRAPH AND TO ATTEMPTS, CONSPIRACIES, AND SOLICITATIONS TO COMMIT THESE CRIMES:

1. A CRIME THAT RELATES TO A DEVICE THAT IS CONSTRUCTED TO REPRESENT A DESTRUCTIVE DEVICE UNDER ARTICLE 27, § 151C OF THE CODE;

2. SETTING FIRE TO A DWELLING OR OCCUPIED STRUCTURE UNDER ARTICLE 27, § 6 OF THE CODE;

3. SETTING FIRE TO A STRUCTURE UNDER ARTICLE 27, § 7 OF THE CODE;

4. MAKING A FALSE STATEMENT OR RUMOR AS TO A DESTRUCTIVE DEVICE UNDER ARTICLE 27, § 151A OF THE CODE; AND

5. A CRIME THAT RELATES TO DESTRUCTIVE DEVICES UNDER ARTICLE 27, § 139C OF THE CODE; AND

(II) A CRIME THAT RELATES TO THE UNLAWFUL POSSESSION OR SALE OF EXPLOSIVES UNDER ARTICLE 38A, §§ 27A AND 31 OF THE CODE.

(B) WARRANTLESS ARREST POWERS FOR COMMISSION OF SPECIFIED CRIMES.

(1) A FIRE INVESTIGATOR OF THE PRINCE GEORGE'S COUNTY FIRE DEPARTMENT MAY ARREST A PERSON WITHOUT A WARRANT IF THE FIRE INVESTIGATOR HAS PROBABLE CAUSE TO BELIEVE:

(I) THE PERSON HAS COMMITTED A CRIME LISTED IN PARAGRAPH (2) OF THIS SUBSECTION; AND

(II) UNLESS THE PERSON IS ARRESTED IMMEDIATELY, THE PERSON:

1. MAY NOT BE APPREHENDED;

2. MAY CAUSE PHYSICAL INJURY OR PROPERTY DAMAGE TO ANOTHER; OR

3. MAY TAMPER WITH, DISPOSE OF, OR DESTROY EVIDENCE.

(2) THE CRIMES REFERRED TO IN PARAGRAPH (1) OF THIS SUBSECTION ARE:

(I) RECKLESS ENDANGERMENT UNDER ARTICLE 27, § 12A-2 OF THE CODE;

(II) MALICIOUS BURNING UNDER ARTICLE 27, § 8(A) OF THE CODE;

(III) THREATENING ARSON UNDER ARTICLE 27, § 9 OF THE CODE;

(IV) BURNING THE CONTENTS OF A TRASH CONTAINER UNDER ARTICLE 27, § 9A OF THE CODE;

(V) MAKING A FALSE ALARM OF FIRE UNDER ARTICLE 27, § 156 OF THE CODE;

(VI) MAKING A FALSE STATEMENT OR REPORT OF COMMISSION OF CRIME UNDER ARTICLE 27, § 151 OF THE CODE;

(VII) A CRIME THAT RELATES TO BURNING OR ATTEMPTING TO BURN PROPERTY AS PART OF A RELIGIOUS OR ETHNIC CRIME UNDER ARTICLE 27, § 470A(B)(4) OF THE CODE;

(VIII) INTENTIONALLY ACTIVATING AN ALARM UNDER ARTICLE 27, § 156B OF THE CODE;

(IX) A CRIME THAT RELATES TO INTERFERENCE, OBSTRUCTION, OR FALSE REPRESENTATION OF FIRE AND SAFETY PERSONNEL UNDER ARTICLE 27, § 11D OF THE CODE;

(X) ATTEMPTING, CAUSING, AIDING, OR ABETTING:

1. SETTING FIRE TO A DWELLING OR OCCUPIED STRUCTURE IN VIOLATION OF ARTICLE 27, § 6 OF THE CODE; OR

2. SETTING FIRE TO A STRUCTURE IN VIOLATION OF ARTICLE 27, § 7 OF THE CODE;

(XI) MALICIOUSLY OR NEGLIGENTLY SETTING FIRES UNDER § 5-704 OF THE NATURAL RESOURCES ARTICLE;

(XII) UNLAWFUL DISCHARGE OR POSSESSION OF FIREWORKS UNDER ARTICLE 38A, §§ 16 AND 17 OF THE CODE; AND

(XIII) UNLAWFUL MANUFACTURE OF OR DEALING IN EXPLOSIVES UNDER ARTICLE 38A, §§ 27 AND 31A OF THE CODE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594B(j).

Throughout this section, the reference to "crime" is substituted for the former reference to "offense" to conform to the terminology used throughout this article.

Subsection (a)(1) of this section is revised to repeat the provisions of § 2-202(c) of this subtitle for clarity and to eliminate the former cross-reference to "subsection (c) of ... [Art. 27, § 594B]". Similarly, subsection (b)(1) of this section is revised to repeat the provisions of § 2-203 of this subtitle for clarity and to eliminate the former cross-reference to "subsection (e) of ... [Art. 27, § 594B]".

In subsection (b)(2)(x) of this section, the reference to "abetting" a violation is substituted for the former reference to "counseling or procuring" a violation, for clarity.

Also in subsection (b)(2)(x) of this section, the former reference to a violation of "8A" of former Article 27 is deleted as erroneous. There was no Art. 27, § 8A. The reference to Art. 27, § 8(a), which concerns malicious burning, is made in subsection (b)(2)(ii) of this section.

Defined term: "Person" § 1-101

SUBTITLE 3. FRESH PURSUIT.

PART I. FRESH PURSUIT IN-STATE.

2-301. ELEMENTS AND CONDITIONS OF FRESH PURSUIT; AUTHORITY OF OFFICERS.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO A LAW ENFORCEMENT OFFICER OF A JURISDICTION IN THE STATE WHO ENGAGES IN FRESH PURSUIT OF A PERSON IN THE STATE.

(B) ELEMENTS OF FRESH PURSUIT.

(1) FRESH PURSUIT IS PURSUIT THAT IS CONTINUOUS AND WITHOUT UNREASONABLE DELAY.

(2) FRESH PURSUIT NEED NOT BE INSTANT PURSUIT.

(3) IN DETERMINING WHETHER THE PURSUIT MEETS THE ELEMENTS OF FRESH PURSUIT, A COURT SHALL APPLY THE REQUIREMENTS OF THE COMMON LAW DEFINITION OF FRESH PURSUIT THAT RELATES TO THESE ELEMENTS.

(C) CONDITIONS FOR FRESH PURSUIT.

A LAW ENFORCEMENT OFFICER MAY ENGAGE IN FRESH PURSUIT OF A PERSON WHO:

(1) HAS COMMITTED OR IS REASONABLY BELIEVED BY THE LAW ENFORCEMENT OFFICER TO HAVE COMMITTED A FELONY IN THE JURISDICTION IN WHICH THE LAW ENFORCEMENT OFFICER HAS THE POWER OF ARREST; OR

(2) HAS COMMITTED A MISDEMEANOR IN THE PRESENCE OF THE LAW ENFORCEMENT OFFICER IN THE JURISDICTION IN WHICH THE LAW ENFORCEMENT OFFICER HAS THE POWER OF ARREST.

(D) AUTHORITY OF OFFICER ENGAGED IN FRESH PURSUIT.

A LAW ENFORCEMENT OFFICER WHO IS ENGAGED IN FRESH PURSUIT OF A PERSON MAY:

(1) ARREST THE PERSON ANYWHERE IN THE STATE AND HOLD THE PERSON IN CUSTODY; AND

(2) RETURN THE PERSON TO THE JURISDICTION IN WHICH A COURT HAS PROPER VENUE FOR THE CRIME ALLEGED TO HAVE BEEN COMMITTED BY THE PERSON.

REVISOR'S NOTE: Subsection (a) of this section is new language added to clarify that this section applies to intrastate fresh pursuit cases.

Subsections (b) through (d) of this section are new language derived without substantive change from former Art. 27, § 602A.

In subsection (b) of this section, the former definition of "fresh pursuit" as "pursuit under the circumstances listed in subsection (c) of this section" is deleted as unnecessary. Former Art. 27, § 602A(c) is revised as a substantive provision in subsection (c) of this section. A cross-reference to the revised substantive provision in a definition section is redundant and unnecessary.

In the introductory language of subsection (c) of this section, the former reference to a law enforcement officer "exercis[ing] the authority provided by subsection (b)" is deleted as unnecessary in light of subsection (d) of this

section, which sets forth the authority of a law enforcement officer who is engaged in fresh pursuit.

In the introductory language of subsection (d) of this section, the reference to a law enforcement officer "who is engaged in fresh pursuit" is substituted for the former phrase "[u]nder the circumstances provided by subsection (c) [now (d)] of this section" for clarity and to eliminate an unnecessary cross-reference.

Defined term: "Person" § 1-101

2-302. RESERVED.

2-303. RESERVED.

PART II. UNIFORM ACT ON FRESH PURSUIT.

2-304. DEFINITIONS.

(A) IN GENERAL.

IN PART II OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language added as the standard introductory language to a definition section.

(B) FRESH PURSUIT.

"FRESH PURSUIT" INCLUDES:

(1) FRESH PURSUIT AS DEFINED BY THE COMMON LAW; AND

(2) PURSUIT WITHOUT UNREASONABLE DELAY, BUT NOT NECESSARILY INSTANT PURSUIT, OF A PERSON WHO:

(I) HAS COMMITTED OR IS REASONABLY SUSPECTED OF HAVING COMMITTED A FELONY; OR

(II) IS SUSPECTED OF HAVING COMMITTED A FELONY, ALTHOUGH A FELONY HAS NOT BEEN COMMITTED, IF THERE IS REASONABLE GROUND FOR BELIEVING THAT A FELONY HAS BEEN COMMITTED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 599.

In the introductory language of this subsection, the former phrases "as used in this subtitle" and "as used herein", which modified "fresh pursuit", are deleted as unnecessary in light of subsection (a) of this section.

In item (2)(ii) of this subsection, the former references to "supposed" felony

and a felony that has not "actually" been committed are deleted as surplusage.

Defined term: "Person" § 1-101

(C) STATE.

"STATE" MEANS A STATE OF THE UNITED STATES OR THE DISTRICT OF COLUMBIA.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 598.

The word "means" is substituted for the former words "shall include" to distinguish this definition from the article-wide definition of the term "state" found in Title 1 of this article. Because the article-wide definition is a "means" definition, and is meant to be exhaustive and not illustrative, the definition for Part II of this subtitle also must be stated as a "means" definition in order for it to be exhaustive for purposes of Part II of this subtitle. In addition, to ensure that the definition is exhaustive, the reference to "a state of the United States" is added.

The former phrase "[f]or the purpose of this subtitle" is deleted in light of subsection (a) of this section.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that as enacted by Chapter 123, Acts of 1937, the term "State" began with an uppercase letter as did all the other references to the term "State" in the former subtitle. However, later, the references to the term "state" when it meant a state other than the State of Maryland or "this State" were changed to begin with a lowercase letter. The term "State" in this definition was not changed to begin with a lowercase letter, as it apparently should have been. No substantive change is intended by changing the term to begin with a lowercase letter in this revision.

2-305. AUTHORITY OF OFFICERS OF OTHER STATES TO ARREST IN THIS STATE.

(A) IN GENERAL.

A MEMBER OF A STATE, COUNTY, OR MUNICIPAL LAW ENFORCEMENT UNIT OF ANOTHER STATE WHO ENTERS THIS STATE IN FRESH PURSUIT AND CONTINUES WITHIN THIS STATE IN FRESH PURSUIT OF A PERSON TO ARREST THE PERSON ON THE GROUND THAT THE PERSON IS BELIEVED TO HAVE COMMITTED A FELONY IN THE OTHER STATE HAS THE SAME AUTHORITY TO ARREST AND HOLD THE PERSON IN CUSTODY AS HAS A MEMBER OF A DULY ORGANIZED STATE, COUNTY, OR MUNICIPAL CORPORATION LAW ENFORCEMENT UNIT OF THIS STATE TO ARREST AND HOLD A PERSON IN CUSTODY ON THE GROUND THAT THE PERSON IS BELIEVED TO HAVE COMMITTED A FELONY IN THIS STATE.

(B) CONSTRUCTION OF SECTION.

THIS SECTION DOES NOT MAKE UNLAWFUL AN ARREST IN THIS STATE THAT WOULD OTHERWISE BE LAWFUL.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 595 and 597.

Defined terms: "County" § 1-101

"Fresh pursuit" § 2-304

"Person" § 1-101

"State" § 2-304

2-306. HEARING TO DETERMINE LAWFULNESS OF ARREST.

(A) NECESSITY FOR HEARING.

IF AN OFFICER OF ANOTHER STATE MAKES AN ARREST IN THIS STATE IN ACCORDANCE WITH § 2-305(A) OF THIS SUBTITLE, THE OFFICER SHALL, WITHOUT UNNECESSARY DELAY, TAKE THE PERSON ARRESTED BEFORE A JUDGE OF THE CIRCUIT COURT OF THE COUNTY IN WHICH THE ARREST WAS MADE FOR A HEARING TO DETERMINE THE LAWFULNESS OF THE ARREST.

(B) EFFECT OF UNLAWFUL ARREST.

IF THE JUDGE DETERMINES THAT THE ARREST WAS UNLAWFUL, THE JUDGE SHALL DISCHARGE THE ARRESTED PERSON.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 596.

Defined terms: "County" § 1-101

"Person" § 1-101

"State" § 2-304

2-307. NOTICE OF SUBTITLE.

AFTER THIS PART II OF THIS SUBTITLE IS PASSED AND APPROVED BY THE GOVERNOR, THE SECRETARY OF STATE SHALL CERTIFY A COPY OF THIS SUBTITLE TO THE EXECUTIVE DEPARTMENT OF EACH STATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 600.

Defined term: "State" § 2-304

2-308. VALIDITY OF PART.

IF ANY PROVISION OF PART II OF THIS SUBTITLE IS FOR ANY REASON DECLARED VOID, THE REST OF PART II OF THIS SUBTITLE WILL STILL BE VALID.

REVISOR'S NOTE: This section formerly was Art. 27, § 601.

The only changes are in style.

2-309. SHORT TITLE.

PART II OF THIS SUBTITLE IS THE MARYLAND UNIFORM ACT ON FRESH PURSUIT.

REVISOR'S NOTE: This section formerly was Art. 27, § 602.

The only changes are in style.

TITLE 3. INCOMPETENCY AND CRIMINAL RESPONSIBILITY IN CRIMINAL CASES.

3-101. DEFINED TERMS.

(A) IN GENERAL.

IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was HG § 12-101(a).

No changes are made.

(B) COMMITTED PERSON.

"COMMITTED PERSON" MEANS A PERSON COMMITTED TO THE HEALTH DEPARTMENT AS NOT CRIMINALLY RESPONSIBLE UNDER THE TEST FOR CRIMINAL RESPONSIBILITY.

REVISOR'S NOTE: This subsection formerly was HG § 12-101(b).

In this subsection, the defined term "person" is substituted for the former reference to "individual" to conform to the terminology used throughout this article.

There are no other changes.

Defined term: "Person" § 1-101

(C) COURT.

"COURT" MEANS A COURT THAT HAS CRIMINAL JURISDICTION.

REVISOR'S NOTE: This subsection formerly was HG § 12-101(c).

No changes are made.

(D) HEALTH DEPARTMENT.

"HEALTH DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

REVISOR'S NOTE: This subsection is new language added to provide a convenient, short reference to the Department of Health and Mental Hygiene.

(E) HOSPITAL WARRANT.

"HOSPITAL WARRANT" MEANS A LEGAL DOCUMENT ISSUED BY A COURT THAT:

(1) AUTHORIZES ANY LAW ENFORCEMENT OFFICER IN THE STATE TO APPREHEND A PERSON WHO IS ALLEGED TO HAVE VIOLATED AN ORDER FOR CONDITIONAL RELEASE AND TRANSPORT THE PERSON TO A FACILITY DESIGNATED BY THE HEALTH DEPARTMENT; AND

(2) REQUIRES THAT THE ISSUANCE OF THE WARRANT IS ENTERED IN THE PERSON'S CRIMINAL HISTORY RECORD INFORMATION OF THE CRIMINAL JUSTICE INFORMATION SYSTEM.

REVISOR'S NOTE: This subsection formerly was HG § 12-101(d).

In item (2) of this subsection, the reference to "requires" is substituted for the former reference to "[e]nsures" for clarity.

The only changes are in style.

Defined terms: "Court" § 3-101

"Health Department" § 3-101

"Person" § 1-101

(F) INCOMPETENT TO STAND TRIAL.

"INCOMPETENT TO STAND TRIAL" MEANS NOT ABLE:

(1) TO UNDERSTAND THE NATURE OR OBJECT OF THE PROCEEDING; OR

(2) TO ASSIST IN ONE'S DEFENSE.

REVISOR'S NOTE: This subsection formerly was HG § 12-101(e).

The only changes are in style.

(G) MENTAL DISORDER.

(1) "MENTAL DISORDER" MEANS A BEHAVIORAL OR EMOTIONAL ILLNESS THAT RESULTS FROM A PSYCHIATRIC OR NEUROLOGICAL DISORDER.

(2) "MENTAL DISORDER" INCLUDES A MENTAL ILLNESS THAT SO SUBSTANTIALLY IMPAIRS THE MENTAL OR EMOTIONAL FUNCTIONING OF A PERSON AS TO MAKE CARE OR TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF THE PERSON OR FOR THE SAFETY OF THE PERSON OR PROPERTY OF ANOTHER.

(3) "MENTAL DISORDER" DOES NOT INCLUDE MENTAL RETARDATION.

REVISOR'S NOTE: This subsection formerly was HG § 12-101(g).

The defined term "person" is substituted for the former reference to "individual" to conform to the terminology used throughout this article.

No other changes are made.

Defined term: "Person" § 1-101

(H) OFFICE.

"OFFICE" MEANS THE OFFICE OF ADMINISTRATIVE HEARINGS.

REVISOR'S NOTE: This subsection is new language added to allow a concise reference to the Office of Administrative Hearings.

REVISOR'S NOTE TO SECTION: Former HG § 12-101(f), which defined "jail" to mean a jail, detention center, or correctional facility, is deleted as included in the defined term "correctional facility".

3-102. SECRETARY TO ADOPT REGULATIONS.

THE SECRETARY OF THE HEALTH DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS TITLE THAT RELATE TO THE HEALTH DEPARTMENT.

REVISOR'S NOTE: This section formerly was HG § 12-102.

The reference to the Secretary "of the Health Department" is added for clarity.

The former reference that "the duties set forth" in this title are "[i]n addition to the duties set forth" in the Health - General Article is deleted as an unnecessary statement of an ordinary rule of statutory construction.

The former reference to "rules" is deleted in light of the reference to "regulations". *See* General Revisor's Note to article.

The only other changes are in style.

Defined term: "Health Department" § 3-101

3-103. INTERPRETERS FOR PROCEEDINGS.

(A) WHEN APPOINTMENT REQUIRED.

THE COURT SHALL APPOINT A QUALIFIED INTERPRETER TO HELP A DEFENDANT THROUGHOUT ANY COURT PROCEEDINGS UNDER THIS TITLE WHEN THE DEFENDANT IS:

(1) DEAF; OR

(2) CANNOT READILY UNDERSTAND OR COMMUNICATE THE ENGLISH LANGUAGE AND CANNOT UNDERSTAND A CHARGE MADE AGAINST THE DEFENDANT OR HELP PRESENT THE DEFENSE.

(B) COMPENSATION AND EXPENSES.

THE COURT SHALL GIVE AN INTERPRETER APPOINTED UNDER THIS SECTION:

(1) COMPENSATION FOR SERVICES IN AN AMOUNT EQUAL TO THAT PROVIDED FOR INTERPRETERS OF LANGUAGES OTHER THAN ENGLISH; AND

(2) REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF SERVICES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 623A, as it related to the appointment of interpreters for court proceedings under this title.

In subsection (a) of this section, the reference to "any court proceedings under this title" is substituted for the former obsolete reference to "insanity or mental health commitment proceedings".

Also in subsection (a) of this section, the former reference to being a "deaf-mute" is deleted as included in the reference to being "deaf".

Also in subsection (a) of this section, the former reference to a defendant who "[b]ecause of hearing, speaking, or other impairment" cannot readily understand or communicate the English language is deleted as unnecessary in light of the general reference to a "defendant is deaf or cannot readily understand or communicate the English language and cannot understand a charge made against the defendant or help present the defense".

As to the appointment and compensation of interpreters generally, *see* CJ § 9-114.

Defined term: "Court" § 3-101

3-104. COURT TO DETERMINE COMPETENCE.

(A) IN GENERAL.

IF, BEFORE OR DURING A TRIAL, THE DEFENDANT IN A CRIMINAL CASE APPEARS TO THE COURT TO BE INCOMPETENT TO STAND TRIAL OR THE DEFENDANT ALLEGES INCOMPETENCE TO STAND TRIAL, THE COURT SHALL DETERMINE, ON EVIDENCE PRESENTED ON THE RECORD, WHETHER THE DEFENDANT IS INCOMPETENT TO STAND TRIAL.

(B) COURT ACTION IF DEFENDANT FOUND COMPETENT.

IF, AFTER RECEIVING EVIDENCE, THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL, THE TRIAL SHALL BEGIN AS SOON AS PRACTICABLE OR, IF ALREADY BEGUN, SHALL CONTINUE.

(C) RECONSIDERATION.

AT ANY TIME DURING THE TRIAL AND BEFORE VERDICT, THE COURT MAY RECONSIDER THE QUESTION OF WHETHER THE DEFENDANT IS INCOMPETENT TO STAND TRIAL.

REVISOR'S NOTE: This section formerly was HG § 12-103.

No changes are made.

Defined terms: "Court" § 3-101

"Incompetent to stand trial" § 3-101

3-105. EXAMINATION OF DEFENDANT BY HEALTH DEPARTMENT.

(A) IN GENERAL.

(1) FOR GOOD CAUSE AND AFTER GIVING THE DEFENDANT AN OPPORTUNITY TO BE HEARD, THE COURT MAY ORDER THE HEALTH DEPARTMENT TO EXAMINE THE DEFENDANT TO DETERMINE WHETHER THE DEFENDANT IS INCOMPETENT TO STAND TRIAL.

(2) THE COURT SHALL SET AND MAY CHANGE THE CONDITIONS UNDER WHICH THE EXAMINATION IS TO BE MADE.

(B) RELEASE FOR EXAMINATION.

EXCEPT IN A CAPITAL CASE, ON CONSIDERATION OF THE NATURE OF THE CHARGE, THE COURT:

(1) MAY REQUIRE OR ALLOW THE EXAMINATION TO BE DONE ON AN OUTPATIENT BASIS; AND

(2) IF AN OUTPATIENT EXAMINATION IS AUTHORIZED, SHALL SET BAIL FOR THE DEFENDANT OR AUTHORIZE RELEASE OF THE DEFENDANT ON RECOGNIZANCE.

(C) CONFINEMENT BEFORE AND DURING EXAMINATION; HABEAS CORPUS.

(1) IF A DEFENDANT IS TO BE HELD IN CUSTODY FOR EXAMINATION UNDER THIS SECTION, THE DEFENDANT MAY BE CONFINED IN A CORRECTIONAL FACILITY UNTIL THE HEALTH DEPARTMENT CAN CONDUCT THE EXAMINATION. IF THE COURT FINDS IT APPROPRIATE FOR THE HEALTH OR SAFETY OF THE DEFENDANT, THE COURT MAY ORDER CONFINEMENT IN A MEDICAL WING OR OTHER ISOLATED AND SECURE UNIT OF THE CORRECTIONAL FACILITY.

(2) (I) IF THE COURT FINDS THAT, BECAUSE OF THE APPARENT SEVERITY OF THE MENTAL DISORDER OR MENTAL RETARDATION, A DEFENDANT IN CUSTODY WOULD BE ENDANGERED BY CONFINEMENT IN A CORRECTIONAL FACILITY, THE COURT MAY ORDER THAT THE HEALTH DEPARTMENT, IN THE HEALTH DEPARTMENT'S DISCRETION:

1. CONFINE THE DEFENDANT, PENDING EXAMINATION, IN A MEDICAL FACILITY THAT THE HEALTH DEPARTMENT DESIGNATES AS APPROPRIATE; OR

2. IMMEDIATELY CONDUCT A COMPETENCY EXAMINATION OF THE DEFENDANT BY A COMMUNITY FORENSIC SCREENING PROGRAM OR OTHER AGENCY THAT THE HEALTH DEPARTMENT FINDS APPROPRIATE.

(II) UNLESS THE HEALTH DEPARTMENT RETAINS THE DEFENDANT, THE DEFENDANT SHALL BE PROMPTLY RETURNED TO THE COURT AFTER THE EXAMINATION.

(3) A DEFENDANT WHO IS HELD FOR EXAMINATION UNDER THIS SECTION MAY QUESTION AT ANY TIME THE LEGALITY OF THE DETENTION BY PETITION FOR A WRIT OF HABEAS CORPUS.

(D) DUTIES OF HEALTH DEPARTMENT.

(1) IF A COURT ORDERS AN EXAMINATION UNDER THIS SECTION, THE HEALTH DEPARTMENT SHALL:

(I) EXAMINE THE DEFENDANT; AND

(II) SEND A COMPLETE REPORT OF ITS FINDINGS TO:

1. THE COURT;

2. THE STATE'S ATTORNEY; AND

3. THE DEFENSE COUNSEL.

(2) UNLESS THERE IS A PLEA THAT THE DEFENDANT WAS NOT CRIMINALLY RESPONSIBLE UNDER § 3-109 OF THIS TITLE, THE DEFENDANT IS ENTITLED TO HAVE THE REPORT WITHIN 7 DAYS AFTER THE COURT ORDERS THE EXAMINATION. HOWEVER, FAILURE OF THE HEALTH DEPARTMENT TO SEND THE COMPLETE REPORT WITHIN THAT TIME IS NOT, OF ITSELF, GROUNDS FOR DISMISSAL OF THE CHARGES. ON GOOD CAUSE SHOWN, THE COURT MAY EXTEND THE TIME FOR EXAMINATION.

(3) IF THE HEALTH DEPARTMENT REPORTS THAT, IN ITS OPINION, THE DEFENDANT IS INCOMPETENT TO STAND TRIAL, THE REPORT SHALL STATE, IN A COMPLETE SUPPLEMENTARY OPINION, WHETHER, BECAUSE OF MENTAL RETARDATION OR MENTAL DISORDER, THE DEFENDANT WOULD BE A DANGER TO SELF OR THE PERSON OR PROPERTY OF ANOTHER, IF RELEASED.

REVISOR'S NOTE: This section formerly was HG § 12-104.

The only changes are in style.

Defined terms: "Correctional facility" § 1-101

"Court" § 3-101

"Health Department" § 3-101

"Incompetent to stand trial" § 3-101

"Person" § 1-101

3-106. FINDING OF INCOMPETENCY.

(A) RELEASE.

EXCEPT IN A CAPITAL CASE, IF, AFTER A HEARING, THE COURT FINDS THAT THE DEFENDANT IS INCOMPETENT TO STAND TRIAL BUT IS NOT DANGEROUS, AS A RESULT OF A MENTAL DISORDER OR MENTAL RETARDATION, TO SELF OR THE PERSON OR PROPERTY OF OTHERS, THE COURT MAY SET BAIL FOR THE DEFENDANT OR AUTHORIZE RELEASE OF THE DEFENDANT ON RECOGNIZANCE.

(B) COMMITMENT.

(1) IF, AFTER A HEARING, 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 ANOTHER, THE COURT MAY ORDER THE DEFENDANT COMMITTED TO THE FACILITY THAT THE HEALTH DEPARTMENT DESIGNATES UNTIL THE COURT IS SATISFIED THAT THE DEFENDANT NO LONGER IS INCOMPETENT TO STAND TRIAL OR NO LONGER IS, BECAUSE OF MENTAL RETARDATION OR A MENTAL DISORDER, A DANGER TO SELF OR THE PERSON OR PROPERTY OF OTHERS.

(2) IF A COURT COMMITS THE DEFENDANT BECAUSE OF MENTAL RETARDATION, THE HEALTH DEPARTMENT SHALL REQUIRE THE DEVELOPMENTAL DISABILITIES ADMINISTRATION TO PROVIDE THE CARE OR TREATMENT THAT THE DEFENDANT NEEDS.

(C) RECONSIDERATION.

(1) ON SUGGESTION OF THE DEFENDANT OR ON ITS INITIATIVE AND SUBJECT TO THE LIMITATIONS ON FREQUENCY IN § 7-507 OR § 10-805 OF THE HEALTH - GENERAL ARTICLE, AS THE CASE MAY BE, THE COURT MAY RECONSIDER WHETHER THE DEFENDANT IS INCOMPETENT TO STAND TRIAL.

(2) IF THE COURT ORDERS COMMITMENT UNDER SUBSECTION (B) OF THIS SECTION, THE DEFENDANT MAY APPLY FOR RELEASE UNDER § 7-507 OR § 10-805 OF THE HEALTH - GENERAL ARTICLE. IN COMPUTING THE AVAILABILITY OF REVIEW UNDER THOSE SECTIONS, AS THE CASE MAY BE, THE DATE OF THE COMMITMENT ORDER SHALL BE TREATED AS A HEARING.

(D) OTHER LEGAL QUESTIONS.

IF THE DEFENDANT IS FOUND INCOMPETENT TO STAND TRIAL, DEFENSE COUNSEL MAY MAKE ANY LEGAL OBJECTION TO THE PROSECUTION THAT MAY BE DETERMINED FAIRLY BEFORE TRIAL AND WITHOUT THE PERSONAL PARTICIPATION OF THE DEFENDANT.

(E) INCLUSION IN CENTRAL REPOSITORY.

THE COURT SHALL NOTIFY THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF ANY COMMITMENT ORDERED OR RELEASE AUTHORIZED UNDER THIS SECTION AND OF ANY DETERMINATION THAT A DEFENDANT IS NO LONGER INCOMPETENT TO STAND TRIAL.

REVISOR'S NOTE: This section is new language derived without substantive change from former HG § 12-105.

In subsection (e) of this section, the reference to "Criminal Justice Information System Central Repository" is substituted for the former reference to "central repository of the criminal justice information system" to conform to the terminology used in § 11-203 of this article.

Defined terms: "Court" § 3-101

"Health Department" § 3-101

"Incompetent to stand trial" § 3-101

"Mental disorder" § 3-101

"Person" § 1-101

3-107. DISMISSAL OF CHARGES.

(A) IN GENERAL.

WHETHER OR NOT THE DEFENDANT IS CONFINED, IF THE COURT CONSIDERS THAT RESUMING THE CRIMINAL PROCEEDING WOULD BE UNJUST BECAUSE SO MUCH TIME HAS PASSED SINCE THE DEFENDANT WAS FOUND INCOMPETENT TO STAND TRIAL, THE COURT MAY DISMISS THE CHARGE. HOWEVER, THE COURT MAY NOT DISMISS A CHARGE:

(1) WITHOUT PROVIDING THE STATE'S ATTORNEY AND A VICTIM OR VICTIM'S REPRESENTATIVE WHO HAS FILED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS ARTICLE ADVANCE NOTICE AND AN OPPORTUNITY TO BE HEARD; AND

(2) (I) UNTIL 10 YEARS AFTER THE DEFENDANT WAS FOUND INCOMPETENT TO STAND TRIAL IN ANY CAPITAL CASE; OR

(II) UNTIL 5 YEARS AFTER THE DEFENDANT WAS FOUND INCOMPETENT TO STAND TRIAL IN ANY OTHER CASE WHERE THE PENALTY MAY BE IMPRISONMENT IN A STATE CORRECTIONAL FACILITY.

(B) NOTICE OF DISMISSAL.

IF CHARGES ARE DISMISSED UNDER THIS SECTION, THE COURT SHALL NOTIFY:

(1) THE VICTIM OF THE CRIME CHARGED OR THE VICTIM'S REPRESENTATIVE WHO HAS FILED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS ARTICLE; AND

(2) THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY.

REVISOR'S NOTE: This section formerly was HG § 12-106.

The reference to "Criminal Justice Information System Central Repository" is substituted for the former reference to "Central Repository of the Criminal Justice Information System" to conform to the terminology used in § 11-203 of this article.

The defined term "State correctional facility" is substituted for the former reference to the "State penitentiary" to conform to the terminology used throughout this article.

Defined terms: "Court" § 3-101

"Incompetent to stand trial" § 3-101

"State correctional facility" § 1-101

3-108. REPORTS ON INCOMPETENT PERSONS.

(A) REPORT TO COURT.

(1) IN ADDITION TO ANY OTHER REPORT REQUIRED UNDER THIS TITLE, THE HEALTH DEPARTMENT SHALL REPORT ANNUALLY TO EACH COURT THAT HAS ORDERED COMMITMENT OF A PERSON UNDER § 3-106 OF THIS TITLE.

(2) THE REPORT SHALL CONTAIN:

(I) A LIST OF THE PERSONS HELD UNDER COMMITMENT ORDERS; AND

(II) ANY RECOMMENDATIONS THAT THE HEALTH DEPARTMENT CONSIDERS APPROPRIATE.

(B) DISTRIBUTION OF COPIES.

(1) THE CLERK OF COURT SHALL GIVE THE LAST COUNSEL FOR EACH PERSON, AS SHOWN BY THE COURT RECORDS, NOTICE THAT THE CLIENT IS LISTED IN THE REPORT AND A COPY OF ANY RECOMMENDATION THAT RELATES TO THE CLIENT.

(2) THE HEALTH DEPARTMENT SHALL SEND A COPY OF THE REPORT TO EACH STATE'S ATTORNEY WHO BROUGHT CHARGES AGAINST A PERSON IN THE REPORT.

(C) RECOMMENDATIONS BY STATE'S ATTORNEY.

(1) WITHIN 30 DAYS AFTER A STATE'S ATTORNEY RECEIVES THE REPORT, THE STATE'S ATTORNEY SHALL SEND A RECOMMENDATION ON DISPOSITION OF CHARGES AGAINST EACH PERSON WHO HAS BEEN HELD LONG ENOUGH TO BE ELIGIBLE FOR RELEASE UNDER § 3-107 OF THIS TITLE.

(2) THE STATE'S ATTORNEY SHALL SEND THE RECOMMENDATION ABOUT A PERSON TO:

(I) THE COURT THAT ORDERED COMMITMENT OF THE PERSON; AND

(II) THE LAST COUNSEL FOR THE PERSON.

(D) NOTIFICATION OF CENTRAL REPOSITORY.

THE FACILITY OF THE HEALTH DEPARTMENT THAT HAS CHARGE OF A PERSON COMMITTED AS INCOMPETENT TO STAND TRIAL SHALL NOTIFY THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY IF THE PERSON ESCAPES.

REVISOR'S NOTE: This section formerly was HG § 12-107.

In subsection (d) of this section, the reference to "Criminal Justice Information System Central Repository" is substituted for the former reference to "central repository of the criminal justice information system" to conform to the terminology used in § 11-203 of this article.

Defined terms: "Court" § 3-101

"Health Department" § 3-101

"Incompetent to stand trial" § 3-101

"Person" § 1-101

3-109. TEST FOR CRIMINAL RESPONSIBILITY.

(A) IN GENERAL.

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:

(1) APPRECIATE THE CRIMINALITY OF THAT CONDUCT; OR

(2) CONFORM THAT CONDUCT TO THE REQUIREMENTS OF LAW.

(B) EXCLUSIONS.

FOR PURPOSES OF THIS SECTION, "MENTAL DISORDER" DOES NOT INCLUDE AN ABNORMALITY THAT IS MANIFESTED ONLY BY REPEATED CRIMINAL OR OTHERWISE ANTISOCIAL CONDUCT.

REVISOR'S NOTE: This section formerly was HG § 12-108.

The only changes are in style.

Defined term: "Mental disorder" § 3-101

3-110. NOT CRIMINALLY RESPONSIBLE -- PLEA AND VERDICT.

(A) TIME AND MANNER OF PLEADING.

(1) IF A DEFENDANT INTENDS TO RELY ON A PLEA OF NOT CRIMINALLY RESPONSIBLE, THE DEFENDANT OR DEFENSE COUNSEL SHALL FILE A WRITTEN PLEA ALLEGING, IN SUBSTANCE, THAT WHEN THE ALLEGED CRIME WAS COMMITTED, THE DEFENDANT WAS NOT CRIMINALLY RESPONSIBLE BY REASON OF INSANITY UNDER THE TEST FOR CRIMINAL RESPONSIBILITY IN § 3-109 OF THIS TITLE.

(2) A WRITTEN PLEA OF NOT CRIMINALLY RESPONSIBLE BY REASON OF INSANITY SHALL BE FILED AT THE TIME PROVIDED FOR INITIAL PLEADING, UNLESS, FOR GOOD CAUSE SHOWN, THE COURT ALLOWS THE PLEA TO BE FILED LATER.

(B) BURDEN OF PROOF.

THE DEFENDANT HAS THE BURDEN TO ESTABLISH, BY A PREPONDERANCE OF THE EVIDENCE, THE DEFENSE OF NOT CRIMINALLY RESPONSIBLE.

(C) DEGREE OF PROOF.

IF THE TRIER OF FACT FINDS THAT THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED THE CRIMINAL ACT CHARGED, THEN, IF THE DEFENDANT HAS PLEADED NOT CRIMINALLY RESPONSIBLE, THE TRIER OF FACT SEPARATELY SHALL FIND, BY A PREPONDERANCE OF THE EVIDENCE, WHETHER THE DEFENDANT WAS AT THE TIME CRIMINALLY RESPONSIBLE OR NOT CRIMINALLY RESPONSIBLE BY REASON OF INSANITY UNDER THE TEST FOR CRIMINAL RESPONSIBILITY IN § 3-109 OF THIS TITLE.

(D) RESTRICTION ON VERDICT.

A COURT MAY NOT ENTER A VERDICT OF NOT CRIMINALLY RESPONSIBLE UNLESS THE DEFENDANT OR DEFENSE COUNSEL HAS FILED A WRITTEN PLEA UNDER SUBSECTION (A) OF THIS SECTION.

REVISOR'S NOTE: This section formerly was HG § 12-109.

The only changes are in style.

Defined term: "Court" § 3-101

3-111. SAME -- EXAMINATION.

(A) IN GENERAL.

IF A DEFENDANT HAS ENTERED A PLEA OF NOT CRIMINALLY RESPONSIBLE, THE COURT MAY ORDER THE HEALTH DEPARTMENT TO EXAMINE THE DEFENDANT TO DETERMINE WHETHER THE DEFENDANT WAS NOT CRIMINALLY RESPONSIBLE UNDER § 3-109 OF THIS TITLE AND WHETHER THE DEFENDANT IS COMPETENT TO STAND TRIAL.

(B) CONFINEMENT.

(1) IF A DEFENDANT IS TO BE HELD IN CUSTODY FOR EXAMINATION UNDER THIS SECTION, THE DEFENDANT SHALL BE CONFINED IN A CORRECTIONAL FACILITY UNTIL THE HEALTH DEPARTMENT CAN DO THE EXAMINATION. IF THE COURT FINDS IT APPROPRIATE FOR THE HEALTH OR SAFETY OF THE DEFENDANT, THE COURT MAY ORDER CONFINEMENT:

(I) IN A MEDICAL WING OR OTHER ISOLATED AND SECURE UNIT OF THE CORRECTIONAL FACILITY; OR

(II) IF A MEDICAL WING OR OTHER SECURE UNIT IS NOT AVAILABLE, IN A MEDICAL FACILITY THAT THE SECRETARY OF THE HEALTH DEPARTMENT DESIGNATES AS APPROPRIATE.

(2) (I) WHEN THE HEALTH DEPARTMENT CAN DO THE EXAMINATION, A COURT UNIT SHALL TAKE THE DEFENDANT TO THE EVALUATION FACILITY THAT THE HEALTH DEPARTMENT DESIGNATES.

(II) AFTER THE EXAMINATION, UNLESS THE HEALTH DEPARTMENT RETAINS THE DEFENDANT, A COURT UNIT SHALL RETURN THE DEFENDANT TO THE PLACE OF CONFINEMENT.

(C) REPORT.

IF A COURT ORDERS AN EXAMINATION UNDER THIS SECTION:

(1) THE HEALTH DEPARTMENT SHALL:

(I) EXAMINE THE DEFENDANT; AND

(II) SEND A REPORT OF ITS OPINIONS TO THE COURT, THE STATE'S ATTORNEY, THE DEFENDANT, AND THE DEFENSE COUNSEL;

(2) THE DEFENDANT IS ENTITLED TO HAVE THE REPORT WITHIN 60 DAYS AFTER THE COURT ORDERS THE EXAMINATION. HOWEVER, FAILURE OF THE HEALTH DEPARTMENT TO SEND THE COMPLETE REPORT WITHIN THAT TIME IS NOT, OF ITSELF, GROUNDS FOR DISMISSAL OF THE CHARGES; AND

(3) FOR GOOD CAUSE SHOWN, THE COURT MAY EXTEND THE TIME FOR EXAMINATION OR ORDER AN ADDITIONAL EXAMINATION.

REVISOR'S NOTE: This section formerly was HG § 12-110.

In subsection (b)(2) of this section, the references to "unit" are substituted

for the former references to "agency" to conform to the terminology used throughout this article.

The only other changes are in style.

Defined terms: "Correctional facility" § 1-101

"Court" § 3-101

"Health Department" § 3-101

3-112. SAME -- COMMITMENT.

(A) IN GENERAL.

EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AFTER A VERDICT OF NOT CRIMINALLY RESPONSIBLE, THE COURT IMMEDIATELY SHALL COMMIT THE DEFENDANT TO THE HEALTH DEPARTMENT FOR INSTITUTIONAL INPATIENT CARE OR TREATMENT.

(B) RETARDED DEFENDANT.

IF THE COURT COMMITS A DEFENDANT WHO WAS FOUND NOT CRIMINALLY RESPONSIBLE PRIMARILY BECAUSE OF MENTAL RETARDATION, THE HEALTH DEPARTMENT SHALL DESIGNATE A FACILITY FOR MENTALLY RETARDED PERSONS FOR CARE AND TREATMENT OF THE COMMITTED PERSON.

(C) RELEASE.

AFTER A VERDICT OF NOT CRIMINALLY RESPONSIBLE, A COURT MAY ORDER THAT A PERSON BE RELEASED, WITH OR WITHOUT CONDITIONS, INSTEAD OF COMMITTED TO THE HEALTH DEPARTMENT, BUT ONLY IF:

(1) THE COURT HAS AVAILABLE AN EVALUATION REPORT WITHIN 90 DAYS PRECEDING THE VERDICT MADE BY AN EVALUATING FACILITY DESIGNATED BY THE HEALTH DEPARTMENT;

(2) THE REPORT INDICATES THAT THE PERSON WOULD NOT BE A DANGER, AS A RESULT OF MENTAL RETARDATION OR MENTAL DISORDER, TO SELF OR TO THE PERSON OR PROPERTY OF OTHERS IF RELEASED, WITH OR WITHOUT CONDITION; AND

(3) THE PERSON AND THE STATE'S ATTORNEY AGREE TO THE RELEASE AND TO ANY CONDITIONS FOR RELEASE THAT THE COURT IMPOSES.

(D) NOTIFICATION OF CENTRAL REPOSITORY.

THE COURT SHALL NOTIFY THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF EACH PERSON IT ORDERS COMMITTED UNDER THIS SECTION.

REVISOR'S NOTE: This section formerly was HG § 12-111.

In subsection (d) of this section, the reference to "Criminal Justice Information System Central Repository" is substituted for the former reference to "central repository of the criminal justice information system" to conform to the terminology used in Title 10, Subtitle 2 of this article.

The only other changes are in style.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Health Department" § 3-101

"Mental disorder" § 3-101

3-113. REPORT ON COMMITTED PERSONS.

(A) IN GENERAL.

(1) WITHIN 10 DAYS AFTER COMMITMENT OF A PERSON UNDER § 3-112 OF THIS TITLE, THE FACILITY THAT RECEIVES THE COMMITTED PERSON SHALL SEND TO THE HEALTH DEPARTMENT AN ADMISSION REPORT ON THE COMMITTED PERSON.

(2) THE REPORT SHALL CONTAIN THE INFORMATION AND BE ON THE FORM THAT THE HEALTH DEPARTMENT REQUIRES.

(B) NOTIFICATION OF MOVEMENT.

(1) THE FACILITY OF THE HEALTH DEPARTMENT THAT HAS CHARGE OF THE COMMITTED PERSON SHALL NOTIFY THE STATE'S ATTORNEY ANY TIME A COMMITTED PERSON:

(I) IS TRANSFERRED;

(II) IS APPROVED FOR TEMPORARY LEAVES OF MORE THAN 24 HOURS; OR

(III) IS ABSENT WITHOUT AUTHORIZATION.

(2) FOR INFORMATION PURPOSES, A COPY OF THIS NOTICE SHALL BE SENT FOR INCLUSION IN THE COURT FILE AND TO COUNSEL FOR THE COMMITTED PERSON.

(C) NOTIFICATION OF CENTRAL REPOSITORY.

THE FACILITY OF THE HEALTH DEPARTMENT THAT HAS CHARGE OF A COMMITTED PERSON SHALL NOTIFY THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY IF THE COMMITTED PERSON ESCAPES.

REVISOR'S NOTE: This section formerly was HG § 12-112.

In subsection (c) of this section, the reference to "Criminal Justice Information System Central Repository" is substituted for the former

reference to "central repository of the criminal justice information system" to conform to the terminology used in Title 10, Subtitle 2 of this article.

The only other changes are in style.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Health Department" § 3-101

3-114. ELIGIBILITY FOR RELEASE.

(A) IN GENERAL.

A COMMITTED PERSON MAY BE RELEASED UNDER THE PROVISIONS OF THIS SECTION AND §§ 3-115 THROUGH 3-122 OF THIS TITLE.

(B) DISCHARGE.

A COMMITTED PERSON IS ELIGIBLE FOR DISCHARGE FROM COMMITMENT ONLY IF THAT PERSON WOULD NOT BE A DANGER, AS A RESULT OF MENTAL DISORDER OR MENTAL RETARDATION, TO SELF OR TO THE PERSON OR PROPERTY OF OTHERS IF DISCHARGED.

(C) CONDITIONAL RELEASE.

A COMMITTED PERSON IS ELIGIBLE FOR CONDITIONAL RELEASE FROM COMMITMENT ONLY IF THAT PERSON WOULD NOT BE A DANGER, AS A RESULT OF MENTAL DISORDER OR MENTAL RETARDATION, TO SELF OR TO THE PERSON OR PROPERTY OF OTHERS IF RELEASED FROM CONFINEMENT WITH CONDITIONS IMPOSED BY THE COURT.

(D) BURDEN OF PROOF.

TO BE RELEASED, A COMMITTED PERSON HAS THE BURDEN TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE ELIGIBILITY FOR DISCHARGE OR ELIGIBILITY FOR CONDITIONAL RELEASE.

REVISOR'S NOTE: This section formerly was HG § 12-113.

The only changes are in style.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Mental disorder" § 3-101

3-115. RELEASE HEARING.

(A) WHEN REQUIRED.

WITHIN 50 DAYS AFTER COMMITMENT TO THE HEALTH DEPARTMENT UNDER § 3-112 OF THIS TITLE, A HEARING OFFICER OF THE HEALTH DEPARTMENT SHALL

HOLD A HEARING TO CONSIDER ANY RELEVANT INFORMATION THAT WILL ENABLE THE HEARING OFFICER TO MAKE RECOMMENDATIONS TO THE COURT AS TO WHETHER THE COMMITTED PERSON IS ELIGIBLE FOR RELEASE UNDER § 3-114 OF THIS TITLE.

(B) POSTPONEMENT OR WAIVER.

(1) THE RELEASE HEARING MAY BE POSTPONED FOR GOOD CAUSE OR BY AGREEMENT OF THE COMMITTED PERSON AND THE HEALTH DEPARTMENT.

(2) THE COMMITTED PERSON MAY WAIVE THE RELEASE HEARING.

(C) EVALUATION AND REPORT.

(1) UNLESS THE HEALTH DEPARTMENT HAS COMPLETED AN EXAMINATION AND REPORT DURING THE 90 DAYS PRECEDING THE RELEASE HEARING, AT LEAST 7 DAYS BEFORE THE RELEASE HEARING IS SCHEDULED, THE HEALTH DEPARTMENT SHALL COMPLETE AN EXAMINATION AND EVALUATION OF THE COMMITTED PERSON.

(2) WHETHER OR NOT THE RELEASE HEARING IS WAIVED, THE HEALTH DEPARTMENT SHALL SEND A COPY OF THE EVALUATION REPORT:

(I) TO THE COMMITTED PERSON;

(II) TO COUNSEL FOR THE COMMITTED PERSON;

(III) TO THE STATE'S ATTORNEY; AND

(IV) TO THE OFFICE OF ADMINISTRATIVE HEARINGS.

(D) NOTICE.

(1) THE HEALTH DEPARTMENT SHALL SEND NOTICE OF THE RELEASE HEARING TO:

(I) THE COMMITTED PERSON;

(II) COUNSEL FOR THE COMMITTED PERSON; AND

(III) THE STATE'S ATTORNEY.

(2) THE OFFICE SHALL ISSUE ANY APPROPRIATE SUBPOENA FOR ANY PERSON OR EVIDENCE. THE COURT MAY COMPEL OBEDIENCE TO THE SUBPOENA.

(E) CONDUCT OF HEARING.

(1) FORMAL RULES OF EVIDENCE DO NOT APPLY TO THE RELEASE HEARING, AND THE OFFICE MAY ADMIT AND CONSIDER ANY RELEVANT EVIDENCE.

(2) THE HEARING SHALL BE RECORDED, BUT THE RECORDING NEED NOT BE TRANSCRIBED UNLESS REQUESTED. THE REQUESTING PARTY SHALL PAY THE COSTS OF THE TRANSCRIPT AND, IF EXCEPTIONS HAVE BEEN FILED, PROVIDE COPIES TO OTHER PARTIES AND THE COURT. IF THE COURT ORDERS A TRANSCRIPT, THE COURT SHALL PAY THE COSTS OF THE TRANSCRIPT.

(3) ANY RECORD THAT RELATES TO EVALUATION OR TREATMENT OF THE COMMITTED PERSON BY THIS STATE SHALL BE MADE AVAILABLE, ON REQUEST, TO THE COMMITTED PERSON OR COUNSEL FOR THE COMMITTED PERSON.

(4) THE HEALTH DEPARTMENT SHALL PRESENT THE EVALUATION REPORT ON THE COMMITTED PERSON AND ANY OTHER RELEVANT EVIDENCE.

(5) AT THE RELEASE HEARING, THE COMMITTED PERSON IS ENTITLED:

(I) TO BE PRESENT, TO OFFER EVIDENCE, AND TO CROSS-EXAMINE ADVERSE WITNESSES; AND

(II) TO BE REPRESENTED BY COUNSEL, INCLUDING, IF THE COMMITTED PERSON IS INDIGENT, THE PUBLIC DEFENDER OR A DESIGNEE OF THE PUBLIC DEFENDER.

(6) AT THE RELEASE HEARING, THE STATE'S ATTORNEY AND THE HEALTH DEPARTMENT ARE ENTITLED TO BE PRESENT, TO OFFER EVIDENCE, AND TO CROSS-EXAMINE WITNESSES.

REVISOR'S NOTE: This section formerly was HG § 12-114.

The defined term "person" is substituted for the former reference to "individual" to conform to the terminology used throughout this article.

The only other changes are in style.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Health Department" § 3-101

"Office" § 3-101

3-116. REPORT OF OFFICE.

(A) IN GENERAL.

WITHIN 10 DAYS AFTER THE HEARING ENDS, THE OFFICE SHALL PREPARE A REPORT OF RECOMMENDATIONS TO THE COURT THAT CONTAINS:

(1) A SUMMARY OF THE EVIDENCE PRESENTED AT THE HEARING;

(2) RECOMMENDATIONS OF THE OFFICE AS TO WHETHER THE COMMITTED PERSON PROVED, BY A PREPONDERANCE OF THE EVIDENCE, ELIGIBILITY FOR CONDITIONAL RELEASE OR ELIGIBILITY FOR DISCHARGE; AND

(3) IF THE OFFICE DETERMINES THAT THE COMMITTED PERSON PROVED ELIGIBILITY FOR CONDITIONAL RELEASE, THE RECOMMENDED CONDITIONS OF THE RELEASE IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

(B) CONSIDERATION OF CONDITIONS FOR RELEASE.

IN RECOMMENDING THE CONDITIONS OF A CONDITIONAL RELEASE, THE OFFICE SHALL GIVE CONSIDERATION TO ANY SPECIFIC CONDITIONS RECOMMENDED BY THE FACILITY OF THE HEALTH DEPARTMENT THAT HAS CHARGE OF THE COMMITTED PERSON, THE COMMITTED PERSON, OR COUNSEL FOR THE COMMITTED PERSON.

(C) COPIES OF REPORT.

THE OFFICE SHALL SEND COPIES OF THE REPORT OF RECOMMENDATIONS:

(1) TO THE COMMITTED PERSON;

(2) TO COUNSEL FOR THE COMMITTED PERSON;

(3) TO THE STATE'S ATTORNEY;

(4) TO THE COURT; AND

(5) TO THE FACILITY OF THE HEALTH DEPARTMENT THAT HAS CHARGE OF THE COMMITTED PERSON.

(D) EXCEPTIONS.

THE COMMITTED PERSON, THE STATE'S ATTORNEY, OR THE HEALTH DEPARTMENT MAY FILE EXCEPTIONS TO THE REPORT OF THE OFFICE WITHIN 10 DAYS AFTER RECEIVING THE REPORT.

REVISOR'S NOTE: This section formerly was HG § 12-115.

Throughout this section, the defined term "Office" is substituted for the former obsolete references to "hearing officer of the Department" and "hearing officer" for accuracy.

The only other changes are in style.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Health Department" § 3-101

"Office" § 3-101

3-117. COURT REVIEW OF REPORT OF OFFICE.

(A) IN GENERAL.

WITHIN 30 DAYS AFTER THE COURT RECEIVES THE REPORT OF RECOMMENDATIONS FROM THE OFFICE:

(1) THE COURT ON ITS OWN INITIATIVE MAY HOLD A HEARING; OR

(2) IF TIMELY EXCEPTIONS ARE FILED, OR IF THE COURT REQUIRES MORE INFORMATION, THE COURT SHALL HOLD A HEARING UNLESS THE COMMITTED PERSON AND THE STATE'S ATTORNEY WAIVE THE HEARING.

(B) CONDUCT OF HEARING.

(1) THE COURT SHALL HOLD THE HEARING ON THE RECORD THAT WAS MADE BEFORE THE OFFICE.

(2) AT THE JUDICIAL HEARING, THE COMMITTED PERSON IS ENTITLED TO BE PRESENT AND TO BE REPRESENTED BY COUNSEL.

(3) THE COURT MAY CONTINUE ITS HEARING AND REMAND FOR THE OFFICE TO TAKE ADDITIONAL EVIDENCE.

REVISOR'S NOTE: This section formerly was HG § 12-116.

The defined term "Office" is substituted for the former obsolete references to "hearing officer of the Department" and "hearing officer" for accuracy.

The only other changes are in style.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Office" § 3-101

3-118. COURT ACTION ON REPORT OF OFFICE.

(A) IN GENERAL.

WITHIN 15 DAYS AFTER A JUDICIAL HEARING ENDS OR IS WAIVED, THE COURT SHALL DETERMINE WHETHER THE EVIDENCE INDICATES THAT THE COMMITTED PERSON PROVED BY A PREPONDERANCE OF THE EVIDENCE ELIGIBILITY FOR RELEASE, WITH OR WITHOUT CONDITIONS, IN ACCORDANCE WITH § 3-114 OF THIS TITLE, AND ENTER AN APPROPRIATE ORDER CONTAINING A CONCISE STATEMENT OF THE FINDINGS OF THE COURT, THE REASONS FOR THOSE FINDINGS, AND ORDERING:

(1) CONTINUED COMMITMENT;

(2) CONDITIONAL RELEASE; OR

(3) DISCHARGE FROM COMMITMENT.

(B) ORDER WITHOUT HEARING.

(1) IF TIMELY EXCEPTIONS ARE NOT FILED, AND, ON REVIEW OF THE REPORT OF RECOMMENDATIONS FROM THE OFFICE, THE COURT DETERMINES THAT THE RECOMMENDATIONS ARE SUPPORTED BY THE EVIDENCE AND A JUDICIAL HEARING IS NOT NECESSARY, THE COURT SHALL ENTER AN ORDER IN ACCORDANCE WITH THE RECOMMENDATIONS WITHIN 30 DAYS AFTER RECEIVING THE REPORT FROM THE OFFICE.

(2) A COURT MAY NOT ENTER AN ORDER THAT IS NOT IN ACCORDANCE WITH THE RECOMMENDATIONS FROM THE OFFICE UNLESS THE COURT HOLDS A HEARING OR THE HEARING IS WAIVED.

(C) LIMITATION ON CONDITIONS OF RELEASE.

UNLESS THE CONDITIONAL RELEASE IS EXTENDED UNDER § 3-122 OF THIS TITLE, THE COURT MAY NOT CONTINUE THE CONDITIONS OF A CONDITIONAL RELEASE FOR MORE THAN 5 YEARS.

(D) NOTIFICATION OF CENTRAL REPOSITORY.

THE COURT SHALL NOTIFY THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY WHENEVER IT ORDERS CONDITIONAL RELEASE OR DISCHARGE OF A COMMITTED PERSON.

(E) APPEALS.

(1) AN APPEAL FROM A DISTRICT COURT ORDER SHALL BE ON THE RECORD IN THE CIRCUIT COURT.

(2) AN APPEAL FROM A CIRCUIT COURT ORDER SHALL BE BY APPLICATION FOR LEAVE TO APPEAL TO THE COURT OF SPECIAL APPEALS.

REVISOR'S NOTE: This section formerly was HG § 12-117.

In subsection (b) of this section, the defined term "Office" is substituted for the former obsolete reference to "hearing officer" for accuracy.

In subsection (d) of this section, the reference to "Criminal Justice Information System Central Repository" is substituted for the former reference to "central repository of the criminal justice information system" to conform to the terminology used in Title 10, Subtitle 2 of this article.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Office" § 3-101

3-119. APPLICATION FOR RELEASE.

(A) IN GENERAL.

(1) NOT EARLIER THAN 1 YEAR AFTER THE INITIAL RELEASE HEARING ENDS OR WAS WAIVED, AND NOT MORE THAN ONCE A YEAR THEREAFTER, A

COMMITTED PERSON MAY APPLY FOR RELEASE UNDER EITHER SUBSECTION (B) OR (C) OF THIS SECTION, BUT NOT BOTH.

(2) NOTWITHSTANDING THE TIME RESTRICTIONS IN PARAGRAPH (1) OF THIS SUBSECTION, A COMMITTED PERSON MAY FILE AN APPLICATION FOR RELEASE AT ANY TIME IF THE APPLICATION IS ACCOMPANIED BY AN AFFIDAVIT OF A PHYSICIAN OR LICENSED PSYCHOLOGIST THAT STATES AN IMPROVEMENT IN THE MENTAL CONDITION OF THE COMMITTED PERSON SINCE THE LAST HEARING.

(B) ADMINISTRATIVE PROCEDURE.

(1) TO APPLY FOR RELEASE UNDER THIS SUBSECTION, THE COMMITTED PERSON SHALL FILE AN APPLICATION FOR RELEASE WITH THE HEALTH DEPARTMENT AND NOTIFY THE COURT AND STATE'S ATTORNEY, IN WRITING, OF THIS REQUEST.

(2) THE PROVISIONS OF THIS TITLE GOVERNING ADMINISTRATIVE HEARING AND JUDICIAL DETERMINATION OF ELIGIBILITY FOR RELEASE APPLY TO ANY APPLICATION FOR RELEASE UNDER THIS SUBSECTION.

(C) COURT PROCEDURE.

(1) TO APPLY FOR RELEASE UNDER THIS SUBSECTION, THE COMMITTED PERSON SHALL FILE A PETITION FOR RELEASE WITH THE COURT THAT ORDERED COMMITMENT.

(2) THE COMMITTED PERSON SHALL SEND A COPY OF THE PETITION FOR RELEASE TO THE HEALTH DEPARTMENT AND THE STATE'S ATTORNEY.

(3) IF THE COMMITTED PERSON REQUESTS A TRIAL BY JURY, THE TRIAL SHALL BE HELD IN A CIRCUIT COURT WITH A JURY AS IN A CIVIL ACTION AT LAW.

(4) THE TRIER OF FACT SHALL:

(I) DETERMINE WHETHER THE COMMITTED PERSON HAS PROVED ELIGIBILITY FOR RELEASE BY A PREPONDERANCE OF THE EVIDENCE; AND

(II) RENDER A VERDICT FOR:

1. CONTINUED COMMITMENT;

2. CONDITIONAL RELEASE; OR

3. DISCHARGE FROM COMMITMENT.

(5) IF THE TRIER OF FACT RENDERS A VERDICT FOR CONDITIONAL RELEASE, WITHIN 30 DAYS AFTER THE VERDICT, THE COURT SHALL RELEASE THE COMMITTED PERSON UNDER CONDITIONS IT IMPOSES IN ACCORDANCE WITH SPECIFIC RECOMMENDATIONS FOR CONDITIONS UNDER § 3-116(B) OF THIS TITLE.

(D) APPEALS.

(1) AN APPEAL FROM A DISTRICT COURT ORDER SHALL BE ON THE RECORD IN THE CIRCUIT COURT.

(2) AN APPEAL FROM A CIRCUIT COURT ORDER SHALL BE BY APPLICATION FOR LEAVE TO APPEAL TO THE COURT OF SPECIAL APPEALS.

REVISOR'S NOTE: This section formerly was HG § 12-118.

In subsection (c)(5) of this section, the reference to "the trier of fact" is substituted for the former misleading reference to "the court" to conform to the terminology used in subsection (c)(4) of this section.

The only other changes are in style.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Health Department" § 3-101

3-120. CONDITIONAL RELEASE REQUEST BY HEALTH DEPARTMENT.

(A) IN GENERAL.

(1) IF AT ANY TIME THE HEALTH DEPARTMENT CONSIDERS THAT A COMMITTED PERSON IS ELIGIBLE FOR CONDITIONAL RELEASE, THE HEALTH DEPARTMENT MAY APPLY FOR THE CONDITIONAL RELEASE TO THE COURT THAT COMMITTED THE PERSON.

(2) THE HEALTH DEPARTMENT SHALL SEND A COPY OF THE APPLICATION FOR CONDITIONAL RELEASE:

(I) TO THE COMMITTED PERSON;

(II) TO COUNSEL FOR THE COMMITTED PERSON; AND

(III) TO THE STATE'S ATTORNEY, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

(B) COURT ACTION.

WITHIN 30 DAYS AFTER RECEIPT OF THE APPLICATION FROM THE HEALTH DEPARTMENT, THE COURT SHALL ISSUE AN ORDER THAT IS IN ACCORDANCE WITH § 3-114 OF THIS TITLE FOR:

(1) CONTINUED COMMITMENT; OR

(2) CONDITIONAL RELEASE UNDER THE CONDITIONS IT IMPOSES AFTER GIVING CONSIDERATION TO THE RECOMMENDATIONS OF SPECIFIC CONDITIONS FROM THE HEALTH DEPARTMENT.

(C) APPLICATION FOR CHANGE IN CONDITIONAL RELEASE.

IF THE COURT ORDERS A CONDITIONAL RELEASE OF THE COMMITTED PERSON UNDER THIS SECTION, THE COMMITTED PERSON, THE STATE'S ATTORNEY, OR THE HEALTH DEPARTMENT MAY APPLY FOR A REVOCATION, CHANGE, OR EXTENSION UNDER § 3-122 OF THIS TITLE.

(D) APPEALS.

(1) AN APPEAL FROM A DISTRICT COURT ORDER SHALL BE ON THE RECORD IN CIRCUIT COURT.

(2) AN APPEAL FROM A CIRCUIT COURT ORDER SHALL BE BY APPLICATION FOR LEAVE TO APPEAL TO THE COURT OF SPECIAL APPEALS.

REVISOR'S NOTE: This section formerly was HG § 12-119.

The only changes are in style.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Health Department" § 3-101

3-121. ALLEGATIONS OF VIOLATIONS OF CONDITIONAL RELEASE.

(A) DETERMINATION OF FACTUAL BASIS BY STATE'S ATTORNEY.

(1) IF THE STATE'S ATTORNEY RECEIVES A REPORT THAT ALLEGES THAT A COMMITTED PERSON HAS VIOLATED A CONDITION OF A CONDITIONAL RELEASE, OR IF THE STATE'S ATTORNEY IS NOTIFIED BY THE COURT OR HEALTH DEPARTMENT UNDER SUBSECTION (B) OF THIS SECTION, THE STATE'S ATTORNEY SHALL DETERMINE WHETHER THERE IS A FACTUAL BASIS FOR THE COMPLAINT.

(2) IF THE STATE'S ATTORNEY DETERMINES THAT THERE IS NO FACTUAL BASIS FOR THE COMPLAINT, THE STATE'S ATTORNEY SHALL NOTIFY THE PERSON WHO MADE THE REPORT AND TAKE NO FURTHER ACTION.

(3) IF THE STATE'S ATTORNEY DETERMINES THAT THERE IS A FACTUAL BASIS TO BELIEVE THAT THE COMMITTED PERSON HAS VIOLATED THE TERMS OF A CONDITIONAL RELEASE AND BELIEVES FURTHER ACTION BY THE COURT IS NECESSARY, THE STATE'S ATTORNEY PROMPTLY SHALL:

(I) NOTIFY THE HEALTH DEPARTMENT OF THE ALLEGED VIOLATION; AND

(II) FILE WITH THE COURT A PETITION FOR REVOCATION OR MODIFICATION OF CONDITIONAL RELEASE AND SEND A COPY OF THE PETITION TO THE HEALTH DEPARTMENT.

(B) ACTION BY COURT AND HEALTH DEPARTMENT.

(1) IF A COURT RECEIVES A REPORT THAT ALLEGES THAT A COMMITTED PERSON HAS VIOLATED A CONDITION OF A CONDITIONAL RELEASE, THE COURT PROMPTLY SHALL:

(I) NOTIFY THE HEALTH DEPARTMENT; AND

(II) NOTIFY THE STATE'S ATTORNEY AND PROVIDE THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON WHO REPORTED THE VIOLATION AND A COPY OF THE ORDER FOR CONDITIONAL RELEASE.

(2) IF THE HEALTH DEPARTMENT RECEIVES A REPORT THAT ALLEGES THAT A COMMITTED PERSON HAS VIOLATED CONDITIONAL RELEASE, THE DEPARTMENT SHALL:

(I) NOTIFY THE COURT AND THE STATE'S ATTORNEY; AND

(II) PROVIDE THE STATE'S ATTORNEY WITH THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON WHO REPORTED THE VIOLATION AND A COPY OF THE ORDER FOR CONDITIONAL RELEASE.

(C) PETITION FOR REVOCATION OR MODIFICATION.

THE PETITION FOR REVOCATION OR MODIFICATION OF A CONDITIONAL RELEASE SHALL CONTAIN:

(1) A STATEMENT THAT THE COMMITTED PERSON HAS VIOLATED A TERM OF A CONDITIONAL RELEASE AND THAT THERE IS THEREFORE REASON TO BELIEVE THAT THE COMMITTED PERSON NO LONGER MEETS THE CRITERIA FOR ELIGIBILITY FOR CONDITIONAL RELEASE;

(2) A STATEMENT OF THE CONDITIONS VIOLATED;

(3) THE FACTUAL BASIS FOR THE STATEMENTS IN ITEMS (1) AND (2) OF THIS SUBSECTION;

(4) THE MOST RECENT EVALUATION REPORT ON THE COMMITTED PERSON; AND

(5) THE DESIGNATION BY THE HEALTH DEPARTMENT OF THE FACILITY TO RECEIVE THE RETURNED COMMITTED PERSON.

(D) DETERMINATION OF NO PROBABLE CAUSE.

IF THE COURT'S REVIEW OF THE PETITION DETERMINES THAT THERE IS NO PROBABLE CAUSE TO BELIEVE THAT THE COMMITTED PERSON HAS VIOLATED A CONDITIONAL RELEASE, THE COURT SHALL:

(1) NOTE THE DETERMINATION ON THE PETITION AND FILE IT IN THE COURT FILE ON THE COMMITTED PERSON; AND

(2) NOTIFY THE STATE'S ATTORNEY, THE HEALTH DEPARTMENT, AND THE PERSON WHO REPORTED THE VIOLATION.

(E) DETERMINATION OF PROBABLE CAUSE.

IF THE COURT'S REVIEW OF THE PETITION DETERMINES THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE COMMITTED PERSON HAS VIOLATED A CONDITIONAL RELEASE, THE COURT PROMPTLY SHALL:

(1) ISSUE A HOSPITAL WARRANT FOR THE COMMITTED PERSON AND DIRECT THAT ON EXECUTION THE COMMITTED PERSON SHALL BE TRANSPORTED TO THE FACILITY DESIGNATED BY THE HEALTH DEPARTMENT; AND

(2) SEND A COPY OF THE HOSPITAL WARRANT AND THE PETITION TO:

(I) THE STATE'S ATTORNEY;

(II) THE PUBLIC DEFENDER;

(III) THE COUNSEL OF RECORD FOR THE COMMITTED PERSON;

(IV) THE PERSON WHO REPORTED THE VIOLATION;

(V) THE OFFICE; AND

(VI) THE HEALTH DEPARTMENT.

(F) REVOCATION HEARING REQUIRED.

WITHIN 10 DAYS AFTER THE COMMITTED PERSON IS RETURNED TO THE HEALTH DEPARTMENT IN ACCORDANCE WITH THE HOSPITAL WARRANT, THE OFFICE SHALL HOLD A HEARING UNLESS:

(1) THE HEARING IS POSTPONED OR WAIVED BY AGREEMENT OF THE PARTIES; OR

(2) THE OFFICE POSTPONES THE HEARING FOR GOOD CAUSE SHOWN.

(G) HEARING PROCEDURES.

AT THE HEARING ON REVOCATION OR MODIFICATION:

(1) THE COMMITTED PERSON IS ENTITLED TO BE REPRESENTED BY COUNSEL INCLUDING, IF THE COMMITTED PERSON IS INDIGENT, THE PUBLIC DEFENDER OR DESIGNEE OF THE PUBLIC DEFENDER;

(2) THE COMMITTED PERSON, HEALTH DEPARTMENT, AND STATE'S ATTORNEY ARE ENTITLED TO OFFER EVIDENCE, TO CROSS-EXAMINE ADVERSE WITNESSES, AND TO EXERCISE ANY OTHER RIGHTS THAT THE OFFICE CONSIDERS NECESSARY FOR A FAIR HEARING; AND

(3) THE OFFICE SHALL FIND:

(I) WHETHER, BY A PREPONDERANCE OF THE EVIDENCE, THE STATE HAS PROVED THAT THE COMMITTED PERSON VIOLATED CONDITIONAL RELEASE; AND

(II) WHETHER, BY A PREPONDERANCE OF THE EVIDENCE, THE COMMITTED PERSON NEVERTHELESS HAS PROVED ELIGIBILITY FOR CONDITIONAL RELEASE.

(H) REPORT AND EXCEPTIONS.

(1) THE OFFICE PROMPTLY SHALL:

(I) SEND A REPORT OF THE HEARING AND DETERMINATION TO THE COURT; AND

(II) SEND COPIES OF THE REPORT TO THE COMMITTED PERSON, COUNSEL FOR THE COMMITTED PERSON, THE STATE'S ATTORNEY, AND THE HEALTH DEPARTMENT.

(2) WITHIN 5 DAYS AFTER RECEIPT OF THE REPORT OF THE OFFICE, THE COMMITTED PERSON, THE STATE'S ATTORNEY, OR THE HEALTH DEPARTMENT MAY FILE EXCEPTIONS TO THE DETERMINATION OF THE OFFICE.

(I) COURT ACTION.

AFTER THE COURT CONSIDERS THE REPORT OF THE OFFICE, THE EVIDENCE, AND ANY EXCEPTIONS FILED, WITHIN 10 DAYS AFTER THE COURT RECEIVES THE REPORT, THE COURT SHALL:

(1) REVOKE THE CONDITIONAL RELEASE AND ORDER THE COMMITTED PERSON RETURNED TO THE FACILITY DESIGNATED BY THE HEALTH DEPARTMENT;

(2) MODIFY THE CONDITIONAL RELEASE AS REQUIRED BY THE EVIDENCE;

(3) CONTINUE THE PRESENT CONDITIONS OF RELEASE; OR

(4) EXTEND THE CONDITIONAL RELEASE BY AN ADDITIONAL TERM OF 5 YEARS.

(J) NOTIFICATION OF CENTRAL REPOSITORY.

THE COURT SHALL NOTIFY THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE ISSUANCE OF ANY HOSPITAL WARRANT AND ANY REVOCATION IT ORDERS UNDER THIS SECTION.

(K) APPEALS.

(1) AN APPEAL FROM A DISTRICT COURT ORDER SHALL BE ON THE RECORD IN CIRCUIT COURT.

(2) AN APPEAL FROM A CIRCUIT COURT ORDER SHALL BE BY APPLICATION FOR LEAVE TO APPEAL TO THE COURT OF SPECIAL APPEALS.

REVISOR'S NOTE: This section formerly was HG § 12-120.

Throughout this section, the defined term "Office" is substituted for the former obsolete references to a "hearing officer of the Department" and "hearing officer" for accuracy.

In subsection (j) of this section, the reference to "Criminal Justice Information System Central Repository" is substituted for the former reference to "central repository of the criminal justice information system" to conform to the terminology used in Title 10, Subtitle 2 of this article.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Health Department" § 3-101

"Hospital warrant" § 3-101

"Office" § 3-101

"Person" § 1-101

3-122. APPLICATION FOR CHANGE IN CONDITIONAL RELEASE.

(A) IN GENERAL.

(1) AN APPLICATION TO THE COURT FOR A CHANGE IN CONDITIONAL RELEASE OF A COMMITTED PERSON MAY BE MADE BY:

(I) THE HEALTH DEPARTMENT OR THE STATE'S ATTORNEY AT ANY TIME; OR

(II) THE COMMITTED PERSON NOT EARLIER THAN 6 MONTHS AFTER THE COURT ORDERED THE CONDITIONAL RELEASE, UNLESS THE COURT FOR GOOD CAUSE PERMITS AN EARLIER APPLICATION.

(2) THE APPLICANT FOR A CHANGE IN CONDITIONAL RELEASE SHALL NOTIFY THE COURT AND OTHER PARTIES, IN WRITING, OF THE APPLICATION AND THE REASONS FOR THE REQUESTED CHANGE.

(B) BURDEN OF PROOF.

THE BURDEN OF PROOF OF ANY ISSUE RAISED BY THE APPLICATION FOR CHANGE IN CONDITIONAL RELEASE RESTS WITH THE APPLICANT.

(C) COURT ACTION.

AFTER THE COURT CONSIDERS THE APPLICATION FOR CHANGE IN CONDITIONAL RELEASE AND THE EVIDENCE, IN ACCORDANCE WITH § 3-114 OF THIS TITLE, THE COURT SHALL:

(1) CHANGE THE CONDITIONS;

(2) IMPOSE APPROPRIATE ADDITIONAL CONDITIONS;

(3) REVOKE THE CONDITIONAL RELEASE;

(4) CONTINUE THE PRESENT CONDITIONS OF RELEASE; OR

(5) EXTEND THE CONDITIONAL RELEASE BY AN ADDITIONAL TERM OF 5 YEARS.

(D) REAPPLICATION.

(1) NOT EARLIER THAN 1 YEAR AFTER THE COURT ACTION ON THE APPLICATION FOR CHANGE FILED BY THE COMMITTED PERSON, AND NOT MORE THAN ONCE A YEAR THEREAFTER, A COMMITTED PERSON MAY REAPPLY FOR A CHANGE IN CONDITIONAL RELEASE.

(2) NOTWITHSTANDING THE TIME RESTRICTIONS IN PARAGRAPH (1) OF THIS SUBSECTION, A COMMITTED PERSON MAY APPLY FOR A CHANGE IN CONDITIONAL RELEASE AT ANY TIME IF THE APPLICATION IS ACCOMPANIED BY AN AFFIDAVIT OF A PHYSICIAN OR LICENSED PSYCHOLOGIST THAT STATES AN IMPROVEMENT IN THE MENTAL CONDITION OF THE COMMITTED PERSON.

REVISOR'S NOTE: This section formerly was HG § 12-121.

The only changes are in style.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Health Department" § 3-101

3-123. NOTIFICATION OF VICTIM.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

(2) "VICTIM" MEANS A VICTIM OF A CRIME OF VIOLENCE OR A VICTIM WHO HAS FILED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS ARTICLE.

(3) "VICTIM'S REPRESENTATIVE" INCLUDES A FAMILY MEMBER OR GUARDIAN OF A VICTIM WHO IS:

(I) A MINOR;

(II) DECEASED; OR

(III) DISABLED.

(B) NOTIFICATION OF RIGHTS.

A STATE'S ATTORNEY SHALL NOTIFY A VICTIM OR VICTIM'S REPRESENTATIVE OF ALL RIGHTS PROVIDED UNDER THIS SECTION.

(C) REQUEST FOR NOTIFICATION.

(1) A VICTIM OR VICTIM'S REPRESENTATIVE MAY REQUEST NOTIFICATION UNDER THIS SECTION BY:

(I) NOTIFYING THE STATE'S ATTORNEY AND THE HEALTH DEPARTMENT ONCE EVERY 2 YEARS IN WRITING OF THE REQUEST FOR NOTIFICATION; OR

(II) FILING A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS ARTICLE.

(2) A REQUEST FOR NOTIFICATION UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION SHALL DESIGNATE:

(I) THE ADDRESS AND TELEPHONE NUMBER OF THE VICTIM; OR

(II) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF A VICTIM'S REPRESENTATIVE.

(3) A VICTIM OR VICTIM'S REPRESENTATIVE MAY, AT ANY TIME, WITHDRAW A REQUEST FOR NOTIFICATION.

(D) NOTIFICATION BY HEALTH DEPARTMENT.

IF A VICTIM OR VICTIM'S REPRESENTATIVE HAS REQUESTED NOTIFICATION IN THE MANNER PROVIDED UNDER SUBSECTION (C) OF THIS SECTION, THE HEALTH DEPARTMENT SHALL PROMPTLY NOTIFY THE VICTIM OR THE VICTIM'S REPRESENTATIVE IN WRITING WHEN:

(1) THE HEALTH DEPARTMENT RECEIVES A COURT ORDER TO EXAMINE A DEFENDANT UNDER § 3-111 OF THIS TITLE;

(2) THE HEALTH DEPARTMENT RECEIVES A COURT ORDER COMMITTING A DEFENDANT TO THE HEALTH DEPARTMENT UNDER § 3-112 OF THIS TITLE;

(3) A HEARING IS SCHEDULED UNDER § 3-115 OF THIS TITLE;

(4) THE HEALTH DEPARTMENT RECEIVES NOTICE THAT A COMMITTED PERSON HAS APPLIED FOR A HEARING UNDER § 3-119 OF THIS TITLE;

(5) THE OFFICE RECOMMENDS THAT A COMMITTED PERSON BE RELEASED AFTER A HEARING UNDER § 3-115 OF THIS TITLE;

(6) THE HEALTH DEPARTMENT SUBMITS A RECOMMENDATION TO THE COURT FOR A COMMITTED PERSON'S CONDITIONAL RELEASE UNDER § 3-120 OF THIS TITLE;

(7) THE FACILITY OF THE HEALTH DEPARTMENT THAT HAS CHARGE OF A COMMITTED PERSON HAS NOTIFIED THE STATE'S ATTORNEY THAT A COMMITTED PERSON IS ABSENT WITHOUT AUTHORIZATION; OR

(8) THE HEALTH DEPARTMENT RECEIVES A COURT ORDER FOR THE CONDITIONAL RELEASE OR DISCHARGE FROM COMMITMENT OF A COMMITTED PERSON UNDER § 3-118, § 3-119, OR § 3-120 OF THIS TITLE.

(E) SUBMISSION OF INFORMATION AND REQUESTS.

ON NOTIFICATION BY THE HEALTH DEPARTMENT UNDER SUBSECTION (D) OF THIS SECTION, A VICTIM OR VICTIM'S REPRESENTATIVE MAY SUBMIT, IN WRITING, TO THE STATE'S ATTORNEY AND TO THE FACILITY OF THE HEALTH DEPARTMENT THAT HAS CHARGE OF A COMMITTED PERSON:

(1) ANY INFORMATION THAT THE VICTIM OR VICTIM'S REPRESENTATIVE CONSIDERS RELEVANT; AND

(2) A REQUEST THAT THE COMMITTED PERSON BE PROHIBITED FROM HAVING ANY CONTACT WITH THE VICTIM OR VICTIM'S REPRESENTATIVE, AS A CONDITION OF RELEASE.

(F) TREATMENT OF INFORMATION BY HEALTH DEPARTMENT.

IF A VICTIM OR VICTIM'S REPRESENTATIVE SUBMITS INFORMATION TO THE HEALTH DEPARTMENT UNDER THIS SECTION, THE HEALTH DEPARTMENT SHALL:

(1) CONSIDER THE INFORMATION;

(2) MAINTAIN AT THE FACILITY THAT HAS CHARGE OF THE COMMITTED PERSON, SEPARATE FROM THE MEDICAL RECORD OF THE COMMITTED PERSON, THE WRITTEN STATEMENT OF THE VICTIM OR VICTIM'S REPRESENTATIVE; AND

(3) DELETE THE VICTIM'S OR THE VICTIM'S REPRESENTATIVE'S ADDRESS AND TELEPHONE NUMBER BEFORE ANY DOCUMENT IS EXAMINED BY THE COMMITTED PERSON OR THE COMMITTED PERSON'S REPRESENTATIVE.

(G) CONFIDENTIALITY.

THIS SECTION MAY NOT BE CONSTRUED TO AUTHORIZE THE RELEASE TO THE VICTIM OR VICTIM'S REPRESENTATIVE OF ANY MEDICAL, PSYCHOLOGICAL, OR PSYCHIATRIC INFORMATION ON A COMMITTED PERSON.

(H) NOTICE OF PERSON'S ABSENCE WITHOUT AUTHORIZATION.

THE FACILITY OF THE HEALTH DEPARTMENT THAT HAS CHARGE OF A PERSON UNDER § 3-111 OF THIS TITLE SHALL PROMPTLY NOTIFY THE STATE'S ATTORNEY AND A VICTIM OR A VICTIM'S REPRESENTATIVE WHO HAS REQUESTED NOTIFICATION UNDER THIS SECTION IF THE PERSON IS ABSENT WITHOUT AUTHORIZATION.

(I) IMMUNITY.

AN AGENT OR EMPLOYEE OF THE HEALTH DEPARTMENT WHO ACTS IN COMPLIANCE WITH THIS SECTION SHALL HAVE THE IMMUNITY FROM LIABILITY DESCRIBED UNDER § 5-522 OF THE COURTS ARTICLE.

REVISOR'S NOTE: This section is new language revised without substantive change from former HG § 12-122.

In subsection (a)(3) of this section, the defined term "victim's representative" is substituted for that part of the former definition of "victim" that included "a designated family member of a victim" to conform to the terminology used throughout this article.

In subsection (d)(5) of this section, the defined term "Office" is substituted for the former obsolete reference to an "administrative law judge" for accuracy.

Defined terms: "Committed person" § 3-101

"Court" § 3-101

"Crime of violence" § 1-101

"Health Department" § 3-101

"Person" § 1-101

TITLE 4. PRETRIAL PROCEDURES.

SUBTITLE 1. CHARGING PROCEDURES AND DOCUMENTS.

4-101. CHARGE BY CITATION.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "CITATION" MEANS A WRITTEN CHARGING DOCUMENT THAT A POLICE OFFICER OR FIRE MARSHAL ISSUES TO A DEFENDANT, ALLEGING THE DEFENDANT HAS COMMITTED A CRIME.

(II) "CITATION" DOES NOT INCLUDE AN INDICTMENT, INFORMATION, OR STATEMENT OF CHARGES.

(3) "FIRE MARSHAL" MEANS:

(I) THE STATE FIRE MARSHAL;

(II) A DEPUTY STATE FIRE MARSHAL; OR

(III) AS DESIGNATED UNDER ARTICLE 38A, § 7 OF THE CODE:

1. AN ASSISTANT STATE FIRE MARSHAL; OR

2. A SPECIAL ASSISTANT STATE FIRE MARSHAL.

(4) "POLICE OFFICER" HAS THE MEANING STATED IN § 2-101 OF THIS ARTICLE.

(B) CITATION BY POLICE OFFICER.

(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN ADDITION TO ANY OTHER LAW ALLOWING A CRIME TO BE CHARGED BY CITATION, A POLICE OFFICER MAY ISSUE A CITATION FOR:

(I) MALICIOUS DESTRUCTION OF PROPERTY UNDER ARTICLE 27, § 111(B) OF THE CODE, IF THE AMOUNT OF DAMAGE TO THE PROPERTY IS LESS THAN $500;

(II) DISTURBING THE PEACE OR DISORDERLY CONDUCT UNDER ARTICLE 27, § 121 OF THE CODE; OR

(III) MISDEMEANOR THEFT UNDER ARTICLE 27, § 342(F)(2) OF THE CODE.

(2) A POLICE OFFICER MAY ISSUE A CITATION TO A DEFENDANT IF THE POLICE OFFICER IS SATISFIED WITH THE DEFENDANT'S EVIDENCE OF IDENTITY AND REASONABLY BELIEVES THAT THE DEFENDANT WILL COMPLY WITH THE CITATION.

(C) CITATION BY FIRE MARSHAL.

(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN ADDITION TO ANY OTHER LAW ALLOWING A CRIME TO BE CHARGED BY CITATION, A FIRE MARSHAL MAY ISSUE A CITATION FOR:

(I) DISCHARGING FIREWORKS WITHOUT A PERMIT UNDER ARTICLE 38A, § 16 OF THE CODE;

(II) POSSESSING WITH INTENT TO DISCHARGE OR ALLOWING THE DISCHARGE OF FIREWORKS UNDER ARTICLE 38A, § 16 OF THE CODE; OR

(III) MAINTAINING A FIRE HAZARD UNDER ARTICLE 38A, § 9(A) OF THE CODE.

(2) A FIRE MARSHAL MAY ISSUE A CITATION IF THE FIRE MARSHAL IS SATISFIED WITH THE DEFENDANT'S EVIDENCE OF IDENTITY AND REASONABLY BELIEVES THAT THE DEFENDANT WILL COMPLY WITH THE CITATION.

(D) FORM.

(1) THIS SECTION DOES NOT APPLY TO A CITATION THAT IS:

(I) AUTHORIZED FOR A VIOLATION OF A PARKING ORDINANCE OR A REGULATION ADOPTED BY A STATE UNIT OR POLITICAL SUBDIVISION OF THE STATE UNDER TITLE 26, SUBTITLE 3 OF THE TRANSPORTATION ARTICLE;

(II) AUTHORIZED BY THE DEPARTMENT OF NATURAL RESOURCES UNDER § 1-205 OF THE NATURAL RESOURCES ARTICLE; OR

(III) AUTHORIZED BY BALTIMORE CITY UNDER § 16-16A (SPECIAL ENFORCEMENT OFFICERS) OF THE CODE OF PUBLIC LOCAL LAWS OF BALTIMORE CITY FOR VIOLATION OF A CODE, ORDINANCE, OR PUBLIC LOCAL LAW OF BALTIMORE CITY CONCERNING BUILDING, HOUSING, HEALTH, FIRE, SAFETY, ZONING, OR SANITATION.

(2) THE DISTRICT COURT SHALL PRESCRIBE A UNIFORM, STATEWIDE FORM OF A CITATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 594B-1 and 594B-2.

Throughout this section, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

In the introductory language of subsections (b)(1) and (c)(1) of this section, the former references to law "or rule" are deleted as implicit in the references to "law".

In the introductory language of subsection (b)(1) and (2) of this section, the references to the authority of a police officer to "issue a citation" are substituted for the former references to being "charged by citation" in light of the definition of "citation" in subsection (a)(2)(i) of this section, which specifies that a citation is a charging document.

In subsection (b)(1)(i) of this section, the reference to "$500" is substituted for the former erroneous reference to "$300". *See* Ch. 288, Acts of 2000.

In subsection (b)(1)(ii) of this section, the reference to disturbing the peace "or" disorderly conduct is substituted for the former reference to disturbing the peace "and" disorderly conduct to conform to Art. 27, § 111(b).

In subsection (b)(1)(iii) of this section, the former reference to misdemeanor theft "as defined" is deleted for consistency with subsection (b)(1)(i) and (ii) of this section and because Art. 27, § 342(f)(2) does not define misdemeanor theft.

In subsection (c)(2) of this section, the reference to the authority of a fire marshal to "issue a citation" is substituted for the former authority to "charge a defendant with an offense specified under subsection (d) of this

section by citation" in light of the definition of "citation" in subsection (a)(2)(i) of this section, which specifies that a citation is a charging document.

In subsection (d)(1)(ii) and (iii) of this section, the reference to a citation that is "authorized" is substituted for the former references to citations that are "[p]rescribed" and "[a]dopted" for clarity.

In subsection (d)(1)(i) of this section, the reference to "a State unit or political subdivision of the State" is added to identify the entity authorized to adopt a parking ordinance or regulation under Title 26, Subtitle 3 of the Transportation Article and for consistency with subsection (d)(1)(ii) and (iii) of this section. *See* TR § 26-301.

In subsection (d)(1)(iii) of this section, the former reference to "designated provisions" of the codes, ordinances, and public local laws of Baltimore City is deleted as unnecessary in light of the reference in this subsection and in § 16-16A of the Code of Public Laws of Baltimore City to codes, ordinances, and public local laws of Baltimore City concerning building, housing, health, fire, safety, zoning, and sanitation.

Also in subsection (d)(1)(iii) of this section, the references to the disjunctive "or" are substituted for the former references to the conjunctive "and" to avoid the unreasonable implication that a violation must simultaneously violate a code, ordinance, and public local law in each of the subject areas of housing, health, fire, safety, zoning, and sanitation.

In subsection (d)(2) of this section, the former reference to a citation "used as a charging document" is deleted as unnecessary in light of subsection (a)(2)(i) of this section, which defines a citation as a charging document.

Defined terms: "Charging document" § 1-101

"State" § 1-101

4-102. CHARGE BY CRIMINAL INFORMATION.

A STATE'S ATTORNEY MAY CHARGE BY INFORMATION:

(1) IN A CASE INVOLVING A FELONY THAT DOES NOT INVOLVE A FELONY WITHIN THE JURISDICTION OF THE DISTRICT COURT, IF THE DEFENDANT IS ENTITLED TO A PRELIMINARY HEARING BUT DOES NOT REQUEST A HEARING WITHIN 10 DAYS AFTER A COURT OR COURT COMMISSIONER INFORMS THE DEFENDANT ABOUT THE AVAILABILITY OF A PRELIMINARY HEARING; OR

(2) IN ANY OTHER CASE, IF A COURT IN A PRELIMINARY HEARING FINDS THAT THERE IS PROBABLE CAUSE TO HOLD THE DEFENDANT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 592(a).

In this section, the references to a "defendant" are substituted for the former references to the "accused" for consistency.

In item (2) of this section, the former phrase "other than a felony" is deleted as implicit in the phrase a "felony within the jurisdiction of the District Court".

4-103. PRELIMINARY HEARING.

(A) DEFENDANT TO BE ADVISED OF RIGHT.

IF A DEFENDANT IS CHARGED WITH A FELONY OTHER THAN A FELONY WITHIN THE JURISDICTION OF THE DISTRICT COURT, AT THE TIME OF THE DEFENDANT'S INITIAL APPEARANCE, AS REQUIRED BY MARYLAND RULE 4-213, A COURT OR COURT COMMISSIONER SHALL ADVISE THE DEFENDANT OF THE DEFENDANT'S RIGHT TO REQUEST A PRELIMINARY HEARING.

(B) TIME FOR WAIVER REQUESTS.

(1) A DEFENDANT MAY REQUEST A PRELIMINARY HEARING AT THE DEFENDANT'S INITIAL APPEARANCE OR AT ANY TIME WITHIN 10 DAYS AFTER THE INITIAL APPEARANCE.

(2) IF THE DEFENDANT DOES NOT REQUEST A PRELIMINARY HEARING WITHIN 10 DAYS AFTER THE INITIAL APPEARANCE, THE RIGHT TO A PRELIMINARY HEARING IS WAIVED.

(C) WHEN RIGHT IS ABSOLUTE.

(1) THE RIGHT OF A DEFENDANT TO A PRELIMINARY HEARING IS ABSOLUTE IF:

(I) THE DEFENDANT IS CHARGED BY CRIMINAL INFORMATION; AND

(II) THE DEFENDANT REQUESTS A PRELIMINARY HEARING IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

(2) IF THE DEFENDANT IS CHARGED BY GRAND JURY INDICTMENT, THE RIGHT OF A DEFENDANT TO A PRELIMINARY HEARING IS NOT ABSOLUTE BUT THE COURT MAY ALLOW THE DEFENDANT TO HAVE A PRELIMINARY HEARING.

(3) IN ANY OTHER CASE, THE RIGHT OF A DEFENDANT TO A PRELIMINARY HEARING IS NOT ABSOLUTE, BUT ON MOTION OF THE STATE'S ATTORNEY OR THE DEFENDANT, THE COURT MAY ALLOW THE DEFENDANT TO HAVE A PRELIMINARY HEARING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 592(b).

In subsections (a) and (c)(1)(i) and (ii) of this section, the references to a

"defendant" are substituted for the former references to the "accused" for consistency.

In subsection (c)(2) and (3) of this section, the references to a preliminary hearing not being "absolute" are substituted for the former references that a preliminary hearing is "not a matter of right" for consistency with the introductory language of subsection (c)(1) of this section.

In subsection (c)(1) and (2) of this section, the former references to the "State's Attorney" are deleted and the paragraphs are revised in the passive voice because, in some cases, defendants may be charged by the State Prosecutor or the Attorney General. The Criminal Procedure Article Review Committee calls this change to the attention of the General Assembly. The Criminal Procedure Article Review Committee also notes, for consideration by the General Assembly, that subsection (c)(2) of this section refers to only a "court". The General Assembly may wish to clarify that this paragraph applies to a circuit court.

The Criminal Procedure Article Review Committee also notes, for consideration by the General Assembly, that subsection (c)(2) of this section authorizes a court to allow a defendant a preliminary hearing if the defendant is charged by grand jury indictment. This authorization is inconsistent with Maryland Rule 4-221(c)(1), which provides that a preliminary hearing may not be held if, before the hearing, an indictment is filed in circuit court. In *Marshall v. State*, 46 Md. App. 695, 420 A.2d 1266 (1980), *rev'd. on other grounds*, 291 Md. 205, 434 A.2d 555 (1981), the Court of Special Appeals affirmed the existence of the conflict between former Art. 27, § 592(b)(3) and Maryland Rule 4-221(c)(1) and stated that the Maryland Rule prevails as the rule was adopted after the statute.

4-104. MERGER OF COMMON LAW MISDEMEANOR IN STATUTORY FELONY PROHIBITED.

IF A STATUTE MAKES A FELONY OF A CRIME THAT IS A MISDEMEANOR AT COMMON LAW, A CHARGING DOCUMENT:

(1) MAY NOT MERGE THE MISDEMEANOR IN THE FELONY; BUT

(2) MAY CONTAIN COUNTS FOR THE FELONY AND FOR THE MISDEMEANOR.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 607.

The reference to "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

The defined term "charging document" is substituted for the former reference to "indictment" to conform to terminology used throughout this article.

Defined term: "Charging document" § 1-101

4-105. NAMING OF TWO OR MORE PERSONS WITH LIKE INTERESTS IN CHARGING DOCUMENT.

(A) PARTNERS, JOINT TENANTS, HEIRS, TENANTS IN COMMON, OR TRUSTEES.

IN SPEAKING OF ANY PARTNERS, JOINT TENANTS, HEIRS, TENANTS IN COMMON, OR TRUSTEES, A CHARGING DOCUMENT MAY NAME ANY ONE OF THEM AND SPEAK OF THEM AS THE NAMED PERSON AND ANOTHER OR OTHERS, AS THE CASE MAY BE.

(B) OWNERS OR POSSESSORS OF PROPERTY.

IN STATING THE OWNERSHIP OR POSSESSION OF REAL OR PERSONAL PROPERTY OWNED OR POSSESSED BY TWO OR MORE PERSONS, A CHARGING DOCUMENT MAY NAME ONE OF THE PERSONS AND LAY THE OWNERSHIP OR POSSESSION IN THE NAMED PERSON AND ANOTHER OR OTHERS, AS THE CASE MAY BE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 605.

The defined term "charging document" is substituted for the former reference to "indictment" to conform to terminology used throughout this article.

In subsection (a) of this section, the reference to a charging document that may name "partners, joint tenants, heirs, tenants in common, or trustees" is substituted for the former reference to "in the manner aforesaid" for clarity.

Also in subsection (a) of this section, the reference to "heirs" is substituted for the former obscure reference to "parceners".

In subsection (b) of this section, the former reference to "partners in trade, joint tenants, parceners, tenants in common or trustees" is deleted in light of the definition of "person" in § 1-101 of this article.

In this section, the former phrase "for any felony or misdemeanor" is deleted as unnecessary. Every crime except treason is either a felony or misdemeanor.

Defined terms: "Charging document" § 1-101

"Person" § 1-101

4-106. DESCRIPTION OF MONEY IN CHARGING DOCUMENT.

(A) CONTENT OF CHARGING DOCUMENT.

A CHARGING DOCUMENT MAY DESCRIBE AN AMOUNT OF MONEY IN DOLLARS AND CENTS WITHOUT SPECIFYING THE PARTICULAR NOTES, DENOMINATIONS, COINS, OR CERTIFICATES CIRCULATING AS MONEY THAT CONSTITUTE THE AMOUNT.

(B) PROOF OF DESCRIPTION.

A DESCRIPTION OF AN AMOUNT OF MONEY IN DOLLARS AND CENTS UNDER SUBSECTION (A) OF THIS SECTION IS SUSTAINED BY PROOF OF ANY NUMBER OF NOTES, DENOMINATIONS, COINS, OR CERTIFICATES CIRCULATING AS MONEY WITHOUT PROOF OF THE PARTICULAR SPECIES OF NOTES, DENOMINATIONS, COINS, OR CERTIFICATES THAT CONSTITUTE THE AMOUNT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 613.

In subsection (a) of this section, the defined term "charging document" is substituted for the former reference to "indictment, information or warrant" to conform to the terminology used throughout this article.

Also in subsection (a) of this section, the former reference to dollars and cents "current money" is deleted as unnecessary in light of the references in subsections (a) and (b) of this section to notes, denominations, coins, or certificates "circulating as money".

In subsection (b) of this section, the reference to "[a] description of an amount of money" is substituted for the former reference to "such allegation" for consistency with the similar reference to "describe an amount of money" in subsection (a)(1) of this section.

Also in subsection (b) of this section, the reference to any "number" of notes is substituted for the former reference to any "amount" of notes for clarity.

Defined term: "Charging document" § 1-101

4-107. CHARGING DOCUMENT FOR VIOLATION OF ORDINANCE.

(A) COPY OF ORDINANCE NOT NECESSARY.

IT IS NOT NECESSARY TO SET FORTH A COPY OF AN ORDINANCE OR A SECTION OF AN ORDINANCE IN A CHARGING DOCUMENT FOR THE VIOLATION OF AN ORDINANCE OF A MUNICIPAL CORPORATION, A COUNTY, OR A SPECIAL TAXING AREA.

(B) SUFFICIENCY OF CHARGING DOCUMENT.

A CHARGING DOCUMENT SPECIFIED IN SUBSECTION (A) OF THIS SECTION IS SUFFICIENT IF IT:

(1) CITES THE ORDINANCE ALLEGED TO HAVE BEEN VIOLATED BY DATE OF PASSAGE OR, IF CODIFIED, BY ARTICLE AND SECTION NUMBER;

(2) CONFORMS TO THE LAW GOVERNING THE FRAMING OF CHARGING DOCUMENTS FOR A VIOLATION OF AN ACT OF THE GENERAL ASSEMBLY; AND

(3) CONCLUDES WITH THE WORDS "AGAINST THE PEACE, GOVERNMENT, AND DIGNITY OF THE STATE.".

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 615. The defined term "charging document" is substituted for the former references to "indictment or warrant" and "indictments or warrants" to conform to terminology used throughout this article.

In subsection (a)(1) of this section, the reference to a "municipal corporation" is substituted for the former reference to an "incorporated city or town" for brevity.

In subsection (a) of this section, the former reference to a municipal corporation or a county "of this State" is deleted as unnecessary. Similarly, the former references to "the board of county commissioners" of a county and a special taxing district "of a county" are deleted as unnecessary.

Also in subsection (a) of this section, the reference to the "governing body" of a county is substituted for the former reference to the "board of county commissioners" of a county in light of the existence in this State of local governing entities other than boards of county commissioners, *e.g.*, county executives.

In subsection (b)(2) of this section, the former reference to the General Assembly "of this State" is deleted as implicit in light of the reference to the "General Assembly".

In subsection (b)(3) of this section, the former archaic reference, "against the form of the ordinance in such case made and provided", is deleted as surplusage.

Defined terms: "Charging document" § 1-101

"County" § 1-101

"State" § 1-101

4-108. CHARGING DOCUMENT FOR CRIMES INVOLVING INSTRUMENTS.

(A) DESCRIPTION OF INSTRUMENT.

IN MAKING AN AVERMENT AS TO AN INSTRUMENT, WHETHER THE INSTRUMENT CONSISTS WHOLLY OR PARTLY OF WRITING, PRINT, OR FIGURES, A CHARGING DOCUMENT MAY DESCRIBE THE INSTRUMENT BY ITS USUAL NAME OR DESIGNATION OR BY ITS PURPORT, WITHOUT SETTING OUT A COPY OF THE INSTRUMENT OR PART OF THE INSTRUMENT.

(B) USING FALSE INSTRUMENTS.

(1) THIS SUBSECTION APPLIES TO A CHARGING DOCUMENT FOR:

(I) FORGING, UTTERING, DISPOSING OF, PUTTING OFF, OR PASSING ANY KIND OF INSTRUMENT; OR

(II) OBTAINING PROPERTY BY FALSE PRETENSES.

(2) A CHARGING DOCUMENT IS SUFFICIENT IF THE CHARGING DOCUMENT ALLEGES THAT THE DEFENDANT ACTED WITH THE INTENT TO DEFRAUD, WITHOUT ALLEGING THE INTENT OF THE DEFENDANT TO DEFRAUD ANY PARTICULAR PERSON.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 612, except as it referred to a standard of proof.

In subsection (a) of this section, the former specific reference to "any indictment for forging, altering, putting off, passing, stealing, embezzling, destroying or for obtaining by false pretenses any instrument" is deleted as included in the reference to "a charging document".

Also in subsection (a) of this section, the former reference to "facsimile" is deleted as included in the reference to "copy".

Defined term: "Charging document" § 1-101

SUBTITLE 2. VENUE AND OTHER PROCEDURAL MATTERS.

4-201. VENUE.

(A) IN DISTRICT COURT.

IN THE DISTRICT COURT, A PROSECUTION FOR A CRIME SHALL BE BROUGHT IN THE DISTRICT THAT INCLUDES THE COUNTY WHERE THE CRIME WAS COMMITTED, AND THE TRIAL SHALL BE HELD IN THAT COUNTY UNLESS THE CASE IS LAWFULLY REMOVED.

(B) PERSON STRICKEN OR POISONED IN ONE COUNTY AND DYING IN ANOTHER COUNTY.

IF A PERSON IS FELONIOUSLY STRICKEN OR POISONED IN A COUNTY AND DIES IN ANOTHER COUNTY OF THE SAME STROKE OR POISON, A PROSECUTION FOR THE FELONY SHALL BE BROUGHT IN THE COUNTY WHERE THE STROKE OR POISON WAS GIVEN.

(C) CRIMES COMMITTED ON CHESAPEAKE BAY.

A PROSECUTION MAY BE BROUGHT IN THE COUNTY IN WHICH THE DEFENDANT IS ARRESTED OR FIRST BROUGHT IF THE PROSECUTION IS FOR:

(1) A CRIME COMMITTED ON THE WATERS OF THE CHESAPEAKE BAY AND NOT IN A COUNTY;

(2) AIDING, ABETTING, OR COMFORTING THE PERPETRATOR OF SUCH A CRIME; OR

(3) BEING AN ACCESSORY TO SUCH A CRIME.

(D) PERSON STRICKEN OR POISONED ON CHESAPEAKE BAY AND DYING IN COUNTY.

IF A PERSON IS FELONIOUSLY STRICKEN OR POISONED ON THE WATERS OF THE CHESAPEAKE BAY AND NOT IN A COUNTY, AND DIES OF THE SAME STROKE OR POISON IN A COUNTY, A PROSECUTION FOR THE FELONY, OR FOR BEING AN ACCESSORY TO THE FELONY, SHALL BE BROUGHT IN THE COUNTY WHERE THE PERSON DIED.

(E) PERSON STRICKEN OR POISONED IN COUNTY AND DYING ON CHESAPEAKE BAY.

IF A PERSON IS FELONIOUSLY STRICKEN OR POISONED IN A COUNTY, AND DIES OF THE SAME STROKE OR POISON ON THE WATERS OF THE CHESAPEAKE BAY AND NOT IN A COUNTY, A PROSECUTION FOR THE FELONY, OR FOR BEING AN ACCESSORY TO THE FELONY, SHALL BE BROUGHT IN THE COUNTY WHERE THE STROKE OR POISON WAS GIVEN.

(F) CRIMES COMMITTED ON COMMON CARRIERS.

(1) IN THIS SUBSECTION, "COMMON CARRIER" MEANS A STEAMBOAT, RAILROAD TRAIN, MOTOR BUS, AIRPLANE, OR OTHER MEANS OF INTERCITY OR INTERSTATE PUBLIC TRANSPORTATION.

(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A PROSECUTION FOR AN INDICTABLE CRIME COMMITTED ON A COMMON CARRIER MAY BE BROUGHT, AND A DISTRICT COURT COMMISSIONER MAY HOLD THE DEFENDANT TO BAIL IF THE CRIME IS BAILABLE, IN ANY COUNTY FROM, TO, OR THROUGH WHICH THE COMMON CARRIER RUNS.

(3) IF THE ACCUSED IS HELD TO BAIL UNDER THIS SUBSECTION BY A DISTRICT COURT COMMISSIONER, PROSECUTION FOR THE CRIME SHALL BE IN THE COUNTY WHERE THE DEFENDANT IS HELD.

(G) CRIMES COMMITTED ON OR NEAR BOUNDARY LINES OF COUNTIES.

(1) A PROSECUTION FOR A CRIME MAY BE BROUGHT IN THE COUNTY IN WHICH PROCESS FOR THE ARREST AND PROSECUTION OF THE DEFENDANT IS FIRST ISSUED IF:

(I) THE CRIME WAS COMMITTED AT THE BOUNDARY BETWEEN COUNTIES; OR

(II) THE BOUNDARY IS SO UNCERTAIN OR THE SITE OF THE CRIME IS SO NEAR TO THE BOUNDARY THAT IT IS DOUBTFUL IN WHICH COUNTY THE CRIME WAS COMMITTED.

(2) TO ESTABLISH THE VENUE ALLEGED IN THE CHARGING DOCUMENT, THE STATE NEED ONLY PROVE THAT A SET OF FACTS IN PARAGRAPH (1)(I) OR (II) OF THIS SUBSECTION IS TRUE.

(H) ACCESSORY AFTER THE FACT TO MURDER OR FELONY.

EXCEPT AS OTHERWISE PROVIDED BY LAW, A PROSECUTION OF A PERSON FOR BEING AN ACCESSORY AFTER THE FACT TO MURDER OR OTHER FELONY SHALL BE BROUGHT IN THE COUNTY IN WHICH THE PERSON BECAME AN ACCESSORY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 586A, 587, 588, 589, 590, and except as it related to the jurisdiction of the District Court, 586.

In subsections (a), (c), (f), and (g) of this section, the reference to "crime" is substituted for former references to "offense", "offense or misdemeanor", and "felony or misdemeanor" to conform to terminology used throughout this article.

In subsection (a) of this section, the requirement that a "prosecution for a crime shall be brought" is substituted for the former requirement that "the defendant shall be tried" for clarity. Similarly, in subsection (c) of this section, the phrase "[a] prosecution may be brought" is substituted for the former phrase "[a]ny person ... may be indicted and tried".

In subsections (b), (d), and (e) of this section, former references to the death of a person "within one year" after the commission of a murder or felony or after a felonious strike or poisoning are deleted in light of Art. 27, § 415 which abolishes the time element between the act or omission causing the death of a person and the death of the person.

In subsection (c)(2) of this section, the reference to "aiding, abetting, or comforting the perpetrator of such a crime" is substituted for the former reference to "all aiders, abettors, comforters ... thereof and thereto" for clarity. Similarly, in subsection (c)(3) of this section, the reference to "being an accessory to such a crime" is substituted for the former reference to "accessories thereof and thereto".

In subsections (d) and (e) of this section, the references to "an accessory to the felony" are substituted for the former reference to "his [offender's] aiders, abettors and comforters, or any accessory after the fact" to conform to the terminology used in subsection (c) of this section.

Also in subsection (d) of this section, the reference to a prosecution being brought "in the county" where the person died is substituted for the former reference to "the court within whose jurisdiction such county lies" for

brevity.

In subsection (f)(2) of this section, the reference to a "prosecution for an indictable crime" is substituted for former references to "[a] person who may commit any indictable offense" being "presented indicted, tried and convicted". In addition, the reference to a "prosecution" is substituted for the former reference to "arrest" and "presentment, indictment and trial", for brevity.

In subsection (f)(3) of this section, the former reference to a county "or city" where a commissioner is located is deleted as included in the reference to "county".

In subsection (g)(1) of this section, the former provision that grants a county "jurisdiction to charge, present, indict, try, convict and sentence" is deleted as implicit in the provision that allows "[a] prosecution for a crime" to be brought in a county.

In subsection (g)(1)(i) of this section, the reference to "the boundary between counties" is substituted for the former reference to "at or on the boundary of the county wherein the accused is being tried" for brevity.

Also in subsection (g)(1)(i) of this section, the former reference to a "divisional line" is deleted as included in the reference to a "boundary".

The first clause of former Art. 27, § 586, which stated that "[t]he District Court sitting in each district may hear and determine criminal cases within its jurisdiction if the acts charged occurred within the district" is deleted as unnecessary in light of Title 4 of the Courts Article, which concerns jurisdiction of the District Court.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that Art. 75, § 82, which specifies the jurisdiction of a county lying on a navigable river, may conflict with subsection (d) of this section. Under Art. 75, § 82, apparently there are no navigable waters outside of all counties.

Defined terms: "Charging document" § 1-101

"County" § 1-101

"Person" § 1-101

4-202. TRANSFER OF CRIMINAL CASES TO JUVENILE COURT.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "VICTIM" HAS THE MEANING STATED IN § 11-104 OF THIS ARTICLE.

(3) "VICTIM'S REPRESENTATIVE" HAS THE MEANING STATED IN § 11-104 OF THIS ARTICLE.

(B) WHEN TRANSFER ALLOWED.

EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A COURT EXERCISING JURISDICTION IN A CASE INVOLVING A CHILD MAY TRANSFER THE CASE TO THE JUVENILE COURT IF:

(1) THE ACCUSED CHILD WAS AT LEAST 14 BUT NOT 18 YEARS OF AGE WHEN THE ALLEGED CRIME WAS COMMITTED;

(2) THE ALLEGED CRIME IS EXCLUDED FROM THE JURISDICTION OF THE JUVENILE COURT UNDER § 3-804(E)(1), (4), OR (5) OF THE COURTS ARTICLE; AND

(3) THE COURT BELIEVES THAT A TRANSFER OF ITS JURISDICTION IS IN THE INTEREST OF THE CHILD OR SOCIETY.

(C) TRANSFER PROHIBITED.

THE COURT MAY NOT TRANSFER A CASE TO THE JUVENILE COURT UNDER SUBSECTION (B) OF THIS SECTION IF:

(1) THE CHILD PREVIOUSLY HAS BEEN TRANSFERRED TO JUVENILE COURT AND ADJUDICATED DELINQUENT;

(2) THE CHILD WAS CONVICTED IN AN UNRELATED CASE EXCLUDED FROM THE JURISDICTION OF THE JUVENILE COURT UNDER § 3-804(E)(1) OR (4) OF THE COURTS ARTICLE; OR

(3) 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.

(D) TRANSFER CRITERIA.

IN DETERMINING WHETHER TO TRANSFER JURISDICTION UNDER THIS SECTION, THE COURT SHALL CONSIDER:

(1) THE AGE OF THE CHILD;

(2) THE MENTAL AND PHYSICAL CONDITION OF THE CHILD;

(3) THE AMENABILITY OF THE CHILD TO TREATMENT IN AN INSTITUTION, FACILITY, OR PROGRAM AVAILABLE TO DELINQUENT CHILDREN;

(4) THE NATURE OF THE ALLEGED CRIME; AND

(5) THE PUBLIC SAFETY.

(E) STUDY CONCERNING CHILD.

IN MAKING A DETERMINATION UNDER THIS SECTION, THE COURT MAY REQUEST THAT A STUDY BE MADE CONCERNING THE CHILD, THE FAMILY OF THE CHILD, THE ENVIRONMENT OF THE CHILD, AND OTHER MATTERS CONCERNING THE DISPOSITION OF THE CASE.

(F) PROCEDURES ON TRANSFER -- JUVENILE COURT.

IF THE COURT TRANSFERS ITS JURISDICTION UNDER THIS SECTION, THE COURT MAY ORDER THE CHILD HELD FOR AN ADJUDICATORY HEARING UNDER THE REGULAR PROCEDURE OF THE JUVENILE COURT.

(G) HOLDING IN JUVENILE FACILITY.

PENDING A DETERMINATION UNDER THIS SECTION TO TRANSFER ITS JURISDICTION, THE COURT MAY ORDER A CHILD TO BE HELD IN A JUVENILE FACILITY.

(H) RIGHTS OF VICTIMS.

(1) A VICTIM OR VICTIM'S REPRESENTATIVE SHALL BE GIVEN NOTICE OF THE TRANSFER HEARING AS PROVIDED UNDER § 11-104 OF THIS ARTICLE.

(2) (I) A VICTIM OR VICTIM'S REPRESENTATIVE MAY SUBMIT A VICTIM IMPACT STATEMENT TO THE COURT AS PROVIDED IN § 11-402 OF THIS ARTICLE.

(II) THIS PARAGRAPH DOES NOT PRECLUDE A VICTIM OR VICTIM'S REPRESENTATIVE WHO HAS NOT FILED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS ARTICLE FROM SUBMITTING A VICTIM IMPACT STATEMENT TO THE COURT.

(III) THE COURT MAY CONSIDER A VICTIM IMPACT STATEMENT IN DETERMINING WHETHER TO TRANSFER JURISDICTION UNDER THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594A.

Throughout this section, the references to "transfer", "transferred", and "transfers" are substituted for the former references to "waive", "waived", and "waiver" for consistency.

In this section, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

In subsection (a) of this section, the defined term "victim's representative" is added to state explicitly what was only implied in the former law, which definition of "victim" included a "victim's representative".

In subsection (b)(3) of this section, the reference to "the court" is added to identify who decides on the appropriateness of a waiver under this

subsection.

In subsections (f) and (g) of this section, the references to "child" are substituted for the former references to "person" and "minor" for consistency with subsections (b) through (e) of this section.

In subsection (f) of this section, the reference to an "adjudicatory hearing" is substituted for the former reference to a "trial" to conform to the terminology used in Title 3, Subtitle 8 of the Courts Article.

In subsection (g) of this section, the former reference to a determination to waive jurisdiction "over the case involving the minor to the juvenile court" is deleted as unnecessary in light of the reference to a determination "under this section" to waive jurisdiction.

4-203. PROCESS AGAINST CORPORATIONS.

(A) "CORPORATION" DEFINED.

IN THIS SECTION, "CORPORATION" INCLUDES A JOINT-STOCK COMPANY AND AN ASSOCIATION.

(B) SUMMONS AUTHORIZED.

IF A CHARGING DOCUMENT IS FILED AGAINST A CORPORATION, THE CLERK OF COURT MAY ISSUE A SUMMONS TO THE CORPORATION IN ITS CORPORATE NAME TO APPEAR AT THE COURT TO ANSWER THE CHARGING DOCUMENT.

(C) SERVICE OF SUMMONS.

A SUMMONS SERVED UNDER SUBSECTION (B) OF THIS SECTION MAY BE SERVED IN THE SAME MANNER AS PROVIDED FOR SERVICE OF PROCESS IN A CIVIL SUIT UNDER THE MARYLAND RULES.

(D) RETURN OF SUMMONS AS APPEARANCE.

(1) IF A SHERIFF OR OTHER OFFICER RETURNS A SUMMONS SERVED UNDER THIS SECTION AS "SUMMONED" OR "SERVED":

(I) THE CORPORATION TO WHOM THE SUMMONS WAS ISSUED SHALL BE CONSIDERED AS IN COURT AND AS APPEARING TO THE CHARGING DOCUMENT; AND

(II) THE COURT SHALL ORDER THE CLERK TO ENTER AN APPEARANCE FOR THE CORPORATION AND TO ENDORSE A PLEA OF NOT GUILTY ON THE CHARGING DOCUMENT.

(2) AFTER THE CLERK MAKES THE ENTRY AND ENDORSEMENT SPECIFIED IN PARAGRAPH (1)(II) OF THIS SUBSECTION, FURTHER PROCEEDINGS MAY OCCUR CONCERNING THE CHARGING DOCUMENT IN THE SAME MANNER AS IF THE CORPORATION HAD APPEARED AND PLEADED NOT GUILTY.

(E) EXECUTION.

(1) IF A CORPORATION IS SERVED A SUMMONS UNDER THIS SECTION AND IS CONVICTED ON THE CHARGING DOCUMENT, A COURT MAY:

(I) PASS A JUDGMENT CONCERNING THE CHARGING DOCUMENT; AND

(II) ISSUE PROCESS OF EXECUTION TO THE SHERIFF OF THE COUNTY AGAINST THE PROPERTY OF THE CORPORATION FOR THE AMOUNT OF THE FINE AND COSTS THAT MAY BE AWARDED AGAINST THE CORPORATION IN THE SAME MANNER AS ON A JUDGMENT IN A CIVIL ACTION.

(2) A SHERIFF SHALL SELL THE PROPERTY OF THE CORPORATION ON AN EXECUTION UNDER PARAGRAPH (1) OF THIS SUBSECTION IN THE SAME MANNER AS ON AN EXECUTION ISSUED IN A CIVIL SUIT.

REVISOR'S NOTE: Subsection (a) of this section is new language added for brevity to avoid repetition throughout this section of the former reference to "corporation, joint-stock company or association".

Subsections (b) and (c) of this section are new language derived without substantive change from former Art. 27, § 624.

Subsections (d) and (e) of this section are new language derived without substantive change from former Art. 27, § 625.

The references to "charging document" are substituted for the references to an "indictment" or "information" to conform to the terminology used throughout this article.

As to the manner for the service of process on a corporation, joint-stock company, or incorporated association as specified in subsection (c) of this section, *see* Md. Rule 2-124(c).

In the introductory language of subsection (e)(1) of this section, the reference to a corporation that is "served a summons under this section" is substituted for the former reference to the "said corporation" for clarity and as service of a summons is the fact common to both actual and constructive service under this section.

In subsection (e)(1)(ii) and (2) of this section, the references to "property" are substituted for the former references to "goods and chattels or lands and tenements" for brevity.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that this section applies only to joint-stock companies or associations. The General Assembly may wish to apply this section also to other kinds of limited liability entities.

Defined terms: "Charging document" § 1-101

"County" § 1-101

4-204. ACCESSORY BEFORE THE FACT.

(A) "ACCESSORY BEFORE THE FACT" AND "PRINCIPAL" DEFINED.

IN THIS SECTION, THE WORDS "ACCESSORY BEFORE THE FACT" AND "PRINCIPAL" HAVE THEIR JUDICIALLY DETERMINED MEANINGS.

(B) ACCESSORY BEFORE THE FACT AND PRINCIPAL -- COMPARED.

EXCEPT FOR A SENTENCING PROCEEDING UNDER ARTICLE 27, § 413 OF THE CODE:

(1) THE DISTINCTION BETWEEN AN ACCESSORY BEFORE THE FACT AND A PRINCIPAL IS ABROGATED; AND

(2) AN ACCESSORY BEFORE THE FACT MAY BE CHARGED, TRIED AND CONVICTED, AND SENTENCED AS A PRINCIPAL.

(C) ACCESSORY LIABILITY NOT LINKED TO PRINCIPAL.

AN ACCESSORY BEFORE THE FACT MAY BE CHARGED, TRIED AND CONVICTED, AND SENTENCED FOR A CRIME REGARDLESS OF WHETHER A PRINCIPAL IN THE CRIME HAS BEEN:

(1) CHARGED WITH THE CRIME;

(2) ACQUITTED OF THE CRIME; OR

(3) CONVICTED OF A LESSER OR DIFFERENT CRIME.

(D) VENUE.

IF A CRIME IS COMMITTED IN THE STATE, AN ACCESSORY BEFORE THE FACT MAY BE CHARGED, TRIED AND CONVICTED, AND SENTENCED IN A COUNTY WHERE:

(1) AN ACT OF ACCESSORYSHIP WAS COMMITTED; OR

(2) A PRINCIPAL IN THE CRIME MAY BE CHARGED, TRIED AND CONVICTED, AND SENTENCED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 592A.

Defined term: "County" § 1-101

TITLE 5. RELEASE.

SUBTITLE 1. IN GENERAL.

5-101. RELEASE ON PERSONAL RECOGNIZANCE.

(A) CONSTRUCTION OF SECTION.

THIS SECTION SHALL BE LIBERALLY CONSTRUED TO CARRY OUT THE PURPOSE OF RELYING ON CRIMINAL SANCTIONS INSTEAD OF FINANCIAL LOSS TO ENSURE THE APPEARANCE OF A DEFENDANT IN A CRIMINAL CASE BEFORE VERDICT OR PENDING A NEW TRIAL.

(B) IN GENERAL.

(1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, IF, FROM ALL THE CIRCUMSTANCES, THE COURT BELIEVES THAT A MINOR OR ADULT DEFENDANT IN A CRIMINAL CASE WILL APPEAR AS REQUIRED FOR TRIAL BEFORE VERDICT OR PENDING A NEW TRIAL, THE DEFENDANT MAY BE RELEASED ON PERSONAL RECOGNIZANCE.

(2) A FAILURE TO APPEAR AS REQUIRED BY PERSONAL RECOGNIZANCE IS SUBJECT TO THE PENALTIES PROVIDED IN § 5-211 OF THIS TITLE.

(C) EXCEPTIONS.

A DEFENDANT MAY NOT BE RELEASED ON PERSONAL RECOGNIZANCE IF THE DEFENDANT IS CHARGED WITH:

(1) A CRIME LISTED IN § 5-202(D) OF THIS SUBTITLE AFTER HAVING BEEN CONVICTED OF A CRIME LISTED IN § 5-202(D) OF THIS SUBTITLE; OR

(2) A CRIME PUNISHABLE BY DEATH OR LIFE IMPRISONMENT WITHOUT PAROLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 638A and 616 1/2(d).

In subsections (a) and (b) of this section, the reference to "before verdict or pending a new trial" is substituted for the former references to "before or after trial of the case" and "trial either before or after", respectively, for accuracy.

In subsections (a) and (b)(1) of this section, the references to a "defendant" are substituted for the former references to an "accused person" for consistency with terminology used throughout this subtitle and in the Maryland Rules.

In subsection (b)(1) of this section, the phrase "[e]xcept as provided in subsection (c) of this section" is added to state expressly what was only

implied in the former law.

Also in subsection (b)(1) of this section, the reference to "personal" recognizance is substituted for the former reference to a person's "own" recognizance for consistency with terminology used in subsection (c) of this section and in the Maryland Rules.

Also in subsection (b)(1) of this section, the reference to a "minor or adult defendant" is substituted for the former reference that "[t]he provisions of this section shall apply to all persons regardless of age" for brevity.

In subsection (c) of this section, the reference to a "crime" is substituted for the former reference to a "criminal case or offense" to conform to the terminology used throughout this subtitle.

In subsection (c)(2) of this section, the former phrase "before any judge of any circuit court in the counties or any judge or commissioner of the District Court of Maryland" is deleted as surplusage.

5-102. DEFENDANT CHARGED WITH CRIME PUNISHABLE BY LIFE IMPRISONMENT.

A DEFENDANT CHARGED WITH A CRIME PUNISHABLE BY LIFE IMPRISONMENT MAY BE RELEASED ON BAIL OR OTHER CONDITIONS OF RELEASE BEFORE CONVICTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 638B.

The former phrases "or may not be" and "in the discretion of the court" are deleted as implicit in the word "may".

The reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

SUBTITLE 2. PRETRIAL RELEASE.

5-201. CONDITIONS OF PRETRIAL RELEASE.

(A) PROTECTIONS OF VICTIM.

IF A DEFENDANT IS CHARGED WITH STALKING UNDER ARTICLE 27, § 124 OF THE CODE OR WITH A FELONY, THE COURT OR A DISTRICT COURT COMMISSIONER SHALL CONSIDER INCLUDING, AS A CONDITION OF PRETRIAL RELEASE, REASONABLE PROTECTIONS FOR THE SAFETY OF THE ALLEGED VICTIM.

(B) HOME DETENTION.

(1) IN ACCORDANCE WITH ELIGIBILITY CRITERIA, CONDITIONS, AND PROCEDURES REQUIRED UNDER THE MARYLAND RULES, THE COURT MAY REQUIRE, AS A CONDITION OF A DEFENDANT'S PRETRIAL RELEASE, THAT THE DEFENDANT BE

MONITORED BY A PRIVATE HOME DETENTION MONITORING AGENCY LICENSED UNDER TITLE 20 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

(2) A DEFENDANT PLACED IN PRIVATE HOME DETENTION UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PAY DIRECTLY TO THE PRIVATE HOME DETENTION MONITORING AGENCY THE AGENCY'S MONITORING FEE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616 1/2(m) and (k), except as it related to juveniles.

In subsection (a) of this section, the former phrase "and is released pretrial" is deleted as implicit in the requirement to consider conditions of pretrial release.

Also in subsection (a) of this section, under the former law the protections for the safety of the alleged victim applied also to "a delinquent act committed by a child that would be a felony if committed by an adult". In addition, a "juvenile intake officer" was required to consider including, as a condition of release, reasonable protections for the safety of the alleged victim. These provisions are transferred to Title 3, Subtitle 8 (Juvenile Causes) of the Courts Article.

5-202. RESTRICTIONS ON PRETRIAL RELEASE.

(A) ESCAPEES.

A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE PRETRIAL RELEASE FOR A DEFENDANT CHARGED WITH ESCAPING FROM A CORRECTIONAL FACILITY OR ANY OTHER PLACE OF CONFINEMENT IN THE STATE.

(B) DRUG KINGPINS.

(1) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT CHARGED AS A DRUG KINGPIN UNDER ARTICLE 27, § 286(G) OF THE CODE.

(2) A JUDGE MAY AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT CHARGED AS A DRUG KINGPIN ON SUITABLE BAIL AND ON ANY OTHER CONDITIONS THAT WILL REASONABLY ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY.

(3) THERE IS A REBUTTABLE PRESUMPTION THAT, IF RELEASED, A DEFENDANT CHARGED AS A DRUG KINGPIN WILL FLEE AND POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY.

(C) CRIMES OF VIOLENCE.

(1) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH A CRIME OF VIOLENCE IF THE DEFENDANT HAS BEEN PREVIOUSLY CONVICTED:

(I) IN THIS STATE OF A CRIME OF VIOLENCE; OR

(II) IN ANY OTHER JURISDICTION OF A CRIME THAT WOULD BE A CRIME OF VIOLENCE IF COMMITTED IN THIS STATE.

(2) (I) A JUDGE MAY AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION ON:

1. SUITABLE BAIL;

2. ANY OTHER CONDITIONS THAT WILL REASONABLY ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY; OR

3. BOTH BAIL AND OTHER CONDITIONS DESCRIBED UNDER ITEM 2 OF THIS SUBPARAGRAPH.

(II) WHEN A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS PRESENTED TO THE COURT UNDER MARYLAND RULE 4-216(G), THE JUDGE SHALL ORDER THE CONTINUED DETENTION OF THE DEFENDANT IF THE JUDGE DETERMINES THAT NEITHER SUITABLE BAIL NOR ANY CONDITION OR COMBINATION OF CONDITIONS WILL REASONABLY ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY BEFORE THE TRIAL.

(3) THERE IS A REBUTTABLE PRESUMPTION THAT A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION WILL FLEE AND POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY.

(D) CRIMES COMMITTED ON PRETRIAL RELEASE.

(1) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH COMMITTING ONE OF THE FOLLOWING CRIMES WHILE THE DEFENDANT WAS RELEASED ON BAIL OR PERSONAL RECOGNIZANCE FOR A PENDING PRIOR CHARGE OF COMMITTING ONE OF THE FOLLOWING CRIMES:

(I) AIDING, COUNSELING, OR PROCURING ARSON IN THE FIRST DEGREE UNDER ARTICLE 27, § 6 OF THE CODE;

(II) ARSON IN THE SECOND DEGREE OR ATTEMPTING, AIDING, COUNSELING, OR PROCURING ARSON IN THE SECOND DEGREE UNDER ARTICLE 27, § 7 OF THE CODE;

(III) BURGLARY IN THE FIRST DEGREE UNDER ARTICLE 27, § 29 OF THE CODE;

(IV) BURGLARY IN THE SECOND DEGREE UNDER ARTICLE 27, § 30 OF THE CODE;

(V) BURGLARY IN THE THIRD DEGREE UNDER ARTICLE 27, § 31 OF THE CODE;

(VI) CAUSING ABUSE TO A CHILD UNDER ARTICLE 27, § 35C OF THE CODE;

(VII) A CRIME THAT RELATES TO A DESTRUCTIVE DEVICE UNDER ARTICLE 27, § 139C OF THE CODE;

(VIII) A CRIME THAT RELATES TO A CONTROLLED DANGEROUS SUBSTANCE UNDER ARTICLE 27, § 286 OF THE CODE;

(IX) MANSLAUGHTER BY VEHICLE OR VESSEL UNDER ARTICLE 27, § 388 OF THE CODE; AND

(X) A CRIME OF VIOLENCE.

(2) A DEFENDANT UNDER THIS SUBSECTION REMAINS INELIGIBLE TO GIVE BAIL OR BE RELEASED ON RECOGNIZANCE ON THE SUBSEQUENT CHARGE UNTIL ALL PRIOR CHARGES HAVE FINALLY BEEN DETERMINED BY THE COURTS.

(3) A JUDGE MAY AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION ON SUITABLE BAIL AND ON ANY OTHER CONDITIONS THAT WILL REASONABLY ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY.

(4) THERE IS A REBUTTABLE PRESUMPTION THAT A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION WILL FLEE AND POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY IF RELEASED BEFORE FINAL DETERMINATION OF THE PRIOR CHARGE.

(E) VIOLATORS OF EX PARTE ORDERS OR PROTECTIVE ORDERS.

(1) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH VIOLATING:

(I) THE PROVISIONS OF AN EX PARTE ORDER DESCRIBED IN § 4-505(A)(2)(I) OF THE FAMILY LAW ARTICLE OR THE PROVISIONS OF A PROTECTIVE ORDER DESCRIBED IN § 4-506(D)(1) OF THE FAMILY LAW ARTICLE THAT ORDER THE DEFENDANT TO REFRAIN FROM ABUSING OR THREATENING TO ABUSE A PERSON ELIGIBLE FOR RELIEF; OR

(II) THE PROVISIONS OF A PROTECTIVE ORDER ISSUED BY A COURT OF ANOTHER STATE OR OF A NATIVE AMERICAN TRIBE THAT ORDER THE DEFENDANT TO REFRAIN FROM ABUSING OR THREATENING TO ABUSE A PERSON ELIGIBLE FOR RELIEF, IF THE ORDER IS ENFORCEABLE UNDER § 4-508.1 OF THE FAMILY LAW ARTICLE.

(2) A JUDGE MAY ALLOW THE PRETRIAL RELEASE OF A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION ON:

(I) SUITABLE BAIL;

(II) ANY OTHER CONDITIONS THAT WILL REASONABLY ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY; OR

(III) BOTH BAIL AND OTHER CONDITIONS DESCRIBED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH.

(3) WHEN A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS PRESENTED TO THE COURT UNDER MARYLAND RULE 4-216(G), THE JUDGE SHALL ORDER THE CONTINUED DETENTION OF THE DEFENDANT IF THE JUDGE DETERMINES THAT NEITHER SUITABLE BAIL NOR ANY CONDITION OR COMBINATION OF CONDITIONS WILL REASONABLY ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY BEFORE THE TRIAL.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616 1/2(c), (i), (j), (l), and (n).

In subsection (a) of this section, the reference to a "defendant" is substituted for the former reference to an "individual" for consistency with terminology used throughout this subtitle and in the Maryland Rules.

Also in subsection (a) of this section, the reference to the defined term "correctional facility" is substituted for the former reference to "penitentiary, jail, house of correction, reformatory, station house, or any other place of confinement" for consistency throughout this article.

In subsections (b)(2) and (c)(1) of this section, the former phrase "pending trial" is deleted as implicit in the reference to "pretrial release".

In subsection (c) of this section, the former references to a crime of violence "under § 643B of this article" and "as defined under § 643B of this article" are deleted in light of the definition of "crime of violence" in § 1-101 of this article to the same effect.

In subsection (d) of this section, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

In subsection (d)(1) of this section, the phrase "[a] District Court commissioner may not authorize the pretrial release of a defendant" is substituted for the former phrase "court does not mean District Court commissioners" for consistency with subsections (b) and (c) of this section.

Subsection (d)(3) of this section is revised to conform to the terminology

used throughout this subtitle, *e.g.*, § 5-202(b)(2). It is substituted for the former sentence "[i]f, after consideration of the matters presented in rebuttal, the court hearing the application for bail is persuaded that the applicant would not pose a danger to any other person or to the community, and would appear at the time set for trial, the court may allow release pending trial on suitable bail and on such other conditions as will reasonably assure that the person charged will not flee".

Also in subsection (d)(3) of this section, the reference to "[a] judge" is substituted for the former reference to "the court" for consistency with subsections (b) and (c) of this section.

Subsection (d)(4) of this section is revised to state expressly that "[t]here is a rebuttable presumption" that certain defendants will flee and pose a danger to another person or the community, which was only implied in the former statement that a person is able to "rebut his ineligibility for release on bail before determination of the prior charge".

Defined terms: "Correctional facility" § 1-101

"Crime of violence" § 1-101

"Person" § 1-101

5-203. BAIL BONDS IN CIRCUIT COURTS.

(A) CIRCUIT COURT RULES.

(1) A CIRCUIT COURT MAY ADOPT RULES SETTING THE TERMS AND CONDITIONS OF BAIL BONDS FILED IN THAT COURT AND RULES ON THE QUALIFICATIONS OF AND FEES CHARGED BY BAIL BONDSMEN.

(2) A BAIL BOND COMMISSIONER MAY BE APPOINTED TO CARRY OUT RULES ADOPTED UNDER THIS SECTION.

(3) A VIOLATION OF A RULE ADOPTED UNDER THIS SECTION IS CONTEMPT OF COURT AND SHALL BE PUNISHED IN ACCORDANCE WITH TITLE 15, CHAPTER 200 OF THE MARYLAND RULES.

(4) A PERSON MAY NOT ENGAGE IN THE BUSINESS OF BECOMING A SURETY FOR COMPENSATION ON BAIL BONDS IN CRIMINAL CASES UNLESS THE PERSON IS:

(I) APPROVED IN ACCORDANCE WITH ANY RULES ADOPTED UNDER THIS SECTION; AND

(II) IF REQUIRED UNDER THE INSURANCE ARTICLE, LICENSED IN ACCORDANCE WITH THE INSURANCE ARTICLE.

(B) SEVENTH JUDICIAL CIRCUIT.

(1) IN THE CIRCUIT COURTS IN THE SEVENTH JUDICIAL CIRCUIT, A BAIL BONDSMAN APPROVED UNDER SUBSECTION (A) OF THIS SECTION SHALL PAY A LICENSE FEE OF 1% OF THE GROSS VALUE OF ALL BAIL BONDS WRITTEN IN ALL COURTS OF THE CIRCUIT, IF THE FEE IS APPROVED BY THE COURT OF THE COUNTY IN WHICH IT APPLIES.

(2) THE FEE SHALL BE PAID TO THE COURT AS REQUIRED BY THE RULES OF COURT AND SHALL BE USED TO PAY THE EXPENSES OF CARRYING OUT THIS SECTION.

(3) ANY ABSOLUTE BAIL BOND FORFEITURES COLLECTED MAY BE USED TO PAY THE EXPENSES OF CARRYING OUT THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616 1/2(f).

Throughout this section, the reference to "bail bond" is substituted for the former reference to "bond" for clarity.

In subsection (a) of this section, the former reference to circuit courts "for each of the counties" is deleted as implicit in the reference to "a circuit court".

In subsection (a)(3) of this section, the phrase "in accordance with Title 15, Chapter 200 of the Maryland Rules" is substituted for the former phrase "as for contempt" for clarity and accuracy.

In subsections (a)(2) and (b)(2) of this section, as for substituting the phrases "carry out" rules and "carrying out" this section for the former phrases "administer" rules and "the administration of" this section, *see* General Revisor's Note to article.

For provisions relating to licensing of bail bondsmen, *see* Title 10, Subtitle 3 of the Insurance Article.

Defined terms: "County" § 1-101

"Person" § 1-101

5-204. BAIL AFTER ADJOURNMENT OR DURING RECESS OF CIRCUIT COURT.

(A) BAIL AFTER ADJOURNMENT.

IN A CRIMINAL CASE IN A CIRCUIT COURT IN WHICH THE DEFENDANT IS ALLOWED TO GIVE BAIL, THE CLERK OF THE COURT MAY TAKE THE BAIL IF:

(1) THE COURT ADJOURNS BEFORE THE DEFENDANT HAS SECURED THE BAIL; AND

(2) THE COURT BEFORE ADJOURNMENT, OR ANY JUDGE OF THE COURT AFTER ADJOURNMENT, ISSUES AN ORDER THAT SETS THE AMOUNT OF THE BAIL AND DIRECTS THE CLERK TO TAKE THE BAIL.

(B) BAIL DURING RECESS.

IF A DEFENDANT IS ARRESTED ON INDICTMENT IN A BAILABLE CASE IN A CIRCUIT COURT AND IS CONFINED DURING THE RECESS OF THE COURT, ANY JUDGE OF THE COURT, BY WRITTEN ORDER, MAY SET THE AMOUNT OF THE BAIL AND DIRECT THE CLERK TO TAKE THE BAIL WITH SECURITY.

(C) SECURITY FOR BAIL.

THE CLERK MAY NOT ACCEPT SECURITY FOR BAIL UNLESS:

(1) THE PERSON OFFERING THE SECURITY STATES UNDER OATH THAT THE PERSON OWNS REAL OR PERSONAL PROPERTY WORTH THE AMOUNT OF THE BAIL, EXCLUSIVE OF THE PERSON'S RIGHT TO EXEMPTION FROM EXECUTION; AND

(2) THE CLERK IS SATISFIED THAT THE STATEMENT IS TRUE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616 1/2(a).

In subsections (a) and (b) of this section, the references to the "defendant" are substituted for the former references to the "accused" and a "party" for consistency with terminology used throughout this subtitle and in the Maryland Rules.

In subsection (c) of this section, the phrase "exception from execution" is added for clarity.

In the introductory language of subsection (a) of this section, the former phrase "[s]ubject to the provisions of subsection (c) of this section" is deleted as unnecessary because those provisions - now § 5-202(d) of this subtitle - do not limit this subsection.

Also in subsection (c) of this section, the former references to an "affirmation" are deleted in light of Art. 1, § 9, which provides that "[w]henever an oath is required by this Code an affirmation shall be sufficient, if made by a person conscientiously scrupulous of taking an oath".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(2) of this section, the provision stating that the court "directs the clerk to take the bail" is archaic and does not reflect current practice.

Defined term: "Person" § 1-101

5-205. BAIL IN DISTRICT COURT.

(A) POWERS OF DISTRICT COURT JUDGE.

A DISTRICT COURT JUDGE MAY:

(1) SET BOND OR BAIL;

(2) RELEASE A DEFENDANT ON PERSONAL RECOGNIZANCE OR ON A PERSONAL OR OTHER BAIL BOND;

(3) COMMIT A DEFENDANT TO A CORRECTIONAL FACILITY IN DEFAULT OF A BAIL BOND; AND

(4) ORDER A BAIL BOND FORFEITED IF THE DEFENDANT FAILS TO MEET THE CONDITIONS OF THE BOND.

(B) POSTING OF BOND; RELEASE OF DEFENDANT.

(1) THIS SUBSECTION DOES NOT APPLY TO A DEFENDANT WHO HAS BEEN ARRESTED FOR FAILURE TO APPEAR IN COURT OR FOR CONTEMPT OF COURT.

(2) (I) IN A CRIMINAL OR TRAFFIC CASE IN THE DISTRICT COURT IN WHICH A BAIL BOND HAS BEEN SET, THE DEFENDANT OR A PRIVATE SURETY ACTING FOR THE DEFENDANT MAY POST THE BAIL BOND BY:

1. EXECUTING IT IN THE FULL PENALTY AMOUNT; AND

2. DEPOSITING WITH THE CLERK OF THE COURT OR A COMMISSIONER THE GREATER OF 10% OF THE PENALTY AMOUNT OR $25.

(II) A JUDGE MAY INCREASE THE PERCENTAGE OF CASH SURETY REQUIRED IN A PARTICULAR CASE BUT MAY NOT AUTHORIZE A CASH DEPOSIT OF LESS THAN $25.

(3) ON DEPOSITING THE AMOUNT REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION AND EXECUTING THE RECOGNIZANCE, THE DEFENDANT SHALL BE RELEASED FROM CUSTODY SUBJECT TO THE CONDITIONS OF THE BAIL BOND.

(C) PERFORMANCE OF CONDITIONS OF BOND; DEFAULT.

(1) WHEN ALL CONDITIONS OF THE BAIL BOND HAVE BEEN PERFORMED WITHOUT DEFAULT AND THE DEFENDANT HAS BEEN DISCHARGED FROM ALL OBLIGATIONS IN THE CAUSE FOR WHICH THE RECOGNIZANCE WAS POSTED, THE CLERK OF THE COURT SHALL RETURN THE DEPOSIT TO THE PERSON OR PRIVATE SURETY WHO DEPOSITED IT.

(2) (I) IF THE DEFENDANT FAILS TO PERFORM ANY CONDITION OF THE BAIL BOND, THE BAIL BOND SHALL BE FORFEITED.

(II) IF THE BAIL BOND IS FORFEITED, THE LIABILITY OF THE BAIL BOND SHALL EXTEND TO THE FULL AMOUNT OF THE BAIL BOND SET AND THE AMOUNT POSTED AS A DEPOSIT SHALL BE APPLIED TO REDUCE THE LIABILITY INCURRED BY THE FORFEITURE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616 1/2(b).

In subsections (a)(2) and (4), (b)(2)(i), and (c) of this section, the references to a "bail bond" are substituted for the former references to a "bond" to conform to the terminology used throughout this subtitle.

In the introductory language of subsection (a) of this section, the former phrase "[s]ubject to the provisions of subsection (c)" is deleted as unnecessary because those provisions - now § 5-202(d) of this subtitle - do not limit this subsection.

In subsection (a) of this section, the former reference to the power of the District Court to "exercise all of the powers of justices of the peace under the Constitution of 1867" is deleted in light of Md. Constitution, Art. IV, § 41-I(c), stating that statutory references to justices of the peace are deemed to refer to the District Court.

In subsection (a)(3) of this section, the reference to the defined term "correctional facility" is substituted for the former reference to a "jail" for consistency throughout this article.

Defined terms: "Correctional facility" § 1-101

"Person" § 1-101

5-206. REINSTATEMENT OF BAIL AFTER DISCHARGE AT PRELIMINARY HEARING.

IN A CRIMINAL CASE, A JUDGE MAY REINSTATE ANY BAIL, BOND, OR RECOGNIZANCE FOR CRIMINAL CHARGES DISCHARGED AT A PRELIMINARY HEARING IN THE DISTRICT COURT, IF A NEW CHARGING DOCUMENT ARISES OUT OF THE SUBSTANTIALLY SAME SET OF FACTS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616 1/2(g).

The former reference to an "indictment" is deleted as included in the defined term "charging document".

Defined term: "Charging document" § 1-101

5-207. TERMINATION OF BOND ON SENTENCING.

(A) IN GENERAL.

IF A DEFENDANT IS FOUND GUILTY IN A CIRCUIT COURT AND SENTENCED TO IMPRISONMENT, A BOND ON WHICH THE DEFENDANT WAS RELEASED BEFORE THE SENTENCING IS TERMINATED.

(B) NEW BOND ON APPEAL.

IF THE DEFENDANT FILES A NOTICE OF APPEAL AND THE SENTENCING COURT REQUIRES A BOND TO BE POSTED, THE DEFENDANT SHALL POST A NEW BOND.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616 1/2(h).

In subsection (b) of this section, the reference to "fil[ing] a notice" of appeal is substituted for the former reference to "tak[ing]" an appeal for accuracy. *See* Md. Rules 8-201 and 8-202.

5-208. STRIKING OUT FORFEITURE OF BAIL OR COLLATERAL; PRODUCTION OF DEFENDANT.

(A) "RETURN" DEFINED.

IN THIS SECTION, "RETURN" MEANS TO PLACE IN THE CUSTODY OF A POLICE OFFICER, SHERIFF, OR OTHER COMMISSIONED LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED TO MAKE ARRESTS WITHIN THE JURISDICTION OF THE COURT.

(B) IN GENERAL.

(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A COURT THAT EXERCISES CRIMINAL JURISDICTION SHALL STRIKE OUT A FORFEITURE OF BAIL OR COLLATERAL AND DISCHARGE THE UNDERLYING BAIL BOND IF THE DEFENDANT CAN SHOW REASONABLE GROUNDS FOR THE DEFENDANT'S FAILURE TO APPEAR.

(2) THE COURT SHALL:

(I) ALLOW A SURETY 90 DAYS AFTER THE DATE OF THE DEFENDANT'S FAILURE TO APPEAR OR, FOR GOOD CAUSE SHOWN, 180 DAYS TO RETURN THE DEFENDANT BEFORE REQUIRING THE PAYMENT OF ANY FORFEITURE OF BAIL OR COLLATERAL; AND

(II) STRIKE OUT A FORFEITURE OF BAIL OR COLLATERAL AND DEDUCT ONLY THE ACTUAL EXPENSE INCURRED FOR THE DEFENDANT'S ARREST, APPREHENSION, OR SURRENDER, IF:

1. THE DEFENDANT IS RETURNED; AND

2. THE ARREST, APPREHENSION, OR SURRENDER OCCURS MORE THAN 90 DAYS AFTER THE DEFENDANT'S FAILURE TO APPEAR OR AT THE END OF THE PERIOD THAT THE COURT ALLOWS TO RETURN THE DEFENDANT.

(C) CONFINEMENT OF DEFENDANT.

EVIDENCE OF CONFINEMENT OF A FUGITIVE DEFENDANT IN A CORRECTIONAL FACILITY IN THE UNITED STATES IS A WHOLLY SUFFICIENT GROUND TO STRIKE OUT A FORFEITURE, IF ASSURANCE IS GIVEN THAT THE DEFENDANT WILL COME BACK TO THE JURISDICTION OF THE COURT ON EXPIRATION OF THE SENTENCE AT NO EXPENSE TO THE STATE, COUNTY, OR MUNICIPAL CORPORATION.

(D) STETTED CHARGE.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF THE COURT INDEFINITELY POSTPONES TRIAL OF A CRIMINAL CHARGE BY MARKING THE CRIMINAL CHARGE "STET" ON THE DOCKET:

(I) THE DEFENDANT OR OTHER PERSON WHO GAVE COLLATERAL FOR BAIL OR RECOGNIZANCE IS ENTITLED TO A REFUND; AND

(II) IF A BAIL BOND OR OTHER SECURITY WAS GIVEN, THE BAIL BOND OR OTHER SECURITY SHALL BE DISCHARGED.

(2) IF THE BAIL BOND OR OTHER SECURITY HAS BEEN DECLARED FORFEITED AND 10 YEARS HAVE PASSED SINCE THE BAIL BOND OR OTHER SECURITY WAS POSTED, THE DEFENDANT OR OTHER PERSON MAY NOT RECEIVE A REFUND OR DISCHARGE.

(E) DEFENDANT CONFINED OUTSIDE STATE; GIVE BACK OF BOND OR COLLATERAL TO SURETY.

(1) A COURT EXERCISING CRIMINAL JURISDICTION MAY NOT ORDER A FORFEITURE OF THE BAIL BOND OR COLLATERAL POSTED BY A SURETY AND SHALL GIVE BACK THE BAIL BOND OR COLLATERAL TO THE SURETY IF:

(I) THE DEFENDANT FAILS TO APPEAR IN COURT; AND

(II) THE SURETY PRODUCES EVIDENCE, WITHIN THE TIME LIMITS ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION, THAT:

1. THE DEFENDANT IS CONFINED IN A CORRECTIONAL FACILITY OUTSIDE THE STATE;

2. THE STATE'S ATTORNEY IS UNWILLING TO ISSUE A DETAINER AND LATER EXTRADITE THE DEFENDANT; AND

3. THE SURETY AGREES IN WRITING TO DEFRAY THE EXPENSE OF RETURNING THE DEFENDANT TO THE JURISDICTION IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

(2) A COURT EXERCISING CRIMINAL JURISDICTION THAT HAS ORDERED FORFEITURE OF A BAIL BOND OR COLLATERAL AFTER EXPIRATION OF THE TIME LIMITS ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION FOR A SURETY TO RETURN A DEFENDANT SHALL GIVE BACK THE FORFEITED BAIL BOND OR

COLLATERAL IF, WITHIN 10 YEARS AFTER THE DATE THE BAIL BOND OR COLLATERAL WAS POSTED, THE SURETY PRODUCES EVIDENCE THAT:

(I) THE DEFENDANT IS CONFINED IN A CORRECTIONAL FACILITY OUTSIDE THE STATE;

(II) THE STATE'S ATTORNEY IS UNWILLING TO ISSUE A DETAINER AND LATER EXTRADITE THE DEFENDANT; AND

(III) THE SURETY AGREES IN WRITING TO DEFRAY THE EXPENSE OF RETURNING THE DEFENDANT TO THE JURISDICTION IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616 1/2(e).

In subsection (a) of this section, the former phrase "unless the context indicates otherwise" is deleted as an unnecessary statement of a standard rule of statutory construction that applies to all definitions.

Also in subsection (a) of this section, the word "return" is substituted for the former references to "produce" and "produced" for clarity.

Also in subsection (a) of this section, the former reference to "the defendant" is deleted as redundant.

In subsections (b)(1) and (e)(1) and (2) of this section, the references to a "bail bond" are substituted for the former references to a "bond" to conform to the terminology used throughout this subtitle.

In subsection (b)(1) of this section, the phrase "failure to appear" is substituted for the former reference to "nonappearance" to conform to the terminology used throughout this subtitle.

In subsections (c) and (e)(1)(ii)1 and (2)(i) of this section, the references to the defined term "correctional facility" are substituted for the former references to a "penal institution" for consistency throughout this article.

In subsection (d)(1) of this section, the reference to a criminal "charge" is substituted for the former reference to a criminal "case" for accuracy. *See* Md. Rule 4-248.

Also in subsection (d)(1) of this section, the clause "if the court indefinitely postpones trial of a criminal charge by marking the criminal charge `stet' on the docket" is substituted for the former reference to "stetted" to clarify the meaning of that term.

Defined terms: "Correctional facility" § 1-101

"County" § 1-101

"Person" § 1-101

5-209. PROPERTY BONDSMEN.

(A) "PROPERTY BONDSMAN" DEFINED.

IN THIS SECTION, "PROPERTY BONDSMAN" MEANS A PERSON OTHER THAN A DEFENDANT WHO EXECUTES A BAIL BOND SECURED BY REAL ESTATE IN THE STATE.

(B) AGENT.

A PROPERTY BONDSMAN MAY AUTHORIZE AN AGENT IN WRITING TO EXECUTE ON BEHALF OF THE PROPERTY BONDSMAN:

(1) A BAIL BOND; AND

(2) A DECLARATION OF TRUST OR DEED OF TRUST TO SECURE A BAIL BOND BY REAL ESTATE.

(C) ACCEPTANCE OF BOND.

IF ALL OTHER REQUIREMENTS OF LAW ARE MET, A PERSON AUTHORIZED BY LAW TO TAKE A BAIL BOND SHALL TAKE A BAIL BOND SECURED BY DECLARATION OF TRUST OR DEED OF TRUST ON REAL ESTATE PROPERLY EXECUTED BY AN AUTHORIZED AGENT OF A PROPERTY BONDSMAN.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616 1/2B.

In subsection (a) of this section, the former reference to "one or more parcels" of real property is deleted as surplusage.

In subsection (b) of this section, the former reference to "agents" is deleted in light of the word "agent" and Art. 1, § 8, which provides that the singular includes the plural.

Defined term: "Person" § 1-101

5-210. SOLICITING BUSINESS.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "AGENT" MEANS A PERSON THAT ACTS OR IS AUTHORIZED TO ACT AS THE REPRESENTATIVE OF A BAIL BONDSMAN.

(3) (I) "BAIL BONDSMAN" MEANS A LICENSED LIMITED SURETY AGENT OR A LICENSED PROFESSIONAL BAIL BONDSMAN.

(II) "BAIL BONDSMAN" DOES NOT INCLUDE A PERSON THAT CONTRACTS WITH A PUBLIC AGENCY TO PROVIDE BAIL BONDS TO PERSONS DETAINED IN A CORRECTIONAL FACILITY.

(B) PROHIBITED ACTS.

ON THE GROUNDS OF A COURTHOUSE OR CORRECTIONAL FACILITY, A BAIL BONDSMAN OR AN AGENT OF A BAIL BONDSMAN MAY NOT:

(1) APPROACH, ENTICE, OR INVITE A PERSON TO USE THE SERVICES OF A BAIL BONDSMAN;

(2) DISTRIBUTE, DISPLAY, OR WEAR AN ITEM THAT ADVERTISES THE SERVICES OF A BAIL BONDSMAN; OR

(3) OTHERWISE SOLICIT BUSINESS AS A BAIL BONDSMAN.

(C) PENALTIES.

A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) A FINE NOT EXCEEDING $100 FOR A FIRST OFFENSE; AND

(2) A FINE NOT EXCEEDING $1,000 FOR A SUBSEQUENT OFFENSE.

(D) REFERRAL TO INSURANCE COMMISSIONER.

A PERSON CONVICTED OF A VIOLATION OF SUBSECTION (B) OF THIS SECTION SHALL BE REFERRED TO THE INSURANCE COMMISSIONER FOR APPROPRIATE ACTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616 1/2A.

In subsection (a)(2) and (3)(ii) of this section, the defined term "person" is substituted for the former reference to "an individual, partnership, association, or corporation" for brevity.

In subsection (b) of this section, the reference to "correctional facility" is substituted for the former reference to "jail, or prison" to conform to the terminology used throughout this article.

In subsection (c) of this section, the defined term "person" is substituted for the former reference to "individual" to conform to the terminology used throughout this article.

Defined terms: "Correctional facility" § 1-101

"Person" § 1-101

5-211. FAILURE TO SURRENDER AFTER FORFEITURE OF BAIL OR RECOGNIZANCE.

(A) BENCH WARRANT.

IF A PERSON HAS BEEN CHARGED WITH A CRIME AND ADMITTED TO BAIL OR RELEASED ON RECOGNIZANCE AND THE PERSON FORFEITS THE BAIL OR RECOGNIZANCE AND WILLFULLY FAILS TO SURRENDER, A BENCH WARRANT SHALL BE ISSUED FOR THE PERSON'S ARREST.

(B) PENALTIES.

A PERSON WHO HAS BEEN ADMITTED TO BAIL OR RELEASED ON RECOGNIZANCE IN A CRIMINAL CASE IN THE STATE AND WHO WILLFULLY FAILS TO SURRENDER WITHIN 30 DAYS AFTER THE DATE OF FORFEITURE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(1) A FINE NOT EXCEEDING $5,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH, IF THE BAIL OR RECOGNIZANCE WAS GIVEN IN CONNECTION WITH A CHARGE OF A FELONY OR PENDING AN APPEAL, CERTIORARI, HABEAS CORPUS, OR POSTCONVICTION PROCEEDING AFTER CONVICTION OF ANY CRIME; OR

(2) A FINE NOT EXCEEDING $1,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH, IF THE BAIL OR RECOGNIZANCE WAS GIVEN IN CONNECTION WITH A CHARGE OF A MISDEMEANOR, OR FOR APPEARANCE AS A WITNESS.

(C) EFFECT OF SECTION.

THIS SECTION DOES NOT DIMINISH THE POWER OF A COURT TO PUNISH FOR CONTEMPT.

(D) STATUTE OF LIMITATIONS AND IN BANC REVIEW.

A PERSON WHO IS PROSECUTED UNDER SUBSECTION (B)(1) OF THIS SECTION IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE REGARDING THE EXEMPTION FROM THE STATUTE OF LIMITATIONS FOR THE INSTITUTION OF PROSECUTION AND THE RIGHT OF IN BANC REVIEW.

REVISOR'S NOTE: Subsections (a) through (c) of this section are new language derived without substantive change from former Art. 27, § 12B.

Subsection (d) of this section is new language substituted for the former reference to being "imprisoned in the penitentiary" for consistency with CS § 9-103(a), which requires convicted persons to be sentenced to the jurisdiction of the Division of Correction. The revision does not alter the two substantive matters that a penitentiary misdemeanor provision connotes, *i.e.*, exemption from the statute of limitations and the right to in banc review. *See* CJ § 5-106(b). *See* Ch. _____, Acts of 2001, § _____which also enacted this revision.

In subsection (b) of this section, the reference to being "guilty of a

misdemeanor" is added to state expressly that which only was implied in the former law. In this State, any crime that was not a felony at common law and has not been declared a felony by statute, is considered to be a misdemeanor. *See State v. Canova*, 278 Md. 493, 490 (1976), *Bowser v. State*, 136 Md. 342, 345 (1920), *Dutton v. State*, 123 Md. 373, 378 (1914), and *Williams v. State*, 4 Md. App. 342, 347.

In subsection (c) of this section, the reference to the inability of this section to "diminish" the power of a court to punish for contempt is substituted for the former reference to the inability of this section to "interfere with or prevent the exercise" by any court of its power to punish, for brevity.

Defined term: "Person" § 1-101

5-212. FAILURE TO APPEAR IN RESPONSE TO CITATION.

(A) APPLICATION OF SECTION.

THIS SECTION DOES NOT APPLY TO A CITATION:

(1) FOR A VIOLATION OF A PARKING ORDINANCE OR REGULATION ADOPTED UNDER TITLE 26, SUBTITLE 3 OF THE TRANSPORTATION ARTICLE;

(2) ADOPTED BY THE CHIEF JUDGE OF THE DISTRICT COURT UNDER § 1-605(D)(8) OF THE COURTS ARTICLE, FOR USE IN TRAFFIC OFFENSES; OR

(3) ISSUED BY A NATURAL RESOURCES POLICE OFFICER UNDER § 1-205 OF THE NATURAL RESOURCES ARTICLE.

(B) BENCH WARRANT.

A BENCH WARRANT MAY BE ISSUED FOR THE ARREST OF A DEFENDANT WHO FAILS TO APPEAR IN COURT IN RESPONSE TO A CITATION.

(C) PENALTY.

A PERSON WHO FAILS TO APPEAR IN COURT IN RESPONSE TO A CITATION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $500 OR IMPRISONMENT NOT EXCEEDING 90 DAYS OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 12C.

In subsection (a)(3) of this section, the phrase "issued by a Natural Resources police officer" is substituted for the former phrase "[p]rescribed by the Department of Natural Resources" for accuracy.

Defined term: "Person" § 1-101

5-213. VIOLATION OF CONDITIONS OF PRETRIAL RELEASE.

(A) BENCH WARRANT.

A COURT MAY ISSUE A BENCH WARRANT FOR THE ARREST OF A DEFENDANT WHO VIOLATES A CONDITION OF PRETRIAL RELEASE.

(B) COURT ACTION.

AFTER A DEFENDANT IS PRESENTED BEFORE A COURT, THE COURT MAY:

(1) REVOKE THE DEFENDANT'S PRETRIAL RELEASE; OR

(2) CONTINUE THE DEFENDANT'S PRETRIAL RELEASE WITH OR WITHOUT CONDITIONS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 616 1/2(o).

In subsection (a) of this section, the former reference to being "charged with a criminal offense" is deleted as implicit in the reference to a "defendant".

GENERAL REVISOR'S NOTE TO SUBTITLE:

Former Art. 87, §§ 6 and 7, which authorized a sheriff or sheriff's deputy to take a bail bond under specified circumstances, are deleted as obsolete. The chief deputy sheriff for Baltimore City reports that in his 25-year career he has never used these sections -- the standard practice is for sheriffs to take persons they arrest to the clerk of the court to post a bond. The executive board of the Maryland Sheriffs' Association concurs that these sections are obsolete.

TITLE 6. TRIAL AND SENTENCING.

SUBTITLE 1. TRIAL.

6-101. RIGHT TO TRIAL BY JURY.

IN A CRIMINAL CASE TRIED IN A COURT OF GENERAL JURISDICTION, THERE IS NO RIGHT TO A JURY TRIAL UNLESS:

(1) THE CRIME CHARGED IS SUBJECT TO A PENALTY OF IMPRISONMENT; OR

(2) THERE IS A CONSTITUTIONAL RIGHT TO A JURY TRIAL FOR THE CRIME.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 593A.

In this section, the references to "crime" are substituted for the former

references to "offense" to avoid any ambiguity that "offense" could apply to an offense other than an offense that results in a criminal conviction and to conform to terminology used in the Correctional Services Article. *See, e.g.*, CS § 4-306(c)(1)(iii).

6-102. ROLE OF JURY.

EXCEPT AS PROVIDED IN § 6-104 OF THIS SUBTITLE, IN THE TRIAL OF A CRIMINAL CASE IN WHICH THERE IS A JURY, THE JURY IS THE JUDGE OF LAW AND FACT.

REVISOR'S NOTE: This section is new language derived without substantive change from the first clause of the first sentence of former Art. 27, § 593.

In this section, the reference to a trial "in which there is a jury" is added in light of § 6-101 of this subtitle and to state expressly what was only implied in the former reference to the trial of "all criminal cases".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the General Assembly may wish to delete this section as unnecessary in light of Article 23 of the Maryland Declaration of Rights, which declares that "[i]n the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact".

6-103. TRIAL DATE.

(A) REQUIREMENTS FOR SETTING DATE.

(1) THE DATE FOR TRIAL OF A CRIMINAL MATTER IN THE CIRCUIT COURT SHALL BE SET WITHIN 30 DAYS AFTER THE EARLIER OF:

(I) THE APPEARANCE OF COUNSEL; OR

(II) THE FIRST APPEARANCE OF THE DEFENDANT BEFORE THE CIRCUIT COURT, AS PROVIDED IN THE MARYLAND RULES.

(2) THE TRIAL DATE MAY NOT BE LATER THAN 180 DAYS AFTER THE EARLIER OF THOSE EVENTS.

(B) CHANGE OF DATE.

FOR GOOD CAUSE SHOWN, THE ADMINISTRATIVE JUDGE OF A COUNTY OR A DESIGNEE OF THE JUDGE MAY GRANT A CHANGE OF THE TRIAL DATE IN A CIRCUIT COURT:

(1) ON MOTION OF A PARTY; OR

(2) ON THE INITIATIVE OF THE CIRCUIT COURT.

(C) COURT RULES.

THE COURT OF APPEALS MAY ADOPT ADDITIONAL RULES TO CARRY OUT THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 591.

As to the first appearance of a defendant before a circuit court, as specified in subsection (a)(1)(ii) of this section, *see* Md. Rule 4-213(c).

In subsection (c) of this section, the former reference to rules of "practice and procedure" is deleted as unnecessary.

Also in subsection (c) of this section, the former phrase "in circuit courts" is deleted as surplusage.

Also in subsection (c) of this section, the phrase "to carry out" is substituted for the former phrase "for the implementation of" to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

Defined term: "County" § 1-101

6-104. MOTION FOR JUDGMENT OF ACQUITTAL ON GROUND OF INSUFFICIENT EVIDENCE.

(A) MOTION AFTER STATE'S EVIDENCE.

(1) AT THE CLOSE OF THE EVIDENCE FOR THE STATE, A DEFENDANT MAY MOVE FOR JUDGMENT OF ACQUITTAL ON ONE OR MORE COUNTS OR ON ONE OR MORE DEGREES OF A CRIME, ON THE GROUND THAT THE EVIDENCE IS INSUFFICIENT IN LAW TO SUSTAIN A CONVICTION AS TO THE COUNT OR DEGREE.

(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IF THE COURT DENIES THE MOVE FOR JUDGMENT OF ACQUITTAL, THE DEFENDANT MAY OFFER EVIDENCE ON THE DEFENDANT'S BEHALF WITHOUT HAVING RESERVED THE RIGHT TO DO SO.

(3) IF THE DEFENDANT OFFERS EVIDENCE AFTER MAKING A MOTION FOR JUDGMENT OF ACQUITTAL, THE MOTION IS DEEMED WITHDRAWN.

(B) MOTION AFTER ALL EVIDENCE.

(1) THE DEFENDANT MAY MOVE FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF ALL THE EVIDENCE WHETHER OR NOT A MOTION FOR JUDGMENT OF ACQUITTAL WAS MADE AT THE CLOSE OF THE EVIDENCE FOR THE STATE.

(2) IF THE COURT DENIES THE MOTION FOR JUDGMENT OF ACQUITTAL, THE DEFENDANT MAY HAVE REVIEW OF THE RULING ON APPEAL.

REVISOR'S NOTE: This section is new language derived without substantive change from the second, third, and fourth sentences and the second clause

of the first sentence of former Art. 27, § 593.

In subsection (a)(1) of this section, the reference to a "crime" is substituted for the former reference to an "offense" to avoid any ambiguity that "offense" could apply to an offense other than an offense that results in a criminal conviction and to conform to terminology used in the Correctional Services Article. *See, e.g.,* CS § 4-306(c)(1)(iii).

Also in subsection (a)(1) of this section, the reference to the "defendant" is substituted for the former reference to the "accused" for clarity and consistency within this section. Similarly, in subsection (a)(2) and (3) of this section, the references to the "defendant" and the "defendant's" are substituted for the former references to "he" and "his".

In subsections (a)(2) and (b)(2) of this section, the references to the "court den[ying]" the motion for judgment of acquittal are added to clarify that it is the court who denies the motion.

In subsection (a)(2) of this section, the phrase "[s]ubject to paragraph (3) of this subsection" is added for clarity.

In subsection (b)(1) of this section, the reference to the "defendant" is added to clarify that it is the defendant making the motion.

6-105. MOTION FOR NEW TRIAL.

(A) TIMING OF HEARING ON MOTION.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A COURT IN WHICH A MOTION FOR A NEW TRIAL IN A CRIMINAL CASE IS PENDING SHALL HEAR THE MOTION:

(1) WITHIN 10 DAYS AFTER THE MOTION IS FILED; OR

(2) IF AN AGREED STATEMENT OF THE EVIDENCE OR A STATEMENT OF THE EVIDENCE CERTIFIED BY THE TRIAL JUDGE IS FILED, WITHIN 10 DAYS AFTER THE STATEMENT IS FILED.

(B) EXTENSION OF TIME FOR HEARING.

THE TIME FOR THE HEARING OF A MOTION FOR A NEW TRIAL MAY BE EXTENDED BY:

(1) A WRITTEN AGREEMENT, SIGNED BY THE STATE'S ATTORNEY OF THE COUNTY IN WHICH THE MOTION IS PENDING AND THE DEFENDANT OR THE DEFENDANT'S COUNSEL; OR

(2) AN ORDER SIGNED BY THE TRIAL JUDGE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 594(a).

In subsection (a)(2) of this section, the reference to the "trial judge" is substituted for the former reference to the "judge before whom the case was tried" for brevity.

In subsection (b)(1) of this section, the reference to the "defendant's counsel" is substituted for the former reference to "his counsel" for clarity.

Also in subsection (b)(1) of this section, the former reference to the "City of Baltimore" is deleted as included in the defined term "county".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the 10-day time period within which a court is required to hear a motion for a new trial in a criminal case is contrary to current practice. The General Assembly may wish to delete subsection (a) of this section as obsolete.

Defined term: "County" § 1-101

6-106. RIGHTS OF VICTIM OR VICTIM'S REPRESENTATIVE.

(A) NOTICE.

BEFORE A HEARING UNDER § 6-105 OF THIS SUBTITLE, THE VICTIM OR VICTIM'S REPRESENTATIVE SHALL BE NOTIFIED AS PROVIDED UNDER § 11-104 OR § 11-503 OF THIS ARTICLE.

(B) ATTENDANCE AT HEARING.

A VICTIM OR VICTIM'S REPRESENTATIVE HAS THE RIGHT TO ATTEND A HEARING UNDER § 6-105 OF THIS SUBTITLE AS PROVIDED UNDER § 11-102 OF THIS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 2-594(b) and (c).

In subsection (a) of this section, the former reference to a victim or victim's representative being notified "of the proceeding" is deleted as implicit in the reference to the requirement that the victim or victim's representative be notified.

Former Art. 27, § 593B, which cross-referenced former Title 12 of the Health - General Article -- now revised as Title 2 of this article, is deleted as unnecessary.

Former Art. 27, § 791, which cross-referenced Art. 27, § 461A concerning the admissibility of evidence relating to a victim's chastity or prior sexual conduct, is deleted as unnecessary.

SUBTITLE 2. SENTENCING.

PART I. STATE COMMISSION ON CRIMINAL SENTENCING POLICY.

6-201.
"COMMISSION" DEFINED.

IN THIS PART, "COMMISSION" MEANS THE STATE COMMISSION ON CRIMINAL SENTENCING POLICY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 21-101.

6-202. STATEMENT OF INTENT.

THE GENERAL ASSEMBLY INTENDS THAT:

(1) SENTENCING SHOULD BE FAIR AND PROPORTIONAL AND THAT SENTENCING POLICIES SHOULD REDUCE UNWARRANTED DISPARITY, INCLUDING ANY RACIAL DISPARITY, IN SENTENCES FOR CRIMINALS WHO HAVE COMMITTED SIMILAR CRIMES AND HAVE SIMILAR CRIMINAL HISTORIES;

(2) SENTENCING POLICIES SHOULD HELP CITIZENS TO UNDERSTAND HOW LONG A CRIMINAL WILL BE CONFINED;

(3) SENTENCING POLICIES SHOULD PRESERVE JUDICIAL DISCRETION AND SUFFICIENT FLEXIBILITY TO ALLOW INDIVIDUALIZED SENTENCES;

(4) SENTENCING GUIDELINES BE VOLUNTARY;

(5) THE PRIORITY FOR THE CAPACITY AND USE OF CORRECTIONAL FACILITIES SHOULD BE THE CONFINEMENT OF VIOLENT AND CAREER CRIMINALS; AND

(6) SENTENCING JUDGES IN THE STATE SHOULD BE ABLE TO IMPOSE THE MOST APPROPRIATE CRIMINAL PENALTIES, INCLUDING CORRECTIONS OPTIONS PROGRAMS FOR APPROPRIATE CRIMINALS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 21-102.

In items (1), (2), (5), and (6) of this section, the references to a "criminal" and "criminals" are substituted for the former reference to an "offender" and "offenders" to conform to the terminology used throughout this article. Similarly, in item (1) of this section, the reference to "crimes" is substituted for the former reference to "offenses".

In items (2) and (5) of this section, the references to being "confined" and "confinement" are substituted for the former references to being

"incarcerated" and "incarceration" to conform to the terminology of this article and of the Correctional Services Article.

In item (2) of this section, the former reference to an offender who will "actually" be confined is deleted as implicit in the reference to being "confined".

In item (3) of this section, the former reference to "meaningful judicial discretion in the imposition of sentences" is deleted as implicit in the reference to "judicial discretion".

In item (4) of this section, the former clause "it is voluntary for the court to sentence within the guidelines" is deleted as redundant in light of the phrase "sentencing guidelines be voluntary".

Defined term: "Correctional facility" § 1-101

6-203. ESTABLISHED.

THERE IS A STATE COMMISSION ON CRIMINAL SENTENCING POLICY.

REVISOR'S NOTE: This section formerly was Art. 41, § 21-103.

No changes are made.

6-204. MEMBERSHIP.

(A) COMPOSITION; APPOINTMENT OF MEMBERS.

THE COMMISSION CONSISTS OF THE FOLLOWING 19 MEMBERS:

(1) A CHAIRMAN, APPOINTED BY THE GOVERNOR;

(2) (I) THE CHIEF JUDGE OF THE COURT OF APPEALS; OR

(II) A JUDGE OR FORMER JUDGE OF THE COURT OF APPEALS OR THE COURT OF SPECIAL APPEALS DESIGNATED BY THE CHIEF JUDGE OF THE COURT OF APPEALS;

(3) ONE CIRCUIT COURT JUDGE, APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS;

(4) ONE DISTRICT COURT JUDGE, APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS;

(5) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE;

(6) ONE STATE'S ATTORNEY WHO IS RECOMMENDED BY THE PRESIDENT OF THE MARYLAND STATE'S ATTORNEYS ASSOCIATION, APPOINTED BY THE GOVERNOR;

(7) THE PUBLIC DEFENDER OR THE PUBLIC DEFENDER'S DESIGNEE;

(8) A CRIMINAL DEFENSE ATTORNEY WHO IS RECOMMENDED BY THE PRESIDENT OF THE MARYLAND CRIMINAL DEFENSE ATTORNEYS ASSOCIATION, APPOINTED BY THE GOVERNOR;

(9) TWO MEMBERS OF THE STATE SENATE, INCLUDING AT LEAST ONE MEMBER OF THE SENATE JUDICIAL PROCEEDINGS COMMITTEE, APPOINTED BY THE PRESIDENT OF THE SENATE;

(10) TWO MEMBERS OF THE HOUSE OF DELEGATES, INCLUDING AT LEAST ONE MEMBER OF THE HOUSE JUDICIARY COMMITTEE, APPOINTED BY THE SPEAKER OF THE HOUSE;

(11) THE SECRETARY OF THE DEPARTMENT OR THE SECRETARY'S DESIGNEE;

(12) ONE REPRESENTATIVE FROM A VICTIMS' ADVOCACY GROUP, APPOINTED BY THE GOVERNOR;

(13) ONE REPRESENTATIVE FROM LAW ENFORCEMENT, APPOINTED BY THE GOVERNOR;

(14) ONE MEMBER WITH A BACKGROUND IN CRIMINAL JUSTICE OR CORRECTIONS POLICY WHO IS A RECOGNIZED EXPERT IN THE FIELD AND WHO IS APPOINTED BY THE GOVERNOR;

(15) ONE REPRESENTATIVE OF LOCAL CORRECTIONAL FACILITIES, APPOINTED BY THE GOVERNOR; AND

(16) TWO REPRESENTATIVES OF THE PUBLIC, APPOINTED BY THE GOVERNOR.

(B) TERMS.

(1) THE TERM OF AN APPOINTED MEMBER IS 4 YEARS.

(2) THE TERMS OF THE APPOINTED MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE COMMISSION ON OCTOBER 1, 2001.

(3) AT THE END OF A TERM, AN APPOINTED MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(C) REMOVAL.

THE GOVERNOR MAY REMOVE A MEMBER FOR INCOMPETENCE OR MISCONDUCT.

REVISOR'S NOTE: Subsections (a) and (b) of this section are new language derived without substantive change from former Art. 41, § 21-104(a) and (b)(1) through (4).

Subsection (c) of this section is new language that repeats the provisions of Md. Constitution, Art. II, § 15. For other provisions on removal, *see* Md. Constitution, Art. XV, § 2, on suspension and removal for crimes, and SG § 8-501, on removal for failure to attend meetings.

In subsection (b)(2) of this section, the phrase "as required by the terms provided for members of the Commission on October 1, 2001" is standard language added for clarity. The terms of the members serving on October 1, 2001, and who are subject to appointment end as follows: (1) seven in 2003; and (2) six in 2005.

Former Art. 41, § 21-104(b)(5), which allowed reappointment, is deleted as unnecessary. As a general rule, the right to serve successive terms is not limited, absent an express provision to the contrary.

Defined terms: "Commission" § 6-201

"Department" § 1-101

"Local correctional facility" § 1-101

6-205. QUORUM; MEETINGS; COMPENSATION; STAFF.

(A) QUORUM.

A MAJORITY OF THE AUTHORIZED MEMBERSHIP OF THE COMMISSION IS A QUORUM.

(B) MEETINGS.

(1) THE COMMISSION SHALL MEET QUARTERLY AT THE TIMES AND PLACES THAT IT DETERMINES.

(2) THE COMMISSION MAY HOLD ADDITIONAL MEETINGS AT THE CALL OF THE CHAIRMAN OR ANY SIX MEMBERS OF THE COMMISSION AFTER GIVING PROPER NOTICE IN THE MANNER PROVIDED IN THE RULES OF THE COMMISSION.

(C) COMPENSATION.

A MEMBER OF THE COMMISSION:

(1) MAY NOT RECEIVE COMPENSATION FOR SERVING ON THE COMMISSION; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

(D) STAFF.

THE CHAIRMAN MAY SELECT A STAFF IN ACCORDANCE WITH THE STATE BUDGET.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 21-105(a), (b), (g), and (i).

In subsection (d) of this section, the former authority granted to the Commission to "employ a staff" is deleted as implicit in the authority of the chairman to "select" a staff.

Defined term: "Commission" § 6-201

6-206. MISCELLANEOUS POWERS AND DUTIES.

(A) POWERS.

IN ADDITION TO ANY OTHER POWERS SET FORTH ELSEWHERE, THE COMMISSION MAY:

(1) ESTABLISH SUBCOMMITTEES OR ADVISORY COMMITTEES COMPOSED OF COMMISSION MEMBERS TO ACCOMPLISH THE DUTIES IMPOSED UNDER THIS SECTION;

(2) REQUIRE EACH STATE UNIT AND LOCAL GOVERNMENT UNIT TO GIVE INFORMATION TO THE COMMISSION ON REQUEST; AND

(3) APPLY FOR, ACCEPT, AND USE GRANTS OR FINANCIAL OR OTHER AID FROM A PUBLIC OR PRIVATE SOURCE TO ACCOMPLISH THE DUTIES ESTABLISHED IN THIS PART.

(B) DUTIES.

AT LEAST ANNUALLY, THE COMMISSION SHALL HOLD A HEARING FOR PUBLIC COMMENTS ABOUT THE ISSUES THAT ARE BEING STUDIED BY THE COMMISSION.

(C) REGULATIONS AND CHANGES TO GUIDELINES.

(1) THE COMMISSION MAY ADOPT RULES GOVERNING THE ADMINISTRATION AND PROCEEDINGS OF THE COMMISSION.

(2) A CHANGE TO THE SENTENCING GUIDELINES REQUIRES ADOPTION BY A MAJORITY OF THE TOTAL NUMBER OF MEMBERS OF THE COMMISSION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 21-105(c), (d), (e), (f), and (h).

In subsection (c)(2) of this section, the reference to "sentencing" guidelines is added for clarity and to conform to the terminology used throughout this article.

Defined term: "Commission" § 6-201

6-207. DUTY OF STATE AND LOCAL UNITS.

EACH STATE UNIT AND LOCAL GOVERNMENTAL UNIT SHALL COOPERATE WITH THE COMMISSION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 21-105(j).

Defined term: "Commission" § 6-201

6-208. SENTENCING GUIDELINES.

(A) ADOPTION OF GUIDELINES.

(1) THE COMMISSION SHALL ADOPT SENTENCING GUIDELINES THAT THE COMMISSION MAY CHANGE.

(2) THE SENTENCING GUIDELINES SHALL INCLUDE SENTENCING GUIDELINES FOR ORDINARY SENTENCES AND SENTENCING GUIDELINES FOR CORRECTIONS OPTIONS.

(B) GUIDELINES FOR ORDINARY SENTENCES.

THE SENTENCING GUIDELINES FOR ORDINARY SENTENCES SHALL CALL FOR SENTENCES WITHIN THE LIMITS SET BY LAW AND SHALL SET FORTH:

(1) THE RANGE OF SENTENCES FOR CRIMES OF A GIVEN DEGREE OF SERIOUSNESS;

(2) A RANGE OF SEVERITY FOR DEFENDANTS PREVIOUSLY CONVICTED OF OR ADJUDICATED DELINQUENT FOR A PREVIOUS CRIME; AND

(3) A LIST OF AGGRAVATING AND MITIGATING CIRCUMSTANCES.

(C) GUIDELINES FOR CORRECTIONS OPTIONS.

THE SENTENCING GUIDELINES FOR CORRECTIONS OPTIONS SHALL BE DESIGNED TO IDENTIFY DEFENDANTS QUALIFIED FOR CORRECTIONS OPTIONS PROGRAMS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 21-106(b), (c)(1), and, as it related to the Commission, (a).

In subsection (a) of this section, the former reference to "consideration of the recommendations of the Maryland Commission on Criminal Sentencing Policy" is deleted as obsolete. Additionally, the former reference to "existing" sentencing guidelines is deleted as obsolete.

In subsection (a)(2) of this section, the reference to "sentencing guideline for ordinary sentences" options is substituted for the former reference to guidelines "which shall be considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to, or who were found guilty of crimes in a circuit court" for brevity.

Also in subsection (a)(2) of this section, the reference to "sentencing guidelines for corrections options" is added to state explicitly what was only implied in the former law - that the guidelines should also help identify defendants for corrections options programs.

In subsection (b)(2) of this section, the former reference to a range of "increased" severity is deleted as included in the reference to "severity".

Also in subsection (b)(2) of this section, the reference to "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

In subsection (c) of this section, the reference to "sentencing" guidelines is added to conform to the terminology used throughout this article.

Defined term: "Commission" § 6-201

6-209. ANNUAL REPORT.

(A) REQUIRED.

THE COMMISSION SHALL REVIEW ANNUALLY SENTENCING POLICY AND PRACTICE AND, ON OR BEFORE DECEMBER 1 OF EACH YEAR, REPORT TO THE GENERAL ASSEMBLY IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

(B) CONTENTS.

(1) THE REPORT SHALL:

(I) INCLUDE ANY CHANGES TO THE SENTENCING GUIDELINES MADE DURING THE PRECEDING YEAR; AND

(II) REVIEW JUDICIAL COMPLIANCE WITH THE SENTENCING GUIDELINES, INCLUDING COMPLIANCE BY CRIME AND BY JUDICIAL CIRCUIT.

(2) THE COMMISSION SHALL CONSIDER A SENTENCE TO A CORRECTIONS OPTIONS PROGRAM TO BE WITHIN THE SENTENCING GUIDELINES IF THE SENTENCE FALLS WITHIN A CORRECTIONS OPTIONS ZONE SHOWN ON THE MATRIX FOR PROPERTY OFFENSES, DRUG OFFENSES, OR OFFENSES AGAINST PERSONS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 21-106(d).

In subsection (b) of this section, the reference to "sentencing" guidelines is added for clarity and consistency with the terminology used throughout this part.

In subsection (b)(1)(ii) of this section, the reference to "crime" is substituted for the former reference to "offense" to conform to the terminology used throughout this article.

In subsection (b)(2) of this section, the former introductory phrase "[i]n determining whether a sentence is within the guidelines" is deleted as unnecessary.

Also in subsection (b)(2) of this section, the reference to the matrix "for property offenses, drug offenses, or offenses against persons" is added for clarity.

Defined terms: "Commission" § 6-201

"Person" § 1-101

6-210. COLLECTING GUIDELINES WORKSHEETS AND MONITORING OF PRACTICE.

THE COMMISSION SHALL:

(1) COLLECT SENTENCING GUIDELINES WORKSHEETS AND AUTOMATE THE INFORMATION WITH THE HELP OF THE ADMINISTRATIVE OFFICE OF THE COURTS; AND

(2) MONITOR SENTENCING PRACTICE AND ADOPT CHANGES TO THE SENTENCING GUIDELINE MATRICES CONSISTENT WITH THE INTENT OF THIS PART.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 21-106(e).

In item (2) of this section, the reference to "sentencing" guidelines is added for clarity and to conform to the terminology used throughout this part.

6-211. ADOPTION OF VOLUNTARY GUIDELINES.

(A) ADOPTION BY COMMISSION.

SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE COMMISSION SHALL ADOPT AS REGULATIONS SENTENCING GUIDELINES AND ANY CHANGES TO THOSE SENTENCING GUIDELINES, SUBJECT TO TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE.

(B) REGULATIONS TO BE VOLUNTARY.

REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION ARE VOLUNTARY SENTENCING GUIDELINES THAT A COURT NEED NOT FOLLOW.

(C) EFFECTIVE DATE OF GUIDELINES.

A CHANGE TO THE SENTENCING GUIDELINES TAKES EFFECT ON THE DAY THAT THE REGULATION TAKES EFFECT AS PROVIDED UNDER TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 21-106(f).

In subsection (a) of this section, the former reference to "the requirements of" Title 10, Subtitle 1 of the State Government Article is deleted as unnecessary.

Defined term: "Commission" § 6-201

6-212. TRAINING, OPERATIONS, AND INFORMATION.

THE COMMISSION SHALL:

(1) HOLD TRAINING AND ORIENTATION PROGRAMS FOR TRIAL COURT JUDGES, ATTORNEYS, PROBATION OFFICERS, AND OTHER INTERESTED PARTIES AS REQUIRED;

(2) CONSULT WITH THE GENERAL ASSEMBLY ABOUT CARRYING OUT, MANAGING, MAINTAINING, AND OPERATING THE SENTENCING GUIDELINES SYSTEM; AND

(3) PREPARE STATEMENTS CONTAINING FISCAL AND STATISTICAL INFORMATION ON PROPOSED LEGISLATION AFFECTING SENTENCING AND CORRECTIONS PRACTICE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 21-107.

In item (1) of this section, the reference to the Commission's holding programs "as required" is substituted for the former reference to the holding of programs "periodically as may be required" for brevity.

In item (2) of this section, the reference to "carrying out" the sentencing guidelines system is substituted for the former reference to "implement[ing]" the system, to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

Defined term: "Commission" § 6-201

6-213. USE OF CORRECTIONAL POPULATION SIMULATION MODEL.

(A) REQUIRED.

THE COMMISSION SHALL USE A CORRECTIONAL POPULATION SIMULATION MODEL TO HELP DETERMINE THE STATE AND LOCAL CORRECTIONAL RESOURCES THAT:

(1) ARE REQUIRED UNDER CURRENT LAWS, POLICIES, AND PRACTICES RELATING TO SENTENCING, PAROLE, AND MANDATORY SUPERVISION; AND

(2) WOULD BE REQUIRED TO CARRY OUT FUTURE COMMISSION RECOMMENDATIONS FOR LEGISLATION OR CHANGES TO THE SENTENCING GUIDELINES.

(B) LIMITS ON RECOMMENDATIONS FOR CHANGES.

IF THE RECOMMENDATIONS OF THE COMMISSION FOR CHANGES IN LEGISLATION WOULD RESULT IN STATE AND LOCAL INMATE POPULATIONS EXCEEDING THE OPERATING CAPACITIES OF AVAILABLE FACILITIES, THE COMMISSION SHALL PRESENT ADDITIONAL SENTENCING MODEL ALTERNATIVES CONSISTENT WITH THESE CAPACITIES.

(C) AVAILABILITY OF MODEL.

IN SECOND PRIORITY TO THE WORK OF THE COMMISSION, THE COMMISSION SHALL MAKE THE MODEL AVAILABLE ON REQUEST FROM ANY MEMBER OF THE GENERAL ASSEMBLY OR THE SECRETARY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 21-108.

Defined terms: "Commission" § 6-201

"Secretary" § 1-101

6-214. RESERVED.

6-215. RESERVED.

PART II. SENTENCING PROCEDURES.

6-216. JUDICIAL SENTENCING GUIDELINES.

(A) IN GENERAL.

(1) A CIRCUIT COURT SHALL CONSIDER:

(I) THE SENTENCING GUIDELINES FOR ORDINARY SENTENCES IN DECIDING ON THE PROPER SENTENCE; AND

(II) THE SENTENCING GUIDELINES FOR CORRECTIONS OPTIONS IN DECIDING WHETHER TO SENTENCE A DEFENDANT TO A CORRECTIONS OPTIONS PROGRAM OR TO IMPOSE AN ORDINARY SENTENCE.

(2) IN DECIDING WHETHER TO SENTENCE A DEFENDANT TO A CORRECTIONS OPTIONS PROGRAM, THE COURT PRIMARILY SHALL CONSIDER THE PUBLIC SAFETY.

(B) LIMITS ON GUIDELINES.

THE SENTENCING GUIDELINES MAY NOT:

(1) ALLOW FOR A SENTENCE EXCEEDING THE MAXIMUM SENTENCE PROVIDED BY LAW; OR

(2) BE USED IN VIOLATION OF ANY MANDATORY MINIMUM SENTENCE REQUIRED BY LAW.

(C) DELIVERY AND REVIEW OF SENTENCING GUIDELINES WORKSHEET.

(1) IF A COURT PREPARES A MARYLAND SENTENCING GUIDELINES WORKSHEET, THE CLERK OF COURT SHALL DELIVER A COPY OF THE MARYLAND SENTENCING GUIDELINES WORKSHEET TO THE UNIT THAT HAS BEEN ORDERED BY THE COURT TO RETAIN CUSTODY OF THE DEFENDANT.

(2) THE COPY SHALL BE DELIVERED WITH THE COMMITMENT ORDER OR AS SOON AS PRACTICABLE AFTER ISSUANCE OF THE COMMITMENT ORDER.

(3) THE PAROLE COMMISSION SHALL REVIEW A MARYLAND SENTENCING GUIDELINES WORKSHEET TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF TITLE 7 OF THE CORRECTIONAL SERVICES ARTICLE.

REVISOR'S NOTE: Subsection (a) of this section is new language derived without substantive change from former Art. 41, § 21-106(c)(2) and (3) and, as it related to guidelines considered by the circuit court, (a).

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 643C(b).

Subsection (c) of this section is new language derived without substantive change from former Art. 27, § 643C(c).

In subsection (c)(1) of this section, the reference to a "unit" is substituted for the former reference to an "agency" to conform to the terminology used throughout this article.

Former Art. 27, § 643C(a), which prohibited provisions in Article 27 or certain provisions in the Correctional Services Article from being construed to prohibit the use of judicial guidelines in setting sentences, is deleted as unnecessary in light of subsection (a) of this section, which requires circuit courts to consider guidelines when imposing sentences.

6-217. ANNOUNCEMENT OF MINIMUM CONFINEMENT FOR VIOLENT CRIME.

(A) ANNOUNCEMENT REQUIRED IN OPEN COURT.

WHEN A SENTENCE OF CONFINEMENT THAT IS TO BE SERVED IS IMPOSED FOR A VIOLENT CRIME FOR WHICH A DEFENDANT WILL BE ELIGIBLE FOR PAROLE UNDER § 7-301(C) OR (D) OF THE CORRECTIONAL SERVICES ARTICLE, THE COURT SHALL STATE IN OPEN COURT THE MINIMUM TIME THE DEFENDANT MUST SERVE BEFORE BECOMING ELIGIBLE FOR PAROLE.

(B) STATEMENT FOR INFORMATION ONLY.

THE STATEMENT REQUIRED BY SUBSECTION (A) OF THIS SECTION IS FOR INFORMATION ONLY AND IS NOT A PART OF THE SENTENCE.

(C) FAILURE TO COMPLY.

THE FAILURE OF A COURT TO COMPLY WITH SUBSECTION (A) OF THIS SECTION DOES NOT AFFECT THE LEGALITY OR EFFICACY OF THE SENTENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 640.

In subsection (a) of this section, the former reference to "a violent crime as defined in § 7-101 of the Correctional Services Article" is deleted as implied in the reference to a violent crime "for which a defendant will be eligible for parole under § 7-301(c) or (d) of the Correctional Services Article".

Defined term: "Violent crime" § 1-101

6-218. CREDIT AGAINST SENTENCE FOR TIME SPENT IN CUSTODY.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO A PAROLEE WHO IS RETURNED TO THE CUSTODY OF THE DIVISION OF CORRECTION BECAUSE OF A SUBSEQUENT CRIME AND IS CONFINED BEFORE BEING SENTENCED FOR THE SUBSEQUENT CRIME.

(B) IN GENERAL.

(1) A DEFENDANT WHO IS CONVICTED AND SENTENCED SHALL RECEIVE CREDIT AGAINST AND A REDUCTION OF THE TERM OF A DEFINITE OR LIFE SENTENCE, OR THE MINIMUM AND MAXIMUM TERMS OF AN INDETERMINATE SENTENCE, FOR ALL TIME SPENT IN THE CUSTODY OF A STATE CORRECTIONAL FACILITY, LOCAL CORRECTIONAL FACILITY, HOSPITAL, FACILITY FOR PERSONS WITH MENTAL DISORDERS, OR OTHER UNIT BECAUSE OF:

(I) THE CHARGE FOR WHICH THE SENTENCE IS IMPOSED; OR

(II) THE CONDUCT ON WHICH THE CHARGE IS BASED.

(2) IF A DEFENDANT IS IN CUSTODY BECAUSE A CHARGE THAT RESULTS IN A DISMISSAL OR ACQUITTAL, THE TIME THAT WOULD HAVE BEEN CREDITED IF A SENTENCE HAD BEEN IMPOSED SHALL BE CREDITED AGAINST ANY SENTENCE THAT

IS BASED ON A CHARGE FOR WHICH A WARRANT OR COMMITMENT WAS FILED DURING THAT CUSTODY.

(3) IN A CASE OTHER THAN A CASE DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, THE SENTENCING COURT MAY APPLY CREDIT AGAINST A SENTENCE FOR TIME SPENT IN CUSTODY FOR ANOTHER CHARGE OR CRIME.

(C) CREDIT WHEN PRIOR SENTENCE SET ASIDE.

A DEFENDANT WHOSE SENTENCE IS SET ASIDE BECAUSE OF A DIRECT OR COLLATERAL ATTACK AND WHO IS REPROSECUTED OR RESENTENCED FOR THE SAME CRIME OR FOR ANOTHER CRIME BASED ON THE SAME TRANSACTION SHALL RECEIVE CREDIT AGAINST AND A REDUCTION OF THE TERM OF A DEFINITE OR LIFE SENTENCE, OR THE MINIMUM AND MAXIMUM TERMS OF AN INDETERMINATE SENTENCE, FOR ALL TIME SPENT IN CUSTODY UNDER THE PRIOR SENTENCE, INCLUDING CREDIT APPLIED AGAINST THE PRIOR SENTENCE IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

(D) CREDIT WHEN ONE OF MULTIPLE SENTENCES SET ASIDE.

A DEFENDANT WHO IS SERVING MULTIPLE SENTENCES, ONE OF WHICH IS SET ASIDE AS THE RESULT OF A DIRECT OR COLLATERAL ATTACK, SHALL RECEIVE CREDIT AGAINST AND A REDUCTION OF THE REMAINING TERM OF A DEFINITE OR LIFE SENTENCE, OR THE REMAINING MINIMUM AND MAXIMUM TERMS OF AN INDETERMINATE SENTENCE, FOR ALL TIME SPENT IN CUSTODY UNDER THE SENTENCE SET ASIDE, INCLUDING CREDIT APPLIED AGAINST THE SENTENCE SET ASIDE IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

(E) CREDIT AWARDED AT SENTENCING.

(1) THE COURT SHALL AWARD THE CREDIT REQUIRED BY THIS SECTION AT THE TIME OF SENTENCING.

(2) AFTER HAVING COMMUNICATED WITH THE PARTIES, THE COURT SHALL TELL THE DEFENDANT AND SHALL STATE ON THE RECORD THE AMOUNT OF THE CREDIT AND THE FACTS ON WHICH THE CREDIT IS BASED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 638C.

In subsection (a) of this section, the reference to "confine[ment]" is substituted for the former reference to "incarcerat[ion]" to conform to terminology used throughout this article and the Correctional Services Article. *See* General Revisor's Note to article.

In subsections (a), (b)(3), and (c) of this section, the references to a "crime" are substituted for the former references to an "offense" to avoid any ambiguity that "offense" could apply to an offense other than an offense that results in a criminal conviction and to conform to terminology used in the Correctional Services Article. *See, e.g.*, CS § 4-306(c)(1)(iii).

In subsections (b), (c), and (d) of this section, the reference to a "defendant" is substituted for the former reference to a "person" to conform to the terminology used throughout this part.

In subsections (b)(1), (c), and (d) of this section, the references to a "reduction of" the terms of a sentence are substituted for the former references to the requirements that the terms be "diminished" to conform to the terminology used throughout this part.

In subsection (b)(1) of this section, the defined terms "State correctional facility" and "local correctional facility" are substituted for the former reference to "any state, county or city jail, [or] correctional institution" for clarity and consistency within this article.

Also in subsection (b)(1) of this section, the reference to "facility for persons with mental disorders" is substituted for the former narrower reference to "mental hospital" for clarity.

Also in subsection (b)(1) of this section, as for the substitution of "unit" for "agency", *see* General Revisor's Note to article.

In subsection (b)(2) of this section, the reference to "that custody" is substituted for the former reference to "the pendency of such custody" for brevity.

Also in subsection (b)(2) of this section, the reference to the time that would have been credited "if a sentence had been imposed" is substituted for the former reference to the time that would have been credited "against a sentence for the charge, had one been imposed" for brevity.

In subsection (b)(3) of this section, the reference to "a case other than a case described in paragraph (2) of this subsection" is substituted for the former reference to "all other cases" for clarity.

In subsection (e) of this section, the former reference to "subsections (a), (b) and (c)" is deleted as unnecessary because those subsections of former Art. 27, § 638C comprised the rest of the section and, thus, there is no need to specify them.

Also in subsection (e) of this section, the reference to "court" is substituted for the former reference to the "trial judge" to conform to the terminology used throughout this subtitle.

Also in subsection (e) of this section, the former reference to the amount of "time" is deleted as implicit in the reference to the "amount of the credit".

Also in subsection (e) of this section, the former reference to the "provision for" credit is deleted as surplusage.

Defined terms: "Local correctional facility" § 1-101

"Person" § 1-101

"State correctional facility" § 1-101

6-219. SUSPENSION OF SENTENCE AND OTHER CONDITIONS PLACED ON SENTENCE.

(A) IN GENERAL.

SUBJECT TO SUBSECTION (B) OF THIS SECTION, A COURT:

(1) MAY SUSPEND A SENTENCE GENERALLY OR FOR A DEFINITE TIME;

(2) MAY PASS ORDERS AND IMPOSE TERMS AS TO COSTS, RECOGNIZANCE FOR APPEARANCE, OR MATTERS RELATING TO THE RESIDENCE OR CONDUCT OF THE DEFENDANT WHO IS CONVICTED AS MAY BE DEEMED PROPER; OR

(3) IF THE DEFENDANT WHO IS CONVICTED IS UNDER 18 YEARS OF AGE, MAY ORDER CONFINEMENT IN ANY CARE OR CUSTODY AS MAY BE DEEMED PROPER.

(B) PARTICIPATION IN TREATMENT AND EDUCATION PROGRAMS.

(1) IF THE COURT PLACES ON PROBATION A DEFENDANT WHO HAS BEEN CONVICTED OF A VIOLATION OF § 21-902(A) OR (B) OF THE TRANSPORTATION ARTICLE, THE COURT SHALL REQUIRE AS A CONDITION THAT THE DEFENDANT PARTICIPATE IN AN ALCOHOL TREATMENT OR EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, UNLESS THE COURT FINDS AND STATES ON THE RECORD THAT THE INTERESTS OF THE DEFENDANT AND THE PUBLIC DO NOT REQUIRE THE IMPOSITION OF THIS CONDITION.

(2) IF THE COURT PLACES ON PROBATION A DEFENDANT WHO HAS BEEN CONVICTED OF A VIOLATION OF ANY PROVISION OF ARTICLE 27, §§ 276 THROUGH 303 OF THE CODE, THE COURT SHALL REQUIRE AS A CONDITION THAT THE DEFENDANT PARTICIPATE IN A DRUG TREATMENT OR EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, UNLESS THE COURT FINDS AND STATES ON THE RECORD THAT THE INTERESTS OF THE DEFENDANT AND THE PUBLIC DO NOT REQUIRE THE IMPOSITION OF THIS CONDITION.

(C) LOCAL PROVISIONS.

(1) IN CALVERT COUNTY, CHARLES COUNTY, AND ST. MARY'S COUNTY, THE COURT MAY IMPOSE A SENTENCE OF CONFINEMENT AS A CONDITION OF PROBATION.

(2) IN PRINCE GEORGE'S COUNTY, THE COURT ON CONVICTION MAY SENTENCE A DEFENDANT TO THE LOCAL CORRECTIONAL FACILITY OR PLACE OF CONFINEMENT UNDER THE JURISDICTION OF THE SHERIFF, IF:

(I) THE SENTENCE IS TO BE PERFORMED DURING ANY 48-HOUR PERIOD IN A 7-DAY PERIOD, WITH EACH PERIOD OF CONFINEMENT TO BE NOT LESS THAN 2 DAYS OF THE SENTENCE IMPOSED;

(II) THE CRIME LEADING TO THE CONVICTION ALLOWS CONFINEMENT IN THE LOCAL CORRECTIONAL FACILITY; AND

(III) THE TOTAL SENTENCE DOES NOT EXCEED 30 TWO-DAY PERIODS OF CONFINEMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 639.

In subsection (a) of this section, the phrase "[s]ubject to subsection (b) of this section" is added for clarity and to reflect the deletion of the former word "[h]owever" in subsection (b) of this section.

Also in subsection (a) of this section, the word "or" is substituted for the former word "and" to clarify that a court may take any of the three actions.

Also in subsection (a) of this section, the references to a "defendant who is convicted" are substituted for the former references to the "convicts" and "convict" to conform to the terminology used in this part. Similarly, in subsections (b) and (c)(2) of this section, the reference to a "defendant" is substituted for the former reference to a "person".

In subsection (b) of this section, the former references to a condition "of the suspension of sentence" are deleted as unnecessary in light of the references to the court placing a defendant on probation.

Also in subsection (b) of this section, the former reference to a court that "affirmatively" states on the record is deleted as implicit in the reference to "states on the record".

In subsection (c)(2) of this section, the reference to the court "sentenc[ing] a defendant" is substituted for the former reference to the court "also impos[ing] such sentences as may be provided by law with respect to the offense upon which an accused has been convicted and cause the convict to serve the sentence" for brevity.

In subsection (c)(2) and (2)(ii) of this section, the defined term "local correctional facility" is substituted for the former reference to a "county detention center" to conform to the terminology used throughout this article.

In subsection (c)(2)(ii) of this section, the reference to a "crime" is substituted for the former references to an "offense" to avoid any ambiguity that "offense" could apply to an offense other than an offense that results in a criminal conviction and to conform to terminology used in the Correctional Services Article. *See, e.g.*, CS § 4-306(c)(1)(iii).

In subsection (c)(2)(iii) of this section, the former reference to the sentence to be "imposed by the judge" is deleted as surplusage.

Defined term: "Local correctional facility" § 1-101

6-220. PROBATION BEFORE JUDGMENT.

(A) IN GENERAL.

(1) WHEN A DEFENDANT PLEADS GUILTY OR NOLO CONTENDERE OR IS FOUND GUILTY OF A CRIME, A COURT MAY STAY THE ENTERING OF JUDGMENT, DEFER FURTHER PROCEEDINGS, AND PLACE THE DEFENDANT ON PROBATION SUBJECT TO REASONABLE CONDITIONS IF:

(I) THE COURT IS SATISFIED THAT THE BEST INTERESTS OF THE DEFENDANT AND THE PUBLIC WELFARE WOULD BE SERVED; AND

(II) THE DEFENDANT GIVES WRITTEN CONSENT AFTER DETERMINATION OF GUILT OR ACCEPTANCE OF A NOLO CONTENDERE PLEA.

(2) SUBJECT TO PARAGRAPHS (3) AND (4) OF THIS SUBSECTION, THE CONDITIONS MAY INCLUDE AN ORDER THAT THE DEFENDANT:

(I) PAY A FINE OR MONETARY PENALTY TO THE STATE OR MAKE RESTITUTION; OR

(II) PARTICIPATE IN A REHABILITATION PROGRAM, THE PARKS PROGRAM, OR A VOLUNTARY HOSPITAL PROGRAM.

(3) BEFORE THE COURT ORDERS A FINE, MONETARY PENALTY, OR RESTITUTION, THE DEFENDANT IS ENTITLED TO NOTICE AND A HEARING TO DETERMINE THE AMOUNT OF THE FINE, MONETARY PENALTY, OR RESTITUTION, WHAT PAYMENT WILL BE REQUIRED, AND HOW PAYMENT WILL BE MADE.

(4) ANY FINE OR MONETARY PENALTY IMPOSED AS A CONDITION OF PROBATION SHALL BE WITHIN THE AMOUNT SET BY LAW FOR A VIOLATION RESULTING IN CONVICTION.

(B) PARTICIPATION IN TREATMENT AND EDUCATION PROGRAMS.

(1) WHEN THE CRIME FOR WHICH THE JUDGMENT IS BEING STAYED IS FOR A VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE, THE COURT SHALL IMPOSE A PERIOD OF PROBATION AND, AS A CONDITION OF THE PROBATION:

(I) SHALL REQUIRE THE DEFENDANT TO PARTICIPATE IN AN ALCOHOL TREATMENT OR EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, UNLESS THE COURT FINDS AND STATES ON THE RECORD THAT THE INTERESTS OF THE DEFENDANT AND THE PUBLIC DO NOT REQUIRE THE IMPOSITION OF THIS CONDITION; AND

(II) MAY PROHIBIT THE DEFENDANT FROM OPERATING A MOTOR VEHICLE UNLESS THE MOTOR VEHICLE IS EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM UNDER § 27-107 OF THE TRANSPORTATION ARTICLE.

(2) WHEN THE CRIME FOR WHICH THE JUDGMENT IS BEING STAYED IS FOR A VIOLATION OF ANY PROVISION OF ARTICLE 27, §§ 276 THROUGH 303 OF THE CODE, THE COURT SHALL IMPOSE A PERIOD OF PROBATION AND, AS A CONDITION OF PROBATION, REQUIRE THE DEFENDANT TO PARTICIPATE IN A DRUG TREATMENT OR EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, UNLESS THE COURT FINDS AND STATES ON THE RECORD THAT THE INTERESTS OF THE DEFENDANT AND THE PUBLIC DO NOT REQUIRE THE IMPOSITION OF THIS CONDITION.

(C) CONDITIONS UNDER WHICH PROBATION BEFORE JUDGMENT PROHIBITED.

NOTWITHSTANDING SUBSECTIONS (A) AND (B) OF THIS SECTION, A COURT MAY NOT STAY THE ENTERING OF JUDGMENT AND PLACE A DEFENDANT ON PROBATION FOR:

(1) A VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE, IF WITHIN THE PRECEDING 5 YEARS THE DEFENDANT HAS BEEN CONVICTED UNDER OR HAS BEEN PLACED ON PROBATION UNDER THAT SECTION AFTER BEING CHARGED WITH A VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE;

(2) A SECOND OR SUBSEQUENT CONTROLLED DANGEROUS SUBSTANCE CRIME UNDER ARTICLE 27, §§ 276 THROUGH 303 OF THE CODE; OR

(3) A VIOLATION OF ANY OF THE PROVISIONS OF ARTICLE 27, §§ 462 THROUGH 464B OF THE CODE FOR A CRIME INVOLVING A PERSON UNDER THE AGE OF 16 YEARS.

(D) WAIVER OF RIGHT TO APPEAL.

(1) BY CONSENTING TO AND RECEIVING A STAY OF ENTERING OF THE JUDGMENT AS PROVIDED BY SUBSECTIONS (A) AND (B) OF THIS SECTION, THE DEFENDANT WAIVES THE RIGHT TO APPEAL AT ANY TIME FROM THE JUDGMENT OF GUILT.

(2) BEFORE GRANTING A STAY, THE COURT SHALL NOTIFY THE DEFENDANT OF THE CONSEQUENCES OF CONSENTING TO AND RECEIVING A STAY OF ENTRY OF JUDGMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(E) EFFECT OF VIOLATION OF PROBATION.

ON VIOLATION OF A CONDITION OF PROBATION, THE COURT MAY ENTER JUDGMENT AND PROCEED AS IF THE DEFENDANT HAD NOT BEEN PLACED ON PROBATION.

(F) EFFECT OF FULFILLMENT OF CONDITIONS OF PROBATION.

(1) ON FULFILLMENT OF THE CONDITIONS OF PROBATION, THE COURT SHALL DISCHARGE THE DEFENDANT FROM PROBATION.

(2) THE DISCHARGE IS A FINAL DISPOSITION OF THE MATTER.

(3) DISCHARGE OF A DEFENDANT UNDER THIS SECTION SHALL BE WITHOUT JUDGMENT OF CONVICTION AND IS NOT A CONVICTION FOR THE PURPOSE OF ANY DISQUALIFICATION OR DISABILITY IMPOSED BY LAW BECAUSE OF CONVICTION OF A CRIME.

(G) LOCAL PROVISIONS.

IN ALLEGANY COUNTY, CALVERT COUNTY, CHARLES COUNTY, GARRETT COUNTY, HOWARD COUNTY, AND ST. MARY'S COUNTY, THE COURT MAY IMPOSE A SENTENCE OF CONFINEMENT AS A CONDITION OF PROBATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 641.

Throughout this section, the references to a "defendant" are substituted for the former references to a "person" to conform to the terminology used throughout this part.

In subsections (a)(1), (2), and (4), and (f)(1) of this section, the former references to "terms" or a "term" are deleted as unnecessary in light of the references to "conditions" or a "condition".

In subsection (a)(1) of this section, the former reference to a court "exercising criminal jurisdiction" is deleted as surplusage.

In subsection (a)(2) of this section, the phrase "[s]ubject to paragraphs (3) and (4) of this subsection" is added for clarity and to reflect the deletion of the former word "[h]owever" in subsection (b) of this section.

In subsection (a)(2)(i), (3), and (4) of this section, the reference to a "monetary" penalty is substituted for the former reference to a "pecuniary" penalty for clarity.

In subsection (a)(2)(ii) of this section, the former reference to "any type of" rehabilitation program is deleted as surplusage.

Also in subsection (a)(2)(ii) of this section, the former reference to a rehabilitation "clinic, or similar program" is deleted as surplusage.

In subsection (b)(1)(i) and (2) of this section, the former reference to a court that "affirmatively" states on the record is deleted as implicit in the reference to "states on the record".

In subsection (c)(3) of this section, the reference to a "crime" is substituted for the former reference to an "offense" to avoid any ambiguity that

"offense" could apply to an offense other than an offense that results in a criminal conviction and to conform to terminology used in the Correctional Services Article. *See, e.g.*, CS § 4-306(c)(1)(iii).

In subsection (d)(1) of this section, the former reference to judgment "by the court" is deleted as surplusage.

In subsection (d)(2) of this section, the phrase "the consequences ... under paragraph (1) of this subsection" is substituted for the former clause "the person waives the right to appeal from the judgment of guilt by the court at any time" for brevity.

In subsection (e) of this section, the former reference "proceed[ing] with disposition of the person" is deleted as surplusage.

Defined terms: "Nolo contendere" § 1-101

"Person" § 1-101

6-221. SUSPENSION OF SENTENCE OR PROBATION AFTER JUDGMENT.

ON ENTERING A JUDGMENT OF CONVICTION, THE COURT MAY SUSPEND THE IMPOSITION OR EXECUTION OF SENTENCE AND PLACE THE DEFENDANT ON PROBATION ON THE CONDITIONS THAT THE COURT CONSIDERS PROPER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 641A(a)(1).

The former reference to "terms" is deleted as unnecessary in light of the reference to "conditions".

6-222. LIMITS ON PROBATION AFTER JUDGMENT; EXTENSION FOR RESTITUTION.

(A) LIMITS ON PROBATION AFTER JUDGMENT.

A CIRCUIT COURT OR THE DISTRICT COURT MAY:

(1) IMPOSE A SENTENCE FOR A SPECIFIED TIME AND PROVIDE THAT A LESSER TIME BE SERVED IN CONFINEMENT;

(2) SUSPEND THE REMAINDER OF THE SENTENCE; AND

(3) ORDER PROBATION FOR A TIME LONGER THAN THE SENTENCE BUT NOT LONGER THAN:

(I) 5 YEARS IF THE PROBATION IS ORDERED BY A CIRCUIT COURT; OR

(II) 3 YEARS IF THE PROBATION IS ORDERED BY THE DISTRICT COURT.

(B) EXTENSION FOR RESTITUTION.

THE COURT MAY EXTEND THE PROBATION BEYOND THE TIME ALLOWED UNDER SUBSECTION (A) OF THIS SECTION IF:

(1) THE DEFENDANT CONSENTS IN WRITING; AND

(2) THE EXTENSION IS ONLY FOR MAKING RESTITUTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 641A(a)(3) and (4) and 643A(a) and (b).

In the introductory language of subsection (a) of this section, the reference to the authority of "[a] circuit court or the District Court" is substituted for the former provision that "[i]n a criminal or motor vehicle case within the court's jurisdiction, a District Court judge has the same power as a judge of the circuit court" for brevity. The former reference to "a criminal or motor vehicle case within the court's jurisdiction" is unnecessary for two reasons. First, motor vehicle cases are criminal cases; and, second, items (1) through (3) of this subsection are the only options that a court may choose in a criminal case.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that a circuit court may order probation for up to 5 years, but a District Court may only order probation for up to 3 years. The General Assembly may wish to conform the limits.

6-223. ADDITIONAL POWERS OF DISTRICT COURT.

(A) POWER TO END PROBATION.

THE DISTRICT COURT MAY END THE PERIOD OF PROBATION AT ANY TIME.

(B) PRESENCE OF PROBATIONER OR DEFENDANT REQUIRED.

DURING THE PERIOD OF PROBATION, ON WRITTEN CHARGES UNDER OATH OR ON VIOLATION OF A CONDITION OF PROBATION, THE DISTRICT COURT MAY ISSUE A WARRANT OR NOTICE REQUIRING THE PROBATIONER OR DEFENDANT TO BE BROUGHT OR APPEAR BEFORE THE JUDGE ISSUING THE WARRANT OR NOTICE:

(1) TO ANSWER THE CHARGE OF VIOLATION OF CONDITIONS OF PROBATION OR OF SUSPENSION OF SENTENCE; AND

(2) TO BE PRESENT FOR THE SETTING OF A HEARING DATE FOR THAT CHARGE.

(C) REMAND OR RELEASE OF PROBATIONER OR DEFENDANT.

PENDING THE HEARING OR DETERMINATION OF THE CHARGE, THE DISTRICT COURT MAY REMAND THE PROBATIONER OR DEFENDANT TO A CORRECTIONAL FACILITY OR RELEASE THE PROBATIONER OR DEFENDANT WITH OR WITHOUT BAIL.

(D) OPTIONS AFTER HEARING.

IF, AT THE HEARING, THE DISTRICT COURT FINDS THAT THE PROBATIONER OR DEFENDANT HAS VIOLATED A CONDITION OF PROBATION, THE DISTRICT COURT MAY:

(1) REVOKE THE PROBATION GRANTED OR THE SUSPENSION OF SENTENCE; AND

(2) IMPOSE ANY SENTENCE THAT MIGHT HAVE ORIGINALLY BEEN IMPOSED FOR THE CRIME OF WHICH THE PROBATIONER OR DEFENDANT WAS CONVICTED OR PLEADED NOLO CONTENDERE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 643A(c).

Throughout this section, the references to a "defendant" are substituted for the former references to the "person accused" to conform to the terminology used throughout this part.

In subsection (a) of this section, the reference to "the District Court" is added to clarify a provision in Ch. 2, § 10, Acts of 1973, 1st Sp. Sess., which had deleted the lead-in to former Art. 27, § 146(e), "[e]very District Court judge in any criminal or motor vehicle case within the court's jurisdiction shall have the power" and left former Art. 27, § 643A(c) as an incomplete sentence.

In subsection (d)(2) of this section, the former phrase "to take effect from its date", which formerly modified "sentence", is deleted as surplusage.

Also in subsection (d)(2) of this section, the former option of the court to try the person accused on the charge if there was neither a conviction or plea of guilty or nolo contendere is deleted as obsolete.

Defined terms: "Correctional facility" § 1-101

"Nolo contendere" § 1-101

6-224. SENTENCING BY OTHER JUDGE.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO A DEFENDANT WHO IS CONVICTED OF A CRIME FOR WHICH THE COURT:

(1) DOES NOT IMPOSE A SENTENCE;

(2) SUSPENDS THE SENTENCE GENERALLY;

(3) PLACES THE DEFENDANT ON PROBATION FOR A DEFINITE TIME; OR

(4) PASSES ANOTHER ORDER AND IMPOSES OTHER CONDITIONS OF PROBATION.

(B) SENTENCING BY PRESIDING JUDGE OF CIRCUIT COURT.

IF A DEFENDANT IS BROUGHT BEFORE A CIRCUIT COURT TO BE SENTENCED ON THE ORIGINAL CHARGE OR FOR VIOLATING A CONDITION OF PROBATION, AND THE JUDGE THEN PRESIDING FINDS THAT THE DEFENDANT VIOLATED A CONDITION OF PROBATION, THE JUDGE:

(1) MAY SENTENCE THE DEFENDANT TO:

(I) ALL OR ANY PART OF THE PERIOD OF IMPRISONMENT IMPOSED IN THE ORIGINAL SENTENCE; OR

(II) ANY SENTENCE ALLOWED BY LAW, IF A SENTENCE WAS NOT IMPOSED BEFORE; AND

(2) MAY SUSPEND ALL OR PART OF A SENTENCE AND PLACE THE DEFENDANT ON FURTHER PROBATION ON ANY CONDITIONS THAT THE JUDGE CONSIDERS PROPER, AND THAT DO NOT EXCEED THE MAXIMUM SET UNDER § 6-222 OF THIS SUBTITLE.

(C) SENTENCING IN DISTRICT COURT.

(1) THE DISTRICT COURT JUDGE WHO ORIGINALLY IMPOSED CONDITIONS OF PROBATION OR SUSPENSION OF SENTENCE SHALL HEAR ANY CHARGE OF VIOLATION OF THE CONDITIONS OF PROBATION OR SUSPENSION OF SENTENCE.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, THE JUDGE SHALL SENTENCE THE DEFENDANT IF PROBATION IS REVOKED OR SUSPENSION STRICKEN.

(3) IF THE JUDGE HAS BEEN REMOVED FROM OFFICE, HAS DIED OR RESIGNED, OR IS OTHERWISE INCAPACITATED, ANY OTHER JUDGE OF THE DISTRICT COURT MAY ACT IN THE MATTER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 642 and 643A(d) and (a), as it related to District Court sentencing.

In subsection (a) of this section, the reference to a "crime" is substituted for the former reference to an "offense" to avoid any ambiguity that "offense" could apply to an offense other than an offense that results in a criminal conviction and to conform to terminology used in the Correctional Services Article. *See, e.g.*, CS § 4-306(c)(1)(iii).

Also in subsection (a) of this section, the former reference to a conviction "in any of the courts of record of this State, having criminal jurisdiction" is deleted as unnecessary because a person would not be convicted in any other type of court.

Also in subsection (a) of this section, the reference to "court" is substituted for the former reference to the "judge presiding" for brevity.

In subsection (a)(4) of this section, the reference to "conditions of probation" is substituted for the former reference to "terms" to conform to terminology used throughout this article. Similarly, in subsection (b) of this section, the former reference to "terms" is deleted as unnecessary in light of the reference to "conditions".

Also in subsection (a)(4) of this section, the former clause "as she or he may deem proper" is deleted as implicit in the reference to the court "pass[ing] another order and impos[ing] other conditions of probation".

In the introductory language of subsection (b) of this section, the reference to "any time thereafter", which formerly modified the reference to the person being "brought before the court", is deleted as implicit in the reference to being "brought before a circuit court".

Also in the introductory language of subsection (b) of this section, the former reference to the original charge "of his conviction" is deleted as unnecessary.

In subsection (b)(1)(ii) of this section, the former reference to the sentence for the "crime for which that person was originally convicted" is deleted as unnecessary.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (b) of this section specifies that the presiding judge may determine whether the probationer or defendant violated probation and, if so, sentence the probationer or defendant. This provision varies from Md. Rules 4-347 and 4-361 and from subsection (c) of this section, which substantively follows Md. Rule 4-361. Maryland Rule 4-347 requires that "[w]henever practicable, the hearing shall be held before the sentencing judge or, if the sentence was imposed by a Review Panel pursuant to Rule 4-344, before one of the judges who was on the panel". Maryland Rule 4-361 states that if, by reason of some disability, the trial judge "is unable to perform an act or duty of the court after verdict or after acceptance of a plea, any other judge authorized to act in that court may sentence the defendant and perform any other act or duty if satisfied that he or she can properly do so".

6-225. CONDITIONS OF PROBATION AFTER JUDGMENT.

(A) IN GENERAL.

(1) (I) PROBATION MAY BE GRANTED WHETHER THE CRIME IS PUNISHABLE BY FINE OR IMPRISONMENT OR BOTH.

(II) IF THE CRIME IS PUNISHABLE BY BOTH FINE AND IMPRISONMENT, THE COURT MAY IMPOSE A FINE AND PLACE THE DEFENDANT ON PROBATION AS TO THE IMPRISONMENT.

(III) PROBATION MAY BE LIMITED TO ONE OR MORE COUNTS OR INDICTMENTS BUT, IN THE ABSENCE OF EXPRESS LIMITATION, EXTENDS TO THE ENTIRE SENTENCE AND JUDGMENT.

(IV) THE COURT MAY REVOKE OR MODIFY A CONDITION OF PROBATION OR MAY REDUCE THE PERIOD OF PROBATION.

(2) IF A SENTENCE OF IMPRISONMENT IS IMPOSED AND A PART OF IT IS SUSPENDED WITH THE DEFENDANT PLACED ON PROBATION, THE COURT MAY IMPOSE AS A CONDITION OF PROBATION THAT THE PROBATION BEGIN ON THE DAY THE DEFENDANT IS RELEASED FROM IMPRISONMENT.

(B) PARTICIPATION IN TREATMENT AND EDUCATION PROGRAMS.

IF THE COURT PLACES ON PROBATION A DEFENDANT WHO HAS BEEN CONVICTED OF A VIOLATION OF ANY PROVISION OF ARTICLE 27, §§ 276 THROUGH 303 OF THE CODE, THE COURT SHALL REQUIRE AS A CONDITION THAT THE DEFENDANT PARTICIPATE IN A DRUG TREATMENT OR EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, UNLESS THE COURT FINDS AND STATES ON THE RECORD THAT THE INTERESTS OF THE DEFENDANT AND THE PUBLIC DO NOT REQUIRE THE IMPOSITION OF THIS CONDITION.

(C) LOCAL PROVISIONS.

IN CALVERT COUNTY, CECIL COUNTY, CHARLES COUNTY, HARFORD COUNTY, AND ST. MARY'S COUNTY, THE COURT MAY IMPOSE A SENTENCE OF CONFINEMENT AS A CONDITION OF PROBATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 641A(b), (c), (d), and (a)(2).

In subsection (a)(1)(i) and (ii) of this section, the references to a "crime" are substituted for the former references to an "offense" to avoid any ambiguity that "offense" could apply to an offense other than an offense that results in a criminal conviction and to conform to terminology used in the Correctional Services Article. *See, e.g.*, CS § 4-306(c)(1)(iii).

In subsection (a)(2) of this section, the former reference to a person who is "actually" released from imprisonment is deleted as implicit in the reference to being "released".

In subsection (b) of this section, the former reference to a condition "of the suspension of sentence" is deleted as unnecessary in light of the reference to the court placing a defendant on probation.

Also in subsection (b) of this section, the former reference to a court that

"affirmatively" states on the record is deleted as implicit in the reference to "states on the record".

6-226. FEES FOR PROBATION UNDER SUPERVISION OF DIVISION OF PAROLE AND PROBATION.

(A) "SUPERVISEE" DEFINED.

IN THIS SECTION, "SUPERVISEE" MEANS A PERSON THAT THE COURT PLACES UNDER THE SUPERVISION OF THE DIVISION OF PAROLE AND PROBATION.

(B) IN GENERAL.

UNLESS THE SUPERVISEE IS EXEMPT UNDER SUBSECTION (D) OF THIS SECTION, THE COURT SHALL IMPOSE A MONTHLY FEE OF $25 ON A SUPERVISEE.

(C) PAYMENT TO DIVISION OF PAROLE AND PROBATION.

(1) THE FEE IMPOSED UNDER THIS SECTION SHALL BE PAID TO THE DIVISION OF PAROLE AND PROBATION.

(2) THE DIVISION OF PAROLE AND PROBATION SHALL PAY THE MONEY COLLECTED UNDER THIS SECTION INTO THE GENERAL FUND OF THE STATE.

(D) EXEMPTIONS.

THE COURT MAY EXEMPT A SUPERVISEE AS A WHOLE OR IN PART FROM THE FEE IMPOSED UNDER THIS SECTION IF:

(1) THE SUPERVISEE HAS DILIGENTLY TRIED BUT HAS BEEN UNABLE TO OBTAIN EMPLOYMENT THAT PROVIDES SUFFICIENT INCOME FOR THE SUPERVISEE TO PAY THE FEE;

(2) (I) THE SUPERVISEE IS A STUDENT IN A SCHOOL, COLLEGE, OR UNIVERSITY OR IS ENROLLED IN A COURSE OF VOCATIONAL OR TECHNICAL TRAINING DESIGNED TO PREPARE THE STUDENT FOR GAINFUL EMPLOYMENT; AND

(II) CERTIFICATION OF STUDENT STATUS IS SUPPLIED TO THE COURT BY THE INSTITUTION IN WHICH THE SUPERVISEE IS ENROLLED;

(3) THE SUPERVISEE HAS A HANDICAP LIMITING EMPLOYMENT, AS DETERMINED BY A PHYSICAL OR PSYCHOLOGICAL EXAMINATION ACCEPTED OR ORDERED BY THE COURT;

(4) THE SUPERVISEE IS RESPONSIBLE FOR THE SUPPORT OF DEPENDENTS AND THE PAYMENT OF THE FEE IS AN UNDUE HARDSHIP ON THE SUPERVISEE; OR

(5) OTHER EXTENUATING CIRCUMSTANCES EXIST.

(E) FEE IN ADDITION TO COURT COSTS AND FINES.

THE FEE IMPOSED BY THIS SECTION IS IN ADDITION TO COURT COSTS AND FINES.

(F) PENALTY FOR NONPAYMENT OF FEE.

(1) THE COURT MAY REVOKE PROBATION FOR FAILURE TO MAKE THE REQUIRED PAYMENT OF THE FEE IMPOSED UNDER THIS SECTION.

(2) IF THE SUPERVISEE DOES NOT COMPLY WITH THE FEE REQUIREMENT, THE DIVISION OF PAROLE AND PROBATION SHALL NOTIFY THE COURT.

(3) THE COURT SHALL HOLD A HEARING TO DETERMINE IF THERE ARE SUFFICIENT GROUNDS TO FIND THE SUPERVISEE IN VIOLATION.

(4) AT A HEARING UNDER THIS SUBSECTION, THE COURT MAY CONSIDER:

(I) ANY MATERIAL CHANGE IN THE SUPERVISEE'S FINANCIAL STATUS;

(II) GOOD FAITH EFFORTS OF THE SUPERVISEE TO PAY THE FEE; AND

(III) ALTERNATIVE MEANS TO ENSURE PAYMENT OF THE FEE BEFORE THE PERIOD OF SUPERVISION ENDS.

(G) PAYMENT FOR DRUG OR ALCOHOL ABUSE TESTING.

(1) IN ADDITION TO FEES IMPOSED UNDER THIS SECTION, THE DIVISION OF PAROLE AND PROBATION MAY REQUIRE A SUPERVISEE TO PAY FOR DRUG OR ALCOHOL ABUSE TESTING IF THE COURT ORDERS TESTING.

(2) FAILURE TO MAKE A PAYMENT REQUIRED FOR DRUG OR ALCOHOL ABUSE TESTING MAY BE CONSIDERED GROUNDS FOR REVOCATION OF PROBATION BY THE COURT.

(3) THE DIVISION OF PAROLE AND PROBATION MAY EXEMPT A SUPERVISEE AS A WHOLE OR IN PART FROM A PAYMENT FOR TESTING IF THE DIVISION DETERMINES THAT ANY OF THE CRITERIA IN SUBSECTION (D) OF THIS SECTION APPLY.

(H) DUTIES OF DIVISION OF PAROLE AND PROBATION.

THE DIVISION OF PAROLE AND PROBATION SHALL:

(1) ADOPT GUIDELINES FOR COLLECTING THE SUPERVISION FEE;

(2) ADOPT GUIDELINES FOR COLLECTING THE COST OF DRUG AND ALCOHOL TESTING;

(3) INVESTIGATE REQUESTS FOR AN EXEMPTION FROM PAYMENT, IF THE COURT REQUESTS AN INVESTIGATION;

(4) KEEP RECORDS OF ALL PAYMENTS BY EACH SUPERVISEE; AND

(5) REPORT DELINQUENCIES TO THE COURT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 641B.

In subsections (b), (c)(1), and (f)(1) of this section, the reference to fees "imposed" is substituted for the former reference to fees "assessed" to conform to the terminology used throughout this section.

In subsection (b) of this section, the reference to the defined term "supervisee" is substituted for the former reference to the "defendant" for consistency within this section. Similarly, in subsection (h)(4) of this section, the defined term "supervisee" is substituted for the former reference to "person".

In subsection (f)(4) of this section, the reference to "the court" is added to state that which was only implied in the former law - authorization is given to the court to consider at a hearing the items listed in this subsection.

In subsection (g)(2) of this section, the reference to revocation "of probation" is added for clarity.

6-227. EXPIRATION DATE FOR SENTENCES TO IMPRISONMENT.

(A) IN GENERAL.

IN SENTENCING A DEFENDANT TO IMPRISONMENT, A COURT SHALL SENTENCE THE DEFENDANT FOR A PERIOD THAT WILL EXPIRE BETWEEN THE FIRST DAY OF APRIL AND THE LAST DAY OF AUGUST IF THE COURT CONSIDERS IT EXPEDIENT TO DO SO.

(B) REDUCTION OF 2-YEAR SENTENCE TO 18 MONTHS.

IN SENTENCING A DEFENDANT TO IMPRISONMENT IN COMPLIANCE WITH SUBSECTION (A) OF THIS SECTION, A COURT MAY SENTENCE THE DEFENDANT TO IMPRISONMENT FOR NOT LESS THAN 18 MONTHS IF THE PUNISHMENT REQUIRED FOR THE CRIME IS AT LEAST 2 YEARS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 633 and 634.

Throughout this section, the references to "imprisonment" are substituted for the former references to "the penitentiary" to reflect the requirement under CS § 9-103 (formerly Art. 27, § 690(b) and (e)) that a judge who

sentences an individual to imprisonment shall sentence the individual to the jurisdiction of the Division of Correction and not to a specific correctional institution such as the penitentiary.

In subsection (a) of this section, the phrase "a court shall" is substituted for the former phrase "[i]t shall be the duty of the court of this State" for brevity.

In subsection (b) of this section, the reference to the "crime" is substituted for the former reference to the "offense" to avoid any ambiguity that "offense" could apply to an offense other than an offense that results in a criminal conviction and to conform to terminology used in the Correctional Services Article. *See, e.g.*, CS § 4-306(c)(1)(iii).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the General Assembly may wish to repeal this section as obsolete.

6-228. APPROVER.

APPROVER MAY NOT BE ADMITTED IN A CASE.

REVISOR'S NOTE: This section is new language derived without substantive change from the fourth clause of former Art. 27, § 635.

As to the first, second, and third clauses of former Art. 27, § 635, they are transferred to ET § 11-109. *See* Ch. _____, Acts of 2001, §_____ which also enacted this revision.

The fifth clause of former Art. 27, § 635, is deleted as obsolete.

TITLE 7. UNIFORM POSTCONVICTION PROCEDURE ACT.

SUBTITLE 1. IN GENERAL.

7-101. SCOPE OF TITLE.

THIS TITLE APPLIES TO A PERSON CONVICTED IN ANY COURT IN THE STATE WHO IS:

(1) CONFINED UNDER SENTENCE OF DEATH OR IMPRISONMENT; OR

(2) ON PAROLE OR PROBATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645A(a)(1), as it related to convicted persons who are confined, on parole, or on probation.

The former reference to a "person confined or on parole or probation as a result of a proceeding before the District Court" is deleted as included in

items (1) and (2) of this section.

Defined term: "Person" § 1-101

7-102. RIGHT TO BEGIN PROCEEDING.

(A) IN GENERAL.

SUBJECT TO SUBSECTION (B) OF THIS SECTION, §§ 7-103 AND 7-104 OF THIS SUBTITLE AND SUBTITLE 2 OF THIS TITLE, A CONVICTED PERSON MAY BEGIN A PROCEEDING UNDER THIS TITLE IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE CONVICTION TOOK PLACE AT ANY TIME IF THE PERSON CLAIMS THAT:

(1) THE SENTENCE OR JUDGMENT WAS IMPOSED IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES OR THE CONSTITUTION OR LAWS OF THE STATE;

(2) THE COURT LACKED JURISDICTION TO IMPOSE THE SENTENCE;

(3) THE SENTENCE EXCEEDS THE MAXIMUM ALLOWED BY LAW; OR

(4) THE SENTENCE IS OTHERWISE SUBJECT TO COLLATERAL ATTACK ON A GROUND OF ALLEGED ERROR THAT WOULD OTHERWISE BE AVAILABLE UNDER A WRIT OF HABEAS CORPUS, WRIT OF CORAM NOBIS, OR OTHER COMMON LAW OR STATUTORY REMEDY.

(B) REQUIREMENTS TO BEGIN PROCEEDING.

A PERSON MAY BEGIN A PROCEEDING UNDER THIS TITLE IF:

(1) THE PERSON SEEKS TO SET ASIDE OR CORRECT THE JUDGMENT OR SENTENCE; AND

(2) THE ALLEGED ERROR HAS NOT BEEN PREVIOUSLY AND FINALLY LITIGATED OR WAIVED IN THE PROCEEDING RESULTING IN THE CONVICTION OR IN ANY OTHER PROCEEDING THAT THE PERSON HAS TAKEN TO SECURE RELIEF FROM THE PERSON'S CONVICTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645A(a)(1), except as it related to convicted persons who are confined, on parole, or on probation, and part of the second sentence of (e), as that sentence related to the filing of a petition for relief.

In the introductory language of subsections (a) and (b) of this section, the reference to "begin" is substituted for the former references to "institute" and "fil[e]" for conformity.

In the introductory language of subsection (a) of this section, the reference to "Subtitle 2 of this title" is substituted for the former reference to "paragraph[s] ... (3) of this subsection" to reflect the placement of the

provision applying only to death penalty cases in Subtitle 2 of this title.

Also in the introductory language of subsection (a) of this section, the phrase "in which the conviction took place" is added for clarity.

Defined terms: "County" § 1-101

"Person" § 1-101

7-103. NUMBER AND TIME OF FILING OF PETITIONS.

(A) ONLY ONE PETITION ALLOWED.

FOR EACH TRIAL OR SENTENCE, A PERSON MAY FILE ONLY ONE PETITION FOR RELIEF UNDER THIS TITLE.

(B) 10-YEAR FILING PERIOD.

(1) UNLESS EXTRAORDINARY CAUSE IS SHOWN, IN A CASE IN WHICH A SENTENCE OF DEATH HAS NOT BEEN IMPOSED, A PETITION UNDER THIS SUBTITLE MAY NOT BE FILED MORE THAN 10 YEARS AFTER THE SENTENCE WAS IMPOSED.

(2) IN A CASE IN WHICH A SENTENCE OF DEATH HAS BEEN IMPOSED, SUBTITLE 2 OF THIS TITLE GOVERNS THE TIME OF FILING A PETITION.

REVISOR'S NOTE: Subsections (a) and (b)(1) of this section are new language derived without substantive change from former Art. 27, § 645A(a)(2)(i) and (ii).

Subsection (b)(2) of this section is new language added for clarity.

In subsection (a) of this section, the reference to a trial "or sentence" is added to reflect the holding of *Greco v. State*, 347 Md. 423 (1997) (after being granted a timely request for modifications or reduction of sentence, a defendant may file another request for modification or reduction of sentence within 90 days). *See also, Webster v. State*, 359 Md. 465 (2000).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in *Coley v. State*, 74 Md. App. 151 (1988) the Maryland Court of Special Appeals held that when a probation is revoked and resentencing occurs, the period in which the probationer may seek to modify the sentence should run from the date the resentencing was imposed. In subsection (b)(1) of this section, the General Assembly may wish to clarify that in cases where a resentencing has been imposed, the 10-year filing period runs from the date of the resentencing.

Defined term: "Person" § 1-101

7-104. REOPENING POSTCONVICTION PROCEEDING.

THE COURT MAY REOPEN A POSTCONVICTION PROCEEDING THAT WAS PREVIOUSLY CONCLUDED IF THE COURT DETERMINES THAT THE ACTION IS IN THE INTERESTS OF JUSTICE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645A(a)(2)(iii).

The former reference to the court may "in its discretion" reopen a postconviction proceeding is deleted as surplusage.

7-105. VICTIM'S AND REPRESENTATIVE'S RIGHTS OF NOTICE AND ATTENDANCE.

(A) RIGHT OF NOTICE.

BEFORE A HEARING IS HELD ON A PETITION FILED UNDER THIS TITLE, THE VICTIM OR VICTIM'S REPRESENTATIVE SHALL BE NOTIFIED OF THE HEARING AS PROVIDED UNDER § 11-104 OR § 11-503 OF THIS ARTICLE.

(B) RIGHT OF ATTENDANCE.

A VICTIM OR VICTIM'S REPRESENTATIVE IS ENTITLED TO ATTEND ANY HEARING UNDER THIS TITLE AS PROVIDED UNDER § 11-102 OF THIS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645A(h).

7-106. ALLEGATION OF ERROR.

(A) WHEN FINALLY LITIGATED.

FOR THE PURPOSES OF THIS TITLE, AN ALLEGATION OF ERROR IS FINALLY LITIGATED WHEN:

(1) AN APPELLATE COURT OF THE STATE DECIDES ON THE MERITS OF THE ALLEGATION:

(I) ON DIRECT APPEAL; OR

(II) ON ANY CONSIDERATION OF AN APPLICATION FOR LEAVE TO APPEAL FILED UNDER § 7-109 OF THIS SUBTITLE; OR

(2) A COURT OF ORIGINAL JURISDICTION, AFTER A FULL AND FAIR HEARING, DECIDES ON THE MERITS OF THE ALLEGATION IN A PETITION FOR A WRIT OF HABEAS CORPUS OR A WRIT OF ERROR CORAM NOBIS, UNLESS THE DECISION ON THE MERITS OF THE PETITION IS CLEARLY ERRONEOUS.

(B) WAIVER OF ALLEGATION OF ERROR.

(1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN ALLEGATION OF ERROR IS WAIVED WHEN A PETITIONER COULD HAVE MADE BUT INTELLIGENTLY AND KNOWINGLY FAILED TO MAKE THE ALLEGATION:

1. BEFORE TRIAL;

2. AT TRIAL;

3. ON DIRECT APPEAL, WHETHER OR NOT THE PETITIONER TOOK AN APPEAL;

4. IN AN APPLICATION FOR LEAVE TO APPEAL A CONVICTION BASED ON A GUILTY PLEA;

5. IN A HABEAS CORPUS OR CORAM NOBIS PROCEEDING BEGAN BY THE PETITIONER;

6. IN A PRIOR PETITION UNDER THIS SUBTITLE; OR

7. IN ANY OTHER PROCEEDING THAT THE PETITIONER BEGAN.

(II) 1. FAILURE TO MAKE AN ALLEGATION OF ERROR SHALL BE EXCUSED IF SPECIAL CIRCUMSTANCES EXIST.

2. THE PETITIONER HAS THE BURDEN OF PROVING THAT SPECIAL CIRCUMSTANCES EXIST.

(2) WHEN A PETITIONER COULD HAVE MADE AN ALLEGATION OF ERROR AT A PROCEEDING SET FORTH IN PARAGRAPH (1)(I) OF THIS SUBSECTION BUT DID NOT MAKE AN ALLEGATION OF ERROR, THERE IS A REBUTTABLE PRESUMPTION THAT THE PETITIONER INTELLIGENTLY AND KNOWINGLY FAILED TO MAKE THE ALLEGATION.

(C) EFFECT OF JUDICIAL DECISION THAT CONSTITUTION IMPOSES NEW STANDARD.

(1) THIS SUBSECTION APPLIES AFTER A DECISION ON THE MERITS OF AN ALLEGATION OF ERROR OR AFTER A PROCEEDING IN WHICH AN ALLEGATION OF ERROR MAY HAVE BEEN WAIVED.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, AN ALLEGATION OF ERROR MAY NOT BE CONSIDERED TO HAVE BEEN FINALLY LITIGATED OR WAIVED UNDER THIS TITLE IF A COURT WHOSE DECISIONS ARE BINDING ON THE LOWER COURTS OF THE STATE HOLDS THAT:

(I) THE CONSTITUTION OF THE UNITED STATES OR THE MARYLAND CONSTITUTION IMPOSES ON STATE CRIMINAL PROCEEDINGS A PROCEDURAL OR SUBSTANTIVE STANDARD NOT PREVIOUSLY RECOGNIZED; AND

(II) THE STANDARD IS INTENDED TO BE APPLIED RETROSPECTIVELY AND WOULD THEREBY AFFECT THE VALIDITY OF THE PETITIONER'S CONVICTION OR SENTENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645A(b), (c), and (d).

Throughout this section, the former references to an appeal, proceeding, or allegation of error having "actually" or "in fact" been made are deleted as surplusage.

In subsections (b)(1)(i) and (c)(2) of this section, the former phrase "[f]or the purposes of this subtitle" is deleted as unnecessary.

In subsection (b)(1)(i)5 and 7 of this section, the references to "began" are substituted for the former references to "instituted" to conform to the terminology used throughout this title.

7-107. EFFECT OF POSTCONVICTION REMEDY ON TRIAL PROCEEDINGS AND APPEALS.

(A) TRIAL PROCEEDINGS.

THE REMEDY PROVIDED UNDER THIS TITLE IS NOT A SUBSTITUTE FOR AND DOES NOT AFFECT ANY REMEDY THAT IS INCIDENT TO THE PROCEEDINGS IN THE TRIAL COURT OR ANY REMEDY OF DIRECT REVIEW OF THE SENTENCE OR CONVICTION.

(B) APPEALS.

(1) IN A CASE IN WHICH A PERSON CHALLENGES THE VALIDITY OF CONFINEMENT UNDER A SENTENCE OF DEATH OR IMPRISONMENT BY SEEKING THE WRIT OF HABEAS CORPUS OR THE WRIT OF CORAM NOBIS OR BY INVOKING A COMMON LAW OR STATUTORY REMEDY OTHER THAN THIS TITLE, A PERSON MAY NOT APPEAL TO THE COURT OF APPEALS OR THE COURT OF SPECIAL APPEALS.

(2) THIS SUBTITLE DOES NOT BAR AN APPEAL TO THE COURT OF SPECIAL APPEALS:

(I) IN A HABEAS CORPUS PROCEEDING BEGUN UNDER § 9-110 OF THIS ARTICLE; OR

(II) IN ANY OTHER PROCEEDING IN WHICH A WRIT OF HABEAS CORPUS IS SOUGHT FOR A PURPOSE OTHER THAN TO CHALLENGE THE LEGALITY OF A CONVICTION OF A CRIME OR SENTENCE OF DEATH OR IMPRISONMENT FOR THE CONVICTION OF THE CRIME, INCLUDING CONFINEMENT AS A RESULT OF A PROCEEDING UNDER TITLE 4 OF THE CORRECTIONAL SERVICES ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from the first, third, and fourth sentences of former Art. 27, §

645A(e).

In subsection (a) of this section, the phrase "under this title" is added for clarity.

In subsection (b)(1) of this section, the former reference to "appeals in such cases pending in the Court of Appeals on June 1, 1958, ... [being] processed in due course" is deleted as obsolete.

Also in subsection (b)(1) of this section, the former reference to appeals "in habeas corpus or coram nobis cases, or from other common-law or statutory remedies which have heretofore been available" is deleted as implied in the reference to an "appeal".

Defined term: "Person" § 1-101

7-108. RIGHT TO COUNSEL AND HEARING.

(A) IN GENERAL.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON IS ENTITLED TO ASSISTANCE OF COUNSEL AND A HEARING ON A PETITION FILED UNDER THIS TITLE.

(B) EXCEPTIONS.

(1) IF A PERSON SEEKS TO REOPEN A POSTCONVICTION PROCEEDING UNDER § 7-104 OF THIS SUBTITLE, THE COURT SHALL DETERMINE WHETHER ASSISTANCE FROM COUNSEL OR A HEARING SHOULD BE GRANTED.

(2) IF AN APPEAL HAS BEEN TAKEN FROM THE JUDGMENT OF CONVICTION TO THE COURT OF SPECIAL APPEALS, UNTIL THE JUDGMENT OF CONVICTION BECOMES FINAL IN THE COURT OF SPECIAL APPEALS, THE COURT NEED NOT:

(I) APPOINT COUNSEL;

(II) HOLD A HEARING; OR

(III) ACT ON THE PETITION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645A(f) and, as it related to appeals pending in the Court of Special Appeals, the second sentence of (e).

In subsections (a) and (b) of this section, the term "person" is substituted for the former references to "petitioner" and "defendant" to conform to the terminology used throughout this title.

Defined term: "Person" § 1-101

7-109. APPEAL OF FINAL ORDER.

(A) APPLICATION.

WITHIN 30 DAYS AFTER THE COURT PASSES AN ORDER IN ACCORDANCE WITH THIS SUBTITLE, A PERSON AGGRIEVED BY THE ORDER, INCLUDING THE ATTORNEY GENERAL AND A STATE'S ATTORNEY, MAY APPLY TO THE COURT OF SPECIAL APPEALS FOR LEAVE TO APPEAL THE ORDER.

(B) APPEAL PROCEDURE.

(1) THE APPLICATION FOR LEAVE TO APPEAL SHALL BE IN THE FORM SET BY THE MARYLAND RULES.

(2) IF THE ATTORNEY GENERAL OR A STATE'S ATTORNEY STATES AN INTENTION TO FILE AN APPLICATION FOR AN APPEAL UNDER THIS SECTION, THE COURT MAY:

(I) STAY THE ORDER; AND

(II) SET BAIL FOR THE PETITIONER.

(3) IF THE APPLICATION FOR LEAVE TO APPEAL IS GRANTED:

(I) THE PROCEDURE FOR THE APPEAL SHALL MEET THE REQUIREMENTS OF THE MARYLAND RULES; AND

(II) THE COURT OF SPECIAL APPEALS MAY:

1. AFFIRM, REVERSE, OR MODIFY THE ORDER APPEALED FROM; OR

2. REMAND THE CASE FOR FURTHER PROCEEDINGS.

(4) IF THE APPLICATION FOR LEAVE TO APPEAL IS DENIED, THE ORDER SOUGHT TO BE REVIEWED BECOMES FINAL.

(C) COSTS.

THE COURT OF SPECIAL APPEALS SHALL DIRECT THE POLITICAL SUBDIVISION IN WHICH AN ORDER IS PASSED TO PAY THE NECESSARY COSTS AND EXPENSES ASSOCIATED WITH A REVIEW UNDER THIS SECTION, INCLUDING ALL COURT COSTS, STENOGRAPHIC SERVICES, AND PRINTING, IF:

(1) A PERSON SEEKS A REVIEW UNDER THIS SECTION WITHIN 30 DAYS AFTER JUDGMENT;

(2) THE COURT OF SPECIAL APPEALS GRANTS LEAVE TO APPEAL UNDER THIS SECTION; AND

(3) THE COURT OF SPECIAL APPEALS FINDS THAT THE PERSON IS UNABLE TO PAY THE COSTS OF THE REVIEW.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 645E and 645-I.

In subsection (a) of this section, the reference to "passes an order" is substituted for the former reference to its "passage" for consistency throughout the revised articles of the Code. Correspondingly, in subsection (c) of this section, the word "passed" is substituted for the former word "rendered".

Also in subsection (a) of this section, the former reference to the State's Attorney "for Baltimore City or any county, as the case may be," is deleted as implied in the reference to a "State's Attorney".

In subsection (b)(2)(ii) of this section, the reference to "set bail for the petitioner" is substituted for the former reference to "admit the petitioner to bail for his appearance when required" for brevity and clarity.

As to the reference to the Maryland Rules in subsection (b)(1) of this section, *see* Md. Rule 8-204.

As to the reference to the Maryland Rules in subsection (b)(3) of this section, *see* Md. Rules 8-205 through 8-207.

In subsection (c)(1) and (3) of this section, the defined term "person" is substituted for the former word "petitioner" to conform to the terminology used throughout this title.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (a) of this section conflicts with the Maryland Rules regarding all appellate proceedings in cases in which a sentence of death was imposed. When a sentence of death is imposed, there is an automatic appeal to the Court of Special Appeals of both the determination of guilt and the sentence. *See* Md. Rule 8-306.

Defined term: "Person" § 1-101

SUBTITLE 2. PROCEEDINGS AFTER DEATH SENTENCES.

7-201. FILING OF PETITION.

(A) 210-DAY FILING PERIOD.

SUBJECT TO SUBSECTION (B) OF THIS SECTION, IN A CASE IN WHICH A SENTENCE OF DEATH HAS BEEN IMPOSED, THE CIRCUIT COURT MAY NOT EXERCISE JURISDICTION OVER A PROCEEDING UNDER THIS TITLE UNLESS THE PETITION IS FILED WITHIN 210 DAYS AFTER:

(1) THE SUPREME COURT OF THE UNITED STATES PASSES AN ORDER DENYING A PETITION FOR A WRIT OF CERTIORARI;

(2) THE SUPREME COURT OF THE UNITED STATES MAKES A DECISION AFFIRMING THE SENTENCE OF DEATH; OR

(3) IF NO REVIEW IS SOUGHT, THE TIME FOR SEEKING REVIEW BY THE SUPREME COURT OF THE UNITED STATES EXPIRES.

(B) EXTENSION.

THE CIRCUIT COURT MAY EXTEND THE PERIOD WITHIN WHICH THE PETITION SHALL BE FILED IF GOOD CAUSE FOR THE EXTENSION IS SHOWN.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645A(a)(3).

7-202. STAY OF WARRANT OF EXECUTION.

NOTWITHSTANDING ANY OTHER LAW AND SUBJECT TO § 7-203 OF THIS SUBTITLE, A WARRANT OF EXECUTION SHALL BE STAYED FOR 210 DAYS AFTER:

(1) THE SUPREME COURT OF THE UNITED STATES PASSES AN ORDER DENYING ANY PETITION FOR A WRIT OF CERTIORARI;

(2) THE SUPREME COURT OF THE UNITED STATES MAKES A DECISION AFFIRMING THE SENTENCE OF DEATH; OR

(3) IF NO REVIEW IS SOUGHT, THE TIME FOR SEEKING REVIEW BY THE SUPREME COURT OF THE UNITED STATES EXPIRES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645A(a)(4).

7-203. WAIVER OF RIGHT TO FILE PETITION.

(A) CONDITIONS FOR WAIVER.

A DEFENDANT IN A CASE IN WHICH A SENTENCE OF DEATH HAS BEEN IMPOSED MAY WAIVE THE RIGHT TO FILE A PETITION UNDER THIS TITLE BEFORE THE EXPIRATION OF THE 210-DAY PERIOD ESTABLISHED IN § 7-201 OF THIS SUBTITLE IF THE WAIVER IS KNOWING, VOLUNTARY, INTELLIGENT, AND IN WRITING.

(B) REVOCATION OF WAIVER.

A DEFENDANT IN A CASE IN WHICH A SENTENCE OF DEATH HAS BEEN IMPOSED MAY REVOKE A WAIVER UNDER SUBSECTION (A) OF THIS SECTION NO LATER THAN 15 DAYS BEFORE THE SCHEDULED DATE OF EXECUTION BY:

(1) FILING A PETITION FOR POSTCONVICTION RELIEF UNDER THIS TITLE; OR

(2) WITHDRAWING THE WAIVER IN WRITING.

(C) EFFECT OF WAIVER.

A WAIVER OF THE RIGHT TO FILE A PETITION UNDER THIS TITLE BEFORE THE EXPIRATION OF THE 210-DAY PERIOD ESTABLISHED IN § 7-201 OF THIS SUBTITLE ENDS THE STATE POSTCONVICTION REVIEW PROCESS FOR PURPOSES OF § 3-902 OF THE CORRECTIONAL SERVICES ARTICLE.

(D) EFFECT OF REVOCATION OF WAIVER.

(1) THE REVOCATION OF A WAIVER UNDER SUBSECTION (B)(1) OF THIS SECTION CONTINUES THE STATE POSTCONVICTION REVIEW PROCESS FOR PURPOSES OF § 3-902 OF THE CORRECTIONAL SERVICES ARTICLE.

(2) THE REVOCATION OF A WAIVER UNDER SUBSECTION (B)(2) OF THIS SECTION CONTINUES THE STATE POSTCONVICTION REVIEW PROCESS FOR PURPOSES OF § 3-902 OF THE CORRECTIONAL SERVICES ARTICLE UNTIL THE EARLIER OF:

(I) THE FILING OF A PETITION FOR POSTCONVICTION RELIEF; OR

(II) THE EXPIRATION OF THE 210-DAY PERIOD ESTABLISHED IN § 7-201 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645A(a)(5).

In subsections (c) and (d)(1) and (2) of this section, the references to "§ 3-902 of the Correctional Services Article" are substituted for the former obsolete references to "§ 75 of this article" for clarity.

7-204. HEARING ON PETITION.

(A) DATE FOR HEARING.

(1) THE DATE FOR A HEARING ON A PETITION FILED IN A CASE IN WHICH A SENTENCE OF DEATH HAS BEEN IMPOSED SHALL:

(I) BE SET WITHIN 30 DAYS AFTER THE DAY ON WHICH THE PETITION IS FILED; AND

(II) OCCUR WITHIN 90 DAYS AFTER THE DAY THE PETITION IS FILED.

(2) AFTER THE HEARING DATE IS SET UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION, THE COURT MAY NOT CHANGE THE DATE UNLESS A PARTY FILES A MOTION REQUESTING THE CHANGE AND SHOWS GOOD CAUSE FOR THE CHANGE.

(3) THE COURT SHALL ISSUE A DECISION ON A PETITION FILED IN A CASE IN WHICH A SENTENCE OF DEATH HAS BEEN IMPOSED WITHIN 90 DAYS AFTER THE HEARING ON THE PETITION.

(B) ENFORCEMENT.

A PARTY MAY ENFORCE THIS SECTION THROUGH THE FILING OF A PETITION FOR WRIT OF MANDAMUS IN THE COURT OF APPEALS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645A(g).

SUBTITLE 3. SHORT TITLE.

7-301. SHORT TITLE.

THIS TITLE IS THE UNIFORM POSTCONVICTION PROCEDURE ACT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645J.

TITLE 8. SENTENCE REVIEW.

8-101. DEFINITIONS.

(A) IN GENERAL.

IN THIS TITLE THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language substituted for the introductory phrase of former Art. 27, § 645JF.

(B) REVIEW PANEL.

"REVIEW PANEL" MEANS A GROUP OF THREE OR MORE CIRCUIT COURT JUDGES WHO CONDUCT A REVIEW PROCEEDING IN CONNECTION WITH AN APPLICATION FOR A REVIEW OF A SENTENCE UNDER THIS TITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 645JF(5).

The reference to "circuit court" judges is substituted for the former reference to "trial" judges to conform to the terminology used throughout this title.

(C) SENTENCING COURT.

"SENTENCING COURT" MEANS THE COURT IN WHICH THE SENTENCING JUDGE IMPOSED THE SENTENCE OR REQUIRED THAT A SENTENCE THAT WAS WHOLLY OR PARTLY SUSPENDED BE SERVED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 645JF(4).

Defined term: "Sentencing judge" § 8-101

(D) SENTENCING JUDGE.

"SENTENCING JUDGE" MEANS THE JUDGE WHO IMPOSED A SENTENCE OR WHO REQUIRED THAT A SENTENCE THAT WAS WHOLLY OR PARTLY SUSPENDED BE SERVED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 645JF(3).

REVISOR'S NOTE TO SECTION:

Former Art. 27, § 645JF(1), which defined the term "trial judge" to mean "a judge of the circuit court of the county or of the judicial circuit of this State, in which the sentencing court is located, whether the judge was elected or appointed," is deleted as unnecessary, because the term "trial judge" is not used in this title. The term as defined does not alter the inherent, ordinary meaning of the term "circuit court judge", which is used in this title to conform to the terminology used throughout this article.

Former Art. 27, § 645JF(2), which defined the term "trial court" to mean "the circuit court for any county" is deleted as unnecessary because the term "trial court" is not used in this title. The term as defined does not add anything to the inherent, ordinary meaning of the term "circuit court", which is used in this title to conform to the terminology used throughout this article.

8-102. RIGHT TO SENTENCE REVIEW.

(A) PERSONS ENTITLED TO REVIEW.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON CONVICTED OF A CRIME BY A CIRCUIT COURT AND SENTENCED TO SERVE A SENTENCE THAT EXCEEDS 2 YEARS IN A CORRECTIONAL FACILITY IS ENTITLED TO A SINGLE SENTENCE REVIEW BY A REVIEW PANEL.

(B) EXCEPTION.

A PERSON IS NOT ENTITLED:

(1) TO A SENTENCE REVIEW IF THE SENTENCE WAS IMPOSED BY MORE THAN ONE CIRCUIT COURT JUDGE; OR

(2) TO A REVIEW OF AN ORDER REQUIRING A SUSPENDED PART OF A SENTENCE TO BE SERVED IF:

(I) THE SENTENCE ORIGINALLY WAS WHOLLY OR PARTLY SUSPENDED;

(II) THE SENTENCE WAS REVIEWED; AND

(III) THE SUSPENDED SENTENCE OR SUSPENDED PART OF THAT SENTENCE LATER WAS REQUIRED TO BE SERVED.

(C) SENTENCE EXCEEDING 2 YEARS.

FOR PURPOSES OF THIS TITLE, A SENTENCE THAT EXCEEDS 2 YEARS IS A SENTENCE IN WHICH THE TOTAL PERIOD OF THE SENTENCE AND ANY UNSERVED TIME OF A PRIOR OR SIMULTANEOUS SENTENCE EXCEEDS 2 YEARS, INCLUDING:

(1) A SENTENCE IMPOSED BY A CIRCUIT COURT;

(2) A REQUIREMENT BY A CIRCUIT COURT THAT ALL OR PART OF A SUSPENDED SENTENCE BE SERVED; AND

(3) A PRIOR OR SIMULTANEOUS SENTENCE, SUSPENDED OR NOT SUSPENDED, THAT HAS BEEN IMPOSED BY A COURT OR OTHER AUTHORITY OF THE STATE OR OF ANOTHER JURISDICTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645JB and the second sentence and, as it related to right to sentence review, the first sentence of § 645JA(a).

In subsection (a) of this section, the reference to a "circuit court" is substituted for the former reference to "any trial court of this State" for brevity.

Also in subsection (a) of this section, the defined term "correctional facility" is substituted for the former reference to "any penal or correctional institution in this State" to conform to the terminology used throughout this article.

Also in subsection (a) of this section, the former phrase "with or without suspension" is deleted as superfluous.

Defined terms: "Correctional facility" § 1-101

"Person" § 1-101

8-103. RIGHT TO COUNSEL.

(A) IN GENERAL.

A PERSON ENTITLED TO FILE AN APPLICATION FOR A SENTENCE REVIEW UNDER THIS TITLE HAS THE RIGHT TO BE REPRESENTED BY COUNSEL:

(1) TO DETERMINE WHETHER TO SEEK A SENTENCE REVIEW; AND

(2) TO FILE AN APPLICATION FOR A SENTENCE REVIEW.

(B) OBTAINING COUNSEL.

THE COUNSEL REPRESENTING A PERSON FOR A SENTENCE REVIEW MAY BE:

(1) RETAINED BY A PERSON WHO IS ENTITLED TO FILE AN APPLICATION FOR REVIEW UNDER THIS TITLE;

(2) APPOINTED BY THE SENTENCING JUDGE; OR

(3) PROVIDED UNDER ARTICLE 27A OF THE CODE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645JE(a).

In subsection (a) of this section, the reference to a "sentence" review is added for clarity.

Defined terms: "Person" § 1-101

"Sentencing judge" § 8-101

8-104. FILING OF APPLICATION FOR REVIEW.

(A) EFFECT OF FILING.

THE FILING OF AN APPLICATION FOR SENTENCE REVIEW UNDER THIS TITLE DOES NOT:

(1) STAY THE EXECUTION OF THE SENTENCE;

(2) AFFECT THE TIME ALLOWED TO FILE AN APPEAL OR A MOTION FOR A NEW TRIAL; OR

(3) AFFECT THE POWER OF THE SENTENCING JUDGE TO CHANGE THE SENTENCE TO THE EXTENT ALLOWED BY THE MARYLAND RULES.

(B) STAY AFTER FILING.

AFTER AN APPLICATION IS FILED, THE SENTENCING JUDGE MAY GRANT A STAY OF THE EXECUTION OF THE SENTENCE PENDING A DECISION UNDER THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645JD.

In subsection (a)(2) of this section, the former reference to an appeal "on the merits of the case" is deleted as implied in the reference to an "appeal".

In subsection (a)(3) of this section, the reference to a "sentencing" judge is substituted for the former reference to a "trial" judge to conform to the terminology used in subsection (b) of this section.

Also in subsection (a)(3) of this section, the reference to the "Maryland Rules" is substituted for the former reference to "rules of the Court of Appeals in force and effect from time to time" for brevity and to conform to the terminology used in current practice.

In subsection (b) of this section, the reference to a stay "of the execution of the sentence" is added for clarity.

Defined term: "Sentencing judge" § 8-101

8-105. REVIEW PANEL.

(A) MEMBERSHIP.

A REVIEW PANEL CONSISTS OF THREE OR MORE CIRCUIT COURT JUDGES OF THE JUDICIAL CIRCUIT IN WHICH THE SENTENCING COURT IS LOCATED.

(B) ROLE OF SENTENCING JUDGE.

NOTWITHSTANDING ANY MARYLAND RULE, THE SENTENCING JUDGE MAY NOT BE A MEMBER OF THE REVIEW PANEL, BUT ON REQUEST OF THE SENTENCING JUDGE, THE SENTENCING JUDGE MAY SIT WITH THE REVIEW PANEL ONLY IN AN ADVISORY CAPACITY.

(C) POWERS AND DUTIES.

(1) A REVIEW PANEL SHALL CONSIDER EACH APPLICATION FOR REVIEW OF A SENTENCE.

(2) A REVIEW PANEL MAY REQUIRE THE DIVISION OF PAROLE AND PROBATION TO MAKE INVESTIGATIONS, REPORTS, AND RECOMMENDATIONS.

(3) A REVIEW PANEL:

(I) WITH OR WITHOUT A HEARING, MAY DECIDE THAT THE SENTENCE UNDER REVIEW SHOULD REMAIN UNCHANGED; OR

(II) AFTER A HEARING, MAY ORDER A DIFFERENT SENTENCE TO BE IMPOSED OR SERVED, INCLUDING:

1. AN INCREASED SENTENCE;

2. SUBJECT TO § 8-107(C) OF THIS TITLE, A DECREASED SENTENCE;

3. A SUSPENDED SENTENCE TO BE SERVED WHOLLY OR PARTLY; OR

4. A SENTENCE TO BE SUSPENDED WITH OR WITHOUT PROBATION.

(4) IN DECIDING TO ORDER A DIFFERENT SENTENCE, THE REVIEW PANEL MAY IMPOSE CONDITIONS THAT THE REVIEW PANEL CONSIDERS JUST AND THAT COULD HAVE BEEN IMPOSED LAWFULLY BY THE SENTENCING COURT WHEN THE SENTENCE WAS IMPOSED.

(D) NOTIFICATION.

IF THE REVIEW PANEL ORDERS A DIFFERENT SENTENCE, THE REVIEW PANEL SHALL RESENTENCE AND NOTIFY THE DEFENDANT IN ACCORDANCE WITH THE ORDER OF THE PANEL.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645JC(a), (b)(1) and (2)(i), (c), and (f) and the third sentence of former § 645JA(a) and the first sentence, as it related to membership of the review panel.

In subsection (b) of this section, the former phrase "to the contrary" is deleted as surplusage. Similarly, the former reference to "the convicted person" is deleted as unnecessary in light of the reference to the defined term "sentencing judge".

In subsection (c)(1) of this section, the reference to a review "of a sentence" is added for clarity.

In subsection (c)(2) of this section, the former reference to recommendations "with regard to any such application for review" is deleted as implied in the reference to "recommendations".

In subsection (c)(3)(ii) of this section, the former reference to including "by way of illustration and not by way of limitation" is deleted in light of Art. 1, § 30.

In subsection (c)(4) of this section, the former reference to "terms" is deleted as unnecessary in light of the reference to "conditions".

In subsection (d) of this section, the reference to a "defendant" is substituted for the former reference to a "convicted person" to conform to the terminology used throughout this article.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the procedure for a sentencing judge to sit with the review panel in an advisory capacity set forth in subsection (b) of this section differs from the procedure set forth in Md. Rule 4-344(d). Subsection (b) of this section states that a sentencing judge may sit with the review panel at the request of the sentencing judge. Md. Rule 4-344(d) states that a sentencing judge may do so "if requested by a majority of the Review Panel".

Defined terms: "Review panel" § 8-101

"Sentencing court" § 8-101

"Sentencing judge" § 8-101

8-106. RIGHTS TO NOTICE OF AND APPEARANCE AT HEARING.

(A) NOTICE.

A REVIEW PANEL MAY INCREASE, MODIFY, OR REDUCE A SENTENCE ONLY AFTER NOTICE TO EACH PARTY AND NOTICE TO ANY VICTIM OR VICTIM'S REPRESENTATIVE AS PROVIDED UNDER § 11-104 OR § 11-503 OF THIS ARTICLE.

(B) RIGHT TO BE HEARD.

BEFORE CHANGING A SENTENCE, A REVIEW PANEL SHALL ALLOW:

(1) EACH PARTY TO BE HEARD AT THE HEARING; AND

(2) THE VICTIM OR VICTIM'S REPRESENTATIVE TO ATTEND THE HEARING, AS PROVIDED BY § 11-102 OF THIS ARTICLE, AND TO ADDRESS THE REVIEW PANEL, AS PROVIDED BY § 11-403 OF THIS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645JE(b) and (c).

In subsection (a) of this section, the reference to "victim's representative" is added to conform to subsection (b) of this section.

In subsection (b)(1) of this section, the reference to "each party" is substituted for the former reference to "the State and the defendant" for clarity.

In subsection (b)(2) of this section, the reference to a "hearing" is substituted for the former reference to a "proceeding" for consistency within this section.

Defined term: "Review panel" § 8-101

8-107. RULES FOR DECISION MAKING.

(A) MAJORITY VOTE NEEDED.

EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A MAJORITY OF THE MEMBERS OF THE REVIEW PANEL IS NECESSARY TO MAKE A DECISION.

(B) DECISION TO BE MADE WITHIN 30 DAYS.

THE REVIEW PANEL SHALL MAKE THE DECISION WITHIN 30 DAYS AFTER THE FILING DATE OF THE APPLICATION FOR REVIEW.

(C) UNANIMITY REQUIRED TO DECREASE MANDATORY SENTENCE.

A REVIEW PANEL MAY NOT ORDER A DECREASE IN A MANDATORY MINIMUM SENTENCE UNLESS THE DECISION OF THE REVIEW PANEL IS UNANIMOUS.

(D) TIME SERVED TO BE CONSIDERED IN SUBSTITUTED SENTENCE.

A REVIEW PANEL SHALL CONSIDER TIME SERVED ON THE SENTENCE UNDER REVIEW TO BE TIME SERVED ON ANY SENTENCE THAT IS SUBSTITUTED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645JC(e), (g), and (b)(2)(ii).

In subsection (b) of this section, the reference to a "defendant" is substituted for the former reference to the "convicted person" to conform to the terminology used throughout this title.

Defined term: "Review panel" § 8-101

8-108. DEATH SENTENCES.

(A) REVIEW OF DEATH SENTENCE.

THE REVIEW OF A SENTENCE OF DEATH IS GOVERNED BY ARTICLE 27, § 414 OF THE CODE.

(B) INCREASE OF SENTENCE TO DEATH SENTENCE -- PROHIBITED.

A REVIEW PANEL MAY NOT INCREASE A SENTENCE TO THE SENTENCE OF DEATH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 645JA(b) and 645JC(d).

The reference to "a sentence" is substituted for the former reference to "a sentence for imprisonment for life, imprisonment for life without the possibility of parole, or a term of years" for clarity.

Defined term: "Review panel" § 8-101

8-109. RULES OF PROCEDURE.

THE COURT OF APPEALS SHALL ADOPT RULES TO CARRY OUT THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 645JG.

The former reference to "appropriate" rules is deleted as surplusage.

The former reference to rules "of procedure" is deleted as implicit in the word "rules".

As for the substitution of the reference to "carry out" this title for the

former reference to "implement" this subtitle, *see* General Revisor's Note to article.

TITLE 9. EXTRADITION.

9-101. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) EXECUTIVE AUTHORITY.

IN THIS TITLE, "EXECUTIVE AUTHORITY" INCLUDES THE GOVERNOR AND ANY PERSON PERFORMING THE FUNCTIONS OF GOVERNOR IN A STATE OTHER THAN THIS STATE.

(C) STATE.

(1) "STATE" MEANS A STATE OTHER THAN THIS STATE.

(2) "STATE" INCLUDES ANY OTHER STATE OR TERRITORY OF THE UNITED STATES OF AMERICA.

REVISOR'S NOTE: Subsection (a) of this section is new language added as the standard introduction to a definition section.

Subsections (b) and (c) of this section formerly were Art. 41, § 2-201.

The only changes are in style.

The Criminal Procedure Article Review Committee notes, for consideration of the General Assembly, that the definition of "executive authority" does not explicitly include a judge of the Superior Court of the District of Columbia. In that jurisdiction, those judges act as the "executive authority" for purposes of this subtitle. The General Assembly may wish to clarify the definition of "executive authority".

Defined term: "Person" § 1-101

9-102. FUGITIVES FROM JUSTICE; DUTY OF GOVERNOR.

SUBJECT TO THE PROVISIONS OF THIS TITLE, THE PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES CONTROLLING, AND ANY AND ALL ACTS OF CONGRESS ENACTED IN PURSUANCE THEREOF, IT IS THE DUTY OF THE GOVERNOR OF THIS STATE TO HAVE ARRESTED AND DELIVERED UP TO THE EXECUTIVE AUTHORITY OF ANY OTHER STATE ANY PERSON CHARGED IN THAT STATE WITH TREASON, FELONY, OR OTHER CRIME, WHO HAS FLED FROM JUSTICE AND IS FOUND IN THIS STATE.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-202.

The former reference to a state "of the United States" is deleted in light of the definition of "state" in § 9-101 of this title.

No other changes are made.

Defined terms: "Executive authority" § 9-101

"Person" § 1-101

"State" § 9-101

9-103. FORM OF DEMAND.

(A) IN GENERAL.

A DEMAND FOR THE EXTRADITION OF A PERSON CHARGED WITH CRIME IN ANOTHER STATE MAY NOT BE RECOGNIZED BY THE GOVERNOR UNLESS IT IS:

(1) IN WRITING AND ALLEGING, EXCEPT IN CASES ARISING UNDER § 9-106 OF THIS TITLE, THAT THE ACCUSED WAS PRESENT IN THE DEMANDING STATE AT THE TIME OF THE COMMISSION OF THE ALLEGED CRIME, AND THAT THEREAFTER THE ACCUSED FLED FROM THE STATE; AND

(2) ACCOMPANIED BY:

(I) A COPY OF AN INDICTMENT FOUND OR BY INFORMATION SUPPORTED BY AFFIDAVIT IN THE STATE HAVING JURISDICTION OF THE CRIME, OR BY A COPY OF AN AFFIDAVIT MADE BEFORE A JUSTICE OF THE PEACE OR MAGISTRATE THERE, TOGETHER WITH A COPY OF ANY WARRANT WHICH WAS ISSUED THEREUPON; OR

(II) A COPY OF A JUDGMENT OF CONVICTION OR OF A SENTENCE IMPOSED IN EXECUTION THEREOF, TOGETHER WITH A STATEMENT BY THE EXECUTIVE AUTHORITY OF THE DEMANDING STATE THAT THE PERSON CLAIMED HAS ESCAPED FROM CONFINEMENT OR HAS BROKEN THE TERMS OF THE PERSON'S BAIL, PROBATION, OR PAROLE.

(B) CONTENTS OF DEMAND.

(1) THE INDICTMENT, INFORMATION, OR AFFIDAVIT MADE BEFORE THE MAGISTRATE OR JUSTICE OF THE PEACE MUST SUBSTANTIALLY CHARGE THE PERSON DEMANDED WITH HAVING COMMITTED A CRIME UNDER THE LAW OF THAT STATE.

(2) THE COPY OF INDICTMENT, INFORMATION, AFFIDAVIT, JUDGMENT OF CONVICTION, OR SENTENCE MUST BE AUTHENTICATED BY THE EXECUTIVE AUTHORITY MAKING THE DEMAND.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-203.

The only changes are in style.

Defined terms: "Executive authority" § 9-101

"Person" § 1-101

"State" § 9-101

9-104. GOVERNOR MAY CALL FOR INVESTIGATION.

WHEN A DEMAND IS MADE UPON THE GOVERNOR OF THIS STATE BY THE EXECUTIVE AUTHORITY OF ANOTHER STATE FOR THE SURRENDER OF A PERSON SO CHARGED WITH CRIME, THE GOVERNOR MAY CALL UPON THE ATTORNEY GENERAL OR ANY PROSECUTING OFFICER IN THIS STATE:

(1) TO INVESTIGATE OR ASSIST IN INVESTIGATING THE DEMAND; AND

(2) TO REPORT TO THE GOVERNOR THE SITUATION AND CIRCUMSTANCES OF THE PERSON SO DEMANDED, AND WHETHER THE PERSON OUGHT TO BE SURRENDERED.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-204.

The only changes are in style.

Defined terms: "Executive authority" § 9-101

"Person" § 1-101

"State" § 9-101

9-105. EXTRADITION OF PERSONS IMPRISONED OR AWAITING TRIAL IN ANOTHER STATE OR WHO HAVE LEFT THE DEMANDING STATE UNDER COMPULSION.

(A) ACCUSED HELD IN ANOTHER STATE.

WHEN IT IS DESIRED TO HAVE RETURNED TO THIS STATE A PERSON CHARGED IN THIS STATE WITH A CRIME, AND THE PERSON IS IMPRISONED OR IS HELD UNDER CRIMINAL PROCEEDINGS THEN PENDING IN ANOTHER STATE, THE GOVERNOR OF THIS STATE MAY AGREE WITH THE EXECUTIVE AUTHORITY OF THE OTHER STATE FOR THE EXTRADITION OF THE PERSON BEFORE THE CONCLUSION OF PROCEEDINGS OR TERM OF SENTENCE IN THE OTHER STATE, UPON CONDITION THAT THE PERSON BE RETURNED TO THE OTHER STATE AT THE EXPENSE OF THIS STATE AS SOON AS THE PROSECUTION IN THIS STATE IS TERMINATED.

(B) ACCUSED HELD IN THIS STATE.

THE GOVERNOR OF THIS STATE MAY ALSO SURRENDER, ON DEMAND OF THE EXECUTIVE AUTHORITY OF ANY OTHER STATE, ANY PERSON IN THIS STATE WHO IS CHARGED IN THE MANNER PROVIDED IN § 9-123 OF THIS TITLE WITH HAVING VIOLATED THE LAWS OF THE STATE WHOSE EXECUTIVE AUTHORITY IS MAKING THE DEMAND, EVEN THOUGH THE PERSON LEFT THE DEMANDING STATE INVOLUNTARILY.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-205.

The only changes are in style.

Defined terms: "Executive authority" § 9-101

"Person" § 1-101

"State" § 9-101

9-106. EXTRADITION OF PERSONS NOT PRESENT IN DEMANDING STATE AT TIME OF COMMISSION OF CRIME.

(A) IN GENERAL.

THE GOVERNOR OF THIS STATE MAY ALSO SURRENDER, ON DEMAND OF THE EXECUTIVE AUTHORITY OF ANY OTHER STATE, ANY PERSON IN THIS STATE CHARGED IN THE OTHER STATE IN THE MANNER PROVIDED IN § 9-103 OF THIS TITLE WITH COMMITTING AN ACT IN THIS STATE OR IN A THIRD STATE THAT INTENTIONALLY RESULTS IN A CRIME IN THE STATE WHOSE EXECUTIVE AUTHORITY IS MAKING THE DEMAND.

(B) APPLICATION.

THE PROVISIONS OF THIS TITLE THAT ARE NOT OTHERWISE INCONSISTENT SHALL APPLY TO THOSE CASES, EVEN THOUGH THE ACCUSED WAS NOT IN THAT STATE AT THE TIME OF THE COMMISSION OF THE CRIME AND HAS NOT FLED THEREFROM.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-206.

The only changes are in style.

Defined terms: "Executive authority" § 9-101

"Person" § 1-101

"State" § 9-101

9-107. GOVERNOR'S WARRANT OF ARREST.

(A) IN GENERAL.

IF THE GOVERNOR DECIDES THAT THE DEMAND SHOULD BE COMPLIED WITH, THE GOVERNOR SHALL SIGN A WARRANT OF ARREST. THE WARRANT SHALL BE SEALED WITH THE STATE SEAL AND BE DIRECTED TO ANY LAW ENFORCEMENT OFFICER OR OTHER PERSON WHOM THE GOVERNOR MAY THINK FIT TO ENTRUST WITH THE EXECUTION THEREOF.

(B) CONTENTS OF WARRANT.

THE WARRANT MUST SUBSTANTIALLY RECITE THE FACTS NECESSARY TO THE VALIDITY OF ITS ISSUANCE.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-207.

In subsection (a) of this section, the reference to any "law enforcement"

officer is substituted for the former reference to any "peace" officer for consistency throughout this article.

The only other changes are in style.

Defined term: "Person" § 1-101

9-108. MANNER AND PLACE OF EXECUTION.

A WARRANT ISSUED UNDER § 9-107 OF THIS TITLE SHALL AUTHORIZE THE LAW ENFORCEMENT OFFICER OR OTHER PERSON TO WHOM IT IS DIRECTED:

(1) TO ARREST THE ACCUSED AT ANY TIME AND ANY PLACE WHERE THE ACCUSED IS FOUND WITHIN THE STATE;

(2) TO COMMAND THE AID OF ALL LAW ENFORCEMENT OFFICERS OR OTHER PERSONS IN THE EXECUTION OF THE WARRANT; AND

(3) TO DELIVER THE ACCUSED, SUBJECT TO THE PROVISIONS OF THIS TITLE, TO THE DULY AUTHORIZED AGENT OF THE DEMANDING STATE.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-208.

In the introductory language and item (2) of this section, the reference to "law enforcement" officers is substituted for the former reference to "peace" officers for consistency throughout this article.

The only other changes are in style.

Defined terms: "Person" § 1-101

"State" § 9-101

9-109. AUTHORITY OF ARRESTING OFFICER.

A LAW ENFORCEMENT OFFICER OR OTHER PERSON EMPOWERED TO MAKE THE ARREST UNDER § 9-108 OF THIS TITLE HAS THE SAME AUTHORITY IN ARRESTING THE ACCUSED TO COMMAND ASSISTANCE AS LAW ENFORCEMENT OFFICERS HAVE BY LAW IN THE EXECUTION OF ANY CRIMINAL PROCESS DIRECTED TO THEM, WITH LIKE PENALTIES AGAINST THOSE WHO REFUSE THEIR ASSISTANCE.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-209.

The references to "law enforcement" officers are substituted for the former reference to "peace" officers for consistency throughout this article.

The only other changes are in style.

Defined term: "Person" § 1-101

9-110. RIGHTS OF ACCUSED PERSON; APPLICATION FOR WRIT OF HABEAS CORPUS.

(A) RIGHTS OF ACCUSED.

(1) A PERSON ARRESTED UPON A WARRANT ISSUED UNDER § 9-107 OF THIS TITLE MAY NOT BE DELIVERED OVER TO THE AGENT WHOM THE EXECUTIVE AUTHORITY DEMANDING THE PERSON HAS APPOINTED TO RECEIVE THE PERSON UNLESS THE PERSON IS FIRST TAKEN FORTHWITH BEFORE A JUDGE OF A COURT OF RECORD IN THIS STATE, WHO SHALL INFORM THE PERSON:

(I) OF THE DEMAND MADE FOR SURRENDER;

(II) OF THE CRIME CHARGED; AND

(III) OF THE RIGHT TO DEMAND AND PROCURE LEGAL COUNSEL.

(2) IF THE PERSON ARRESTED OR THE PERSON'S COUNSEL SHALL STATE A DESIRE TO TEST THE LEGALITY OF THE ARREST, THE JUDGE SHALL FIX A REASONABLE TIME WITHIN WHICH THE PERSON CAN APPLY FOR A WRIT OF HABEAS CORPUS.

(B) NOTICE OF HEARING.

WHEN THE WRIT IS APPLIED FOR, NOTICE THEREOF AND OF THE TIME AND PLACE OF HEARING THEREON SHALL BE GIVEN TO THE PROSECUTING OFFICER OF THE COUNTY IN WHICH THE ARREST IS MADE AND IN WHICH THE ACCUSED IS IN CUSTODY, AND TO THE AGENT OF THE DEMANDING STATE.

(C) JUDICIAL REVIEW.

IF THE APPLICATION FOR A WRIT OF HABEAS CORPUS AFTER AN EXTRADITION HEARING ONLY IS DENIED BY THE TRIAL COURT, THE DENIAL MAY BE APPEALED TO THE COURT OF SPECIAL APPEALS.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-210.

In subsection (a)(2) of this section, the reference to the "person arrested" is substituted for the former reference to the "prisoner" for consistency within this section.

In subsection (b) of this section, the former reference to the "City of Baltimore" is deleted in light of the definition of "county" in § 1-101 of this article.

The only other changes are in style.

Defined terms: "County" § 1-101

"Executive authority" § 9-101

"Person" § 1-101

"State" § 9-101

9-111. NONCOMPLIANCE WITH DELIVERY PROCEDURES.

(A) IN GENERAL.

AN OFFICER MAY NOT DELIVER TO THE AGENT FOR EXTRADITION OF THE DEMANDING STATE A PERSON IN THE OFFICER'S CUSTODY UNDER THE GOVERNOR'S WARRANT IN WILLFUL DISOBEDIENCE TO § 9-110 OF THIS TITLE.

(B) PENALTY.

A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE NOT EXCEEDING $1,000 OR IMPRISONMENT NOT EXCEEDING 6 MONTHS OR BOTH.

(C) VENUE.

THE TRIAL OF A CASE BROUGHT FOR A VIOLATION OF THIS SECTION SHALL BE CONDUCTED IN THE CIRCUIT COURT OF THE COUNTY IN WHICH THE VIOLATION WAS COMMITTED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 2-211.

This section is revised in the standard language used to express a prohibition and a penalty.

The Criminal Procedure Article Review Committee notes, for consideration of the General Assembly, that subsection (c) of this section does not give jurisdiction to the District Court. Considering that the misdemeanor created by this section carries relatively small penalties, the General Assembly may wish to amend subsection (c) to allow cases to be brought in the District Court.

Defined terms: "County" § 1-101

"Person" § 1-101

"State" § 9-101

9-112. CONFINEMENT IN CORRECTIONAL FACILITY WHEN NECESSARY.

(A) TEMPORARY CUSTODY OF PRISONER ARRESTED IN THIS STATE.

(1) THE OFFICER OR PERSON EXECUTING THE GOVERNOR'S WARRANT OF ARREST OR THE AGENT OF THE DEMANDING STATE TO WHOM THE PRISONER MAY HAVE BEEN DELIVERED MAY, WHEN NECESSARY, CONFINE THE PRISONER IN THE CORRECTIONAL FACILITY OF ANY COUNTY OR MUNICIPAL CORPORATION THROUGH WHICH THE OFFICER, PERSON, OR AGENT MAY PASS.

(2) THE MANAGING OFFICIAL OF THE CORRECTIONAL FACILITY MUST RECEIVE AND SAFELY KEEP THE PRISONER UNTIL THE OFFICER, PERSON, OR AGENT HAVING CHARGE OF THE PRISONER IS READY TO PROCEED.

(3) THE OFFICER, PERSON, OR AGENT IS CHARGEABLE WITH THE EXPENSE OF KEEPING THE PRISONER.

(B) TEMPORARY CUSTODY OF PRISONER ARRESTED IN ANOTHER STATE.

(1) THE OFFICER OR AGENT OF A DEMANDING STATE TO WHOM A PRISONER MAY HAVE BEEN DELIVERED FOLLOWING EXTRADITION PROCEEDINGS IN ANOTHER STATE, OR TO WHOM A PRISONER MAY HAVE BEEN DELIVERED AFTER WAIVING EXTRADITION IN ANOTHER STATE, AND WHO IS PASSING THROUGH THIS STATE WITH THE PRISONER FOR THE PURPOSE OF IMMEDIATELY RETURNING THE PRISONER TO THE DEMANDING STATE MAY, WHEN NECESSARY, CONFINE THE PRISONER IN THE CORRECTIONAL FACILITY OF ANY COUNTY OR MUNICIPAL CORPORATION THROUGH WHICH THE OFFICER OR AGENT MAY PASS.

(2) THE MANAGING OFFICIAL OF THE CORRECTIONAL FACILITY MUST RECEIVE AND SAFELY KEEP THE PRISONER UNTIL THE OFFICER OR AGENT HAVING CHARGE OF THE PRISONER IS READY TO PROCEED.

(3) THE OFFICER OR AGENT IS CHARGEABLE WITH THE EXPENSE OF KEEPING THE PRISONER.

(4) THE OFFICER OR AGENT SHALL PRODUCE AND SHOW TO THE MANAGING OFFICIAL OF THE CORRECTIONAL FACILITY SATISFACTORY WRITTEN EVIDENCE OF THE FACT THAT THE OFFICER OR AGENT IS ACTUALLY TRANSPORTING THE PRISONER TO THE DEMANDING STATE AFTER A REQUISITION BY THE EXECUTIVE AUTHORITY OF THE DEMANDING STATE.

(5) THE PRISONER IS NOT ENTITLED TO DEMAND A NEW REQUISITION WHILE IN THIS STATE.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-212.

In subsections (a)(1) and (2) and (b)(1), (2), and (4) of this section, the references to a "correctional facility" are substituted for the former references to a "jail" for consistency throughout this article.

In subsections (a)(1) and (b)(1) of this section, the references to "municipal corporation" are substituted for the former references to a "city" to conform to Md. Constitution, Art. XI-E.

In subsections (a)(2) and (b)(2) and (4) of this section, the references to a "managing official" are substituted for the former references to a "keeper" for consistency with current nomenclature.

In subsections (a)(2) and (b)(2) of this section, the former phrase "on his route" is deleted as implicit in the reference to "proceed[ing]".

The only other changes are in style.

Defined terms: "Correctional facility" § 1-101

"County" § 1-101

"Executive authority" § 9-101

"Managing official" § 1-101

"Person" § 1-101

"State" § 9-101

9-113. ARREST BEFORE REQUISITION.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES WHENEVER:

(1) IT IS CHARGED ON THE OATH OF A CREDIBLE WITNESS BEFORE A JUDGE OR DISTRICT COURT COMMISSIONER THAT A PERSON IN THIS STATE:

(I) HAS COMMITTED A CRIME IN ANOTHER STATE AND, EXCEPT IN CASES ARISING UNDER § 9-106 OF THIS TITLE, HAS FLED FROM JUSTICE; OR

(II) HAS BEEN CONVICTED OF A CRIME IN ANOTHER STATE AND HAS ESCAPED FROM CONFINEMENT OR HAS BROKEN THE TERMS OF BAIL, PROBATION, OR PAROLE; OR

(2) COMPLAINT IS MADE BEFORE A JUDGE OR DISTRICT COURT COMMISSIONER IN THIS STATE SETTING FORTH ON THE AFFIDAVIT OF A CREDIBLE PERSON IN ANOTHER STATE THAT A PERSON IS BELIEVED TO BE IN THIS STATE AND:

(I) THAT A CRIME HAS BEEN COMMITTED IN THE OTHER STATE, THE PERSON HAS BEEN CHARGED IN THE OTHER STATE WITH COMMITTING THE CRIME AND, EXCEPT IN CASES ARISING UNDER § 9-106 OF THIS TITLE, THE PERSON HAS FLED FROM JUSTICE; OR

(II) THAT THE PERSON HAS BEEN CONVICTED OF A CRIME IN THE OTHER STATE AND HAS ESCAPED FROM CONFINEMENT OR HAS BROKEN THE TERMS OF BAIL, PROBATION, OR PAROLE.

(B) WARRANT.

A JUDGE OR DISTRICT COURT COMMISSIONER SHALL ISSUE A WARRANT DIRECTED TO ANY LAW ENFORCEMENT OFFICER COMMANDING THE OFFICER TO APPREHEND THE PERSON NAMED THEREIN, WHEREVER FOUND IN THIS STATE, AND TO BRING THE PERSON BEFORE THE JUDGE, DISTRICT COURT COMMISSIONER, OR ANY OTHER JUDGE OR COURT AVAILABLE IN OR CONVENIENT TO THE PLACE WHERE THE ARREST MAY BE MADE, TO ANSWER THE CHARGE OR COMPLAINT AND AFFIDAVIT.

(C) DOCUMENTS ATTACHED TO WARRANT.

A CERTIFIED COPY OF THE SWORN CHARGE OR COMPLAINT AND AFFIDAVIT UPON WHICH THE WARRANT IS ISSUED SHALL BE ATTACHED TO THE WARRANT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 2-213.

Defined terms: "Person" § 1-101

"State" § 9-101

9-114. ARREST WITHOUT WARRANT.

(A) IN GENERAL.

THE ARREST OF A PERSON MAY BE LAWFULLY MADE ALSO BY ANY LAW ENFORCEMENT OFFICER WITHOUT A WARRANT UPON REASONABLE INFORMATION THAT THE ACCUSED STANDS CHARGED IN A COURT OF A STATE WITH A CRIME PUNISHABLE BY DEATH OR IMPRISONMENT FOR A TERM EXCEEDING 1 YEAR.

(B) HEARING.

WHEN AN ACCUSED IS ARRESTED UNDER SUBSECTION (A) OF THIS SECTION:

(1) THE ACCUSED MUST BE TAKEN BEFORE A JUDGE OR DISTRICT COURT COMMISSIONER WITH ALL PRACTICABLE SPEED;

(2) COMPLAINT MUST BE MADE AGAINST THE ACCUSED UNDER OATH SETTING FORTH THE GROUND FOR THE ARREST AS IN § 9-113 OF THIS TITLE; AND

(3) THEREAFTER, THE ANSWER OF THE ACCUSED SHALL BE HEARD AS IF THE ACCUSED HAD BEEN ARRESTED ON A WARRANT.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-214.

In subsection (a) of this section, the reference to any "law enforcement" officer is substituted for the former reference to any "peace" officer for consistency throughout this article.

The only other changes are in style.

Defined terms: "Person" § 1-101

"State" § 9-101

9-115. COMMITMENT TO AWAIT REQUISITION; BAIL.

IF, FROM THE EXAMINATION BEFORE THE JUDGE OR DISTRICT COURT COMMISSIONER, IT APPEARS THAT THE PERSON HELD IS THE PERSON CHARGED WITH HAVING COMMITTED THE CRIME ALLEGED AND, EXCEPT IN CASES ARISING UNDER § 9-106 OF THIS TITLE, THAT THE PERSON HAS FLED FROM JUSTICE, THE JUDGE OR DISTRICT COURT COMMISSIONER MUST, BY A WARRANT RECITING THE ACCUSATION, COMMIT THE PERSON TO THE LOCAL CORRECTIONAL FACILITY FOR A TERM SPECIFIED IN THE WARRANT BUT NOT EXCEEDING 30 DAYS, AS WILL ENABLE THE ARREST OF THE ACCUSED TO BE MADE UNDER A WARRANT OF THE GOVERNOR ON A REQUISITION OF THE EXECUTIVE AUTHORITY OF THE STATE HAVING

JURISDICTION OF THE CRIME, UNLESS THE PERSON GIVES BAIL AS PROVIDED IN § 9-116 OF THIS TITLE OR UNTIL THE PERSON IS LEGALLY DISCHARGED.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-215.

The reference to the "local correctional facility" is substituted for the former reference to the "county jail" for consistency throughout this article.

The reference to "crime" is substituted for the former reference to "offense" to conform to the terminology used throughout this article.

The only other changes are in style.

Defined terms: "Executive authority" § 9-101

"Local correctional facility" § 1-101

"Person" § 1-101

"State" § 9-101

9-116. BAIL BY BOND.

(A) IN GENERAL.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AND UNLESS THE CRIME WITH WHICH THE PERSON ARRESTED IS CHARGED IS SHOWN TO BE A CRIME PUNISHABLE BY DEATH OR LIFE IMPRISONMENT UNDER THE LAWS OF THE STATE IN WHICH IT WAS COMMITTED, A JUDGE IN THIS STATE MAY ADMIT THE PERSON ARRESTED TO BAIL BY BOND, WITH SUFFICIENT SURETIES, AND IN THE SUM THE JUDGE DEEMS PROPER, CONDITIONED FOR THE PERSON'S APPEARANCE BEFORE THE JUDGE AT A TIME SPECIFIED IN THE BOND, AND FOR THE PERSON'S SURRENDER, TO BE ARRESTED UPON THE WARRANT OF THE GOVERNOR OF THIS STATE.

(B) EXCEPTIONS.

A JUDGE MAY NOT ADMIT A PERSON TO BAIL BY BOND UNDER SUBSECTION (A) OF THIS SECTION FOR THE FIRST 10 DAYS FOLLOWING THE PERSON'S:

(1) ARREST UNDER OR SERVICE WITH A GOVERNOR'S WARRANT UNDER THIS TITLE; OR

(2) SIGNING A WAIVER OF EXTRADITION PROCEEDINGS UNDER THIS TITLE.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-216.

In subsection (a) of this section, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

Also in subsection (a) of this section, the defined term "person" is substituted for the former reference to "prisoner" to conform to the terminology used throughout this article.

The only other changes are in style.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that, unlike other provisions of this title, in subsection (a) of this section, a reference to "District Court commissioner" does not appear with the reference to a "judge". The General Assembly may wish to add that reference for consistency.

Defined terms: "Person" § 1-101

"State" § 9-101

9-117. DISCHARGE, RECOMMITMENT, OR RENEWAL OF BAIL.

IF THE ACCUSED IS NOT ARRESTED UNDER WARRANT OF THE GOVERNOR WITHIN THE TIME SPECIFIED IN THE WARRANT OR BOND, A JUDGE OR DISTRICT COURT COMMISSIONER MAY DISCHARGE THE ACCUSED OR RECOMMIT THE ACCUSED FOR A FURTHER PERIOD NOT TO EXCEED 60 DAYS, OR A JUDGE OR DISTRICT COURT COMMISSIONER MAY AGAIN TAKE BAIL FOR THE ACCUSED'S APPEARANCE AND SURRENDER, AS PROVIDED IN § 9-116 OF THIS TITLE, BUT WITHIN A PERIOD NOT TO EXCEED 60 DAYS AFTER THE DATE OF THE NEW BOND.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-217.

The word "within" is substituted for the former phrase "by the expiration of" for brevity.

The only other changes are in style.

9-118. FORFEITURE OF BAIL.

(A) IN GENERAL.

IF THE ACCUSED IS ADMITTED TO BAIL AND FAILS TO APPEAR AND SURRENDER ACCORDING TO THE CONDITIONS OF THE BOND, THE JUDGE OR DISTRICT COURT COMMISSIONER BY PROPER ORDER SHALL DECLARE THE BOND FORFEITED AND ORDER THE IMMEDIATE ARREST OF THE ACCUSED WITHOUT WARRANT IF THE ACCUSED IS WITHIN THIS STATE.

(B) PROCEDURE.

RECOVERY MAY BE HAD ON THE BOND IN THE NAME OF THE STATE AS IN THE CASE OF OTHER BONDS GIVEN BY THE ACCUSED IN CRIMINAL PROCEEDINGS WITHIN THIS STATE.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-218.

In subsection (a) of this section, the references to the "accused" are substituted for the former references to "the prisoner" for clarity and consistency with § 9-117 of this title.

The only other changes are in style.

9-119. PERSONS UNDER CRIMINAL PROSECUTION IN THIS STATE AT TIME OF REQUISITION.

IF A CRIMINAL PROSECUTION HAS BEEN INSTITUTED AGAINST A PERSON UNDER THE LAWS OF THIS STATE AND IS STILL PENDING, THE GOVERNOR MAY:

(1) SURRENDER THE PERSON ON DEMAND OF THE EXECUTIVE AUTHORITY OF ANOTHER STATE; OR

(2) HOLD THE PERSON UNTIL THE PERSON HAS BEEN TRIED AND DISCHARGED OR CONVICTED AND PUNISHED IN THIS STATE.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-219.

The former reference to the Governor's "discretion" is deleted in light of the phrase "the Governor may".

The only other changes are in style.

Defined terms: "Executive authority" § 9-101

"Person" § 1-101

"State" § 9-101

9-120. INQUIRY INTO GUILT OR INNOCENCE OF ACCUSED PROHIBITED.

THE GUILT OR INNOCENCE OF THE ACCUSED OF THE CRIME CHARGED MAY NOT BE INQUIRED INTO BY THE GOVERNOR OR IN ANY PROCEEDING AFTER THE DEMAND FOR EXTRADITION, ACCOMPANIED BY A CHARGE OF CRIME IN LEGAL FORM AS PROVIDED IN THIS TITLE, HAS BEEN PRESENTED TO THE GOVERNOR, EXCEPT AS IT MAY BE INVOLVED IN IDENTIFYING THE ACCUSED AS THE PERSON CHARGED WITH THE CRIME.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-220.

The reference to "identifying the accused" is substituted for the former reference to "identifying the person held" for clarity and consistency.

The only other changes are in style.

Defined term: "Person" § 1-101

9-121. GOVERNOR MAY RECALL WARRANT.

THE GOVERNOR MAY RECALL A WARRANT OF ARREST OR MAY ISSUE ANOTHER WARRANT WHENEVER THE GOVERNOR DEEMS PROPER.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-221.

The only changes are in style.

9-122. FUGITIVES FROM THIS STATE; DUTY OF GOVERNOR.

WHENEVER THE GOVERNOR DEMANDS A PERSON CHARGED WITH CRIME OR WITH ESCAPING FROM CONFINEMENT OR BREAKING THE TERMS OF BAIL, PROBATION, OR PAROLE IN THIS STATE FROM THE EXECUTIVE AUTHORITY OF ANY OTHER STATE, THE GOVERNOR SHALL ISSUE A WARRANT UNDER THE SEAL OF THIS STATE TO AN AGENT, COMMANDING THE AGENT TO RECEIVE THE PERSON SO CHARGED AND CONVEY THE PERSON TO THE PROPER OFFICER OF THE COUNTY IN WHICH THE CRIME WAS COMMITTED.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-222.

The former reference to "the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States" is deleted in light of the definition of "executive authority" in § 9-101 of this title and "state" in § 1-101 of this article.

The reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

The former reference to the "City of Baltimore" is deleted in light of the definition of "county" in § 1-101 of this article.

The only other changes are in style.

Defined terms: "Executive authority" § 9-101

"Person" § 1-101

"State" § 9-101

9-123. APPLICATION FOR ISSUANCE OF REQUISITION; BY WHOM MADE; CONTENTS.

(A) APPLICATION TO GOVERNOR FOR RETURN OF ACCUSED.

(1) WHEN THE RETURN TO THIS STATE OF A PERSON CHARGED WITH A CRIME IN THIS STATE IS REQUIRED, THE STATE'S ATTORNEY SHALL PRESENT TO THE GOVERNOR A WRITTEN APPLICATION FOR A REQUISITION FOR THE RETURN OF THE PERSON CHARGED.

(2) THE APPLICATION SHALL STATE:

(I) THE NAME OF THE PERSON CHARGED;

(II) THE CRIME CHARGED AGAINST THE PERSON;

(III) THE APPROXIMATE TIME, PLACE, AND CIRCUMSTANCES OF ITS COMMISSION; AND

(IV) THE STATE IN WHICH THE PERSON IS BELIEVED TO BE, INCLUDING THE LOCATION OF THE ACCUSED THEREIN, WHEN THE APPLICATION IS MADE.

(3) THE APPLICATION SHALL CERTIFY THAT IN THE OPINION OF THE STATE'S ATTORNEY, THE ENDS OF JUSTICE REQUIRE THE ARREST AND RETURN OF THE ACCUSED TO THIS STATE FOR TRIAL, AND THE PROCEEDING IS NOT INSTITUTED TO ENFORCE A PRIVATE CLAIM.

(B) APPLICATION TO GOVERNOR FOR RETURN OF ESCAPEE.

(1) WHEN THE RETURN TO THIS STATE IS REQUIRED OF A PERSON WHO HAS BEEN CONVICTED OF A CRIME IN THIS STATE AND HAS ESCAPED FROM CONFINEMENT OR BROKEN THE TERMS OF BAIL, PROBATION, OR PAROLE, THE STATE'S ATTORNEY OF THE COUNTY IN WHICH THE CRIME WAS COMMITTED, THE PAROLE COMMISSION, OR THE MANAGING OFFICIAL OF THE CORRECTIONAL FACILITY OR SHERIFF OF THE COUNTY FROM WHICH ESCAPE WAS MADE SHALL PRESENT TO THE GOVERNOR A WRITTEN APPLICATION FOR A REQUISITION FOR THE RETURN OF THE PERSON.

(2) THE APPLICATION SHALL STATE:

(I) THE NAME OF THE PERSON;

(II) THE CRIME OF WHICH THE PERSON WAS CONVICTED;

(III) THE CIRCUMSTANCES OF THE ESCAPE FROM CONFINEMENT OR OF THE BREACH OF THE TERMS OF BAIL, PROBATION, OR PAROLE; AND

(IV) THE STATE IN WHICH THE PERSON IS BELIEVED TO BE, INCLUDING THE LOCATION OF THE PERSON THEREIN WHEN APPLICATION IS MADE.

(C) PROCEDURE.

(1) THE APPLICATION SHALL BE VERIFIED BY AFFIDAVIT, BE EXECUTED IN DUPLICATE, AND BE ACCOMPANIED BY TWO CERTIFIED COPIES OF:

(I) THE INDICTMENT RETURNED;

(II) THE INFORMATION AND AFFIDAVIT FILED;

(III) THE COMPLAINT MADE TO THE JUDGE OR DISTRICT COURT COMMISSIONER, STATING THE CRIME WITH WHICH THE ACCUSED IS CHARGED; OR

(IV) THE JUDGMENT OF CONVICTION OR THE SENTENCE.

(2) THE APPLICANT MAY ALSO ATTACH FURTHER AFFIDAVITS AND OTHER DOCUMENTS IN DUPLICATE.

(3) ONE COPY OF THE APPLICATION WITH THE ACTION OF THE GOVERNOR INDICATED BY ENDORSEMENT THEREON, AND ONE OF THE CERTIFIED COPIES OF THE INDICTMENT, COMPLAINT, INFORMATION, AFFIDAVITS, JUDGMENT OF CONVICTION, OR SENTENCE SHALL BE FILED IN THE OFFICE OF THE SECRETARY OF STATE, TO REMAIN OF RECORD IN THAT OFFICE.

(4) THE OTHER COPIES OF ALL PAPERS SHALL BE FORWARDED WITH THE GOVERNOR'S REQUISITION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 2-223.

In subsection (a)(3) of this section, the reference to "the State's Attorney" is substituted for the former reference to a "prosecuting attorney" for consistency with current nomenclature.

In subsection (b)(1) of this section, the reference to the "managing official" is substituted for the former reference to the "warden" for consistency throughout this article.

Also in subsection (b)(1) of this section, the reference to a "correctional facility" is substituted for the former reference to an "institution" for consistency throughout this article.

Also in subsection (b)(1) of this section, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

Also in subsection (b)(1) of this section, the former references to "the City of Baltimore" are deleted in light of the definition of "county" in § 1-101 of this article.

In subsection (c)(2) of this section, the reference to an "applicant" is substituted for the former reference to "[t]he prosecuting officer, parole board, warden or sheriff" for brevity.

Also in subsection (c)(2) of this section, the former phrase "as he shall deem proper to be submitted with such application" is deleted as implicit in the grant of authority to attach the listed documents.

Defined terms: "Correctional facility" § 1-101

"County" § 1-101

"Managing official" § 1-101

"Person" § 1-101

"State" § 9-101

9-124. WAIVER OF EXTRADITION PROCEEDINGS.

(A) IN GENERAL.

(1) ANY PERSON ARRESTED IN THIS STATE CHARGED WITH HAVING COMMITTED ANY CRIME IN ANOTHER STATE OR ALLEGED TO HAVE ESCAPED FROM CONFINEMENT, OR BROKEN THE TERMS OF BAIL, PROBATION, OR PAROLE, MAY WAIVE THE ISSUANCE AND SERVICE OF THE WARRANT PROVIDED FOR IN §§ 9-107 AND 9-108 OF THIS TITLE, AND ALL OTHER PROCEDURE INCIDENTAL TO EXTRADITION PROCEEDINGS, BY EXECUTING OR SUBSCRIBING IN THE PRESENCE OF

A JUDGE OF ANY COURT OF RECORD WITHIN THIS STATE A WRITING THAT STATES THAT THE PERSON CONSENTS TO RETURN TO THE DEMANDING STATE.

(2) BEFORE A WAIVER IS EXECUTED OR SUBSCRIBED BY THE PERSON, IT SHALL BE THE DUTY OF THE JUDGE TO INFORM THE PERSON OF THE RIGHT TO THE ISSUANCE AND SERVICE OF A WARRANT OF EXTRADITION AND THE RIGHT TO OBTAIN A WRIT OF HABEAS CORPUS AS PROVIDED IN § 9-110 OF THIS TITLE.

(B) ACTION ON CONSENT.

(1) IF AND WHEN A CONSENT HAS BEEN DULY EXECUTED, IT SHALL FORTHWITH BE FORWARDED TO THE OFFICE OF THE GOVERNOR OF THIS STATE AND FILED THEREIN.

(2) THE JUDGE SHALL:

(I) DIRECT THE OFFICER HAVING THE PERSON IN CUSTODY TO DELIVER FORTHWITH THE PERSON TO A DULY ACCREDITED AGENT OF THE DEMANDING STATE; AND

(II) DELIVER OR CAUSE TO BE DELIVERED TO THE AGENT A COPY OF THE CONSENT.

(C) CONSTRUCTION.

(1) THIS SECTION DOES NOT LIMIT THE RIGHTS OF THE ACCUSED PERSON TO RETURN VOLUNTARILY AND WITHOUT FORMALITY TO THE DEMANDING STATE.

(2) THIS WAIVER PROCEDURE IS NOT AN EXCLUSIVE PROCEDURE AND DOES NOT LIMIT THE POWERS, RIGHTS, OR DUTIES OF THE OFFICERS OF THE DEMANDING STATE OR OF THIS STATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 2-224.

Defined terms: "Person" § 1-101

"State" § 9-101

9-125. NO WAIVER BY THIS STATE.

(A) IN GENERAL.

NOTHING IN THIS TITLE IS A WAIVER BY THIS STATE OF ITS RIGHT, POWER, OR PRIVILEGE TO TRY A DEMANDED PERSON FOR A CRIME COMMITTED WITHIN THIS STATE, OR OF ITS RIGHT, POWER, OR PRIVILEGE TO REGAIN CUSTODY OF A PERSON BY EXTRADITION PROCEEDINGS OR OTHERWISE FOR THE PURPOSE OF TRIAL, SENTENCE, OR PUNISHMENT FOR ANY CRIME COMMITTED WITHIN THIS STATE.

(B) RESULT OF PROCEEDING NOT A WAIVER.

A PROCEEDING UNDER THIS TITLE THAT RESULTS IN, OR FAILS TO RESULT IN, EXTRADITION IS NOT A WAIVER BY THIS STATE OF ANY OF ITS RIGHTS, PRIVILEGES, OR JURISDICTION.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-225.

In subsection (b) of this section, the former reference to "in any way whatsoever" is deleted as surplusage.

The only other changes are in style.

Defined term: "Person" § 1-101

9-126. NO RIGHT OF ASYLUM OR IMMUNITY FROM OTHER CRIMINAL PROSECUTIONS WHILE IN THIS STATE.

AFTER A PERSON HAS BEEN BROUGHT BACK TO THIS STATE BY OR AFTER WAIVER OF EXTRADITION PROCEEDINGS, THE PERSON MAY BE TRIED IN THIS STATE FOR OTHER CRIMES THAT THE PERSON MAY BE CHARGED WITH HAVING COMMITTED HERE, AS WELL AS THAT SPECIFIED IN THE REQUISITION FOR EXTRADITION.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-226.

The only changes are in style.

Defined term: "Person" § 1-101

9-127. INTERPRETATION OF TITLE.

THIS TITLE SHALL BE INTERPRETED AND CONSTRUED TO EFFECTUATE ITS GENERAL PURPOSES TO MAKE UNIFORM THE LAW OF THOSE STATES THAT ENACT IT.

REVISOR'S NOTE: This section formerly was Art. 41, § 2-227.

No changes are made.

Defined term: "State" § 9-101

9-128. SHORT TITLE.

THIS TITLE IS THE UNIFORM CRIMINAL EXTRADITION ACT.

REVISOR'S NOTE: This section formerly was the second sentence of Art. 41, § 2-228.

The only changes are in style.

The first sentence of former Art. 41, § 2-228, which provided for the severability of the provisions in this title, is deleted in light of Art. 1, § 23 to the same effect.

TITLE 10. CRIMINAL RECORDS.

SUBTITLE 1. EXPUNGEMENT OF POLICE AND COURT RECORDS.

10-101. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 735(a).

The only changes are in style.

(B) CENTRAL REPOSITORY.

"CENTRAL REPOSITORY" MEANS THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY IN THE DEPARTMENT.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 735(g).

The only changes are in style.

Defined term: "Department" § 1-101

(C) COURT RECORD.

(1) "COURT RECORD" MEANS AN OFFICIAL RECORD OF A COURT ABOUT A CRIMINAL PROCEEDING THAT THE CLERK OF A COURT OR OTHER COURT PERSONNEL KEEPS.

(2) "COURT RECORD" INCLUDES:

(I) A RECORD OF A VIOLATION OF THE TRANSPORTATION ARTICLE FOR WHICH A TERM OF IMPRISONMENT MAY BE IMPOSED; AND

(II) AN INDEX, DOCKET ENTRY, CHARGING DOCUMENT, PLEADING, MEMORANDUM, TRANSCRIPTION OF PROCEEDINGS, ELECTRONIC RECORDING, ORDER, AND JUDGMENT.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 735(b)(1) and (2).

In paragraph (2)(ii) of this subsection, the former erroneous reference to "decrees" is deleted.

The only other changes are in style.

(D) EXPUNGE.

"EXPUNGE" MEANS TO REMOVE INFORMATION FROM PUBLIC INSPECTION IN ACCORDANCE WITH THIS SUBTITLE.

REVISOR'S NOTE: This subsection is new language added for clarity.

(E) EXPUNGEMENT.

"EXPUNGEMENT" WITH RESPECT TO A COURT RECORD OR A POLICE RECORD MEANS REMOVAL FROM PUBLIC INSPECTION:

(1) BY OBLITERATION;

(2) BY REMOVAL TO A SEPARATE SECURE AREA TO WHICH PERSONS WHO DO NOT HAVE A LEGITIMATE REASON FOR ACCESS ARE DENIED ACCESS; OR

(3) IF ACCESS TO A COURT RECORD OR POLICE RECORD CAN BE OBTAINED ONLY BY REFERENCE TO ANOTHER COURT RECORD OR POLICE RECORD, BY THE EXPUNGEMENT OF IT OR THE PART OF IT THAT PROVIDES ACCESS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 735(c).

In the introductory language of this subsection and item (3) of this subsection, the former references to the "effective" removal of court records are deleted as surplusage.

In item (2) of this subsection, the former reference to the secure area to which "the public" is denied access is deleted as unnecessary in light of the introductory language of this subsection, which defined "expungement" as the removal of records "from public inspection".

Defined terms: "Court record" § 10-101

"Person" § 1-101

(F) LAW ENFORCEMENT UNIT.

"LAW ENFORCEMENT UNIT" MEANS A STATE, COUNTY, OR MUNICIPAL POLICE DEPARTMENT OR UNIT, THE OFFICE OF A SHERIFF, THE OFFICE OF A STATE'S ATTORNEY, OR THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 735(d).

In this subsection, the word "unit" is substituted for the former word "agency". *See* General Revisor's Note to article.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the former definition of "law enforcement agency" did not include the State Prosecutor. The General Assembly may wish to include the State Prosecutor in the definition of "law enforcement unit".

Defined term: "County" § 1-101

(G) MINOR TRAFFIC VIOLATION.

"MINOR TRAFFIC VIOLATION" MEANS A NONINCARCERABLE VIOLATION OF THE MARYLAND VEHICLE LAW OR ANY OTHER TRAFFIC LAW, ORDINANCE, OR REGULATION.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of "a nonincarcerable violation of the Maryland Vehicle Law or any other traffic law, ordinance or regulation".

(H) POLICE RECORD.

"POLICE RECORD" MEANS AN OFFICIAL RECORD THAT A LAW ENFORCEMENT UNIT, BOOKING FACILITY, OR THE CENTRAL REPOSITORY MAINTAINS ABOUT THE ARREST AND DETENTION OF, OR FURTHER PROCEEDING AGAINST, A PERSON FOR:

(1) A CRIMINAL CHARGE;

(2) A SUSPECTED VIOLATION OF A CRIMINAL LAW; OR

(3) A VIOLATION OF THE TRANSPORTATION ARTICLE FOR WHICH A TERM OF IMPRISONMENT MAY BE IMPOSED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 735(e)(1).

Defined terms: "Central Repository" § 10-101

"Law enforcement unit" § 10-101

"Person" § 1-101

REVISOR'S NOTE TO SECTION:

Former Art. 27, § 735(f) which defined the term "crime of violence" as having "the meaning stated in [Art. 27,] § 643B(a)" is deleted as unnecessary because the term "crime of violence" is defined in § 1-101 of this article.

10-102. SCOPE.

(A) IN GENERAL.

A POLICE RECORD OR A COURT RECORD MAY BE EXPUNGED UNDER THIS SUBTITLE.

(B) RECORD BEFORE JULY 1, 1975.

(1) A COURT RECORD OR A POLICE RECORD THAT EXISTED BEFORE JULY 1, 1975, AND IS STILL MAINTAINED, MAY BE EXPUNGED UNDER THIS SUBTITLE.

(2) A PERSON WHO IS ENTITLED TO THE EXPUNGEMENT OF A COURT RECORD OR A POLICE RECORD THAT EXISTED BEFORE JULY 1, 1975, MAY USE THE PROCEDURES FOR EXPUNGEMENT PROVIDED UNDER THIS SUBTITLE.

(3) THE LIMITATION PERIODS PROVIDED IN §§ 10-103 AND 10-105 OF THIS SUBTITLE BEGIN WHEN THE PERSON BECOMES ENTITLED TO EXPUNGEMENT OF A COURT RECORD OR A POLICE RECORD THAT EXISTED BEFORE JULY 1, 1975.

(4) THE CUSTODIAN OF COURT RECORDS OR POLICE RECORDS THAT WERE MADE BEFORE JULY 1, 1975, AND THAT MAY BE EXPUNGED UNDER THIS SUBTITLE:

(I) SHALL MAKE A REASONABLE SEARCH FOR A RECORD REQUESTED FOR EXPUNGEMENT; BUT

(II) NEED NOT EXPUNGE A COURT RECORD OR A POLICE RECORD THAT IS NOT FOUND AFTER A REASONABLE SEARCH.

(C) EXCLUSIONS.

THIS SUBTITLE DOES NOT APPLY TO:

(1) A RECORD ABOUT A MINOR TRAFFIC VIOLATION;

(2) THE PUBLISHED OPINION OF A COURT;

(3) A CASH RECEIPT OR DISBURSEMENT RECORD THAT IS NECESSARY FOR AUDIT PURPOSES;

(4) A TRANSCRIPT OF COURT PROCEEDINGS MADE BY A COURT REPORTER IN A MULTIPLE DEFENDANT CASE;

(5) AN INVESTIGATORY FILE; OR

(6) A RECORD OF THE WORK PRODUCT OF A LAW ENFORCEMENT UNIT THAT IS USED SOLELY FOR POLICE INVESTIGATION.

REVISOR'S NOTE: Subsection (a) of this section is new language added to clarify that any court record or police record in existence may be subject to expungement.

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 741.

Subsection (c) of this section is new language derived without substantive change from former Art. 27, § 735(b)(3) and (e)(2). It is revised as a scope subsection rather than as part of a definition to avoid the illogical assertion that police records and court records "do not include" materials (*e.g.*, investigatory files and police work-product records) that by their everyday meanings are police records and court records.

Defined terms: "Court record" § 10-101

"Expunge" § 10-101

"Expungement" § 10-101

"Minor traffic violation" § 10-101

"Person" § 1-101

"Police record" § 10-101

10-103. EXPUNGEMENT OF POLICE RECORD WHEN NO CHARGE IS FILED.

(A) NOTICE AND REQUEST FOR EXPUNGEMENT.

A PERSON WHO IS ARRESTED, DETAINED, OR CONFINED BY A LAW ENFORCEMENT UNIT FOR THE SUSPECTED COMMISSION OF A CRIME AND THEN IS RELEASED WITHOUT BEING CHARGED WITH THE COMMISSION OF A CRIME MAY:

(1) GIVE WRITTEN NOTICE OF THESE FACTS TO A LAW ENFORCEMENT UNIT THAT THE PERSON BELIEVES MAY HAVE A POLICE RECORD ABOUT THE MATTER; AND

(2) REQUEST THE EXPUNGEMENT OF THE POLICE RECORD.

(B) GENERAL WAIVER AND RELEASE.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY NOT GIVE NOTICE UNDER THIS SUBTITLE BEFORE THE STATUTE OF LIMITATIONS EXPIRES FOR ALL TORT CLAIMS THAT ARISE FROM THE INCIDENT.

(2) (I) A PERSON MAY GIVE NOTICE BEFORE THE STATUTE OF LIMITATIONS EXPIRES IF THE PERSON ATTACHES TO THE NOTICE A WRITTEN GENERAL WAIVER AND RELEASE, IN LEGAL FORM, OF ALL TORT CLAIMS THAT THE PERSON HAS ARISING FROM THE INCIDENT.

(II) THE NOTICE AND WAIVER ARE NOT SUBJECT TO EXPUNGEMENT.

(3) THE LAW ENFORCEMENT UNIT SHALL KEEP THE NOTICE AND WAIVER AT LEAST UNTIL ANY APPLICABLE STATUTE OF LIMITATIONS EXPIRES.

(4) THE PERSON SHALL GIVE THE NOTICE WITHIN 8 YEARS AFTER THE DATE OF THE INCIDENT.

(C) INVESTIGATION.

(1) ON RECEIPT OF A TIMELY FILED NOTICE, THE LAW ENFORCEMENT UNIT PROMPTLY SHALL INVESTIGATE AND TRY TO VERIFY THE FACTS STATED IN THE NOTICE.

(2) IF THE LAW ENFORCEMENT UNIT FINDS THE FACTS ARE TRUE, THE LAW ENFORCEMENT UNIT SHALL:

(I) SEARCH DILIGENTLY FOR EACH POLICE RECORD ABOUT THE ARREST, DETENTION, OR CONFINEMENT OF THE PERSON;

(II) EXPUNGE EACH POLICE RECORD IT HAS ABOUT THE ARREST, DETENTION, OR CONFINEMENT WITHIN 60 DAYS AFTER RECEIPT OF THE NOTICE; AND

(III) SEND A COPY OF THE NOTICE AND THE LAW ENFORCEMENT UNIT'S VERIFICATION OF THE FACTS IN THE NOTICE TO:

1. THE CENTRAL REPOSITORY;

2. EACH BOOKING FACILITY OR LAW ENFORCEMENT UNIT THAT THE LAW ENFORCEMENT UNIT BELIEVES MAY HAVE A POLICE RECORD ABOUT THE ARREST, DETENTION, OR CONFINEMENT; AND

3. THE PERSON REQUESTING EXPUNGEMENT.

(D) DUTIES OF OTHER UNITS.

WITHIN 30 DAYS AFTER RECEIPT OF THE NOTICE, THE CENTRAL REPOSITORY, BOOKING FACILITY, AND ANY OTHER LAW ENFORCEMENT UNIT SHALL SEARCH DILIGENTLY FOR AND EXPUNGE A POLICE RECORD ABOUT THE ARREST, DETENTION, OR CONFINEMENT.

(E) DENIAL OF REQUEST.

IF THE LAW ENFORCEMENT UNIT TO WHICH THE PERSON HAS SENT NOTICE FINDS THAT THE PERSON IS NOT ENTITLED TO AN EXPUNGEMENT OF THE POLICE RECORD, THE LAW ENFORCEMENT UNIT, WITHIN 60 DAYS AFTER RECEIPT OF THE NOTICE, SHALL ADVISE THE PERSON IN WRITING OF:

(1) THE DENIAL OF THE REQUEST FOR EXPUNGEMENT; AND

(2) THE REASONS FOR THE DENIAL.

(F) COURT ORDER.

(1) (I) IF A REQUEST BY THE PERSON FOR EXPUNGEMENT OF A POLICE RECORD IS DENIED UNDER SUBSECTION (E) OF THIS SECTION, THE PERSON MAY APPLY FOR AN ORDER OF EXPUNGEMENT IN THE DISTRICT COURT THAT HAS PROPER VENUE AGAINST THE LAW ENFORCEMENT UNIT.

(II) THE PERSON SHALL FILE THE APPLICATION WITHIN 30 DAYS AFTER THE WRITTEN NOTICE OF THE DENIAL IS MAILED OR DELIVERED TO THE PERSON.

(2) AFTER NOTICE TO THE LAW ENFORCEMENT UNIT, THE COURT SHALL HOLD A HEARING.

(3) IF THE COURT FINDS THAT THE PERSON IS ENTITLED TO EXPUNGEMENT, THE COURT SHALL ORDER THE LAW ENFORCEMENT UNIT TO EXPUNGE THE POLICE RECORD.

(4) IF THE COURT FINDS THAT THE PERSON IS NOT ENTITLED TO EXPUNGEMENT OF THE POLICE RECORD, THE COURT SHALL DENY THE APPLICATION.

(5) (I) THE LAW ENFORCEMENT UNIT IS A PARTY TO THE PROCEEDING.

(II) EACH PARTY TO THE PROCEEDING IS ENTITLED TO APPELLATE REVIEW ON THE RECORD, AS PROVIDED IN THE COURTS ARTICLE FOR APPEALS IN CIVIL CASES FROM THE DISTRICT COURT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 736.

Throughout this section, the defined term "person" is substituted for the former word "individual" to conform to the terminology used throughout this article.

In subsection (a) of this section, the former reference to a violation of a criminal law "other than a nonincarcerable violation of the vehicle laws of the State or any other traffic law, ordinance, or regulation" is deleted as unnecessary in light of § 10-102(c) of this subtitle, which states that those items are not covered by this subtitle.

In subsections (b)(2) and (f)(2) of this section, the former references to "proper" legal form and "proper" notice are deleted as unnecessary.

Defined terms: "Central Repository" § 10-101

"Expunge" § 10-101

"Expungement" § 10-101

"Law enforcement unit" § 10-101

"Person" § 1-101

"Police record" § 10-101

10-104. EXPUNGEMENT ON NOLLE PROSEQUI BEFORE SERVICE.

(A) IN GENERAL.

UNLESS THE STATE OBJECTS AND SHOWS CAUSE WHY A RECORD SHOULD NOT BE EXPUNGED, IF THE STATE ENTERS A NOLLE PROSEQUI AS TO ALL CHARGES IN A CRIMINAL CASE WITHIN THE JURISDICTION OF THE DISTRICT COURT WITH WHICH A DEFENDANT HAS NOT BEEN SERVED, THE DISTRICT COURT MAY ORDER EXPUNGEMENT OF EACH COURT RECORD, POLICE RECORD, OR OTHER RECORD THAT THE STATE OR A POLITICAL SUBDIVISION OF THE STATE KEEPS AS TO THE CHARGES.

(B) COSTS.

THE DISTRICT COURT MAY NOT ASSESS ANY COSTS AGAINST A DEFENDANT FOR A PROCEEDING UNDER SUBSECTION (A) OF THIS SECTION.

REVISOR'S NOTE: This section formerly was Art. 27, § 736A.

In subsection (a) of this section, references to "each" court record and "other" record are substituted for the former references to "any" court record and "any" other record, for clarity.

No other changes are made.

Defined terms: "Court record" § 10-101

"Expunge" § 10-101

"Expungement" § 10-101

"Nolle prosequi" § 1-101

"Police record" § 10-101

10-105. EXPUNGEMENT OF RECORD AFTER CHARGE IS FILED.

(A) PETITION FOR EXPUNGEMENT.

A PERSON WHO HAS BEEN CHARGED WITH THE COMMISSION OF A CRIME, INCLUDING A VIOLATION OF THE TRANSPORTATION ARTICLE FOR WHICH A TERM OF IMPRISONMENT MAY BE IMPOSED, MAY FILE A PETITION LISTING RELEVANT FACTS FOR EXPUNGEMENT OF A POLICE RECORD, COURT RECORD, OR OTHER RECORD MAINTAINED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE IF:

(1) THE PERSON IS ACQUITTED;

(2) THE CHARGE IS OTHERWISE DISMISSED;

(3) A PROBATION BEFORE JUDGMENT IS ENTERED, UNLESS THE PERSON IS CHARGED WITH A VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE;

(4) A NOLLE PROSEQUI IS ENTERED;

(5) THE COURT INDEFINITELY POSTPONES TRIAL OF A CRIMINAL CHARGE BY MARKING THE CRIMINAL CHARGE "STET" ON THE DOCKET;

(6) THE CASE IS COMPROMISED UNDER ARTICLE 27, § 12A-5 OF THE CODE;

(7) THE CHARGE WAS TRANSFERRED TO THE JUVENILE COURT UNDER § 4-202 OF THIS ARTICLE; OR

(8) THE PERSON:

(I) IS CONVICTED OF ONLY ONE CRIMINAL ACT, AND THAT ACT IS NOT A CRIME OF VIOLENCE; AND

(II) IS GRANTED A PARDON BY THE GOVERNOR.

(B) WHERE PETITION FILED.

(1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, A PERSON SHALL FILE A PETITION IN THE COURT IN WHICH THE PROCEEDING BEGAN.

(2) IF THE PROCEEDING BEGAN IN ONE COURT AND WAS TRANSFERRED TO ANOTHER COURT, THE PERSON SHALL FILE THE PETITION IN THE COURT TO WHICH THE PROCEEDING WAS TRANSFERRED.

(3) (I) IF THE PROCEEDING IN A COURT OF ORIGINAL JURISDICTION WAS APPEALED TO A COURT EXERCISING APPELLATE JURISDICTION, THE PERSON SHALL FILE THE PETITION IN THE APPELLATE COURT.

(II) THE APPELLATE COURT MAY REMAND THE MATTER TO THE COURT OF ORIGINAL JURISDICTION.

(C) TIME OF FILING.

(1) A PETITION FOR EXPUNGEMENT BASED ON AN ACQUITTAL, A NOLLE PROSEQUI, OR A DISMISSAL MAY NOT BE FILED WITHIN 3 YEARS AFTER THE DISPOSITION, UNLESS THE PETITIONER FILES WITH THE PETITION A WRITTEN GENERAL WAIVER AND RELEASE OF ALL THE PETITIONER'S TORT CLAIMS ARISING FROM THE CHARGE.

(2) A PETITION FOR EXPUNGEMENT BASED ON A PROBATION BEFORE JUDGMENT MAY NOT BE FILED UNTIL EITHER:

(I) THE PETITIONER HAS BEEN DISCHARGED FROM PROBATION; OR

(II) 3 YEARS HAVE PASSED SINCE THE PROBATION WAS GRANTED.

(3) A PETITION FOR EXPUNGEMENT BASED ON A PARDON BY THE GOVERNOR MAY NOT BE FILED EARLIER THAN 5 YEARS OR LATER THAN 10 YEARS AFTER THE PARDON WAS SIGNED BY THE GOVERNOR.

(4) A PETITION FOR EXPUNGEMENT BASED ON A STET OR A COMPROMISE UNDER ARTICLE 27, § 12A-5 OF THE CODE MAY NOT BE FILED WITHIN 3 YEARS AFTER THE STET OR COMPROMISE.

(5) A COURT MAY GRANT A PETITION FOR EXPUNGEMENT AT ANY TIME ON A SHOWING OF GOOD CAUSE.

(D) PERIOD FOR OBJECTION BY STATE'S ATTORNEY.

(1) THE COURT SHALL HAVE A COPY OF A PETITION FOR EXPUNGEMENT SERVED ON THE STATE'S ATTORNEY.

(2) UNLESS THE STATE'S ATTORNEY FILES AN OBJECTION TO THE PETITION FOR EXPUNGEMENT WITHIN 30 DAYS AFTER THE PETITION IS SERVED, THE COURT SHALL PASS AN ORDER REQUIRING THE EXPUNGEMENT OF ALL POLICE RECORDS AND COURT RECORDS ABOUT THE CHARGE.

(E) HEARING ON EXPUNGEMENT.

(1) IF THE STATE'S ATTORNEY FILES A TIMELY OBJECTION TO THE PETITION, THE COURT SHALL HOLD A HEARING.

(2) IF THE COURT AT THE HEARING FINDS THAT THE PERSON IS ENTITLED TO EXPUNGEMENT, THE COURT SHALL ORDER THE EXPUNGEMENT OF ALL POLICE RECORDS AND COURT RECORDS ABOUT THE CHARGE.

(3) IF THE COURT FINDS THAT THE PERSON IS NOT ENTITLED TO EXPUNGEMENT, THE COURT SHALL DENY THE PETITION.

(4) THE PERSON IS NOT ENTITLED TO EXPUNGEMENT IF:

(I) THE PETITION IS BASED ON THE ENTRY OF PROBATION BEFORE JUDGMENT, A NOLLE PROSEQUI, OR A STET, OR THE GRANT OF A PARDON BY THE GOVERNOR; AND

(II) THE PERSON:

1. SINCE THE PARDON OR ENTRY, HAS BEEN CONVICTED OF A CRIME OTHER THAN A MINOR TRAFFIC VIOLATION; OR

2. IS A DEFENDANT IN A PENDING CRIMINAL PROCEEDING.

(F) NOTICE OF COMPLIANCE.

UNLESS AN ORDER IS STAYED PENDING AN APPEAL, WITHIN 60 DAYS AFTER ENTRY OF THE ORDER, EVERY CUSTODIAN OF THE POLICE RECORDS AND COURT RECORDS THAT ARE SUBJECT TO THE ORDER OF EXPUNGEMENT SHALL ADVISE IN WRITING THE COURT AND THE PERSON WHO IS SEEKING EXPUNGEMENT OF COMPLIANCE WITH THE ORDER.

(G) APPELLATE REVIEW.

(1) THE STATE'S ATTORNEY IS A PARTY TO THE PROCEEDING.

(2) A PARTY AGGRIEVED BY THE DECISION OF THE COURT IS ENTITLED TO APPELLATE REVIEW AS PROVIDED IN THE COURTS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 737(a) and (c) through (l).

In the introductory language of subsection (a) of this section, the former reference to records "pertaining to the charge" is deleted as unnecessary in light of the reference to "relevant facts".

In subsections (a)(2) and (c)(1) of this section, the former references to a charge that is "quashed" and to a "quashing" of a charge are deleted as obsolete and unnecessary in light of the references to "dismissed" and "dismissal".

In subsections (a)(3) and (e)(4)(i) of this section, the phrase "probation before judgment" is substituted for the former phrase "judgment of probation before judgment" for brevity.

In subsection (a)(6) of this section, the cross-reference to "Article 27, § 12A-5 of the Code" is substituted for the former cross-reference to "§ 766 of this article" for accuracy.

In subsections (a)(8)(ii), (c)(3), and (e)(4) of this section, the former references to the "full and unconditional" character of a pardon are deleted as unnecessary in light of subsection (a)(8) of this section.

In subsections (a)(8)(ii) and (c)(3) of this section, the former phrase "only one criminal act[,] which is not a crime of violence" is deleted as unnecessary in light of subsection (a)(8) of this section.

In subsection (c)(2)(ii) of this section, the former reference to the "entry of judgment" is deleted as unnecessary in light of the reference to the "grant[ing]" of probation before judgment.

In subsection (c)(4) of this section, the reference to "the compromise" is substituted for the former reference to an "order" to conform to the terminology used in this subsection.

In subsection (c)(5) of this section, the former phrase "[n]otwithstanding any other provision of this section" is deleted for brevity.

Also in subsection (c)(5) of this section, the former reference to a showing of good cause "by the petitioner" is deleted as implicit in the reference to a "showing of good cause".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (b)(2) of this section, which states that, if a proceeding is transferred, a person is required to file a petition in the court to which the proceeding was transferred, apparently does not contemplate a proceeding that is transferred to juvenile court.

Defined terms: "Court record" § 10-101

"Crime of violence" § 1-101

"Expungement" § 10-101

"Minor traffic violation" § 10-101

"Nolle prosequi" § 1-101

"Person" § 1-101

"Police record" § 10-101

10-106. EXPUNGEMENT OF CRIMINAL CHARGE TRANSFERRED TO JUVENILE COURT.

(A) WHEN ALLOWED.

A PERSON MAY FILE A PETITION FOR EXPUNGEMENT OF A CRIMINAL CHARGE TRANSFERRED TO THE JUVENILE COURT UNDER § 4-202 OF THIS ARTICLE:

(1) AFTER THE DATE OF THE DECISION NOT TO FILE A PETITION UNDER § 3-810 OF THE COURTS ARTICLE; OR

(2) IF A PETITION IS FILED UNDER § 3-810 OF THE COURTS ARTICLE, AFTER A DECISION OF FACTS-NOT-SUSTAINED.

(B) DISCRETIONARY GRANTS OF EXPUNGEMENT.

THE COURT MAY GRANT A PETITION FOR EXPUNGEMENT TO A PERSON WHEN THE PERSON BECOMES 21 YEARS OLD, IF A CHARGE TRANSFERRED UNDER § 4-202 OF THIS ARTICLE RESULTED IN:

(1) THE FILING OF A PETITION UNDER § 3-810 OF THE COURTS ARTICLE; AND

(2) THE ADJUDICATION OF THE PERSON AS A DELINQUENT CHILD.

(C) MANDATORY GRANTS OF EXPUNGEMENT.

A COURT SHALL GRANT A PETITION FOR EXPUNGEMENT OF A CRIMINAL CHARGE THAT WAS TRANSFERRED TO THE JUVENILE COURT UNDER § 4-202 OF THIS ARTICLE, IF:

(1) THE CHARGE THAT WAS TRANSFERRED UNDER § 4-202 OF THIS ARTICLE DID NOT RESULT IN THE FILING OF A PETITION UNDER § 3-810 OF THE COURTS ARTICLE; OR

(2) THE CHARGE DID RESULT IN THE FILING OF A PETITION UNDER § 3-810 OF THE COURTS ARTICLE AND THE DECISION ON THE PETITION WAS THAT THERE WAS A FINDING OF FACTS-NOT-SUSTAINED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 737(b).

In the introductory language of this section, the former reference to the ability of a person to file a petition "at any time" after a certain date is deleted as unnecessary.

Defined terms: "Expungement" § 10-101

"Person" § 1-101

10-107. CHARGES ARISING FROM SAME INCIDENT, TRANSACTION, OR SET OF FACTS.

(A) MULTIPLE CHARGES AS UNIT.

(1) IN THIS SUBTITLE, IF TWO OR MORE CHARGES, OTHER THAN ONE FOR A MINOR TRAFFIC VIOLATION, ARISE FROM THE SAME INCIDENT, TRANSACTION, OR SET OF FACTS, THEY ARE CONSIDERED TO BE A UNIT.

(2) A CHARGE FOR A MINOR TRAFFIC VIOLATION THAT ARISES FROM THE SAME INCIDENT, TRANSACTION, OR SET OF FACTS AS A CHARGE IN THE UNIT IS NOT A PART OF THE UNIT.

(B) EFFECT ON RIGHT TO EXPUNGEMENT.

(1) IF A PERSON IS NOT ENTITLED TO EXPUNGEMENT OF ONE CHARGE IN A UNIT, THE PERSON IS NOT ENTITLED TO EXPUNGEMENT OF ANY OTHER CHARGE IN THE UNIT.

(2) THE DISPOSITION OF A CHARGE FOR A MINOR TRAFFIC VIOLATION THAT ARISES FROM THE SAME INCIDENT, TRANSACTION, OR SET OF FACTS AS A CHARGE IN THE UNIT DOES NOT AFFECT ANY RIGHT TO EXPUNGEMENT OF A CHARGE IN THE UNIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 738.

In subsection (b)(2) of this section, the former reference to the fact that a disposition does not affect any right to expungement "if the person is otherwise entitled to an expungement of the charge" is deleted as implied in the reference to the "right to expungement".

Defined terms: "Expungement" § 10-101

"Minor traffic violation" § 10-101

"Person" § 1-101

10-108. OPENING, REVIEW, OR DISCLOSURE OF EXPUNGED RECORDS.

(A) GENERAL PROHIBITION; EXCEPTIONS.

A PERSON MAY NOT OPEN OR REVIEW AN EXPUNGED RECORD OR DISCLOSE TO ANOTHER PERSON ANY INFORMATION FROM THAT RECORD WITHOUT A COURT ORDER FROM:

(1) THE COURT THAT ORDERED THE RECORD EXPUNGED; OR

(2) THE DISTRICT COURT THAT HAS VENUE IN THE CASE OF A POLICE RECORD EXPUNGED UNDER § 10-103 OF THIS SUBTITLE.

(B) PROCEDURE FOR OPENING, REVIEW, OR DISCLOSURE.

A COURT MAY ORDER THE OPENING OR REVIEW OF AN EXPUNGED RECORD OR THE DISCLOSURE OF INFORMATION FROM THAT RECORD:

(1) AFTER NOTICE TO THE PERSON WHOM THE RECORD CONCERNS, A HEARING, AND THE SHOWING OF GOOD CAUSE; OR

(2) ON AN EX PARTE ORDER, AS PROVIDED IN SUBSECTION (C) OF THIS SECTION.

(C) EX PARTE ORDER.

(1) THE COURT MAY PASS AN EX PARTE ORDER ALLOWING ACCESS TO AN EXPUNGED RECORD, WITHOUT NOTICE TO THE PERSON WHO IS THE SUBJECT OF THAT RECORD, ON A VERIFIED PETITION FILED BY A STATE'S ATTORNEY ALLEGING THAT:

(I) THE EXPUNGED RECORD IS NEEDED BY A LAW ENFORCEMENT UNIT FOR A PENDING CRIMINAL INVESTIGATION; AND

(II) THE INVESTIGATION WILL BE JEOPARDIZED OR LIFE OR PROPERTY WILL BE ENDANGERED WITHOUT IMMEDIATE ACCESS TO THE EXPUNGED RECORD.

(2) IN AN EX PARTE ORDER, THE COURT MAY NOT ALLOW A COPY OF THE EXPUNGED RECORD TO BE MADE.

(D) PENALTIES.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

(2) IN ADDITION TO THE PENALTIES PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION, AN OFFICIAL OR EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE WHO IS CONVICTED UNDER THIS SECTION MAY BE REMOVED OR DISMISSED FROM PUBLIC SERVICE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 739.

In subsection (a) of this section, the former reference to a person "having or acquiring access to an expunged record" is deleted as implicit.

In subsection (d)(2) of this section, the former reference to removal or dismissal from public service "on grounds of misconduct in office" is deleted as unnecessary.

Defined terms: "Expunge" § 10-101

"Law enforcement unit" § 10-101

"Person" § 1-101

10-109. PROHIBITED ACTS.

(A) APPLICATIONS FOR EMPLOYMENT OR ADMISSION.

(1) DISCLOSURE OF EXPUNGED INFORMATION ABOUT CRIMINAL CHARGES IN AN APPLICATION, INTERVIEW, OR OTHER MEANS MAY NOT BE REQUIRED:

(I) BY AN EMPLOYER OR EDUCATIONAL INSTITUTION OF A PERSON WHO APPLIES FOR EMPLOYMENT OR ADMISSION; OR

(II) BY A UNIT, OFFICIAL, OR EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OF A PERSON WHO APPLIES FOR A LICENSE, PERMIT, REGISTRATION, OR GOVERNMENTAL SERVICE.

(2) A PERSON NEED NOT REFER TO OR GIVE INFORMATION CONCERNING AN EXPUNGED CHARGE WHEN ANSWERING A QUESTION CONCERNING:

(I) A CRIMINAL CHARGE THAT DID NOT RESULT IN A CONVICTION; OR

(II) A CONVICTION THAT THE GOVERNOR PARDONED.

(3) REFUSAL BY A PERSON TO DISCLOSE INFORMATION ABOUT CRIMINAL CHARGES THAT HAVE BEEN EXPUNGED MAY NOT BE THE SOLE REASON FOR:

(I) AN EMPLOYER TO DISCHARGE OR REFUSE TO HIRE THE PERSON; OR

(II) A UNIT, OFFICIAL, OR EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE TO DENY THE PERSON'S APPLICATION.

(B) PENALTIES.

(1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH FOR EACH VIOLATION.

(2) IN ADDITION TO THE PENALTIES PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION, AN OFFICIAL OR EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE WHO IS CONVICTED UNDER THIS SECTION MAY BE REMOVED OR DISMISSED FROM PUBLIC SERVICE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 740.

In subsections (a)(3)(ii) and (b)(2) of this section, the phrase "political subdivision of the State" is substituted for the former phrase "local governments" to conform to the terminology used elsewhere in this article.

In subsection (a) of this section, the defined term "person" is substituted for the former, narrow reference to "applicant" to clarify that all of the

provisions of this subsection apply also to persons already employed. This clarification is supported by subsection (a)(3)(i) of this section, which prohibits an employer to "discharge" a person.

In subsection (a)(1)(ii) and (3)(ii) of this section, the word "unit" is substituted for the former word "agency". *See* General Revisor's Note to article.

In subsection (a)(1) of this section, the former reference to "concerning criminal charges against him" is deleted as surplusage.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(3) of this section, there is no prohibition concerning educational institutions that is analogous to the prohibition in subsection (a)(3)(i) of this section, which bars employers from discharging or refusing to hire persons for failure to disclose criminal charges that have been expunged.

Defined terms: "Expunge" § 10-101

"Person" § 1-101

SUBTITLE 2. CRIMINAL JUSTICE INFORMATION SYSTEM.

PART I. DEFINITIONS; GENERAL PROVISIONS.

10-201. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 743(a).

The only changes are in style.

(B) ADVISORY BOARD.

"ADVISORY BOARD" MEANS THE CRIMINAL JUSTICE INFORMATION ADVISORY BOARD.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 743(b).

No changes are made.

(C) CENTRAL REPOSITORY.

"CENTRAL REPOSITORY" MEANS THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY ESTABLISHED UNDER § 10-213 OF THIS SUBTITLE.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 743(c).

The only changes are in style.

Defined terms: "Central Repository" § 10-201

"Criminal justice information system" § 10-201

(D) CRIMINAL HISTORY RECORD INFORMATION.

(1) "CRIMINAL HISTORY RECORD INFORMATION" MEANS DATA THAT ARE DEVELOPED OR COLLECTED BY A CRIMINAL JUSTICE UNIT ABOUT A PERSON AND THAT PERTAIN TO A REPORTABLE EVENT.

(2) "CRIMINAL HISTORY RECORD INFORMATION" INCLUDES:

(I) DATA FROM A UNIT THAT IS REQUIRED TO REPORT TO THE CENTRAL REPOSITORY UNDER TITLE 3 OF THIS ARTICLE;

(II) DATA ABOUT A PERSON FOLLOWING WAIVER OF JURISDICTION BY A JUVENILE COURT; AND

(III) DATA DESCRIBED UNDER §§ 10-215(A)(21) AND (22) AND 10-216 OF THIS SUBTITLE.

(3) "CRIMINAL HISTORY RECORD INFORMATION" DOES NOT INCLUDE:

(I) DATA CONTAINED IN INTELLIGENCE OR INVESTIGATORY FILES OR POLICE WORK PRODUCT RECORDS USED ONLY FOR POLICE INVESTIGATIONS;

(II) EXCEPT AS PROVIDED IN PARAGRAPH (2)(II) AND (III) OF THIS SUBSECTION, DATA ABOUT A PROCEEDING UNDER TITLE 3, SUBTITLE 8 OF THE COURTS ARTICLE;

(III) WANTED POSTERS, POLICE BLOTTER ENTRIES, COURT RECORDS OF PUBLIC JUDICIAL PROCEEDINGS, OR PUBLISHED COURT OPINIONS;

(IV) DATA ABOUT A VIOLATION OF:

1. A TRAFFIC LAW OF THIS STATE OR ANY OTHER TRAFFIC LAW, ORDINANCE, OR REGULATION;

2. A LOCAL ORDINANCE OR A STATE OR LOCAL REGULATION; OR

3. THE NATURAL RESOURCES ARTICLE OR A PUBLIC LOCAL LAW;

(V) DATA ABOUT THE POINT SYSTEM ESTABLISHED BY THE MOTOR VEHICLE ADMINISTRATION UNDER TITLE 16 OF THE TRANSPORTATION ARTICLE; OR

(VI) A PRESENTENCE INVESTIGATION REPORT OR OTHER REPORT THAT A PROBATION DEPARTMENT PREPARES FOR A COURT TO USE IN THE EXERCISE OF CRIMINAL JURISDICTION OR FOR THE GOVERNOR TO USE IN THE EXERCISE OF

THE GOVERNOR'S POWER TO GRANT A PARDON, REPRIEVE, COMMUTATION, OR NOLLE PROSEQUI.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 743(e).

In paragraph (3)(ii) of this subsection, the phrase, "except as provided in paragraph (2)(ii) and (iii) of this subsection", is added for clarity.

Defined terms: "Central Repository" § 10-201

"Criminal justice unit" § 10-201

"Nolle prosequi" § 1-101

"Person" § 1-101

"Reportable event" § 10-201

(E) CRIMINAL JUSTICE INFORMATION SYSTEM.

(1) "CRIMINAL JUSTICE INFORMATION SYSTEM" MEANS EQUIPMENT, FACILITIES, PROCEDURES, AGREEMENTS, AND PERSONNEL THAT ARE USED TO COLLECT, PROCESS, PRESERVE, AND DISSEMINATE CRIMINAL HISTORY RECORD INFORMATION.

(2) "CRIMINAL JUSTICE INFORMATION SYSTEM" INCLUDES COMPUTER HARDWARE AND SOFTWARE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 743(g).

Defined term: "Criminal history record information" § 10-201

(F) CRIMINAL JUSTICE UNIT.

(1) "CRIMINAL JUSTICE UNIT" MEANS A GOVERNMENT UNIT OR SUBUNIT THAT ALLOCATES A SUBSTANTIAL PART OF ITS ANNUAL BUDGET TO ANY OF THE FOLLOWING FUNCTIONS AND THAT BY LAW:

(I) MAY ARREST, DETAIN, PROSECUTE, OR ADJUDICATE PERSONS SUSPECTED OF OR CHARGED WITH A CRIME;

(II) IS RESPONSIBLE FOR THE CUSTODIAL TREATMENT OR CONFINEMENT UNDER TITLE 3 OF THIS ARTICLE OF PERSONS CHARGED OR CONVICTED OF A CRIME OR RELIEVED OF CRIMINAL PUNISHMENT BY REASON OF A VERDICT OF NOT CRIMINALLY RESPONSIBLE;

(III) IS RESPONSIBLE FOR THE CORRECTIONAL SUPERVISION, REHABILITATION, OR RELEASE OF PERSONS CONVICTED OF A CRIME; OR

(IV) IS RESPONSIBLE FOR CRIMINAL IDENTIFICATION ACTIVITIES AND THE COLLECTION, STORAGE, AND DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION.

(2) "CRIMINAL JUSTICE UNIT" INCLUDES, WHEN EXERCISING JURISDICTION OVER CRIMINAL MATTERS, ALTERNATIVE DISPOSITIONS OF CRIMINAL MATTERS, OR CRIMINAL HISTORY RECORD INFORMATION:

(I) A STATE, COUNTY, OR MUNICIPAL POLICE UNIT, SHERIFF'S OFFICE, OR CORRECTIONAL FACILITY;

(II) A UNIT REQUIRED TO REPORT TO THE CENTRAL REPOSITORY UNDER § 3-107 OR § 3-112 OF THIS ARTICLE;

(III) THE OFFICES OF THE ATTORNEY GENERAL, STATE'S ATTORNEYS, AND ANY OTHER PERSON OR UNIT THAT BY LAW MAY PROSECUTE PERSONS ACCUSED OF A CRIME; AND

(IV) THE ADMINISTRATIVE OFFICE OF THE COURTS, THE COURT OF APPEALS, THE COURT OF SPECIAL APPEALS, THE CIRCUIT COURTS, THE DISTRICT COURT OF MARYLAND, AND THE OFFICES OF THE CLERKS OF THESE COURTS.

(3) EXCEPT AS PROVIDED IN §§ 10-215(A)(21) AND (22) AND 10-216(E) OF THIS SUBTITLE, "CRIMINAL JUSTICE UNIT" DOES NOT INCLUDE:

(I) THE DEPARTMENT OF JUVENILE JUSTICE; OR

(II) A JUVENILE COURT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 743(f).

In paragraph (1)(i) of this subsection, the former reference to a government agency's authority to "exercise the power" to arrest, detain, prosecute, or adjudicate is deleted in light of the agency's discretionary authority that it "may" exercise those powers.

Also in paragraph (1)(i) of this subsection, the reference to "persons suspected of or charged with a crime" is added to state explicitly that which formerly was only implied as to the references to "arrest, detain ... or adjudicate".

In paragraphs (1), the introductory language of (2), (2)(i) and (ii) of this subsection, the references to a "unit" are substituted for the former references to "agency" or "departments and agencies" to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

Defined terms: "Central Repository" § 10-201

"Correctional facility" § 1-101

"County" § 1-101

"Criminal history record information" § 10-201

"Person" § 1-101

(G) DISSEMINATE.

(1) "DISSEMINATE", WITH RESPECT TO RECORDS, MEANS TO TRANSMIT CRIMINAL HISTORY RECORD INFORMATION IN ANY FORM.

(2) "DISSEMINATE" DOES NOT INCLUDE:

(I) TRANSMITTING CRIMINAL HISTORY RECORD INFORMATION WITHIN A CRIMINAL JUSTICE UNIT;

(II) REPORTING CRIMINAL HISTORY RECORD INFORMATION AS REQUIRED UNDER § 10-214 OF THIS SUBTITLE; OR

(III) TRANSMITTING CRIMINAL HISTORY RECORD INFORMATION BETWEEN CRIMINAL JUSTICE UNITS TO ALLOW THE INITIATION OF SUBSEQUENT CRIMINAL JUSTICE PROCEEDINGS AGAINST A PERSON RELATING TO THE SAME CRIME.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 743(h).

In paragraph (1) of this subsection, the reference to "any" form is substituted for the former reference to "oral or written" form for brevity.

Defined terms: "Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Person" § 1-101

(H) REPORTABLE EVENT.

"REPORTABLE EVENT" MEANS AN EVENT SPECIFIED OR PROVIDED FOR IN § 10-215 OF THIS SUBTITLE.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 743(i).

The only changes are in style.

10-202. LEGISLATIVE FINDINGS.

THE GENERAL ASSEMBLY FINDS THAT THERE IS A NEED:

(1) TO CREATE A CENTRAL REPOSITORY FOR CRIMINAL HISTORY RECORD INFORMATION;

(2) TO REQUIRE THE REPORTING OF ACCURATE, RELEVANT, AND CURRENT CRIMINAL HISTORY RECORD INFORMATION TO THE CENTRAL REPOSITORY BY ALL CRIMINAL JUSTICE UNITS;

(3) TO ENSURE THAT CRIMINAL HISTORY RECORD INFORMATION IS KEPT ACCURATE AND CURRENT; AND

(4) TO PROHIBIT THE IMPROPER DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 742(b).

In item (2) of this section, the defined term "criminal history record information" is substituted for the former reference to "information" for consistency and clarity.

The former introductory phrase "[i]n order to achieve this result", is deleted as unnecessary in light of the reorganization of material in this revision of former Art. 27, § 742.

Defined terms: "Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

10-203. PURPOSE OF SUBTITLE.

THE PURPOSE OF THIS SUBTITLE IS:

(1) TO CREATE AND MAINTAIN AN ACCURATE AND EFFICIENT CRIMINAL JUSTICE INFORMATION SYSTEM IN THE STATE CONSISTENT WITH:

(I) APPLICABLE FEDERAL LAW AND REGULATIONS;

(II) THE NEED OF CRIMINAL JUSTICE UNITS IN THE STATE FOR ACCURATE AND CURRENT CRIMINAL HISTORY RECORD INFORMATION; AND

(III) THE RIGHT OF PERSONS TO BE FREE FROM IMPROPER AND UNWARRANTED INTRUSIONS INTO THEIR PRIVACY; AND

(2) TO PROVIDE A BASIC STATUTORY FRAMEWORK WITHIN WHICH THE OBJECTIVES OF § 10-202 OF THIS SUBTITLE CAN BE ATTAINED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 742(a) and (c).

In item (1)(iii) of this section, the reference "persons" is substituted for the former reference to "individuals" to conform to the terminology used throughout this subtitle.

Defined terms: "Criminal history record information" § 10-201

"Criminal justice information system" § 10-201

"Criminal justice unit" § 10-201

"Person" § 1-101

10-204. EFFECT OF SUBTITLE.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A PERSON MAY NOT MAINTAIN OR DISSEMINATE CRIMINAL HISTORY RECORD INFORMATION IN A WAY INCONSISTENT WITH SUBTITLE 1 OF THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 750.

In this section, the defined term "criminal history record information" is substituted for the former reference to "record" for consistency and clarity.

Defined terms: "Criminal history record information" § 10-201

"Disseminate" § 10-201

"Person" § 1-101

10-205. RESERVED.

10-206. RESERVED.

PART II. CRIMINAL JUSTICE INFORMATION ADVISORY BOARD.

10-207. ESTABLISHED.

(A) IN GENERAL.

THERE IS A CRIMINAL JUSTICE INFORMATION ADVISORY BOARD.

(B) STATUS.

THE ADVISORY BOARD IS IN THE DEPARTMENT FOR ADMINISTRATIVE AND BUDGETARY PURPOSES ONLY.

REVISOR'S NOTE: This section is new language derived without substantive change from the first sentence of former Art. 27, § 744(a).

Defined terms: "Advisory Board" § 10-201

"Department" § 1-101

10-208. MEMBERSHIP.

(A) COMPOSITION.

THE ADVISORY BOARD CONSISTS OF THE FOLLOWING 18 MEMBERS:

(1) ONE MEMBER OF THE SENATE APPOINTED BY THE PRESIDENT;

(2) ONE MEMBER OF THE HOUSE OF DELEGATES APPOINTED BY THE SPEAKER;

(3) THREE MEMBERS FROM THE JUDICIAL BRANCH OF STATE GOVERNMENT APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS;

(4) THE EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION;

(5) THREE MEMBERS RECOMMENDED BY THE SECRETARY;

(6) TWO MEMBERS WHO ARE EXECUTIVE OFFICIALS FROM STATE, COUNTY, OR MUNICIPAL POLICE UNITS;

(7) THE DIRECTOR OF THE MARYLAND JUSTICE ANALYSIS CENTER OF THE DEPARTMENT OF CRIMINOLOGY AND CRIMINAL JUSTICE OF THE UNIVERSITY OF MARYLAND;

(8) TWO ELECTED COUNTY OFFICIALS;

(9) THE ATTORNEY GENERAL;

(10) ONE ELECTED OFFICIAL OF A MUNICIPAL CORPORATION;

(11) ONE STATE'S ATTORNEY; AND

(12) ONE MEMBER FROM THE PUBLIC.

(B) APPOINTMENT OF MEMBERS.

EXCEPT FOR EX OFFICIO MEMBERS AND MEMBERS APPOINTED BY THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF DELEGATES, OR THE CHIEF JUDGE OF THE COURT OF APPEALS, THE GOVERNOR SHALL APPOINT THE MEMBERS OF THE ADVISORY BOARD.

(C) CHAIRMAN.

THE GOVERNOR SHALL DESIGNATE A MEMBER OF THE ADVISORY BOARD AS THE CHAIRMAN.

(D) TENURE; VACANCIES.

(1) SUBJECT TO § 10-209 OF THIS SUBTITLE, THE TERM OF A MEMBER IS 3 YEARS.

(2) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(3) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(E) DESIGNEES.

(1) EXCEPT FOR THE MEMBER OF THE ADVISORY BOARD FROM THE PUBLIC, EACH MEMBER MAY DESIGNATE A PERSON TO REPRESENT THE MEMBER AT ANY MEETING OR OTHER ACTIVITY OF THE ADVISORY BOARD.

(2) A PERSON DESIGNATED BY A VOTING MEMBER UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY VOTE ON BEHALF OF THE VOTING MEMBER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 744(c), the second, third, fourth, fifth, and seventh sentences of (a), and the first sentence of (b).

In subsection (a)(6) of this section, the reference to police "units" is substituted for the former reference to police "agencies" to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

In subsection (a)(7) of this section, the reference to the "Department of Criminology and Criminal Justice" is substituted for the former, obsolete reference to the "Institute of Criminal Justice and Criminology" for clarity.

In subsections (b), (c), (d), and (e)(1) of this section, the reference to a member "of the Advisory Board" is added for clarity.

In subsection (d)(2) of this section, the introductory phrase, "[a]t the end of a term", is added for consistency with language used in similar provisions in other revised articles of the Code.

In subsection (e)(2) of this section, the phrase, "on behalf of the member", is added to clarify that a person designated to represent the member at an Advisory Board activity or meeting may vote for that member.

Defined terms: "Advisory Board" § 10-201

"County" § 1-101

"Person" § 1-101

"Secretary" § 1-101

10-209. QUORUM; EX OFFICIO MEMBERS; MEETINGS; EXPENSES; STAFF.

(A) QUORUM.

A MAJORITY OF THE MEMBERS OF THE ADVISORY BOARD THEN SERVING IS A QUORUM.

(B) EX OFFICIO MEMBERS.

(1) THE EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION, THE ATTORNEY GENERAL, AND TWO OF THE MEMBERS OF THE ADVISORY BOARD THAT THE SECRETARY RECOMMENDS SHALL SERVE ON THE ADVISORY BOARD AS EX OFFICIO MEMBERS.

(2) FROM THE PERSONS THE SECRETARY RECOMMENDS TO THE GOVERNOR TO SERVE ON THE ADVISORY BOARD, THE SECRETARY SHALL DESIGNATE THE VOTING MEMBER.

(C) MEETINGS.

THE ADVISORY BOARD SETS THE TIMES AND PLACES OF ITS MEETINGS.

(D) REIMBURSEMENT FOR EXPENSES.

A MEMBER OF THE ADVISORY BOARD:

(1) SHALL SERVE WITHOUT COMPENSATION; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

(E) STAFF.

SUBJECT TO THE APPROVAL OF THE HEAD OF THE APPROPRIATE UNIT, THE ADVISORY BOARD MAY USE THE STAFF AND FACILITIES OF THE DEPARTMENT, THE ADMINISTRATIVE OFFICE OF THE COURTS, AND THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION IN THE PERFORMANCE OF ITS FUNCTIONS.

REVISOR'S NOTE: Subsections (a), (b), (d), and (e) of this section are new language derived without substantive change from former Art. 27, § 744(d), (e), the sixth sentence of (a) and the second and third sentences of (b).

Subsection (c) of this section is new language added for clarity.

In subsections (a) and (b)(1) of this section, the references to members "of the Advisory Board" are added for clarity.

In subsection (a) of this section, the reference to a majority of the members "then serving" on the Advisory Board is added for clarity.

In subsection (a) of this section, the former reference to "their designees" is deleted to avoid ambiguity as to what constitutes a "majority".

Also in subsection (a) of this section, the former phrase "for the transaction of business" is deleted in light of the word "quorum".

In subsection (b)(2) of this section, the introductory phrase, "[f]rom the persons the Secretary recommends to the Governor to serve on the Advisory Board", is added for clarity.

In subsection (e) of this section, the reference to the "appropriate unit" is substituted for the former reference to the "respective department or agency" to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (b)(1) of this section, the meaning of the requirement that the Executive Director of the Governor's Office of Crime Control and Prevention, the Attorney General, and two members of the Advisory Board serve on the Advisory Board as "ex officio members" is unclear. The term is not used in § 10-208(a) of this subtitle, which sets forth the composition of the Advisory Board.

Defined terms: "Advisory Board" § 10-201

"Department" § 1-101

"Person" § 1-101

"Secretary" § 1-101

10-210. DUTIES.

THE ADVISORY BOARD SHALL:

(1) ADVISE THE SECRETARY, THE COURT OF APPEALS, AND THE CHIEF JUDGE OF THE COURT OF APPEALS ON THE DEVELOPMENT, OPERATION, AND MAINTENANCE OF THE CRIMINAL JUSTICE INFORMATION SYSTEM;

(2) PROPOSE AND RECOMMEND REGULATIONS TO THE SECRETARY NECESSARY TO DEVELOP, OPERATE, AND MAINTAIN THE CRIMINAL JUSTICE INFORMATION SYSTEM;

(3) PROPOSE AND RECOMMEND RULES, IN CONJUNCTION WITH THE STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE OF THE COURT OF APPEALS, TO THE COURT OF APPEALS AND THE CHIEF JUDGE OF THE COURT OF APPEALS NECESSARY TO DEVELOP, OPERATE, AND MAINTAIN THE CRIMINAL JUSTICE INFORMATION SYSTEM;

(4) MONITOR THE OPERATION OF THE CRIMINAL JUSTICE INFORMATION SYSTEM; AND

(5) RECOMMEND:

(I) PROCEDURES AND METHODS FOR CRIMINAL HISTORY RECORD INFORMATION TO BE USED IN THE RESEARCH, EVALUATION, AND STATISTICAL ANALYSIS OF CRIMINAL ACTIVITY; AND

(II) ANY LEGISLATION NECESSARY TO IMPLEMENT, OPERATE, AND MAINTAIN THE CRIMINAL JUSTICE INFORMATION SYSTEM.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 745(b), (c), and (d).

In item (2) of this section, the reference to the "Standing Committee on Rules of Practice and Procedure" is substituted for the former reference to the "Standing Committee on Rules" to reflect the current name of that committee.

Former Art. 27, § 745(a), which stated that the Advisory Board shall "perform the duties set forth in this section and those of an advisory nature that may otherwise be delegated to it in accordance with law", is deleted as implied in light of the rules of statutory interpretation.

Defined terms: "Advisory Board" § 10-201

"Criminal history record information" § 10-201

"Criminal justice information system" § 10-201

"Secretary" § 1-101

10-211. RESERVED.

10-212. RESERVED.

PART III. CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY.

10-213. ESTABLISHMENT AND ADMINISTRATION.

(A) ESTABLISHMENT.

THERE IS A CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY IN THE DEPARTMENT.

(B) ADMINISTRATION BY SECRETARY.

THE SECRETARY:

(1) HAS ADMINISTRATIVE CONTROL OF THE CENTRAL REPOSITORY; AND

(2) SHALL OPERATE THE CENTRAL REPOSITORY WITH THE ADVICE OF THE ADVISORY BOARD.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 747(b).

Defined terms: "Advisory Board" § 10-201

"Central Repository" § 10-201

"Criminal justice information system" § 10-201

"Department" § 1-101

"Secretary" § 1-101

10-214. REPORTING DATA TO CENTRAL REPOSITORY.

(A) IN GENERAL.

EACH CRIMINAL JUSTICE UNIT SHALL REPORT IN ACCORDANCE WITH THIS SECTION THE CRIMINAL HISTORY RECORD INFORMATION THAT IT COLLECTS TO THE CENTRAL REPOSITORY.

(B) REPORTING DEADLINES.

SUBJECT TO SUBSECTION (C) OF THIS SECTION:

(1) THE DATA PERTAINING TO AN ARREST OR THE ISSUANCE OF AN ARREST WARRANT SHALL BE REPORTED WITHIN 72 HOURS AFTER THE EARLIER OF THE ARREST OR THE ISSUANCE OF THE ARREST WARRANT;

(2) THE DATA PERTAINING TO THE RELEASE OF A PERSON AFTER AN ARREST WITHOUT THE FILING OF A CHARGE SHALL BE REPORTED WITHIN 30 DAYS AFTER THE PERSON IS RELEASED; AND

(3) THE DATA PERTAINING TO ANY OTHER REPORTABLE EVENT SHALL BE REPORTED WITHIN 60 DAYS AFTER THE REPORTABLE EVENT OCCURS.

(C) EXCEPTION.

THE SECRETARY BY REGULATION OR THE COURT OF APPEALS BY RULE MAY REDUCE THE TIME FOR REPORTING THE CRIMINAL HISTORY RECORD INFORMATION SPECIFIED IN SUBSECTION (B) OF THIS SECTION.

(D) METHOD.

THE CRIMINAL HISTORY RECORD INFORMATION MAY BE REPORTED UNDER SUBSECTION (B) OF THIS SECTION TO THE CENTRAL REPOSITORY:

(1) DIRECTLY BY THE CRIMINAL JUSTICE UNIT;

(2) IF THE CRIMINAL HISTORY RECORD INFORMATION CAN BE READILY COLLECTED AND REPORTED THROUGH THE COURT SYSTEM, BY THE ADMINISTRATIVE OFFICE OF THE COURTS; OR

(3) IF THE CRIMINAL HISTORY RECORD INFORMATION CAN BE READILY COLLECTED AND REPORTED THROUGH CRIMINAL JUSTICE UNITS THAT ARE PART OF A GEOGRAPHICALLY BASED INFORMATION SYSTEM, BY THOSE CRIMINAL JUSTICE UNITS.

(E) MAINTENANCE AND DISSEMINATION OF INFORMATION.

(1) A CRIMINAL JUSTICE UNIT MAY MAINTAIN CRIMINAL HISTORY RECORD INFORMATION THAT IS MORE DETAILED THAN REQUIRED FOR REPORTING TO THE CENTRAL REPOSITORY.

(2) A CRIMINAL JUSTICE UNIT MAY DISSEMINATE CRIMINAL HISTORY RECORD INFORMATION MAINTAINED UNDER PARAGRAPH (1) OF THIS SUBSECTION ONLY IN ACCORDANCE WITH § 10-219 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 747(c), (d), and (e).

In subsection (a) of this section, the former reference to information "whether collected manually or by means of an automated system" is deleted because each criminal justice unit must submit all of the criminal

history record information it collects regardless of the manner by which the information is collected.

Subsection (c) of this section is revised to distinguish between regulations and rules. The Secretary is head of an executive unit, *i.e.*, Department of Public Safety and Correctional Services, and may adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article (Administrative Procedure Act - Regulations). The Court of Appeals, however, is not an executive unit and, therefore, does not come under Title 10, Subtitle 1 of the State Government Article. Instead, the Court of Appeals may adopt rules under Md. Constitution, Art. IV, § 18.

In subsection (d)(2) and (3) of this section, the defined term "criminal history record information" is substituted for the former references to "information" for consistency and clarity.

In subsection (e)(2) of this section, the word "only" is added to clarify that criminal history record information maintained by a criminal justice unit that is more detailed than that required in this subtitle is subject to the dissemination requirements of § 10-215 of this subtitle.

Defined terms: "Central Repository" § 10-201

"Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Disseminate" § 10-201

"Person" § 1-101

"Reportable event" § 10-201

"Secretary" § 1-101

10-215. REPORTABLE EVENTS.

(A) IN GENERAL.

THE FOLLOWING EVENTS ARE REPORTABLE EVENTS UNDER THIS SUBTITLE THAT MUST BE REPORTED TO THE CENTRAL REPOSITORY IN ACCORDANCE WITH § 10-214 OF THIS SUBTITLE:

(1) THE ISSUANCE OR WITHDRAWAL OF AN ARREST WARRANT;

(2) AN ARREST;

(3) THE RELEASE OF A PERSON AFTER ARREST WITHOUT THE FILING OF A CHARGE;

(4) THE FILING OF A CHARGING DOCUMENT;

(5) A RELEASE PENDING TRIAL OR AN APPEAL;

(6) A COMMITMENT TO AN INSTITUTION OF PRETRIAL DETENTION;

(7) THE DISMISSAL OF AN INDICTMENT OR CRIMINAL INFORMATION;

(8) A NOLLE PROSEQUI;

(9) THE MARKING OF A CHARGE "STET" ON THE DOCKET;

(10) AN ACQUITTAL, CONVICTION, VERDICT OF NOT CRIMINALLY RESPONSIBLE, OR ANY OTHER DISPOSITION OF A CASE AT OR FOLLOWING TRIAL, INCLUDING A FINDING OF PROBATION BEFORE JUDGMENT;

(11) THE IMPOSITION OF A SENTENCE;

(12) A COMMITMENT TO A STATE CORRECTIONAL FACILITY OR LOCAL CORRECTIONAL FACILITY;

(13) A COMMITMENT TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER § 3-105 OR § 3-111 OF THIS ARTICLE AS INCOMPETENT TO STAND TRIAL OR NOT CRIMINALLY RESPONSIBLE;

(14) A RELEASE FROM DETENTION OR CONFINEMENT;

(15) A CONDITIONAL RELEASE, REVOCATION OF CONDITIONAL RELEASE, OR DISCHARGE OF A PERSON COMMITTED TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER § 3-105 OR § 3-111 OF THIS ARTICLE AS INCOMPETENT TO STAND TRIAL OR NOT CRIMINALLY RESPONSIBLE;

(16) AN ESCAPE FROM CONFINEMENT OR COMMITMENT;

(17) A PARDON, REPRIEVE, COMMUTATION OF A SENTENCE, OR OTHER CHANGE IN A SENTENCE, INCLUDING A CHANGE IN A SENTENCE THAT A COURT ORDERS;

(18) AN ENTRY OF AN APPEAL TO AN APPELLATE COURT;

(19) A JUDGMENT OF AN APPELLATE COURT;

(20) AN ORDER OF A COURT IN A COLLATERAL PROCEEDING THAT AFFECTS A PERSON'S CONVICTION, SENTENCE, OR CONFINEMENT;

(21) AN ADJUDICATION OF A CHILD AS DELINQUENT:

(I) IF THE CHILD IS AT LEAST 14 YEARS OLD, FOR AN ACT DESCRIBED IN § 3-804(E)(1) OF THE COURTS ARTICLE; OR

(II) IF THE CHILD IS AT LEAST 16 YEARS OLD, FOR AN ACT DESCRIBED IN § 3-804(E)(4) OR (5) OF THE COURTS ARTICLE;

(22) THE ISSUANCE OR WITHDRAWAL OF A WRIT OF ATTACHMENT BY A JUVENILE COURT; AND

(23) ANY OTHER EVENT ARISING OUT OF OR OCCURRING DURING THE COURSE OF A CRIMINAL PROCEEDING THAT THE SECRETARY BY REGULATION OR THE COURT OF APPEALS BY RULE MAKES A REPORTABLE EVENT.

(B) SPECIFIED BY RULE OR REGULATION.

TO AVOID DUPLICATION IN THE REPORTING OF CRIMINAL HISTORY RECORD INFORMATION, THE SECRETARY BY REGULATION AND THE COURT OF APPEALS BY RULE MAY DETERMINE THOSE REPORTABLE EVENTS DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION TO BE REPORTED BY EACH CRIMINAL JUSTICE UNIT TO THE CENTRAL REPOSITORY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 747(a) and (f).

In the introductory language of subsection (a) of this section, the phrase, "that must be reported to the Central Repository in accordance with § 10-214 of this subtitle", is added for clarity.

In subsection (a)(4) of this section, the reference to the "filing" of a charging document is substituted for the former reference to the "presentment of an indictment, filing of a criminal information, or filing of a statement of charges after arrest" to conform to the terminology of this subsection.

In subsection (a)(2) of this section, the defined term "person" is substituted for the former reference to "individual" to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

In subsection (a)(7) of this section, the former reference to the "quashing" of an indictment is deleted in light of the reference to the "dismissal" of an indictment.

In subsection (a)(21) of this section, the reference to the "Courts Article" is substituted for the former reference to the "Courts and Judicial Proceedings Article" in light of Art. 1, § 25(g).

Subsections (a)(23) and (b) of this section are revised to distinguish between regulations and rules. The Secretary is head of an executive unit, *i.e.*, Department of Public Safety and Correctional Services, and may adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article (Administrative Procedure Act - Regulations). The Court of Appeals, however, is not an executive unit and, therefore, does not come under Title 10, Subtitle 1 of the State Government Article. Instead, the Court of Appeals may adopt rules under Md. Constitution, Art. IV, § 18.

In subsection (b) of this section, the reference to reportable events "described under subsection (a) of this section" is added for clarity.

Also in subsection (b) of this section, the reference to the "Central

Repository" is added for clarity.

Defined terms: "Central Repository" § 10-201

"Charging document" § 1-101

"Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Local correctional facility" § 1-101

"Person" § 1-101

"Reportable event" § 10-201

"Secretary" § 1-101

"State correctional facility" § 1-101

10-216. FINGERPRINTING.

(A) "LAW ENFORCEMENT UNIT" DEFINED.

IN THIS SECTION, "LAW ENFORCEMENT UNIT" MEANS:

(1) A STATE, COUNTY, OR MUNICIPAL POLICE UNIT; OR

(2) A SHERIFF'S OFFICE.

(B) FINGERPRINTING ON ORDER OF COURT.

SUBJECT TO SUBSECTION (C) OF THIS SECTION:

(1) IF A DEFENDANT WAS NOT FINGERPRINTED AT THE TIME OF ARREST FOR THE SENTENCED CRIME, THE SENTENCING JUDGE SHALL ORDER THE DEFENDANT TO BE FINGERPRINTED BY THE APPROPRIATE AND AVAILABLE LAW ENFORCEMENT UNIT WHEN THE DEFENDANT:

(I) IS FOUND GUILTY OR PLEADS GUILTY OR NOLO CONTENDERE TO A CRIME THAT IS REPORTABLE AS CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SUBTITLE; AND

(II) IS SENTENCED TO COMMITMENT IN A LOCAL CORRECTIONAL FACILITY OR RECEIVES A SUSPENDED SENTENCE, PROBATION OTHER THAN PROBATION BEFORE JUDGMENT UNDER § 6-220 OF THIS ARTICLE, OR A FINE; AND

(2) IF THE DEFENDANT CANNOT BE FINGERPRINTED AT THE TIME OF SENTENCING, THE SENTENCING JUDGE SHALL ORDER THE DEFENDANT TO REPORT TO A DESIGNATED LAW ENFORCEMENT UNIT TO BE FINGERPRINTED WITHIN 3 DAYS AFTER THE DATE OF THE SENTENCING.

(C) EXCEPTION.

IF THE CRIME CHARGED IS A CRIME DEFINED BY LAW OR A RULE OF COURT AS A "PETTY OFFENSE", A SENTENCING JUDGE MAY ORDER THAT THE DEFENDANT BE FINGERPRINTED UNDER SUBSECTION (B) OF THIS SECTION.

(D) EFFECT OF FAILURE TO APPEAR.

IF A DEFENDANT FAILS TO REPORT TO THE DESIGNATED LAW ENFORCEMENT UNIT AS ORDERED UNDER SUBSECTION (B)(2) OF THIS SECTION, THE DEFENDANT IS IN CONTEMPT OF COURT.

(E) ADJUDICATION OF DELINQUENCY.

(1) THIS SUBSECTION ONLY APPLIES TO AN ADJUDICATION OF DELINQUENCY OF A CHILD:

(I) FOR AN ACT DESCRIBED IN § 3-804(E)(1) OF THE COURTS ARTICLE IF THE CHILD IS AT LEAST 14 YEARS OLD; OR

(II) FOR AN ACT DESCRIBED IN § 3-804(E)(4) OR (5) OF THE COURTS ARTICLE IF THE CHILD IS AT LEAST 16 YEARS OLD.

(2) IF A CHILD HAS NOT BEEN PREVIOUSLY FINGERPRINTED AS A RESULT OF ARREST FOR THE DELINQUENT ACT, THE COURT THAT HELD THE DISPOSITION HEARING OF THE CHILD ADJUDICATED DELINQUENT SHALL ORDER THE CHILD TO BE FINGERPRINTED BY THE APPROPRIATE AND AVAILABLE LAW ENFORCEMENT UNIT.

(3) IF THE CHILD CANNOT BE FINGERPRINTED AT THE TIME OF THE DISPOSITION HEARING HELD UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE COURT SHALL ORDER THE CHILD TO REPORT TO A DESIGNATED LAW ENFORCEMENT UNIT TO BE FINGERPRINTED WITHIN 3 DAYS AFTER MAKING A DISPOSITION ON AN ADJUDICATION OF DELINQUENCY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 747A.

In subsection (a) of this section, the defined term "law enforcement unit" is substituted for the former reference to "law enforcement agency" to conform to the terminology used throughout this article. Similarly, the reference to municipal police "unit" is substituted for the former reference to municipal police "department or agency". *See* General Revisor's Note to article.

In subsection (b)(1) of this section, the reference to a sentenced "crime" is substituted for the former reference to a sentenced "offense" to conform to the terminology used throughout this article.

In subsections (b)(2) and (e)(3) of this section, the reference to "the time of sentencing" and "the time of the disposition", respectively, are substituted for the former word "immediately" for clarity.

In subsection (c) of this section, the former reference to the power of a judge to "exercise discretion" in ordering a person to be fingerprinted is deleted as unnecessary in light of the use of the word "may".

In subsection (e)(2) of this section, the former references to "a child

described under paragraph (1) of this subsection" and "an offense described in this subsection" is deleted as redundant in light of subsection (e)(1) of this section.

Defined terms: "County" § 1-101

"Criminal history record information" § 10-201

"Local correctional facility" § 1-101

"Nolo contendere" § 1-101

10-217. AGREEMENTS BETWEEN CENTRAL REPOSITORY AND CRIMINAL JUSTICE UNITS.

(A) IN GENERAL.

THE SECRETARY AND THE CHIEF JUDGE OF THE COURT OF APPEALS SHALL DEVELOP AGREEMENTS BETWEEN THE CENTRAL REPOSITORY AND EACH CRIMINAL JUSTICE UNIT.

(B) CONTENTS.

THE AGREEMENTS REQUIRED BY THIS SECTION SHALL INCLUDE PROVISIONS ON:

(1) THE METHOD THE CRIMINAL JUSTICE UNIT WILL USE TO REPORT CRIMINAL HISTORY RECORD INFORMATION, INCLUDING A METHOD OF IDENTIFYING AN OFFENDER IN A WAY THAT ALLOWS OTHER CRIMINAL JUSTICE UNITS TO LOCATE THE OFFENDER AT ANY STAGE IN THE CRIMINAL JUSTICE SYSTEM, THE TIME OF REPORTING, THE SPECIFIC DATA TO BE REPORTED, AND THE PLACE OF REPORTING;

(2) THE SERVICES THE CENTRAL REPOSITORY IS TO PROVIDE TO THE CRIMINAL JUSTICE UNIT;

(3) THE CONDITIONS AND LIMITATIONS ON DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION BY THE CRIMINAL JUSTICE UNIT;

(4) THE MAINTENANCE OF SECURITY IN ALL TRANSACTIONS BETWEEN THE CENTRAL REPOSITORY AND THE CRIMINAL JUSTICE UNIT;

(5) THE METHOD OF COMPLYING WITH THE RIGHT OF A PERSON TO INSPECT, CHALLENGE, AND CORRECT CRIMINAL HISTORY RECORD INFORMATION THAT THE CRIMINAL JUSTICE UNIT KEEPS;

(6) THE AUDIT REQUIREMENTS TO BE USED TO ENSURE THE ACCURACY OF CRIMINAL HISTORY RECORD INFORMATION REPORTED OR DISSEMINATED;

(7) THE TIMETABLE TO CARRY OUT THE AGREEMENT;

(8) THE PENALTIES TO BE IMPOSED IF A CRIMINAL JUSTICE UNIT FAILS TO COMPLY WITH THIS SUBTITLE, INCLUDING THE REVOCATION OF THE AGREEMENT BETWEEN THE UNIT AND THE CENTRAL REPOSITORY AND

APPROPRIATE JUDICIAL OR ADMINISTRATIVE PROCEEDINGS TO ENFORCE COMPLIANCE; AND

(9) ANY OTHER MATTER THAT THE SECRETARY AND THE CHIEF JUDGE OF THE COURT OF APPEALS CONSIDER NECESSARY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 748(a).

In subsection (b)(7) of this section, the reference to "carry out" the agreement is substituted for the former reference to "implement[ation]" of the agreement to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

In subsection (b)(8) of this section, the reference to penalties "to be imposed" on a criminal justice unit for failure to comply with this subtitle, is added for clarity.

Defined terms: "Central Repository" § 10-201

"Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Person" § 1-101

"Secretary" § 1-101

10-218. PROCEDURES FOR SHARING CRIMINAL HISTORY RECORD INFORMATION.

THE SECRETARY AND THE CHIEF JUDGE OF THE COURT OF APPEALS MAY DEVELOP PROCEDURES CONSISTENT WITH THIS SUBTITLE TO SHARE CRIMINAL HISTORY RECORD INFORMATION WITH FEDERAL CRIMINAL JUSTICE UNITS AND CRIMINAL JUSTICE UNITS OF OTHER STATES AND COUNTRIES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 748(b).

Defined terms: "Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Secretary" § 1-101

"State" § 1-101

10-219. DISSEMINATING CRIMINAL HISTORY RECORD INFORMATION -- IN GENERAL.

EXCEPT IN ACCORDANCE WITH APPLICABLE FEDERAL LAW AND REGULATIONS, A CRIMINAL JUSTICE UNIT AND THE CENTRAL REPOSITORY MAY NOT DISSEMINATE CRIMINAL HISTORY RECORD INFORMATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 749.

The defined term "criminal history record information" is substituted for

the former reference to "information" for consistency and clarity.

Defined terms: "Central Repository" § 10-201

"Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Disseminate" § 10-201

10-220. MAINTAINING AND DISSEMINATING OF CRIMINAL HISTORY RECORD INFORMATION ABOUT CHILDREN.

(A) COMPLIANCE WITH COURTS AND JUDICIAL PROCEEDINGS ARTICLE.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A CRIMINAL JUSTICE UNIT AND THE CENTRAL REPOSITORY MAY NOT MAINTAIN OR DISSEMINATE CRIMINAL HISTORY RECORD INFORMATION IN A WAY THAT IS INCONSISTENT WITH § 3-828 OF THE COURTS ARTICLE.

(B) SEPARATION OF RECORDS ON CHILDREN NOT REQUIRED.

NOTWITHSTANDING § 3-828(A) OF THE COURTS ARTICLE, CRIMINAL HISTORY RECORD INFORMATION ON A CHILD AND A RECORD OF THE FINGERPRINTING OF A CHILD REQUIRED UNDER § 10-216(E) OF THIS SUBTITLE NEED NOT BE MAINTAINED SEPARATE FROM SUCH RECORDS ON ADULTS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 750A.

Subsection (a) of this section is revised in the active voice to clarify that this section applies to the Central Repository and criminal justice units.

In subsection (a) of this section, the defined term "criminal history record information" is substituted for the former reference to "record" for clarity and consistency. Similarly, in subsection (b) of this section, the defined term "criminal history record information" is substituted for the former reference to "a reportable event described under § 747(a)(21) and (22) of this subtitle".

Defined terms: "Central Repository" § 10-201

"Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Disseminate" § 10-201

10-221. REGULATIONS AND RULES.

(A) IN GENERAL.

TO CARRY OUT THIS SUBTITLE AND TO ESTABLISH, OPERATE, AND MAINTAIN THE CRIMINAL JUSTICE INFORMATION SYSTEM:

(1) THE SECRETARY SHALL ADOPT REGULATIONS CONSISTENT WITH THIS SUBTITLE FOR:

(I) UNITS IN THE EXECUTIVE BRANCH OF GOVERNMENT; AND

(II) CRIMINAL JUSTICE UNITS THAT ARE NOT IN THE JUDICIAL BRANCH OF GOVERNMENT; AND

(2) THE COURT OF APPEALS AND THE CHIEF JUDGE OF THE COURT OF APPEALS UNDER ARTICLE IV, § 18 OF THE MARYLAND CONSTITUTION SHALL ADOPT RULES CONSISTENT WITH THIS SUBTITLE FOR THE JUDICIAL BRANCH OF GOVERNMENT.

(B) CONTENTS.

SUBJECT TO TITLE 3, SUBTITLE 4 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, THE REGULATIONS ADOPTED BY THE SECRETARY UNDER SUBSECTION (A)(1) OF THIS SECTION AND THE RULES ADOPTED BY THE COURT OF APPEALS UNDER SUBSECTION (A)(2) OF THIS SECTION SHALL:

(1) REGULATE THE COLLECTION, REPORTING, AND DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION BY A COURT AND CRIMINAL JUSTICE UNITS;

(2) ENSURE THE SECURITY OF THE CRIMINAL JUSTICE INFORMATION SYSTEM AND CRIMINAL HISTORY RECORD INFORMATION REPORTED TO AND COLLECTED FROM IT;

(3) REGULATE THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION IN ACCORDANCE WITH SUBTITLE 1 OF THIS TITLE AND THIS SUBTITLE;

(4) REGULATE THE PROCEDURES FOR INSPECTING AND CHALLENGING OF CRIMINAL HISTORY RECORD INFORMATION;

(5) REGULATE THE AUDITING OF CRIMINAL JUSTICE UNITS TO ENSURE THAT CRIMINAL HISTORY RECORD INFORMATION IS:

(I) ACCURATE AND COMPLETE; AND

(II) COLLECTED, REPORTED, AND DISSEMINATED IN ACCORDANCE WITH SUBTITLE 1 OF THIS TITLE AND THIS SUBTITLE;

(6) REGULATE THE DEVELOPMENT AND CONTENT OF AGREEMENTS BETWEEN THE CENTRAL REPOSITORY AND CRIMINAL JUSTICE UNITS AND NONCRIMINAL JUSTICE UNITS; AND

(7) REGULATE THE DEVELOPMENT OF A FEE SCHEDULE AND PROVIDE FOR THE COLLECTION OF THE FEES FOR OBTAINING CRIMINAL HISTORY RECORD INFORMATION FOR OTHER THAN CRIMINAL JUSTICE PURPOSES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 746(a) and (b)(1) through (6) and (8).

In subsection (a) of this section, the former reference to the Secretary adopting "appropriate" regulations is deleted as unnecessary in light of the use of the reference to adopting regulations "consistent with this subtitle" and in light of the comprehensive requirements regarding the adoption of regulations set forth in Title 10, Subtitle 1 of the State Government Article (Administrative Procedure Act - Regulations).

In subsection (a)(1) of this section, the former reference to "rules" is deleted as unnecessary in light of the reference to "regulations". *See* General Revisor's Note to article.

In subsection (a)(2) of this section, the former reference to "regulations" is deleted because the Court of Appeals is a unit in the Judicial Branch of State government and, therefore, is not subject to the provisions of Title 10, Subtitle 1 of the State Government Article (Administrative Procedure Act - Regulations), which applies, for the most part, to units in the Executive Branch of State government.

Also in subsection (a)(2) of this section, the former reference to "appropriate" rules is deleted as implied in the reference to "rules".

Former Art. 27, § 746(b)(7), which required the rules and regulations adopted by the Secretary or the Court or its Chief Judge to include "[g]overning the exercise of the rights of inspection and challenge provided for in §§ 751 through 755", is deleted as included in subsection (b)(4) of this section.

Former Art. 27, § 746(c), which required the "[r]ules and regulations adopted by the Secretary or the Court or its Chief Judge" to be consistent with the provisions of this subtitle, is deleted as included in subsection (a) of this section.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (a)(2) of this section refers to the Chief Judge of the Court of Appeals adopting rules and regulations. Under Md. Constitution, Art. IV, § 18, rulemaking authority is given only to the Court of Appeals. The Chief Judge of the Court of Appeals has no express rulemaking authority.

Defined terms: "Central Repository" § 10-201

"Criminal history record information" § 10-201

"Criminal justice information system" § 10-201

"Criminal justice unit" § 10-201

"Secretary" § 1-101

10-222. INSPECTION OF CRIMINAL HISTORY RECORD INFORMATION.

(A) IN GENERAL.

SUBJECT TO § 10-226 OF THIS SUBTITLE, A PERSON OR A PERSON'S ATTORNEY HAVING SATISFACTORY IDENTIFICATION AND WRITTEN AUTHORIZATION FROM THE PERSON MAY INSPECT CRIMINAL HISTORY RECORD INFORMATION ON THE PERSON THAT IS MAINTAINED BY A CRIMINAL JUSTICE UNIT.

(B) NOTES.

A PERSON WITH THE RIGHT TO INSPECT CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SECTION MAY MAKE NOTES OF THE INFORMATION.

(C) EFFECT OF SECTION.

THIS SECTION DOES NOT:

(1) REQUIRE A CRIMINAL JUSTICE UNIT TO COPY ANY CRIMINAL HISTORY RECORD INFORMATION; OR

(2) ALLOW A PERSON TO REMOVE A DOCUMENT FOR COPYING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 751.

In subsection (b) of this section, the reference to a person with a right to inspect "criminal history record information under this section" is added for clarity.

Defined terms: "Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Person" § 1-101

10-223. CHALLENGE OF CRIMINAL HISTORY RECORD INFORMATION.

(A) ALLOWED.

A PERSON WHO HAS INSPECTED THE PERSON'S OWN CRIMINAL HISTORY RECORD INFORMATION MAY CHALLENGE THE COMPLETENESS, CONTENTS, ACCURACY, OR DISSEMINATION OF THE INFORMATION.

(B) NOTICE.

A PERSON CHALLENGING CRIMINAL HISTORY RECORD INFORMATION UNDER SUBSECTION (A) OF THIS SECTION SHALL GIVE WRITTEN NOTICE OF THE CHALLENGE TO THE CENTRAL REPOSITORY AND, IF THE INSPECTION WAS NOT AT THE CENTRAL REPOSITORY, TO THE CRIMINAL JUSTICE UNIT WHERE THE PERSON INSPECTED THE INFORMATION.

(C) CONTENTS OF NOTICE.

THE NOTICE UNDER SUBSECTION (B) OF THIS SECTION SHALL:

(1) STATE:

(I) THE PART OF THE CRIMINAL HISTORY RECORD INFORMATION BEING CHALLENGED;

(II) THE REASON FOR THE CHALLENGE; AND

(III) THE CHANGE REQUESTED TO CORRECT OR COMPLETE THE CRIMINAL HISTORY RECORD INFORMATION OR ITS DISSEMINATION;

(2) INCLUDE ANY AVAILABLE CERTIFIED DOCUMENTATION OR OTHER EVIDENCE SUPPORTING THE CHALLENGE; AND

(3) CONTAIN A SWORN STATEMENT, UNDER PENALTY OF PERJURY, THAT THE INFORMATION IN OR SUPPORTING THE CHALLENGE IS ACCURATE AND THE CHALLENGE IS MADE IN GOOD FAITH.

(D) AUDIT.

(1) AFTER RECEIVING THE NOTICE UNDER SUBSECTION (B) OF THIS SECTION, THE CENTRAL REPOSITORY SHALL AUDIT THAT PART OF THE CRIMINAL HISTORY RECORD INFORMATION THAT IS NECESSARY TO DETERMINE THE VALIDITY OF THE CHALLENGE.

(2) AS PART OF THE AUDIT, THE CENTRAL REPOSITORY MAY REQUIRE THE CRIMINAL JUSTICE UNIT THAT WAS THE SOURCE OF THE CHALLENGED CRIMINAL HISTORY RECORD INFORMATION TO VERIFY THE INFORMATION.

(E) NOTICE OF AUDIT RESULTS AND DECISION.

WITHIN 90 DAYS AFTER RECEIVING NOTICE OF THE CHALLENGE, THE CENTRAL REPOSITORY SHALL NOTIFY THE PERSON CHALLENGING THE CRIMINAL HISTORY RECORD INFORMATION IN WRITING OF THE AUDIT RESULTS AND ITS DECISION.

(F) NOTICE OF APPEAL RIGHT.

IF THE CHALLENGE IS DENIED AS A WHOLE OR IN PART, THE NOTICE REQUIRED UNDER SUBSECTION (E) OF THIS SECTION SHALL INFORM THE PERSON OF THE RIGHT TO APPEAL THE DECISION.

(G) NOTICE TO CRIMINAL JUSTICE UNITS OF DENIAL OF CHALLENGE.

IF THE CHALLENGE IS DENIED AS A WHOLE OR IN PART, THE CENTRAL REPOSITORY SHALL SEND WRITTEN NOTICE OF THIS DECISION TO EACH CRIMINAL JUSTICE UNIT THAT WAS SENT A COPY OF THE CHALLENGE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 752(a), (b), and (e).

In subsection (c) of this section, the reference to "criminal history record information" is added to avoid confusion with the word "information".

In subsection (d)(1) of this section, the word "valid[ity]" is substituted for the former word "accuracy" for consistency with § 10-224 of this subtitle and to avoid confusion with the reasons under which a person may challenge criminal history record information.

In subsection (e) of this section, the reference to notifying the person "challenging the criminal history record information" in writing of the audit results is added for clarity.

In subsections (e) and (g) of this section, the references to a "decision" are substituted for the former references to a "determination" for consistency with § 10-227 of this subtitle.

In subsection (f) of this section, the reference to "denied" is substituted for the former reference to "rejected" to conform to the terminology used in subsection (g) of this section.

Former Art. 27, § 752(g), which authorized a delayed starting date for the Central Repository not later than July 1, 1977, is deleted as obsolete.

Defined terms: "Central Repository" § 10-201

"Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Person" § 1-101

10-224. CORRECTION OF CRIMINAL HISTORY RECORD INFORMATION.

(A) DUTY OF CENTRAL REPOSITORY.

IF A CHALLENGE OF CRIMINAL HISTORY RECORD INFORMATION UNDER § 10-223 OF THIS SUBTITLE IS DETERMINED AS A WHOLE OR IN PART TO BE VALID, THE CENTRAL REPOSITORY SHALL:

(1) CORRECT ITS RECORDS; AND

(2) GIVE NOTICE OF THE CORRECTION TO EACH CRIMINAL JUSTICE UNIT THAT HAS CUSTODY OF THE INCOMPLETE OR INACCURATE CRIMINAL HISTORY RECORD INFORMATION OR ANY PART OF THAT INFORMATION.

(B) CORRECTION AND CERTIFICATION OF CORRECTION BY CRIMINAL JUSTICE UNIT.

A CRIMINAL JUSTICE UNIT NOTIFIED UNDER SUBSECTION (A) OF THIS SECTION SHALL:

(1) CORRECT ITS RECORDS; AND

(2) CERTIFY TO THE CENTRAL REPOSITORY THAT THE CORRECTION WAS MADE.

(C) NOTICE OF CORRECTION BY CRIMINAL JUSTICE UNIT.

(1) A CRIMINAL JUSTICE UNIT REQUIRED BY SUBSECTION (B) OF THIS SECTION TO CORRECT CRIMINAL HISTORY RECORD INFORMATION SHALL GIVE WRITTEN NOTICE OF THE CORRECTION TO EACH UNIT OR PERSON TO WHICH THE CRIMINAL JUSTICE UNIT HAD DISSEMINATED THE INFORMATION BEFORE THE CORRECTION.

(2) THE UNIT OR PERSON THAT RECEIVES THE NOTICE OF CORRECTION UNDER PARAGRAPH (1) OF THIS SUBSECTION PROMPTLY SHALL CORRECT ITS RECORDS AND CERTIFY TO THE DISSEMINATING CRIMINAL JUSTICE UNIT THAT THE CORRECTION WAS MADE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 752(c) and (d).

In subsection (a)(2) of this section, the defined term "criminal history record information" is substituted for the former reference to "information" for clarity and consistency.

In subsection (b)(1) of this section, the former reference to a criminal justice unit to "take appropriate steps" to correct its records is deleted as unnecessary.

Defined terms: "Central Repository" § 10-201

"Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Disseminate" § 10-201

"Person" § 1-101

10-225. INSPECTION OR CHALLENGE OF CRIMINAL HISTORY RECORD INFORMATION RECORDED BEFORE JULY 1, 1976.

(A) SCOPE.

THIS SECTION APPLIES ONLY TO CRIMINAL HISTORY RECORD INFORMATION RECORDED BEFORE JULY 1, 1976.

(B) IN GENERAL.

SUBJECT TO SUBSECTION (C) OF THIS SECTION, A PERSON HAS A RIGHT TO INSPECT AND CHALLENGE CRIMINAL HISTORY RECORD INFORMATION IN ACCORDANCE WITH THIS SUBTITLE.

(C) DUTY TO MAKE REASONABLE SEARCH.

ON REQUEST BY A PERSON TO INSPECT CRIMINAL HISTORY RECORD INFORMATION, A CRIMINAL JUSTICE UNIT:

(1) SHALL MAKE A REASONABLE SEARCH FOR THE INFORMATION; BUT

(2) NEED NOT PROVIDE FOR THE INSPECTION OF INFORMATION THAT IS NOT FOUND AFTER A REASONABLE SEARCH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 755.

Subsection (a) of this section is revised as a scope provision to clarify the application of this section.

Subsection (b) of this section is revised in the active voice for clarity and consistency with other provisions of this subtitle.

In the introductory language of subsection (b) of this section, the phrase "[s]ubject to subsection (c) of this section" is added for clarity.

In subsection (b) of this section, the word "inspect" is substituted for the former word "access" for consistency with other provisions in this subtitle.

In the introductory language of subsection (c) of this section, the clause "[o]n request by a person to inspect criminal history record information" is added for clarity.

In subsection (c)(2) of this section, the reference to providing for the "inspection" is substituted for the former reference to "access" for consistency with other provisions of this subtitle.

Defined terms: "Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Person" § 1-101

10-226. INSPECTION OR CHALLENGE OF CRIMINAL HISTORY RECORD INFORMATION RELEVANT TO PENDING CRIMINAL PROCEEDING.

(A) PROHIBITED.

A PERSON MAY NOT INSPECT OR CHALLENGE CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SUBTITLE IF ANY OF THE CRIMINAL HISTORY RECORD INFORMATION IS RELEVANT TO A PENDING CRIMINAL PROCEEDING.

(B) EFFECT OF SECTION.

THIS SECTION DOES NOT AFFECT A PERSON'S RIGHT OF INSPECTION OR DISCOVERY ALLOWED UNDER THE MARYLAND RULES OR UNDER ANY STATUTE, RULE, OR REGULATION NOT A PART OF OR ADOPTED UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 752(f).

In subsection (a) of this section, the defined term "criminal history record information" is substituted for the former reference to "information" for clarity and consistency.

Defined terms: "Criminal history record information" § 10-201

"Person" § 1-101

10-227. APPEAL RIGHTS.

(A) IN GENERAL.

A PERSON AGGRIEVED BY A DECISION OF A CRIMINAL JUSTICE UNIT CONCERNING THE INSPECTION OF OR A CHALLENGE TO CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SUBTITLE MAY FILE AN ADMINISTRATIVE APPEAL OF THE DECISION IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE SECRETARY AND RULES ADOPTED BY THE COURT OF APPEALS UNDER SUBSECTION (B) OF THIS SECTION.

(B) ADOPTION OF RULES AND REGULATIONS.

THE SECRETARY BY REGULATION AND THE COURT OF APPEALS BY RULE SHALL ADOPT APPROPRIATE PROCEDURES FOR ADMINISTRATIVE APPEALS FROM A DECISION BY A CRIMINAL JUSTICE UNIT TO DENY A PERSON THE RIGHT TO INSPECT OR CHALLENGE CRIMINAL HISTORY RECORD INFORMATION.

(C) CONTENTS.

THE RULES AND REGULATIONS ADOPTED UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE PROVISIONS FOR:

(1) THE FORMS, WAY, AND TIME FOR FILING AN APPEAL;

(2) THE OFFICIAL OR PANEL THAT WILL HEAR THE APPEAL;

(3) HEARING AND MAKING A DECISION ON THE APPEAL; AND

(4) CARRYING OUT THE DECISION ON THE APPEAL.

(D) JUDICIAL REVIEW.

A PERSON, THE CENTRAL REPOSITORY, OR A CRIMINAL JUSTICE UNIT THAT IS AGGRIEVED BY A DECISION ON AN ADMINISTRATIVE APPEAL MAY SEEK JUDICIAL REVIEW OF THE DECISION IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE (ADMINISTRATIVE PROCEDURE ACT - CONTESTED CASES) AND THE MARYLAND RULES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 753.

This section is revised to distinguish between regulations and rules. The Secretary is head of a unit in the Executive Branch of State government, *i.e.*, Department of Public Safety and Correctional Services, and may adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article (Administrative Procedure Act - Regulations). The Court of Appeals, however, is a unit in the Judicial Branch of State government and, therefore, is not subject to Title 10, Subtitle 1 of the State Government Article (Administrative Procedure Act -- Regulations). Instead, the Court of Appeals may adopt rules under Md. Constitution, Art. IV, § 18.

In subsection (b) of this section, the term "person" is added for clarity and consistency with other provisions of this subtitle.

In subsection (c) of this section, the reference to "regulations" is added for consistency with other provisions in this section because the Secretary is authorized to adopt regulations under Title 10, Subtitle 1 of the State Government Article (Administrative Procedure Act - Regulations). *See* General Revisor's Note to article.

In subsection (d) of this section, the phrase "of the decision", as it relates to the subject of the judicial review, is added for clarity.

Also in subsection (d) of this section, the reference to "Title 10, Subtitle 2 of the State Government Article" is added for clarity.

Defined terms: "Central Repository" § 10-201

"Criminal history record information" § 10-201

"Criminal justice unit" § 10-201

"Person" § 1-101

"Secretary" § 1-101

10-228. PROHIBITED ACT; PENALTY.

(A) PROHIBITED ACT.

AN EMPLOYER OR PROSPECTIVE EMPLOYER MAY NOT REQUIRE A PERSON TO INSPECT OR CHALLENGE ANY CRIMINAL HISTORY RECORD INFORMATION RELATING TO THAT PERSON FOR THE PURPOSE OF OBTAINING A COPY OF THE PERSON'S RECORD TO QUALIFY FOR EMPLOYMENT.

(B) PENALTY.

A PERSON THAT VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $5,000 OR IMPRISONMENT NOT EXCEEDING 6 MONTHS OR BOTH FOR EACH VIOLATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 754.

Defined terms: "Criminal history record information" § 10-201

"Person" § 1-101

10-229. RESERVED.

10-230. RESERVED.

PART IV. CRIMINAL HISTORY RECORDS CHECK REQUESTS -- COUNTIES.

10-231. REQUESTS FOR CRIMINAL HISTORY RECORDS CHECK -- ANNE ARUNDEL COUNTY.

(A) PROSPECTIVE EMPLOYEE.

IN ACCORDANCE WITH GUIDELINES THAT THE ANNE ARUNDEL COUNTY COUNCIL ADOPTS BY RESOLUTION, THE DIRECTOR OF ADMINISTRATION OF ANNE ARUNDEL COUNTY MAY REQUEST A STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK FROM THE CENTRAL REPOSITORY FOR A PROSPECTIVE EMPLOYEE OF ANNE ARUNDEL COUNTY.

(B) FEE.

THE DIRECTOR OF ADMINISTRATION SHALL PAY TO THE DEPARTMENT THE FEE IMPOSED BY THE DEPARTMENT FOR EACH REQUEST MADE UNDER SUBSECTION (A) OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 754A(b).

In subsection (a) of this section, the reference to "national" criminal history records check is substituted for the former reference to "federal" criminal record check to include checks by other states as well as from the federal government.

In subsection (b) of this section, the reference to the fee imposed "by the Department" is added for clarity.

Defined terms: "Central Repository" § 10-201

"Department" § 1-101

10-232. SAME -- CARROLL COUNTY.

(A) APPLICATION OF SECTION.

THIS SECTION DOES NOT APPLY TO A PERSON WHO PROVIDES SERVICES OR PERFORMS DUTIES VOLUNTARILY AND WITHOUT COMPENSATION FOR THE GOVERNMENT OF CARROLL COUNTY.

(B) CURRENT OR PROSPECTIVE EMPLOYEE.

THE COUNTY COMMISSIONERS OF CARROLL COUNTY MAY REQUEST A STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK FROM THE CENTRAL REPOSITORY FOR:

(1) A CURRENT OR PROSPECTIVE EMPLOYEE OF CARROLL COUNTY WHO IS OR WILL BE ASSIGNED TO A POSITION THAT INVOLVES:

(I) INSPECTIONS;

(II) APPROVAL OR DENIAL OF A PERMIT, LICENSE, OR OTHER GRANT OF AUTHORITY;

(III) WORK IN THE OFFICES OF THE COUNTY COMMISSIONERS, SHERIFF, STATE'S ATTORNEY, CIRCUIT COURT, OR COUNTY ATTORNEY; OR

(IV) COLLECTING OR HANDLING MONEY; OR

(2) A CURRENT OR PROSPECTIVE EMPLOYEE OF A PERSON THAT HAS A CONTRACT WITH CARROLL COUNTY IF THE CONTRACT INVOLVES WORK IN A PLACE THAT REQUIRES SECURITY OF PERSONNEL OR FILES, INCLUDING THE COUNTY COURTHOUSE, THE LOCAL CORRECTIONAL FACILITY, THE STATE'S ATTORNEY'S OFFICE, A COUNTY COMMISSIONER'S OFFICE, AND THE COUNTY ATTORNEY'S OFFICE.

(C) FEE.

THE COMPTROLLER OF CARROLL COUNTY SHALL PAY TO THE DEPARTMENT THE FEE THAT THE DEPARTMENT IMPOSES FOR EACH REQUEST MADE UNDER SUBSECTION (B) OF THIS SECTION.

(D) FINGERPRINTING.

IF THE REQUEST FOR A CRIMINAL HISTORY RECORDS CHECK UNDER SUBSECTION (B) OF THIS SECTION REQUIRES THAT INFORMATION BE OBTAINED FROM THE FEDERAL BUREAU OF INVESTIGATION, THE PERSON WHO IS THE SUBJECT OF THE REQUEST SHALL SUBMIT TO THE DEPARTMENT A COMPLETE AND LEGIBLE SET OF THE PERSON'S FINGERPRINTS ON STANDARD FINGERPRINT CARDS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 754A(c), (d), and (e).

In the introductory language of subsection (b) of this section, the reference to a "national criminal history records" check is substituted for the former reference to a "federal criminal record" check for consistency and clarity. Similarly, in subsection (d) of this section, the reference to "criminal history records" check is substituted for the former reference to "criminal record" check.

In subsection (c) of this section, the reference to the fee "that the Department imposes for each request" is added for clarity.

Also in subsection (c) of this section, the former reference to the defined term "criminal history record information" is deleted in light of subsection (b) of this section.

In subsection (d) of this section, the reference to "subsection (b) of this section" is substituted for the former reference to "this subsection" to correct an erroneous codification under former Art. 27, § 754A(e), which referred to "a request for a criminal record check under this subsection". The County Commissioners in fact made such requests under former Art. 27, § 754A(c)(2) - now subsection (b) of this section.

Defined terms: "Central Repository" § 10-201

"Department" § 1-101

"Local correctional facility" § 1-101

"Person" § 1-101

10-233. SAME -- HOWARD COUNTY.

(A) PROSPECTIVE EMPLOYEE.

THE COUNTY ADMINISTRATOR OF HOWARD COUNTY MAY REQUEST A STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK FROM THE CENTRAL REPOSITORY FOR A PROSPECTIVE EMPLOYEE OF HOWARD COUNTY.

(B) FEE.

THE COUNTY ADMINISTRATOR OF HOWARD COUNTY SHALL PAY TO THE DEPARTMENT THE FEE THAT THE DEPARTMENT IMPOSES FOR EACH REQUEST MADE UNDER SUBSECTION (A) OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 754A(a).

In subsection (a) of this section, the reference to a "national criminal history records" check is substituted for the former reference to a "criminal record" check for consistency and clarity.

In subsection (b) of this section, the reference to the fee "that the Department imposes for each request" is added for clarity.

Also in subsection (b) of this section, the former reference to the defined term "criminal history record information" is deleted in light of subsection (a) of this section.

Defined terms: "Central Repository" § 10-201

"Department" § 1-101

10-234. SAME -- MONTGOMERY COUNTY.

(A) "TAXICAB LICENSE" DEFINED.

IN THIS SECTION, "TAXICAB LICENSE":

(1) MEANS A LICENSE OR SIMILAR DOCUMENT THAT WOULD ALLOW A PERSON TO DRIVE A TAXICAB IN MONTGOMERY COUNTY; AND

(2) INCLUDES ANY RENEWAL OF A LICENSE AS DESCRIBED IN ITEM (1) OF THIS SUBSECTION.

(B) REQUEST FOR CRIMINAL HISTORY RECORDS CHECK.

IN ACCORDANCE WITH THIS SUBTITLE, MONTGOMERY COUNTY MAY REQUEST A CRIMINAL HISTORY RECORDS CHECK FROM THE CENTRAL REPOSITORY OR THROUGH THE DEPARTMENT FROM THE FEDERAL BUREAU OF INVESTIGATION ON AN APPLICANT FOR A TAXICAB LICENSE OR LICENSEE SEEKING A RENEWAL OF A TAXICAB LICENSE.

(C) FEE.

MONTGOMERY COUNTY SHALL PAY TO THE DEPARTMENT THE FEE AND ADMINISTRATIVE COST THAT THE DEPARTMENT IMPOSES FOR EACH REQUEST MADE UNDER SUBSECTION (B) OF THIS SECTION.

(D) FINGERPRINTS.

IF THE REQUEST FOR A CRIMINAL HISTORY RECORDS CHECK UNDER SUBSECTION (B) OF THIS SECTION INCLUDES A REQUEST FOR CRIMINAL HISTORY RECORD INFORMATION FROM THE FEDERAL BUREAU OF INVESTIGATION, THE APPLICANT FOR A TAXICAB LICENSE OR RENEWAL OF A TAXICAB LICENSE SHALL SUBMIT TO THE DEPARTMENT A COMPLETE SET OF LEGIBLE FINGERPRINTS ON STANDARD FINGERPRINT CARDS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 754C.

In subsection (a)(1) of this section, the defined term "person" is substituted for the former reference to an "individual" to conform to the terminology used throughout this article.

In subsections (b) and (d) of this section, the reference to a "criminal history records" check is substituted for the former reference to a "criminal background record" check for consistency and clarity.

In subsection (b) of this section, the reference to a "licensee seeking a renewal of a taxicab license" is added for clarity.

In subsection (c) of this section, the former reference to "criminal background record check" is deleted as unnecessary in light of subsection (b) of this section.

Also in subsection (c) of this section, the reference to the fee "that the

Department imposes for each request" is added for clarity.

In subsection (d) of this section, the reference to the "renewal of a taxicab license" is added for clarity.

Defined terms: "Central Repository" § 10-201

"Department" § 1-101

"Person" § 1-101

TITLE 11. VICTIMS AND WITNESSES.

SUBTITLE 1. GENERAL PROVISIONS.

PART I. DEFINITIONS; RIGHTS AVAILABLE THROUGHOUT PROCEEDINGS.

11-101. DEFINITIONS.

(A) IN GENERAL.

IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language added as the standard introductory language to a definition section.

(B) CHILD RESPONDENT.

"CHILD RESPONDENT" MEANS A PERSON WHO:

(1) IN A PETITION FILED IN JUVENILE COURT, IS ALLEGED TO HAVE COMMITTED A DELINQUENT ACT; OR

(2) HAS COMMITTED A DELINQUENT ACT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, §§ 781(a)(2), 805A(f)(2), and 773(a)(2)(ii).

The defined term "child respondent" is substituted for the former defined term "defendant" to avoid the erroneous implication that a child who is alleged to have committed a delinquent act is involved in a criminal proceeding and to conform to the terminology of Title 11 of the Maryland Rules.

Former Art. 27, §§ 773(a)(2)(i) and 781(a)(1), which defined "defendant" in part to mean a person who is charged with a crime, are deleted as unnecessary because they did not add anything to the ordinary meaning of "defendant".

Defined terms: "Delinquent act" § 11-101

"Person" § 1-101

(C) DELINQUENT ACT.

"DELINQUENT ACT" HAS THE MEANING STATED IN § 3-801 OF THE COURTS ARTICLE.

REVISOR'S NOTE: This subsection is new language added to state expressly what was only implied in the former law - that the term "delinquent act" as used in this title has the meaning stated in § 3-801 of the Courts Article.

(D) PROSECUTING ATTORNEY.

"PROSECUTING ATTORNEY" MEANS:

(1) THE STATE'S ATTORNEY;

(2) THE STATE'S ATTORNEY'S DESIGNEE; OR

(3) WHEN PERFORMING A PROSECUTORIAL FUNCTION AT THE TRIAL LEVEL, THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 770(a)(4).

The defined term "prosecuting attorney" is added to provide a comprehensive term encompassing the State's Attorney, the State's Attorney's designee, and the Attorney General or the Attorney General's designee, to avoid ambiguity. Consequently, in the introductory language of this subsection, the reference to "means", which is normally used to introduce an exhaustive list, is substituted for the former reference to "includes", which is normally used to introduce a nonexhaustive list.

11-102. VICTIM'S RIGHT TO ATTEND PROCEEDINGS.

(A) IN GENERAL.

IF PRACTICABLE, A VICTIM OR VICTIM'S REPRESENTATIVE WHO HAS FILED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS SUBTITLE HAS THE RIGHT TO ATTEND ANY PROCEEDING IN WHICH THE RIGHT TO APPEAR HAS BEEN GRANTED TO A DEFENDANT.

(B) EMPLOYMENT PROTECTION.

AS PROVIDED IN § 9-205 OF THE COURTS ARTICLE, A PERSON MAY NOT BE DEPRIVED OF EMPLOYMENT SOLELY BECAUSE OF JOB TIME LOST BECAUSE THE PERSON ATTENDED A PROCEEDING THAT THE PERSON HAS A RIGHT TO ATTEND UNDER THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 857 and 778, except for the references to former § 3-812 of the Courts Article and former Art. 27, § 773.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the right to attend proceedings under subsection (a) of this section does not apply to proceedings that a child respondent has a right to attend. The General Assembly may wish to amend this section to cover child respondents.

As to the revision of the rest of former Art. 27, § 778, *see* § 11-302(f) of this title.

Defined term: "Person" § 1-101

11-103. APPLICATION FOR LEAVE TO APPEAL DENIAL OF VICTIM'S RIGHTS.

(A) "VIOLENT CRIME" DEFINED.

(1) IN THIS SECTION, "VIOLENT CRIME" MEANS:

(I) A CRIME OF VIOLENCE; OR

(II) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A CRIME INVOLVING, CAUSING, OR RESULTING IN DEATH OR SERIOUS BODILY INJURY.

(2) "VIOLENT CRIME" DOES NOT INCLUDE AN OFFENSE UNDER THE MARYLAND VEHICLE LAW OR UNDER TITLE 8, SUBTITLE 7 OF THE NATURAL RESOURCES ARTICLE UNLESS THE OFFENSE IS PUNISHABLE BY IMPRISONMENT.

(B) RIGHT TO FILE FOR LEAVE TO APPEAL.

ALTHOUGH NOT A PARTY TO A CRIMINAL PROCEEDING, A VICTIM OF A VIOLENT CRIME FOR WHICH THE DEFENDANT IS CHARGED MAY FILE AN APPLICATION FOR LEAVE TO APPEAL TO THE COURT OF SPECIAL APPEALS FROM AN INTERLOCUTORY OR FINAL ORDER THAT DENIES OR FAILS TO CONSIDER A RIGHT SECURED TO THE VICTIM BY § 11-302(C), § 11-402, § 11-403, OR § 11-404 OF THIS TITLE OR § 6-112 OF THE CORRECTIONAL SERVICES ARTICLE.

(C) STAY OF OTHER PROCEEDINGS.

THE FILING OF AN APPLICATION FOR LEAVE TO APPEAL UNDER THIS SECTION DOES NOT STAY OTHER PROCEEDINGS IN A CRIMINAL CASE UNLESS ALL PARTIES CONSENT.

(D) VICTIM'S REPRESENTATIVE.

(1) FOR PURPOSES OF THIS SECTION, A VICTIM'S REPRESENTATIVE, INCLUDING THE VICTIM'S SPOUSE OR SURVIVING SPOUSE, PARENT OR LEGAL GUARDIAN, CHILD, OR SIBLING, MAY REPRESENT A VICTIM OF A VIOLENT CRIME WHO DIES OR IS DISABLED.

(2) IF THERE IS A DISPUTE OVER WHO SHALL BE THE VICTIM'S REPRESENTATIVE, THE COURT SHALL DESIGNATE THE VICTIM'S REPRESENTATIVE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 776.

In subsection (a) of this section, the defined term "violent crime" is substituted for the former defined term "victim of a violent crime" for clarity.

In subsection (a)(1)(i) of this section, the former reference to a crime of violence "as defined under § 643B of this article" is deleted as unnecessary in light of the revision of the definition in § 1-101 of this article.

In subsection (d) of this section, the reference to a "victim's representative" is substituted for the former reference to "the term `victim of a violent crime'" for clarity.

Defined term: "Crime of violence" § 1-101

11-104. VICTIM NOTIFICATION.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "VICTIM" MEANS A PERSON WHO SUFFERS ACTUAL OR THREATENED PHYSICAL, EMOTIONAL, OR FINANCIAL HARM AS A DIRECT RESULT OF A CRIME OR DELINQUENT ACT.

(3) "VICTIM'S REPRESENTATIVE" INCLUDES A FAMILY MEMBER OR GUARDIAN OF A VICTIM WHO IS:

(I) A MINOR;

(II) DECEASED; OR

(III) DISABLED.

(B) DUTY OF LAW ENFORCEMENT OFFICER, COMMISSIONER, OR INTAKE OFFICER.

ON FIRST CONTACT WITH A VICTIM OR VICTIM'S REPRESENTATIVE, A LAW ENFORCEMENT OFFICER, DISTRICT COURT COMMISSIONER, OR JUVENILE INTAKE OFFICER SHALL GIVE THE VICTIM OR THE VICTIM'S REPRESENTATIVE THE PAMPHLET DESCRIBED IN § 11-914(9)(I) OF THIS TITLE.

(C) DUTIES OF PROSECUTING ATTORNEY.

(1) WITHIN 10 DAYS AFTER THE FILING OR THE UNSEALING OF AN INDICTMENT OR INFORMATION IN CIRCUIT COURT, WHICHEVER IS LATER, THE PROSECUTING ATTORNEY SHALL:

(I) MAIL OR DELIVER TO THE VICTIM OR VICTIM'S REPRESENTATIVE THE PAMPHLET DESCRIBED IN § 11-914(9)(II) OF THIS TITLE AND THE NOTIFICATION REQUEST FORM DESCRIBED IN § 11-914(10) OF THIS TITLE; AND

(II) CERTIFY TO THE CLERK OF THE COURT THAT THE PROSECUTING ATTORNEY HAS COMPLIED WITH THIS PARAGRAPH OR IS UNABLE TO IDENTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE.

(2) IF THE PROSECUTING ATTORNEY FILES A PETITION ALLEGING THAT A CHILD IS DELINQUENT FOR COMMITTING AN ACT THAT COULD ONLY BE TRIED IN THE CIRCUIT COURT IF COMMITTED BY AN ADULT, THE PROSECUTING ATTORNEY SHALL:

(I) INFORM THE VICTIM OR VICTIM'S REPRESENTATIVE OF THE RIGHT TO REQUEST RESTITUTION UNDER § 11-606 OF THIS TITLE;

(II) MAIL OR DELIVER TO THE VICTIM OR VICTIM'S REPRESENTATIVE THE NOTIFICATION REQUEST FORM DESCRIBED IN § 11-914(10) OF THIS TITLE; AND

(III) CERTIFY TO THE CLERK OF THE JUVENILE COURT THAT THE PROSECUTING ATTORNEY HAS COMPLIED WITH THIS PARAGRAPH OR IS UNABLE TO IDENTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE.

(3) FOR CASES DESCRIBED UNDER THIS SUBSECTION, THE PROSECUTING ATTORNEY MAY PROVIDE A STATE'S WITNESS IN THE CASE WITH THE GUIDELINES FOR VICTIMS, VICTIMS' REPRESENTATIVES, AND WITNESSES AVAILABLE UNDER §§ 11-1001 THROUGH 11-1004 OF THIS TITLE.

(D) NOTIFICATION REQUEST FORM -- FILING WITH PROSECUTING ATTORNEY.

(1) A VICTIM OR VICTIM'S REPRESENTATIVE MAY FILE A COMPLETED NOTIFICATION REQUEST FORM WITH THE PROSECUTING ATTORNEY.

(2) THE PROSECUTING ATTORNEY SHALL SEND A COPY OF THE COMPLETED NOTIFICATION REQUEST FORM TO THE CLERK OF THE CIRCUIT COURT OR JUVENILE COURT.

(3) BY FILING A COMPLETED NOTIFICATION REQUEST FORM, A VICTIM OR VICTIM'S REPRESENTATIVE COMPLIES WITH ARTICLE 47 OF THE MARYLAND DECLARATION OF RIGHTS AND EACH PROVISION OF THE CODE THAT REQUIRES A VICTIM OR VICTIM'S REPRESENTATIVE TO REQUEST NOTICE.

(4) TO KEEP THE ADDRESS OF A VICTIM OR VICTIM'S REPRESENTATIVE CONFIDENTIAL, THE VICTIM OR VICTIM'S REPRESENTATIVE SHALL DESIGNATE IN THE NOTIFICATION REQUEST FORM A PERSON WHO HAS AGREED TO RECEIVE NOTICE FOR THE VICTIM OR VICTIM'S REPRESENTATIVE.

(E) SAME -- NOTICE OF COURT PROCEEDINGS.

(1) THE PROSECUTING ATTORNEY SHALL SEND A VICTIM OR VICTIM'S REPRESENTATIVE PRIOR NOTICE OF EACH COURT PROCEEDING IN THE CASE, OF THE TERMS OF ANY PLEA AGREEMENT, AND OF THE RIGHT OF THE VICTIM OR VICTIM'S REPRESENTATIVE TO SUBMIT A VICTIM IMPACT STATEMENT TO THE COURT UNDER § 11-402 OF THIS TITLE IF:

(I) PRIOR NOTICE IS PRACTICABLE; AND

(II) THE VICTIM OR VICTIM'S REPRESENTATIVE HAS FILED A NOTIFICATION REQUEST FORM UNDER SUBSECTION (D) OF THIS SECTION.

(2) IF THE CASE IS IN A JURISDICTION IN WHICH THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OR JUVENILE COURT HAS AN AUTOMATED FILING SYSTEM, THE PROSECUTING ATTORNEY MAY ASK THE CLERK TO SEND THE NOTICE REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION.

(3) AS SOON AFTER A PROCEEDING AS PRACTICABLE, THE PROSECUTING ATTORNEY SHALL TELL THE VICTIM OR VICTIM'S REPRESENTATIVE OF THE TERMS OF ANY PLEA AGREEMENT, JUDICIAL ACTION, AND PROCEEDING THAT AFFECTS THE INTERESTS OF THE VICTIM OR VICTIM'S REPRESENTATIVE, INCLUDING A BAIL HEARING, CHANGE IN THE DEFENDANT'S PRETRIAL RELEASE ORDER, DISMISSAL, NOLLE PROSEQUI, STETTING OF CHARGES, TRIAL, DISPOSITION, AND POSTSENTENCING COURT PROCEEDING IF:

(I) THE VICTIM OR VICTIM'S REPRESENTATIVE HAS FILED A NOTIFICATION REQUEST FORM UNDER SUBSECTION (D) OF THIS SECTION AND PRIOR NOTICE TO THE VICTIM OR VICTIM'S REPRESENTATIVE IS NOT PRACTICABLE; OR

(II) THE VICTIM OR VICTIM'S REPRESENTATIVE IS NOT PRESENT AT THE PROCEEDING.

(4) WHETHER OR NOT THE VICTIM OR VICTIM'S REPRESENTATIVE HAS FILED A NOTIFICATION REQUEST FORM UNDER SUBSECTION (D) OF THIS SECTION, THE PROSECUTING ATTORNEY MAY GIVE THE VICTIM OR VICTIM'S REPRESENTATIVE INFORMATION ABOUT THE STATUS OF THE CASE IF THE VICTIM OR VICTIM'S REPRESENTATIVE ASKS FOR THE INFORMATION.

(F) SAME -- COMMITMENT ORDERS, PROBATION ORDERS, AND APPEALS.

IF A VICTIM OR VICTIM'S REPRESENTATIVE HAS FILED A NOTIFICATION REQUEST FORM UNDER SUBSECTION (D) OF THIS SECTION, THE CLERK OF THE CIRCUIT COURT OR JUVENILE COURT:

(1) SHALL INCLUDE A COPY OF THE FORM WITH ANY COMMITMENT ORDER OR PROBATION ORDER THAT IS PASSED; AND

(2) IF AN APPEAL IS FILED, SHALL SEND A COPY OF THE FORM TO THE ATTORNEY GENERAL AND THE COURT TO WHICH THE CASE HAS BEEN APPEALED.

(G) SAME -- FILING WITH COMMITMENT UNIT.

THIS SECTION DOES NOT PROHIBIT A VICTIM OR VICTIM'S REPRESENTATIVE FROM FILING A NOTIFICATION REQUEST FORM WITH A UNIT TO WHICH A DEFENDANT OR CHILD RESPONDENT HAS BEEN COMMITTED.

(H) TERMINATION OF NOTIFICATION.

AFTER FILING A NOTIFICATION REQUEST FORM UNDER SUBSECTION (D) OF THIS SECTION, A VICTIM OR VICTIM'S REPRESENTATIVE MAY DISCONTINUE FURTHER NOTICES BY FILING A WRITTEN REQUEST WITH:

(1) THE PROSECUTING ATTORNEY, IF THE CASE IS STILL IN A CIRCUIT COURT OR JUVENILE COURT; OR

(2) THE UNIT TO WHICH THE DEFENDANT OR CHILD RESPONDENT HAS BEEN COMMITTED, IF A COMMITMENT ORDER HAS BEEN ISSUED IN THE CASE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 770(b) through (i) and (a)(1), (2), and (3).

In subsection (a)(2) of this section, the defined term "person" is substituted for the former reference to "individual" to conform to the terminology used throughout this article.

Also in subsection (a)(2) of this section, the reference to "actual" harm is substituted for the former reference to "direct" harm for clarity.

In subsections (b) and (c)(1)(i), (2)(ii), and (3) of this section, the former references to "a copy of" a pamphlet, form, or guidelines are deleted as surplusage.

In subsection (c)(1)(ii) and (2)(iii) of this section, the former references to compliance with "the requirements in items (i) and (ii)" are deleted as surplusage.

In subsection (d)(4) of this section, the former reference to an "organization" is deleted as included in the reference to the defined term "person".

In subsection (e)(1) and (3) of this section, the former references to "conditions" are deleted as unnecessary in light of the references to "terms".

In subsections (g) and (h)(2) of this section, the defined term "child respondent" is added to clarify that these provisions apply to children in juvenile court.

Also in subsections (g) and (h)(2) of this section, the term "unit" is substituted for the former terms "department" and "facility" to conform to the terminology used in revised articles of the Code. *See* General Revisor's Note to article.

In the introductory language of subsection (h) of this section, the former phrase "[a]t any time" is deleted as surplusage.

In subsection (h)(2) of this section, the former reference to the department or facility "specified in the commitment order" is deleted as surplusage.

Defined terms: "Child respondent" § 11-101

"Nolle prosequi" § 1-101

"Person" § 1-101

"Prosecuting attorney" § 11-101

11-105. RESERVED.

11-106. RESERVED.

PART II. RIGHT TO HIV TESTING.

11-107. DEFINITIONS.

(A) IN GENERAL.

IN PART II OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 855(a)(1).

The only changes are in style.

(B) CHARGED.

"CHARGED" MEANS TO BE THE SUBJECT OF AN INDICTMENT, AN INFORMATION, OR A PETITION ALLEGING A DELINQUENT ACT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 855(a)(4).

In this subsection, the term "charged" is defined to mean "to be the subject" of an indictment, information, or petition. This phrase is substituted for the former reference that defined "charged" to mean "the filing" of an indictment, information, or petition. This substitution is made to reflect that "charged" is used in Part II of this subtitle to describe a person who is accused in the charging document and not the act of filing the document.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that charging documents in most District Court cases are excluded from the definition under subsection (b) of this section, yet the documents could cover criminal conduct warranting HIV testing.

Defined term: "Delinquent act" § 11-101

(C) HEALTH OFFICER.

"HEALTH OFFICER" HAS THE MEANING STATED IN § 1-101 OF THE HEALTH - GENERAL ARTICLE.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 855(a)(8).

The only changes are in style.

(D) HIV.

"HIV" MEANS ANY HUMAN IMMUNODEFICIENCY VIRUS THAT CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS).

REVISOR'S NOTE: This subsection formerly was Art. 27, § 855(a)(9).

No changes are made.

(E) PROHIBITED EXPOSURE.

(1) "PROHIBITED EXPOSURE" MEANS A CRIME OR DELINQUENT ACT THAT MAY HAVE CAUSED OR RESULTED IN EXPOSURE TO HIV.

(2) "PROHIBITED EXPOSURE" INCLUDES:

(I) CONTACT THAT OCCURS ON PENETRATION, HOWEVER SLIGHT, BETWEEN THE PENIS AND THE VULVA OR ANUS; AND

(II) CONTACT BETWEEN THE MOUTH AND THE PENIS, VULVA, OR ANUS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 855(a)(10).

The defined term "prohibited exposure" is substituted for the former defined term "offense" for clarity and to avoid the erroneous implication that a delinquent act is criminal activity.

The former reference to "[a]ny prohibited activity involving a sexual act" is deleted as unnecessary in light of the reference to "a crime or delinquent act that may have caused or resulted in exposure to HIV".

In paragraph (1) of this subsection, the former reference to a criminal offense or delinquent act "the commission of which" may have caused or resulted in exposure is deleted as unnecessary in light of the reference to "crime or delinquent act".

Also in paragraph (1) of this subsection, the phrase "exposure to HIV" is added for clarity.

Defined term: "Delinquent act" § 11-101

(F) VICTIM.

(1) "VICTIM" MEANS THE VICTIM OF A PROHIBITED EXPOSURE.

(2) "VICTIM" INCLUDES:

(I) A LAW ENFORCEMENT OFFICER WHO IS EXPOSED TO HIV WHILE ACTING IN THE PERFORMANCE OF DUTY; AND

(II) A PAID OR VOLUNTEER FIREFIGHTER, AN EMERGENCY MEDICAL TECHNICIAN, OR RESCUE SQUAD MEMBER WHO IS EXPOSED TO HIV WHILE ACTING IN THE PERFORMANCE OF DUTY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 855(a)(11)(i) and (ii)4 and 5.

In paragraph (2)(i) of this subsection, the reference to a law enforcement officer who is exposed "to HIV" is added for clarity.

Also in paragraph (2)(i) of this subsection, the former reference to "official" is deleted as included in the reference to "duty".

Defined terms: "HIV" § 11-107

"Prohibited exposure" § 11-107

(G) VICTIM'S REPRESENTATIVE.

"VICTIM'S REPRESENTATIVE" MEANS:

(1) THE PARENT OF A VICTIM WHO IS A MINOR;

(2) THE LEGAL GUARDIAN OF A VICTIM; OR

(3) THE PERSON AUTHORIZED TO GIVE CONSENT FOR THE VICTIM UNDER § 5-605 OF THE HEALTH - GENERAL ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 855(a)(11)(ii)1 through 3.

In this subsection and in subsection (f) of this section, the former defined term "victim" is revised as two defined terms -- "victim" and "victim's representative". This bifurcation allows independent reference to be made to persons with an actual involvement in a prohibited exposure -- *i.e.*, the victim, including certain law enforcement and fire fighting personnel -- without invoking certain persons with only a legal relationship with a victim -- *i.e.*, the parent of a victim who is a minor, the legal guardian of a victim, or the person authorized to give consent. Thus, for references in the former law to "victim" in which only actual victims were obviously intended, reference to persons with only a legal relationship with a victim is not made in this revision. *See* § 11-115(a) -- which refers to "the victim, the victim's sexual partner, or the victim's family". In all other instances, references both to actual victims and persons with a legal relationship to a

victim are apparently intended; thus, both defined terms, "victim" and "victim's representative" are used.

In item (3) of this subsection, the former reference to "substituted" consent for the victim is deleted as implied in the word "consent".

Defined terms: "Person" § 1-101

"Victim" § 11-107

11-108. ELEMENTS OF CONVICTION.

FOR THE PURPOSES OF PART II OF THIS SUBTITLE, A PERSON IS CONVICTED WHEN IN A CRIMINAL PROCEEDING THE PERSON:

(1) IS FOUND GUILTY; OR

(2) ENTERS A PLEA OF GUILTY OR NOLO CONTENDERE AND THE PLEA IS ACCEPTED BY THE COURT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 855(a)(5)(i) and (iii).

It is revised as a general provision rather than as part of a definition section for clarity.

In item (1) of this section, the former reference to a "receipt of a verdict" is deleted as included in the reference to "found guilty".

In item (2) of this section, the phrase "by the court" is added for clarity.

Defined terms: "Nolo contendere" § 1-101

"Person" § 1-101

11-109. ELEMENTS OF EXPOSURE.

(A) "BODY FLUIDS" DEFINED.

IN THIS SECTION, "BODY FLUIDS" HAS THE MEANING STATED IN § 18-338.1 OF THE HEALTH - GENERAL ARTICLE.

(B) OCCURRENCES OF EXPOSURE.

EXPOSURE TO HIV BETWEEN A VICTIM AND A PERSON CHARGED WITH A PROHIBITED EXPOSURE OCCURS:

(1) BY PERCUTANEOUS OR MUCOCUTANEOUS CONTACT WITH BLOOD OR BODY FLUIDS;

(2) BY CONTACT FOR A PROLONGED PERIOD WITH BLOOD OR BODY FLUIDS OF AN OPEN WOUND, INCLUDING DERMATITIS, EXUDATIVE LESIONS, AND CHAPPED SKIN;

(3) BY INTACT SKIN CONTACT FOR A PROLONGED PERIOD WITH LARGE AMOUNTS OF BLOOD OR BODY FLUIDS; OR

(4) UNDER ANY OTHER CONDITION OR CIRCUMSTANCE UNDER WHICH A PERSON MAY BE EXPOSED TO HIV.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 855(a)(3) and (7).

In subsection (a) of this section, the phrase "in this section" is added to reflect that the term "body fluids" appears nowhere else in Part II of this subtitle.

In the introductory language of subsection (b) of this section, the phrase relating to a victim and a person charged "with a prohibited exposure" is added for clarity.

Defined terms: "Charged" § 11-107

"HIV" § 11-107

"Person" § 1-101

"Prohibited exposure" § 11-107

"Victim" § 11-107

11-110. HIV TESTING OF CHARGED PERSON.

IN ADDITION TO TESTING ALLOWED UNDER § 11-112 OF THIS SUBTITLE, THE COURT MAY ORDER A PERSON CHARGED WITH A PROHIBITED EXPOSURE TO GIVE A BLOOD SAMPLE TO BE TESTED FOR THE PRESENCE OF HIV IF:

(1) THE PERSON IS CHARGED WITH A PROHIBITED EXPOSURE WITHIN 1 YEAR AFTER THE PROHIBITED EXPOSURE OCCURRED;

(2) A VICTIM OR VICTIM'S REPRESENTATIVE REQUESTS THE TESTING IN WRITING TO THE STATE'S ATTORNEY IN THE COUNTY WHERE THE PROHIBITED EXPOSURE OCCURRED; AND

(3) THE COURT FINDS PROBABLE CAUSE TO BELIEVE THAT A PROHIBITED EXPOSURE OCCURRED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 855(c)(1).

In the introductory language to this section and in item (1) of this section, the defined term "person" is substituted for the former reference to an "individual" to conform to the terminology of this article.

In item (2) of this section, the reference to "county" is substituted for the former reference to "jurisdiction" for clarity.

Defined terms: "Charged" § 11-107

"County" § 1-101

"HIV" § 11-107

"Person" § 1-101

"Prohibited exposure" § 11-107

"Victim" § 11-107

"Victim's representative" § 11-107

11-111. HEARING.

(A) REQUIRED BEFORE TESTING.

(1) BEFORE ORDERING A TEST UNDER § 11-110 OF THIS SUBTITLE, THE COURT SHALL HOLD A HEARING AT WHICH BOTH THE VICTIM OR VICTIM'S REPRESENTATIVE AND THE PERSON CHARGED WITH A PROHIBITED EXPOSURE HAVE THE RIGHT TO BE PRESENT.

(2) THE COURT SHALL NOTIFY BOTH THE VICTIM OR VICTIM'S REPRESENTATIVE AND THE PERSON CHARGED WITH A PROHIBITED EXPOSURE OF:

(I) THE DATE, TIME, AND LOCATION OF THE HEARING; AND

(II) THEIR RIGHT TO BE PRESENT AT THE HEARING.

(B) ADMISSIBLE EVIDENCE.

DURING THE HEARING, A COURT MAY ADMIT INTO EVIDENCE ONLY AFFIDAVITS, COUNTER-AFFIDAVITS, AND MEDICAL RECORDS THAT:

(1) RELATE TO THE MATERIAL FACTS OF THE CASE; AND

(2) SUPPORT OR REBUT A FINDING OF PROBABLE CAUSE TO ISSUE A COURT ORDER.

(C) REQUEST TO BE FILED AND SEALED.

THE WRITTEN REQUEST OF THE VICTIM OR VICTIM'S REPRESENTATIVE SHALL BE FILED BY THE STATE'S ATTORNEY WITH THE COURT AND SEALED BY THE COURT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 855(c)(2), (3), and (4).

In subsection (a)(1) of this section, the phrase "charged with a prohibited exposure" is added to reflect that this subsection applies to proceedings in juvenile court.

In subsection (a)(2) of this section, reference to the obligation of "the court" to notify certain persons is added to reflect current practice.

In the introductory language of subsection (b) of this section, the clause "a court may admit into evidence" is substituted for the former reference to

affidavits, counter-affidavits, and medical records that "may be admissible", for clarity.

In subsection (b)(2) of this section, the former reference to a finding of probable cause "by a court" is deleted as unnecessary because all findings of probable cause are made by a court.

Defined terms: "Charged" § 11-107

"Person" § 1-101

"Prohibited exposure" § 11-107

"Victim" § 11-107

"Victim's representative" § 11-107

11-112. HIV TESTING AFTER CONVICTION, PROBATION BEFORE JUDGMENT, OR ADJUDICATION.

(A) IN GENERAL.

ON THE WRITTEN REQUEST OF A VICTIM OR VICTIM'S REPRESENTATIVE TO THE STATE'S ATTORNEY IN THE COUNTY WHERE A PROHIBITED EXPOSURE OCCURRED, THE COURT SHALL ORDER A TEST OF A BLOOD SAMPLE FOR HIV AND ANY OTHER IDENTIFIED CAUSATIVE AGENT OF AIDS.

(B) WHO MUST GIVE BLOOD SAMPLE.

THE BLOOD SAMPLE SHALL BE GIVEN BY:

(1) A PERSON WHO HAS BEEN CONVICTED OF A CRIME THAT INCLUDES A PROHIBITED EXPOSURE;

(2) A PERSON WHO HAS BEEN GRANTED PROBATION BEFORE JUDGMENT UNDER § 6-220 OF THIS ARTICLE IN A CASE INVOLVING A PROHIBITED EXPOSURE; OR

(3) A CHILD RESPONDENT WHO HAS BEEN FOUND TO HAVE COMMITTED A DELINQUENT ACT THAT INCLUDES A PROHIBITED EXPOSURE.

(C) REQUEST TO BE FILED AND SEALED.

THE WRITTEN REQUEST SHALL BE FILED BY THE STATE'S ATTORNEY WITH THE COURT AND SEALED BY THE COURT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 855(b) and (a)(5)(ii).

In subsection (a) of this section, the former reference to "the office of" the State's Attorney is deleted as implied in the reference to "State's Attorney".

Also in subsection (a) of this section, the word "county" is substituted for the former reference to "jurisdiction" to precisely state the extent of the jurisdiction of a State's Attorney.

Defined terms: "Child respondent" § 11-101

"County" § 1-101

"Delinquent act" § 11-101

"HIV" § 11-107

"Person" § 1-101

"Prohibited exposure" § 11-107

"Victim" § 11-107

"Victim's representative" § 11-107

11-113. NOTIFICATION.

(A) TO HEALTH OFFICER OF TESTING REQUEST.

(1) AFTER CONVICTION OR A FINDING OF A PROHIBITED EXPOSURE, A FINDING OF PROBABLE CAUSE UNDER § 11-110(3) OF THIS SUBTITLE, OR A GRANTING OF PROBATION BEFORE JUDGMENT UNDER § 11-112 OF THIS SUBTITLE, THE STATE'S ATTORNEY SHALL PROMPTLY NOTIFY THE LOCAL HEALTH OFFICER OF THE WRITTEN REQUEST BY THE VICTIM OR VICTIM'S REPRESENTATIVE FOR TESTING.

(2) ON RECEIPT OF A COURT ORDER FOR TESTING ISSUED UNDER § 11-110(3) OR § 11-112 OF THIS SUBTITLE, THE LOCAL HEALTH OFFICER OR THE LOCAL HEALTH OFFICER'S DESIGNEE FROM ANY OTHER GOVERNMENTAL UNIT SHALL:

(I) PROMPTLY COLLECT THE BLOOD SAMPLE FROM THE PERSON WHO IS CHARGED WITH, CONVICTED OF, OR FOUND TO HAVE COMMITTED A PROHIBITED EXPOSURE;

(II) TEST THE BLOOD SAMPLE; AND

(III) GIVE PRETEST AND POSTTEST COUNSELING TO THE VICTIM OR VICTIM'S REPRESENTATIVE AND THE PERSON SUBJECT TO TESTING IN ACCORDANCE WITH TITLE 18, SUBTITLE 3, PART VI OF THE HEALTH - GENERAL ARTICLE.

(B) TO VICTIM OR VICTIM'S REPRESENTATIVE AND TESTED PERSON.

(1) AFTER RECEIVING THE RESULTS OF A TEST CONDUCTED UNDER SUBSECTION (A) OF THIS SECTION, THE LOCAL HEALTH OFFICER SHALL PROMPTLY SEND NOTICE OF THE TEST RESULTS TO:

(I) THE VICTIM OR VICTIM'S REPRESENTATIVE; AND

(II) THE PERSON CHARGED WITH, CONVICTED OF, OR FOUND TO HAVE COMMITTED A PROHIBITED EXPOSURE.

(2) THE LOCAL HEALTH OFFICER MAY NOT DISCLOSE POSITIVE TEST RESULTS TO A VICTIM OR VICTIM'S REPRESENTATIVE OR A PERSON CHARGED WITH, CONVICTED OF, OR FOUND TO HAVE COMMITTED A PROHIBITED EXPOSURE WITHOUT ALSO GIVING, OFFERING, OR ARRANGING FOR APPROPRIATE COUNSELING TO:

(I) THE VICTIM OR VICTIM'S REPRESENTATIVE; AND

(II) THE PERSON.

(C) TO VICTIM OR VICTIM'S REPRESENTATIVE OF PROVISIONS OF PART II.

THE FOLLOWING SHALL NOTIFY A VICTIM OF PROHIBITED EXPOSURE OR THE VICTIM'S REPRESENTATIVE OF THE PROVISIONS OF PART II OF THIS SUBTITLE:

(1) A SEXUAL ASSAULT CRISIS PROGRAM ESTABLISHED UNDER § 11-923 OF THIS TITLE WHEN A VICTIM OR VICTIM'S REPRESENTATIVE CONTACTS THE PROGRAM;

(2) AN INTAKE OFFICER WHO RECEIVES A COMPLAINT FOR THE ALLEGED PROHIBITED EXPOSURE UNDER § 3-810 OF THE COURTS ARTICLE; OR

(3) ON THE FILING OF A CHARGING DOCUMENT OR DELINQUENCY PETITION FOR THE ALLEGED PROHIBITED EXPOSURE:

(I) THE DEPARTMENT OF STATE POLICE;

(II) THE POLICE DEPARTMENT OF BALTIMORE CITY;

(III) THE POLICE UNIT OF A COUNTY;

(IV) THE POLICE UNIT OF A MUNICIPAL CORPORATION;

(V) THE OFFICE OF THE SHERIFF OF A COUNTY;

(VI) THE OFFICE OF THE STATE'S ATTORNEY OF A COUNTY;

(VII) THE OFFICE OF THE ATTORNEY GENERAL;

(VIII) THE OFFICE OF THE STATE PROSECUTOR;

(IX) THE DEPARTMENT OF JUVENILE JUSTICE; OR

(X) THE POLICE UNIT OF A BICOUNTY UNIT OR THE UNIVERSITY OF MARYLAND.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 855(d), (e), and (g) and (a)(2) and (5)(ii).

In subsections (a)(2)(i) and (b) of this section, the defined term "person" is substituted for the former reference to an "individual" to conform to the terminology used throughout this article.

In subsection (a)(2) of this section, the reference to a governmental "unit" is substituted for the former reference to a governmental "entity" to conform to the terminology used in this and other revised articles of the Code. Similarly, in subsection (c)(3)(x) of this section, the reference to a

bicounty "unit" is substituted for the former reference to a bicounty "agency". *See* General Revisor's Note to article.

In subsection (a)(2)(iii) of this section, the reference to "person subject to testing" is substituted for the former reference to "convicted individual" for clarity.

In subsection (c)(3) of this section, the former reference to the filing "with a court" of a charging document is deleted as unnecessary because those items are filed only with a court.

Also in subsection (c)(3) of this section, the defined term "charging document" is substituted for the former reference to "statement of charges or indictment or information" for brevity.

Also in subsection (c)(3) of this section, the former phrase "[a]gency means any of the following" is deleted as unnecessary in light of the list of governmental units in subsection (c)(3)(i) through (x) of this section.

In subsection (c)(3)(iv) of this section, the reference to a "municipal corporation" is substituted for the former reference to an "incorporated city or town" to conform to the terminology used in the Md. Constitution, Art. XI-E.

In subsection (c)(3)(ii) and (iv) of this section, the reference to a "unit" is substituted for the former reference to a "department, bureau, or force".

Defined terms: "Charged" § 11-107

"Charging document" § 1-101

"County" § 1-101

"Health officer" § 11-107

"Person" § 1-101

"Prohibited exposure" § 11-107

"Victim" § 11-107

"Victim's representative" § 11-107

11-114. DISCLOSURE OF TEST RESULTS.

(A) ALLOWED.

A VICTIM OR VICTIM'S REPRESENTATIVE WHO RECEIVES NOTIFICATION UNDER § 11-113(B) OF THIS SUBTITLE MAY DISCLOSE THE RESULTS OF THE TEST TO ANOTHER PERSON TO PROTECT THE HEALTH AND SAFETY OF, OR TO SEEK COMPENSATION FOR, THE VICTIM, THE VICTIM'S SEXUAL PARTNER, OR THE VICTIM'S FAMILY.

(B) PROHIBITED ACT; PENALTY.

(1) EXCEPT AS OTHERWISE PROVIDED IN PART II OF THIS SUBTITLE, A PERSON WHO RECEIVES NOTIFICATION OR DISCLOSURE OF THE RESULTS OF THE

TEST UNDER SUBSECTION (A) OF THIS SECTION MAY NOT KNOWINGLY DISCLOSE THE RESULTS OF THAT TEST.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 855(h).

Defined terms: "Person" § 1-101

"Victim" § 11-107

"Victim's representative" § 11-107

11-115. TEST RESULTS NOT ADMISSIBLE AS EVIDENCE.

THE RESULTS OF A TEST HELD UNDER PART II OF THIS SUBTITLE ARE NOT ADMISSIBLE AS EVIDENCE OF GUILT OR INNOCENCE IN A CRIMINAL PROCEEDING ARISING OUT OF THE ALLEGED PROHIBITED EXPOSURE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 855(i).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that this section does not apply to a juvenile proceeding.

Defined term: "Prohibited exposure" § 11-107

11-116. IMMUNITY FOR STATE EMPLOYEES AND AGENTS.

AN AGENT OR EMPLOYEE OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OR ANY OTHER STATE EMPLOYEE WHO COMPLIES WITH PART II OF THIS SUBTITLE HAS THE IMMUNITY FROM LIABILITY DESCRIBED UNDER § 5-522 OF THE COURTS ARTICLE FOR ACTIONS TAKEN IN ACCORDANCE WITH PART II OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 855(j) and (a)(6).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that this section does not extend immunity from liability to local government employees.

11-117. REGULATIONS.

THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL ADOPT REGULATIONS TO CARRY OUT PART II OF THIS SUBTITLE, INCLUDING REGULATIONS ON:

(1) THE CONFIDENTIALITY OF HIV TEST RESULTS; AND

(2) GIVING THE VICTIM OR VICTIM'S REPRESENTATIVE COUNSELING REGARDING HIV DISEASE, HIV TESTING, AND REFERRAL FOR APPROPRIATE HEALTH CARE AND SUPPORT SERVICES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 855(f) and (a)(6).

Regulations adopted by the Department of Health and Mental Hygiene under this section must conform to federal government requirements under 42 U.S.C. § 3756(f). *See* Section 2, Chapters 90 and 91, Acts of 1992.

In the introductory language of this section, the reference to the adoption of regulations by the Department of Health and Mental Hygiene "to carry out" this section is substituted for the former reference to the adoption of regulations "to implement" this section to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

SUBTITLE 2. PRETRIAL RIGHTS.

11-201. RIGHTS OF VICTIM OF ASSAULT.

A VICTIM OF AN ASSAULT HAS THE RIGHTS PROVIDED UNDER ARTICLE 27, § 12A-5 OF THE CODE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 766.

In this section, the former phrase "concerning compromising cases of assault" is deleted as surplusage.

11-202. VICTIM OF DELINQUENT ACT.

(A) DEFINITION.

IN THIS SECTION, "VICTIM" HAS THE MEANING STATED IN § 3-801 OF THE COURTS ARTICLE.

(B) IN GENERAL.

A VICTIM OF A DELINQUENT ACT HAS THE RIGHTS PROVIDED UNDER § 3-810 OF THE COURTS ARTICLE.

REVISOR'S NOTE: Subsection (a) of this section is new language added for clarity.

Subsection (b) of this section is new language derived without substantive change from former Art. 27, § 767.

Defined term: "Delinquent act" § 11-101

11-203. PROTECTION OF VICTIM BEFORE TRIAL OR HEARING.

AS PROVIDED UNDER § 5-201 OF THIS ARTICLE, THE COURT, A JUVENILE INTAKE OFFICER, OR A DISTRICT COURT COMMISSIONER SHALL CONSIDER THE SAFETY OF THE ALLEGED VICTIM IN SETTING CONDITIONS OF:

(1) THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH STALKING OR A FELONY; OR

(2) THE PREHEARING RELEASE OF A CHILD RESPONDENT WHO IS ALLEGED TO HAVE COMMITTED A DELINQUENT ACT THAT WOULD BE STALKING OR A FELONY IF COMMITTED BY AN ADULT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 768.

In item (2) of this section, the reference to "prehearing release" is added to describe accurately the type of release to which a child respondent in juvenile court is entitled.

Also in item (2) of this section, the defined term "child respondent" is substituted for the former reference to "child" to conform to the terminology used in this title describing children who appear before juvenile court.

Defined terms: "Child respondent" § 11-101

"Delinquent act" § 11-101

11-204. COMPETENCE EXAMINATION NOTIFICATION.

AS PROVIDED UNDER § 3-122 OF THIS ARTICLE, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL NOTIFY A VICTIM OF A CRIME OF VIOLENCE OR A VICTIM OR VICTIM'S REPRESENTATIVE WHO HAS FILED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS TITLE WHENEVER THE DEPARTMENT RECEIVES A COURT ORDER TO EXAMINE A DEFENDANT TO DETERMINE WHETHER THE DEFENDANT WAS CRIMINALLY RESPONSIBLE FOR THE ALLEGED CRIME OR IS COMPETENT TO STAND TRIAL.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 769.

Defined term: "Crime of violence" § 1-101

11-205. RESTRICTIONS ON RELEASE OF INFORMATION.

ON REQUEST OF THE STATE, A VICTIM OF OR WITNESS TO A FELONY OR DELINQUENT ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT, OR A VICTIM'S REPRESENTATIVE, A JUDGE, STATE'S ATTORNEY, DISTRICT COURT COMMISSIONER, INTAKE OFFICER, OR LAW ENFORCEMENT OFFICER MAY WITHHOLD THE ADDRESS OR TELEPHONE NUMBER OF THE VICTIM, VICTIM'S REPRESENTATIVE,

OR WITNESS BEFORE THE TRIAL OR ADJUDICATORY HEARING IN A JUVENILE DELINQUENCY PROCEEDING, UNLESS A JUDGE DETERMINES THAT GOOD CAUSE HAS BEEN SHOWN FOR THE RELEASE OF THE INFORMATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 771.

Defined term: "Delinquent act" § 11-101

SUBTITLE 3. TRIAL PROCEDURES.

11-301. RELEASE OF ADDRESS OR PHONE NUMBER OF VICTIM OR WITNESS.

ON MOTION OF THE STATE OR ON REQUEST OF A VICTIM OR WITNESS, DURING A CRIMINAL TRIAL OR A JUVENILE DELINQUENCY ADJUDICATORY HEARING, A COURT MAY PROHIBIT THE RELEASE OF THE ADDRESS OR TELEPHONE NUMBER OF THE VICTIM OR WITNESS UNLESS THE COURT DETERMINES THAT GOOD CAUSE IS SHOWN FOR THE RELEASE OF THE INFORMATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 772.

The reference to a "juvenile delinquency" adjudicatory hearing is added to conform to the terminology used in § 11-302 of this subtitle.

The reference to a "court" is substituted for the former reference to a "judge" to conform to the terminology used throughout this article.

11-302. PRESENCE OF VICTIM OR REPRESENTATIVE AT TRIAL.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "REPRESENTATIVE" MEANS A PERSON WHO IS DESIGNATED BY:

(I) THE NEXT OF KIN OR GUARDIAN OF A VICTIM WHO IS DECEASED OR DISABLED; OR

(II) THE COURT IN A DISPUTE OVER WHO WILL BE THE REPRESENTATIVE.

(3) "VICTIM" MEANS A PERSON WHO IS THE VICTIM OF A CRIME OR DELINQUENT ACT.

(B) SCOPE OF SECTION.

THIS SECTION APPLIES TO:

(1) A CRIMINAL TRIAL; AND

(2) A JUVENILE DELINQUENCY ADJUDICATORY HEARING THAT IS HELD IN OPEN COURT OR THAT A VICTIM OR REPRESENTATIVE MAY ATTEND UNDER § 3-812 OF THE COURTS ARTICLE.

(C) RIGHT TO BE PRESENT.

EXCEPT AS PROVIDED IN SUBSECTIONS (D) AND (E) OF THIS SECTION:

(1) A REPRESENTATIVE HAS THE RIGHT TO BE PRESENT AT THE TRIAL OF THE DEFENDANT OR JUVENILE DELINQUENCY ADJUDICATORY HEARING OF THE CHILD RESPONDENT; AND

(2) AFTER INITIALLY TESTIFYING, A VICTIM HAS THE RIGHT TO BE PRESENT AT THE TRIAL OF THE DEFENDANT OR JUVENILE DELINQUENCY ADJUDICATORY HEARING OF THE CHILD RESPONDENT.

(D) SEQUESTRATION OF REPRESENTATIVE OR VICTIM.

THE COURT MAY SEQUESTER A REPRESENTATIVE OR, AFTER A VICTIM HAS INITIALLY TESTIFIED, THE VICTIM FROM ANY PART OF THE TRIAL OR JUVENILE DELINQUENCY ADJUDICATORY HEARING ON REQUEST OF THE DEFENDANT, CHILD RESPONDENT, OR THE STATE ONLY AFTER THE COURT DETERMINES, WITH SPECIFIC FINDINGS OF FACT ON THE RECORD, THAT:

(1) THERE IS REASON TO BELIEVE THAT THE VICTIM WILL BE RECALLED OR THE REPRESENTATIVE WILL BE CALLED TO TESTIFY AT THE TRIAL OR JUVENILE DELINQUENCY ADJUDICATORY HEARING; AND

(2) THE PRESENCE OF THE VICTIM OR REPRESENTATIVE WOULD INFLUENCE THE VICTIM'S OR REPRESENTATIVE'S FUTURE TESTIMONY IN A MANNER THAT WOULD MATERIALLY AFFECT A DEFENDANT'S RIGHT TO A FAIR TRIAL OR A CHILD RESPONDENT'S RIGHT TO A FAIR HEARING.

(E) REMOVAL OF REPRESENTATIVE OR VICTIM.

THE COURT MAY REMOVE A VICTIM OR REPRESENTATIVE FROM THE TRIAL OR JUVENILE DELINQUENCY ADJUDICATORY HEARING FOR THE SAME CAUSES AND IN THE SAME MANNER AS THE LAW PROVIDES FOR THE EXCLUSION OR REMOVAL OF A DEFENDANT OR A CHILD RESPONDENT.

(F) EMPLOYMENT PROTECTION.

AS PROVIDED IN § 9-205 OF THE COURTS ARTICLE, A PERSON MAY NOT BE DEPRIVED OF EMPLOYMENT SOLELY BECAUSE OF JOB TIME LOST BECAUSE THE PERSON ATTENDED A PROCEEDING THAT THE PERSON HAS A RIGHT TO ATTEND UNDER THIS SECTION.

(G) CONSTRUCTION OF SECTION.

THIS SECTION DOES NOT LIMIT A VICTIM'S OR REPRESENTATIVE'S RIGHT TO ATTEND A TRIAL OR JUVENILE DELINQUENCY ADJUDICATORY HEARING AS PROVIDED IN § 3-812 OF THE COURTS ARTICLE OR § 11-102 OF THIS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 773(b) through (f) and (a)(1), (3), and (4) and, except for the reference to former Art. 27, § 857, § 778.

In subsection (a)(3) of this section, the former reference to a crime or delinquent act "for which the defendant is being tried or adjudicated" is deleted as surplusage.

In subsection (d)(2) of this section, the former reference to testimony "at the trial or adjudicatory hearing" is deleted as implicit in the reference to "testimony".

In subsection (e) of this section, the former reference to "rules of court" is deleted as unnecessary in light of the comprehensive reference to "law", which includes the Maryland Rules. *See* Md. Constitution, Art. IV, § 18.

The balance of former Art. 27, § 778, is revised at § 11-102(b) of this title.

As for the addition of the reference to "child respondent" throughout this section, *see* General Revisor's Note to title.

Defined terms: "Child respondent" § 11-101

"Delinquent act" § 11-101

"Person" § 1-101

11-303. TESTIMONY OF CHILD VICTIM BY CLOSED CIRCUIT TELEVISION.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO A CASE OF ABUSE OF A CHILD UNDER TITLE 5, SUBTITLE 7 OF THE FAMILY LAW ARTICLE OR ARTICLE 27, § 35C OF THE CODE.

(B) IN GENERAL.

A COURT MAY ORDER THAT THE TESTIMONY OF A CHILD VICTIM BE TAKEN OUTSIDE THE COURTROOM AND SHOWN IN THE COURTROOM BY CLOSED CIRCUIT TELEVISION IF:

(1) THE COURT DETERMINES THAT TESTIMONY BY THE CHILD VICTIM IN THE PRESENCE OF A DEFENDANT OR A CHILD RESPONDENT WILL RESULT IN THE CHILD VICTIM'S SUFFERING SERIOUS EMOTIONAL DISTRESS SUCH THAT THE CHILD VICTIM CANNOT REASONABLY COMMUNICATE; AND

(2) THE TESTIMONY IS TAKEN DURING THE PROCEEDING.

(C) DETERMINATION BY COURT.

(1) IN DETERMINING WHETHER TESTIMONY BY THE CHILD VICTIM IN THE PRESENCE OF THE DEFENDANT OR CHILD RESPONDENT WILL RESULT IN THE CHILD VICTIM'S SUFFERING SUCH SERIOUS EMOTIONAL DISTRESS THAT THE CHILD CANNOT REASONABLY COMMUNICATE, THE COURT MAY:

(I) OBSERVE AND QUESTION THE CHILD VICTIM INSIDE OR OUTSIDE THE COURTROOM; AND

(II) HEAR TESTIMONY OF A PARENT OR CUSTODIAN OF THE CHILD VICTIM OR OTHER PERSON, INCLUDING A PERSON WHO HAS DEALT WITH THE CHILD VICTIM IN A THERAPEUTIC SETTING.

(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, EACH DEFENDANT OR CHILD RESPONDENT, ONE ATTORNEY FOR A DEFENDANT OR CHILD RESPONDENT, ONE PROSECUTING ATTORNEY, AND ONE ATTORNEY FOR THE CHILD VICTIM MAY BE PRESENT WHEN THE COURT HEARS TESTIMONY ON WHETHER TO ALLOW A CHILD VICTIM TO TESTIFY BY CLOSED CIRCUIT TELEVISION.

(II) IF THE COURT DECIDES TO OBSERVE OR QUESTION THE CHILD VICTIM IN CONNECTION WITH THE DETERMINATION TO ALLOW TESTIMONY BY CLOSED CIRCUIT TELEVISION:

1. THE COURT MAY NOT ALLOW THE DEFENDANT OR CHILD RESPONDENT TO BE PRESENT; BUT

2. ONE ATTORNEY FOR EACH DEFENDANT OR CHILD RESPONDENT, ONE PROSECUTING ATTORNEY, AND ONE ATTORNEY FOR THE CHILD VICTIM MAY BE PRESENT.

(D) PROCEDURES DURING TESTIMONY.

(1) ONLY THE FOLLOWING PERSONS MAY BE IN THE ROOM WITH THE CHILD VICTIM WHEN THE CHILD VICTIM TESTIFIES BY CLOSED CIRCUIT TELEVISION:

(I) ONE PROSECUTING ATTORNEY;

(II) ONE ATTORNEY FOR EACH DEFENDANT OR CHILD RESPONDENT;

(III) ONE ATTORNEY FOR THE CHILD VICTIM;

(IV) THE OPERATORS OF THE CLOSED CIRCUIT TELEVISION EQUIPMENT; AND

(V) SUBJECT TO THE MARYLAND RULES, ANY PERSON WHOSE PRESENCE, IN THE OPINION OF THE COURT, CONTRIBUTES TO THE WELL-BEING OF THE CHILD VICTIM, INCLUDING A PERSON WHO HAS DEALT WITH THE CHILD VICTIM IN A THERAPEUTIC SETTING CONCERNING THE ABUSE.

(2) DURING THE CHILD VICTIM'S TESTIMONY BY CLOSED CIRCUIT TELEVISION, THE COURT AND THE DEFENDANT OR CHILD RESPONDENT SHALL BE IN THE COURTROOM.

(3) THE COURT AND THE DEFENDANT OR CHILD RESPONDENT SHALL BE ALLOWED TO COMMUNICATE WITH THE PERSONS IN THE ROOM WHERE THE CHILD VICTIM IS TESTIFYING BY ANY APPROPRIATE ELECTRONIC METHOD.

(4) (I) IN A JUVENILE DELINQUENCY PROCEEDING OR CRIMINAL PROCEEDING, ONLY ONE PROSECUTING ATTORNEY, ONE ATTORNEY FOR EACH DEFENDANT OR CHILD RESPONDENT, AND THE COURT MAY QUESTION THE CHILD VICTIM.

(II) IN A CHILD IN NEED OF ASSISTANCE CASE, ONLY ONE ATTORNEY FOR EACH PARTY AND THE COURT MAY QUESTION THE CHILD VICTIM.

(E) APPLICABILITY.

THIS SECTION DOES NOT APPLY IF A DEFENDANT OR CHILD RESPONDENT IS WITHOUT COUNSEL.

(F) IDENTIFICATION OF DEFENDANT.

THIS SECTION MAY NOT BE INTERPRETED TO PREVENT A CHILD VICTIM AND A DEFENDANT OR CHILD RESPONDENT FROM BEING IN THE COURTROOM AT THE SAME TIME WHEN THE CHILD VICTIM IS ASKED TO IDENTIFY THE DEFENDANT OR CHILD RESPONDENT.

(G) TWO-WAY CLOSED CIRCUIT TELEVISION.

THIS SECTION DOES NOT ALLOW THE USE OF TWO-WAY CLOSED CIRCUIT TELEVISION OR OTHER PROCEDURE THAT WOULD LET A CHILD VICTIM SEE OR HEAR A DEFENDANT OR CHILD RESPONDENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 774.

Throughout this section, the reference to "court" is substituted for the former reference to "judge" to conform to the terminology used throughout this title.

As for the addition of the reference to "child respondent" in subsections (c), (d), (e), and (f) of this section, *see* General Revisor's Note to title.

In subsections (d) and (f) of this section, the references to a child "victim" are added for clarity.

In subsection (d)(4)(i) of this section, the reference to a juvenile delinquency "proceeding or criminal proceeding" is substituted for the former reference to "criminal or juvenile delinquency case" for consistency

throughout this subtitle.

In subsection (e) of this section, the reference to a defendant or child respondent who "is without counsel" is substituted for the former reference to a defendant "appearing pro se" for clarity.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (g) of this section is revised to protect a child victim from seeing or hearing a defendant or child respondent.

Defined terms: "Child respondent" § 11-101

"Person" § 1-101

"Prosecuting attorney" § 11-101

11-304. OUT OF COURT STATEMENTS OF CERTAIN CHILD VICTIMS.

(A) "STATEMENT" DEFINED.

IN THIS SECTION, "STATEMENT" MEANS:

(1) AN ORAL OR WRITTEN ASSERTION; OR

(2) NONVERBAL CONDUCT INTENDED AS AN ASSERTION, INCLUDING SOUNDS, GESTURES, DEMONSTRATIONS, DRAWINGS, AND SIMILAR ACTIONS.

(B) ADMISSIBILITY.

SUBJECT TO SUBSECTIONS (C), (D), AND (E) OF THIS SECTION, THE COURT MAY ADMIT INTO EVIDENCE IN A JUVENILE COURT PROCEEDING OR IN A CRIMINAL PROCEEDING AN OUT OF COURT STATEMENT TO PROVE THE TRUTH OF THE MATTER ASSERTED IN THE STATEMENT MADE BY A CHILD VICTIM WHO:

(1) IS UNDER THE AGE OF 12 YEARS; AND

(2) IS THE ALLEGED VICTIM OR THE CHILD ALLEGED TO NEED ASSISTANCE IN THE CASE BEFORE THE COURT CONCERNING:

(I) CHILD ABUSE UNDER ARTICLE 27, § 35C OF THE CODE;

(II) RAPE OR SEXUAL OFFENSE UNDER ARTICLE 27, §§ 462 THROUGH 464B OF THE CODE;

(III) ATTEMPTED RAPE OR ATTEMPTED SEXUAL OFFENSE IN THE FIRST DEGREE OR IN THE SECOND DEGREE UNDER ARTICLE 27, § 464F OF THE CODE; OR

(IV) IN A JUVENILE COURT PROCEEDING, ABUSE OR NEGLECT AS DEFINED IN § 5-701 OF THE FAMILY LAW ARTICLE.

(C) RECIPIENTS AND OFFERORS OF STATEMENT.

AN OUT OF COURT STATEMENT MAY BE ADMISSIBLE UNDER THIS SECTION ONLY IF THE STATEMENT WAS MADE TO AND IS OFFERED BY A PERSON ACTING LAWFULLY IN THE COURSE OF THE PERSON'S PROFESSION WHEN THE STATEMENT WAS MADE WHO IS:

(1) A PHYSICIAN;

(2) A PSYCHOLOGIST;

(3) A NURSE;

(4) A SOCIAL WORKER; OR

(5) A PRINCIPAL, VICE PRINCIPAL, TEACHER, OR SCHOOL COUNSELOR AT A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY SCHOOL, OR SECONDARY SCHOOL.

(D) CONDITIONS PRECEDENT.

(1) UNDER THIS SECTION, AN OUT OF COURT STATEMENT BY A CHILD VICTIM MAY COME INTO EVIDENCE TO PROVE THE TRUTH OF THE MATTER ASSERTED IN THE STATEMENT:

(I) IF THE STATEMENT IS NOT ADMISSIBLE UNDER ANY OTHER HEARSAY EXCEPTION; AND

(II) REGARDLESS OF WHETHER THE CHILD VICTIM TESTIFIES.

(2) IF THE CHILD VICTIM DOES NOT TESTIFY, THE CHILD VICTIM'S OUT OF COURT STATEMENT WILL BE ADMISSIBLE ONLY IF THERE IS CORROBORATIVE EVIDENCE THAT:

(I) THE DEFENDANT HAD THE OPPORTUNITY TO COMMIT THE ALLEGED CRIME; OR

(II) THE CHILD RESPONDENT HAD THE OPPORTUNITY TO COMMIT THE ALLEGED ABUSE OR NEGLECT.

(3) TO PROVIDE THE DEFENDANT OR CHILD RESPONDENT WITH AN OPPORTUNITY TO PREPARE A RESPONSE TO THE STATEMENT, THE PROSECUTING ATTORNEY SHALL SERVE ON THE DEFENDANT OR CHILD RESPONDENT AND THE ATTORNEY FOR THE DEFENDANT OR CHILD RESPONDENT, WITHIN A REASONABLE TIME BEFORE THE JUVENILE COURT PROCEEDING AND AT LEAST 20 DAYS BEFORE THE CRIMINAL PROCEEDING IN WHICH THE STATEMENT IS TO BE OFFERED INTO EVIDENCE, NOTICE OF:

(I) THE STATE'S INTENTION TO INTRODUCE THE STATEMENT; AND

(II) THE CONTENT OF THE STATEMENT.

(4) (I) THE DEFENDANT OR CHILD RESPONDENT MAY DEPOSE A WITNESS WHO WILL TESTIFY UNDER THIS SECTION.

(II) UNLESS THE STATE AND THE DEFENDANT OR CHILD RESPONDENT AGREE OR THE COURT ORDERS OTHERWISE, THE DEFENDANT OR CHILD RESPONDENT SHALL FILE A NOTICE OF DEPOSITION:

1. IN A CRIMINAL PROCEEDING, AT LEAST 5 DAYS BEFORE THE DATE OF THE DEPOSITION; OR

2. IN A JUVENILE COURT PROCEEDING, WITHIN A REASONABLE TIME BEFORE THE DATE OF THE DEPOSITION.

(III) EXCEPT WHERE INCONSISTENT WITH THIS PARAGRAPH, MARYLAND RULE 4-261 APPLIES TO A DEPOSITION TAKEN UNDER THIS PARAGRAPH.

(E) PARTICULARIZED GUARANTEES OF TRUSTWORTHINESS.

(1) A CHILD VICTIM'S OUT OF COURT STATEMENT IS ADMISSIBLE UNDER THIS SECTION ONLY IF THE STATEMENT HAS PARTICULARIZED GUARANTEES OF TRUSTWORTHINESS.

(2) TO DETERMINE WHETHER THE STATEMENT HAS PARTICULARIZED GUARANTEES OF TRUSTWORTHINESS UNDER THIS SECTION, THE COURT SHALL CONSIDER, BUT IS NOT LIMITED TO, THE FOLLOWING FACTORS:

(I) THE CHILD VICTIM'S PERSONAL KNOWLEDGE OF THE EVENT;

(II) THE CERTAINTY THAT THE STATEMENT WAS MADE;

(III) ANY APPARENT MOTIVE TO FABRICATE OR EXHIBIT PARTIALITY BY THE CHILD VICTIM, INCLUDING INTEREST, BIAS, CORRUPTION, OR COERCION;

(IV) WHETHER THE STATEMENT WAS SPONTANEOUS OR DIRECTLY RESPONSIVE TO QUESTIONS;

(V) THE TIMING OF THE STATEMENT;

(VI) WHETHER THE CHILD VICTIM'S YOUNG AGE MAKES IT UNLIKELY THAT THE CHILD VICTIM FABRICATED THE STATEMENT THAT REPRESENTS A GRAPHIC, DETAILED ACCOUNT BEYOND THE CHILD VICTIM'S EXPECTED KNOWLEDGE AND EXPERIENCE;

(VII) THE APPROPRIATENESS OF THE TERMINOLOGY OF THE STATEMENT TO THE CHILD VICTIM'S AGE;

(VIII) THE NATURE AND DURATION OF THE ABUSE OR NEGLECT;

(IX) THE INNER CONSISTENCY AND COHERENCE OF THE STATEMENT;

(X) WHETHER THE CHILD VICTIM WAS SUFFERING PAIN OR DISTRESS WHEN MAKING THE STATEMENT;

(XI) WHETHER EXTRINSIC EVIDENCE EXISTS TO SHOW THE DEFENDANT OR CHILD RESPONDENT HAD AN OPPORTUNITY TO COMMIT THE ACT COMPLAINED OF IN THE CHILD VICTIM'S STATEMENT;

(XII) WHETHER THE STATEMENT WAS SUGGESTED BY THE USE OF LEADING QUESTIONS; AND

(XIII) THE CREDIBILITY OF THE PERSON TESTIFYING ABOUT THE STATEMENT.

(F) ROLE OF COURT.

IN A HEARING OUTSIDE OF THE PRESENCE OF THE JURY OR BEFORE THE JUVENILE COURT PROCEEDING, THE COURT SHALL:

(1) MAKE A FINDING ON THE RECORD AS TO THE SPECIFIC GUARANTEES OF TRUSTWORTHINESS THAT ARE IN THE STATEMENT; AND

(2) DETERMINE THE ADMISSIBILITY OF THE STATEMENT.

(G) EXAMINATION OF CHILD VICTIM.

(1) IN MAKING A DETERMINATION UNDER SUBSECTION (F) OF THIS SECTION, THE COURT SHALL EXAMINE THE CHILD VICTIM IN A PROCEEDING IN THE JUDGE'S CHAMBERS, THE COURTROOM, OR ANOTHER SUITABLE LOCATION THAT THE PUBLIC MAY NOT ATTEND UNLESS THE CHILD VICTIM:

(I) IS DECEASED; OR

(II) IS ABSENT FROM THE JURISDICTION FOR GOOD CAUSE SHOWN OR THE STATE HAS BEEN UNABLE TO PROCURE THE CHILD VICTIM'S PRESENCE BY SUBPOENA OR OTHER REASONABLE MEANS.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, ANY DEFENDANT OR CHILD RESPONDENT, ATTORNEY FOR A DEFENDANT OR CHILD RESPONDENT, AND THE PROSECUTING ATTORNEY MAY BE PRESENT WHEN THE COURT HEARS TESTIMONY ON WHETHER TO ADMIT INTO EVIDENCE THE OUT OF COURT STATEMENT OF A CHILD VICTIM UNDER THIS SECTION.

(3) WHEN THE COURT EXAMINES THE CHILD VICTIM AS PARAGRAPH (1) OF THIS SUBSECTION REQUIRES:

(I) ONE ATTORNEY FOR EACH DEFENDANT OR CHILD RESPONDENT, ONE ATTORNEY FOR THE CHILD VICTIM, AND ONE PROSECUTING ATTORNEY MAY BE PRESENT AT THE EXAMINATION; AND

(II) THE COURT MAY NOT ALLOW A DEFENDANT OR CHILD RESPONDENT TO BE PRESENT AT THE EXAMINATION.

(H) CONSTRUCTION OF SECTION.

(1) THIS SECTION DOES NOT LIMIT THE ADMISSIBILITY OF A STATEMENT UNDER ANY OTHER APPLICABLE HEARSAY EXCEPTION OR RULE OF EVIDENCE.

(2) THIS SECTION DOES NOT PROHIBIT THE COURT IN A JUVENILE COURT PROCEEDING FROM HEARING TESTIMONY IN THE JUDGE'S CHAMBERS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 775.

In subsections (d), (e), and (g) of this section, the reference to a child "victim" is added for clarity.

In subsections (d)(3) and (g)(2) and (3)(i) of this section, the references to a "child respondent" are added to the reference to "defendant" to clarify that these provisions apply to juvenile court as well as to criminal court.

In subsection (d)(3) of this section, the reference to the attorney "for the defendant or child respondent" is added to state expressly what formerly was merely implied - that an attorney for a defendant or child respondent is entitled to receive notice.

In subsection (d)(4)(i) of this section, the reference to a "defendant" is added to clarify that this provision applies to criminal court.

In subsection (d)(4)(ii) of this section, the reference to a "child respondent" is added for clarity.

In subsection (e)(2)(vi) of this section, the reference to a child victim's "expected" knowledge is added for clarity.

In subsection (e)(2)(viii) of this section, the reference to the nature and duration of the abuse "or neglect" is added to conform to the standards used in the Family Law Article. *See, e.g.*, FL §§ 5-702 and 5-704.

In subsections (e)(2)(xi) and (g)(3)(ii) of this section, the references to a "child respondent" are added. *See* General Revisor's Note to title.

In subsection (g)(1) of this section, the phrase "that the public may not attend" is substituted for the former phrase "in camera" for clarity.

Also in subsection (g)(1) of this section, the reference to an examination "in the judge's chambers, the courtroom, or another suitable location" is added to clarify that the former reference to "in camera" was meant to exclude the public and not to limit where the examination occurred.

In subsection (g)(2) of this section, the reference to an attorney for a "child respondent" is added to state what formerly was merely implied - an

attorney for a child respondent may be present when the court hears testimony.

Defined terms: "Child respondent" § 11-101

"Person" § 1-101

"Prosecuting attorney" § 11-101

SUBTITLE 4. SENTENCING PROCEDURES.

11-401. "VICTIM'S REPRESENTATIVE" DEFINED.

IN THIS SUBTITLE, "VICTIM'S REPRESENTATIVE" MEANS:

(1) A MEMBER OF THE VICTIM'S IMMEDIATE FAMILY; OR

(2) ANOTHER FAMILY MEMBER, THE PERSONAL REPRESENTATIVE, OR GUARDIAN OF THE VICTIM IF THE VICTIM IS:

(I) DECEASED;

(II) UNDER A MENTAL, PHYSICAL, OR LEGAL DISABILITY; OR

(III) OTHERWISE UNABLE TO PROVIDE THE REQUIRED INFORMATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 780A(a) and 780(a)(1) and (3).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the language of this section differs from the definition of "victim's representative" under § 11-705 of this title, which was based on the provisions enacted by Ch. 392, Acts of 2000.

11-402. VICTIM IMPACT STATEMENT IN PRESENTENCE INVESTIGATION.

(A) WHEN REQUIRED.

A PRESENTENCE INVESTIGATION THAT THE DIVISION OF PAROLE AND PROBATION COMPLETES UNDER § 6-112 OF THE CORRECTIONAL SERVICES ARTICLE OR A PREDISPOSITION INVESTIGATION THAT THE DEPARTMENT OF JUVENILE JUSTICE COMPLETES SHALL INCLUDE A VICTIM IMPACT STATEMENT IF:

(1) THE DEFENDANT OR CHILD RESPONDENT CAUSED PHYSICAL, PSYCHOLOGICAL, OR ECONOMIC INJURY TO THE VICTIM IN COMMITTING A FELONY OR DELINQUENT ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT; OR

(2) THE DEFENDANT CAUSED SERIOUS PHYSICAL INJURY OR DEATH TO THE VICTIM IN COMMITTING A MISDEMEANOR.

(B) ABSENCE OF PRESENTENCE INVESTIGATION ORDER.

IF THE COURT DOES NOT ORDER A PRESENTENCE INVESTIGATION OR PREDISPOSITION INVESTIGATION, THE PROSECUTING ATTORNEY OR THE VICTIM MAY PREPARE A VICTIM IMPACT STATEMENT TO BE SUBMITTED TO THE COURT AND THE DEFENDANT OR CHILD RESPONDENT IN ACCORDANCE WITH THE MARYLAND RULES.

(C) NOTIFICATION BY PROSECUTING ATTORNEY.

(1) THE PROSECUTING ATTORNEY SHALL NOTIFY A VICTIM WHO HAS FILED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS TITLE OF THE VICTIM'S RIGHT TO SUBMIT A VICTIM IMPACT STATEMENT TO THE COURT IN A TRANSFER HEARING UNDER § 4-202 OF THIS ARTICLE OR A WAIVER HEARING UNDER § 3-817 OF THE COURTS ARTICLE.

(2) THIS SUBSECTION DOES NOT PRECLUDE A VICTIM WHO HAS NOT FILED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS TITLE FROM SUBMITTING A VICTIM IMPACT STATEMENT TO THE COURT.

(3) THE COURT MAY CONSIDER A VICTIM IMPACT STATEMENT IN DETERMINING WHETHER TO TRANSFER JURISDICTION UNDER § 4-202 OF THIS ARTICLE OR WAIVE JURISDICTION UNDER § 3-817 OF THE COURTS ARTICLE.

(D) CONSIDERATION OF STATEMENT.

THE COURT SHALL CONSIDER THE VICTIM IMPACT STATEMENT IN DETERMINING THE APPROPRIATE SENTENCE OR DISPOSITION AND IN ENTERING A JUDGMENT OF RESTITUTION FOR THE VICTIM UNDER § 11-603 OF THIS TITLE.

(E) STATEMENT OF CONTENTS.

A VICTIM IMPACT STATEMENT FOR A CRIME OR DELINQUENT ACT SHALL:

(1) IDENTIFY THE VICTIM;

(2) ITEMIZE ANY ECONOMIC LOSS SUFFERED BY THE VICTIM;

(3) IDENTIFY ANY PHYSICAL INJURY SUFFERED BY THE VICTIM AND DESCRIBE THE SERIOUSNESS AND ANY PERMANENT EFFECTS OF THE INJURY;

(4) DESCRIBE ANY CHANGE IN THE VICTIM'S PERSONAL WELFARE OR FAMILIAL RELATIONSHIPS;

(5) IDENTIFY ANY REQUEST FOR PSYCHOLOGICAL SERVICES INITIATED BY THE VICTIM OR THE VICTIM'S FAMILY;

(6) IDENTIFY ANY REQUEST BY THE VICTIM TO PROHIBIT THE DEFENDANT OR CHILD RESPONDENT FROM HAVING CONTACT WITH THE VICTIM AS A CONDITION OF PROBATION, PAROLE, MANDATORY SUPERVISION, WORK RELEASE, OR ANY OTHER JUDICIAL OR ADMINISTRATIVE RELEASE OF THE DEFENDANT OR CHILD RESPONDENT; AND

(7) CONTAIN ANY OTHER INFORMATION RELATED TO THE IMPACT ON THE VICTIM OR THE VICTIM'S FAMILY THAT THE COURT REQUIRES.

(F) DECEASED OR DISABLED VICTIM.

IF THE VICTIM IS DECEASED, UNDER A MENTAL, PHYSICAL, OR LEGAL DISABILITY, OR OTHERWISE UNABLE TO PROVIDE THE INFORMATION REQUIRED UNDER THIS SECTION, THE INFORMATION MAY BE OBTAINED FROM THE VICTIM'S REPRESENTATIVE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 781(b) through (g).

In subsections (b) and (c) of this section, the defined term "prosecuting attorney" is substituted for the former narrower reference to a "State's Attorney" to reflect that, in practice, attorneys other than a State's Attorney may prosecute cases and thus have victim notification responsibilities.

In subsection (e) of this section, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used in this section.

In subsection (f) of this section, the former phrase "as may be necessary" is deleted as surplusage.

Also in subsection (f) of this section, the former reference to a "committee" is deleted as obsolete.

Also in subsection (f) of this section, the former references to "guardian" and "family members" are deleted as included in the defined term "victim's representative".

Defined terms: "Child respondent" § 11-101

"Delinquent act" § 11-101

"Prosecuting attorney" § 11-101

"Victim's representative" § 11-401

11-403. RIGHT OF VICTIM OR VICTIM'S REPRESENTATIVE TO ADDRESS COURT DURING SENTENCING OR DISPOSITION HEARING.

(A) "SENTENCING OR DISPOSITION HEARING" DEFINED.

IN THIS SECTION, "SENTENCING OR DISPOSITION HEARING" MEANS A HEARING AT WHICH THE IMPOSITION OF A SENTENCE, DISPOSITION IN A JUVENILE COURT PROCEEDING, OR ALTERATION OF A SENTENCE OR DISPOSITION IN A JUVENILE COURT PROCEEDING IS CONSIDERED.

(B) IN GENERAL.

IN THE SENTENCING OR DISPOSITION HEARING THE COURT:

(1) IF PRACTICABLE, SHALL ALLOW THE VICTIM OR THE VICTIM'S REPRESENTATIVE TO ADDRESS THE COURT UNDER OATH BEFORE THE IMPOSITION OF SENTENCE OR OTHER DISPOSITION:

(I) AT THE REQUEST OF THE PROSECUTING ATTORNEY; OR

(II) IF THE VICTIM HAS FILED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS TITLE; AND

(2) MAY ALLOW THE VICTIM OR THE VICTIM'S REPRESENTATIVE TO ADDRESS THE COURT UNDER OATH BEFORE THE IMPOSITION OF SENTENCE OR OTHER DISPOSITION AT THE REQUEST OF THE VICTIM OR THE VICTIM'S REPRESENTATIVE.

(C) CROSS-EXAMINATION OF VICTIM OR VICTIM'S REPRESENTATIVE.

(1) IF THE VICTIM OR THE VICTIM'S REPRESENTATIVE IS ALLOWED TO ADDRESS THE COURT, THE DEFENDANT OR CHILD RESPONDENT MAY CROSS-EXAMINE THE VICTIM OR THE VICTIM'S REPRESENTATIVE.

(2) THE CROSS-EXAMINATION IS LIMITED TO THE FACTUAL STATEMENTS MADE TO THE COURT.

(D) RIGHT NOT TO ADDRESS COURT.

(1) A VICTIM OR THE VICTIM'S REPRESENTATIVE HAS THE RIGHT NOT TO ADDRESS THE COURT AT THE SENTENCING OR DISPOSITION HEARING.

(2) A PERSON MAY NOT ATTEMPT TO COERCE A VICTIM OR THE VICTIM'S REPRESENTATIVE TO ADDRESS THE COURT AT THE SENTENCING OR DISPOSITION HEARING.

(E) DENIAL OF RIGHTS.

A VICTIM OR VICTIM'S REPRESENTATIVE WHO HAS BEEN DENIED A RIGHT PROVIDED UNDER THIS SECTION MAY FILE AN APPLICATION FOR LEAVE TO APPEAL IN THE MANNER PROVIDED UNDER § 11-103 OF THIS TITLE.

REVISOR'S NOTE: Subsections (a), (b), (c), and (d) are new language derived without substantive change from former Art. 27, § 780(b), (c), (d), and (a)(1) and (2).

Subsection (e) of this section is new language added to provide a cross-reference to the victim's right to file a leave to appeal a denial of a right provided in this section.

In subsection (a) of this section, the reference to a juvenile "court" proceeding is substituted for the former reference to a juvenile "delinquency" proceeding to conform to the terminology used throughout

this subtitle.

In the introductory language of subsection (b) of this section, the references to a criminal "proceeding" or a juvenile court "proceeding" are substituted for the former reference to a criminal or juvenile "case" to conform to the terminology used throughout this title.

In subsection (b)(1) and (2) of this section, the former references to an "affirmation" are deleted in light of Art. 1, § 9, which provides that if an oath is required in the Code, an affirmation made by a person conscientiously scrupulous of taking an oath is sufficient.

In subsection (b)(1)(i) of this section, the defined term "prosecuting attorney" is substituted for the former narrower reference to "State's Attorney" to reflect that, in practice, attorneys other than a State's Attorney may prosecute cases and thus may request a victim or victim's representative to address the court.

In subsection (c) of this section, the reference to "court" is substituted for the former reference to a "judge" to conform to the terminology used throughout this title.

Also in subsection (c) of this section, the former references to a "jury" are deleted because, with the exception of death penalty cases, a court does the sentencing or disposition. *See* § 11-404 of this subtitle for provisions on addressing the jury in a death penalty case.

Defined terms: "Child respondent" § 11-101

"Person" § 1-101

"Prosecuting attorney" § 11-101

"Victim's representative" § 11-401

11-404. RIGHT OF VICTIM'S REPRESENTATIVE TO ADDRESS JURY IN DEATH PENALTY PROCEEDING.

(A) IN GENERAL.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A VICTIM'S REPRESENTATIVE HAS THE SAME RIGHT TO ADDRESS THE JURY IN A DEATH PENALTY SENTENCING AS A VICTIM'S REPRESENTATIVE HAS TO ADDRESS A COURT UNDER § 11-403 OF THIS SUBTITLE.

(B) HEARINGS; LIMITATIONS.

(1) ON MOTION OF A DEFENDANT OR THE STATE OR ON THE COURT'S OWN INITIATIVE, THE COURT IN A DEATH PENALTY SENTENCING MAY HOLD A HEARING OUTSIDE OF THE PRESENCE OF THE JURY TO DETERMINE WHETHER A VICTIM'S REPRESENTATIVE MAY PRESENT AN ORAL ADDRESS TO THE JURY.

(2) IF THE COURT DETERMINES THAT PART OF A VICTIM'S REPRESENTATIVE'S ORAL ADDRESS WILL BE SO UNDULY PREJUDICIAL THAT IT RENDERS THE JURY SENTENCING PROCEEDING FUNDAMENTALLY UNFAIR, THE COURT MAY LIMIT THE PREJUDICIAL PORTION OF THE ORAL ADDRESS.

(C) RIGHT TO HEARING DENIED.

A VICTIM'S REPRESENTATIVE WHO HAS BEEN DENIED A RIGHT PROVIDED UNDER THIS SECTION MAY FILE AN APPLICATION FOR LEAVE TO APPEAL IN THE MANNER PROVIDED UNDER § 11-103 OF THIS TITLE.

REVISOR'S NOTE: Subsections (a) and (b) of this section are new language derived without substantive change from former Art. 27, § 780A(b) and (c).

Subsection (c) of this section is new language added to provide a cross-reference to the right of a victim's representative to file a leave to appeal a denial of a right provided in this section.

In subsection (b)(1) of this section, the reference to the court's "initiative" is substituted for the former reference to a "request", because the court is not requesting that a hearing be held but rather, using its own discretion, has decided to hold a hearing.

Defined term: "Victim's representative" § 11-401

SUBTITLE 5. POSTSENTENCING PROCEDURES.

11-501. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 783A(a).

(B) VICTIM.

"VICTIM" MEANS A PERSON WHO SUFFERS DIRECT OR THREATENED PHYSICAL, EMOTIONAL, OR FINANCIAL HARM AS A DIRECT RESULT OF A CRIME OR DELINQUENT ACT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 783A(c), as it related to an individual who suffers harm.

The reference to a "crime" is substituted for the former references to a "felony" to avoid giving the term "victim" an unnaturally narrow meaning. Similarly, the former reference to a delinquent act "that would be a felony if committed by an adult" is deleted. The restrictive quality that the

references to "felony" and to "felony if committed by an adult" signify is more properly expressed as scope provisions. *See* § 11-502 of this subtitle.

The defined term "person" is substituted for the former reference to "individual" to conform to the terminology used throughout this article.

Defined terms: "Delinquent act" § 11-101

"Person" § 1-101

(C) VICTIM'S REPRESENTATIVE.

"VICTIM'S REPRESENTATIVE" INCLUDES:

(1) A FAMILY MEMBER OF A VICTIM WHO IS A MINOR, AN INCOMPETENT, OR A VICTIM OF HOMICIDE; OR

(2) A GUARDIAN OF A MINOR OR AN INCOMPETENT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 783A(c), as it related to family members and guardians of certain victims.

The defined term "victim's representative" is added for clarity.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the language of subsection (c) of this section differs from the definition of "victim's representative" under § 11-104 of this title, which was based on the provisions enacted by Ch. 392, Acts of 2000.

Defined term: "Victim" § 11-501

11-502. SCOPE OF SUBTITLE.

THIS SUBTITLE APPLIES ONLY TO A DEFENDANT WHO IS CHARGED WITH A FELONY OR TO A CHILD RESPONDENT WHO IS ALLEGED TO HAVE COMMITTED A DELINQUENT ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 783A(b).

This section is revised as a restriction on the applicability of this subtitle on defendants and child respondents to avoid defining "defendant" in misleadingly narrow terms.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that this section is not consistent with provisions that this subtitle cross-references. The cross-referenced provisions provide rights in cases of misdemeanors as well as in cases of felonies. This section applies only to a defendant who is charged with a felony or to a child respondent who is alleged to have committed a delinquent act that

would be a felony if committed by an adult.

Defined terms: "Child respondent" § 11-101

"Delinquent act" § 11-101

11-503. NOTICE OF SUBSEQUENT PROCEEDINGS.

(A) "SUBSEQUENT PROCEEDING" DEFINED.

IN THIS SECTION, "SUBSEQUENT PROCEEDING" INCLUDES:

(1) A SENTENCE REVIEW UNDER § 8-102 OF THIS ARTICLE;

(2) A HEARING ON A REQUEST TO HAVE A SENTENCE MODIFIED OR VACATED UNDER THE MARYLAND RULES;

(3) IN A JUVENILE DELINQUENCY PROCEEDING, A REVIEW OF A COMMITMENT ORDER OR OTHER DISPOSITION UNDER THE MARYLAND RULES;

(4) AN APPEAL TO THE COURT OF SPECIAL APPEALS;

(5) AN APPEAL TO THE COURT OF APPEALS; AND

(6) ANY OTHER POSTSENTENCING COURT PROCEEDING.

(B) REQUEST REQUIRED FROM VICTIM OR VICTIM'S REPRESENTATIVE.

FOLLOWING CONVICTION OR ADJUDICATION AND SENTENCING OR DISPOSITION OF A DEFENDANT OR CHILD RESPONDENT, THE STATE'S ATTORNEY SHALL NOTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE OF A SUBSEQUENT PROCEEDING IN ACCORDANCE WITH § 11-104(E) OF THIS TITLE IF:

(1) BEFORE THE STATE'S ATTORNEY DISTRIBUTES NOTIFICATION REQUEST FORMS UNDER § 11-104(C) OF THIS TITLE, THE VICTIM OR VICTIM'S REPRESENTATIVE SUBMITTED TO THE STATE'S ATTORNEY A WRITTEN REQUEST TO BE NOTIFIED OF SUBSEQUENT PROCEEDINGS; OR

(2) AFTER THE STATE'S ATTORNEY DISTRIBUTES NOTIFICATION REQUEST FORMS UNDER § 11-104(C) OF THIS TITLE, THE VICTIM OR VICTIM'S REPRESENTATIVE SUBMITS A NOTIFICATION REQUEST FORM IN ACCORDANCE WITH § 11-104(D) OF THIS TITLE.

(C) DUTIES OF STATE'S ATTORNEY.

(1) THE STATE'S ATTORNEY'S OFFICE SHALL:

(I) NOTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE OF ALL APPEALS TO THE COURT OF SPECIAL APPEALS AND THE COURT OF APPEALS; AND

(II) SEND AN INFORMATION COPY OF THE NOTIFICATION TO THE OFFICE OF THE ATTORNEY GENERAL.

(2) AFTER THE INITIAL NOTIFICATION TO THE VICTIM OR VICTIM'S REPRESENTATIVE OR RECEIPT OF A NOTIFICATION REQUEST FORM, AS DEFINED IN § 11-104 OF THIS TITLE, THE OFFICE OF THE ATTORNEY GENERAL SHALL:

(I) NOTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE OF EACH SUBSEQUENT DATE PERTINENT TO THE APPEAL, INCLUDING DATES OF HEARINGS, POSTPONEMENTS, AND DECISIONS OF THE APPELLATE COURTS; AND

(II) SEND AN INFORMATION COPY OF THE NOTIFICATION TO THE STATE'S ATTORNEY'S OFFICE.

(D) CONTENT OF NOTICE.

A NOTICE SENT UNDER THIS SECTION SHALL INCLUDE THE DATE, THE TIME, THE LOCATION, AND A BRIEF DESCRIPTION OF THE SUBSEQUENT PROCEEDING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 784.

In subsection (a)(3) of this section, the reference to a juvenile delinquency "proceeding" is substituted for the former reference to a juvenile delinquency "case" to conform to the terminology used throughout this title.

In the introductory language of subsection (b) of this section, the reference to "the State's Attorney" is added to make explicit that which only was implied in the former law -- the State's Attorney must make notification of a subsequent proceeding under certain circumstances.

In subsection (b) of this section, the former reference to "a felony or delinquent act that would be a felony if committed by an adult" is deleted as unnecessary. *See* § 11-502 of this subtitle.

Also in subsection (b) of this section, the former reference to "in the case of a homicide, a designated family member," is deleted as unnecessary in light of the definition of "victim's representative". *See* § 11-501(c) of this subtitle. Correspondingly, in subsection (c) of this section, the former references to "designated family member" are deleted.

In subsection (b)(2) of this section, the reference to "submits" is substituted for the former reference to "filed" to conform to the terminology used in subsection (b)(1) of this section.

Defined terms: "Child respondent" § 11-101

"Victim" § 11-501

"Victim's representative" § 11-501

11-504. PROCEEDINGS AT PATUXENT INSTITUTION -- NOTICE AND COMMENT.

(A) WORK RELEASE AND LEAVE OF ABSENCE.

BEFORE THE BOARD OF REVIEW FOR PATUXENT INSTITUTION GRANTS WORK RELEASE OR LEAVE OF ABSENCE TO AN ELIGIBLE PERSON, THE BOARD SHALL GIVE THE VICTIM OR VICTIM'S REPRESENTATIVE NOTICE AND OPPORTUNITY FOR COMMENT AS PROVIDED UNDER § 4-303(B) OF THE CORRECTIONAL SERVICES ARTICLE.

(B) RELEASE.

(1) BEFORE THE BOARD OF REVIEW FOR PATUXENT INSTITUTION DECIDES WHETHER TO GRANT PAROLE TO AN ELIGIBLE PERSON, THE BOARD SHALL GIVE THE VICTIM OR VICTIM'S REPRESENTATIVE NOTICE AND THE OPPORTUNITY FOR COMMENT AS PROVIDED UNDER § 4-305(D) OF THE CORRECTIONAL SERVICES ARTICLE.

(2) IF THE BOARD OF REVIEW FOR PATUXENT INSTITUTION PETITIONS A COURT TO SUSPEND OR VACATE THE SENTENCE OF A PERSON WHO HAS SUCCESSFULLY COMPLETED 3 YEARS ON PAROLE WITHOUT VIOLATION AND WHO THE BOARD CONCLUDES IS SAFE TO BE PERMANENTLY RELEASED, THE BOARD SHALL NOTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE AS PROVIDED UNDER § 4-305(F) OF THE CORRECTIONAL SERVICES ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 785.

In subsection (a) of this section, the former reference to leave or release "from Patuxent Institution" is deleted as unnecessary since the Board of Review only has authority in these matters over eligible persons in the Patuxent Institution.

As to the definition of "eligible person", *see* CS § 4-101(e).

Defined terms: "Person" § 1-101

"Victim" § 11-501

"Victim's representative" § 11-501

11-505. DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES -- NOTICE AND COMMENT.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO A VICTIM OR VICTIM'S REPRESENTATIVE WHO:

(1) HAS MADE A WRITTEN REQUEST TO THE DEPARTMENT FOR NOTIFICATION; OR

(2) HAS FILED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS TITLE.

(B) PAROLE RELEASE HEARING.

(1) IF A PAROLE RELEASE HEARING IS SCHEDULED FOR AN INMATE WHO HAS BEEN CONVICTED OF AND SENTENCED FOR A CRIME, THE VICTIM OR VICTIM'S REPRESENTATIVE HAS THE RIGHTS PROVIDED UNDER § 7-801 OF THE CORRECTIONAL SERVICES ARTICLE.

(2) AT A PAROLE RELEASE HEARING, A VICTIM OR VICTIM'S REPRESENTATIVE HAS THE RIGHTS PROVIDED UNDER § 7-304 OF THE CORRECTIONAL SERVICES ARTICLE.

(C) VIOLATION OF PAROLE.

(1) WHENEVER A PERSON WHO WAS CONVICTED OF A VIOLENT CRIME AS DEFINED IN § 7-101 OF THE CORRECTIONAL SERVICES ARTICLE IS FOUND GUILTY OF VIOLATING A CONDITION OF PAROLE, THE DEPARTMENT SHALL NOTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE AS PROVIDED UNDER § 7-804 OF THE CORRECTIONAL SERVICES ARTICLE.

(2) WHENEVER A WARRANT OR SUBPOENA IS ISSUED FOR A PERSON WHO WAS CONVICTED OF A VIOLENT CRIME AS DEFINED IN § 7-101 OF THE CORRECTIONAL SERVICES ARTICLE FOR AN ALLEGED VIOLATION OF A CONDITION OF PAROLE, THE DEPARTMENT SHALL NOTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE AS PROVIDED UNDER § 7-804 OF THE CORRECTIONAL SERVICES ARTICLE.

(D) COMMUTATION, PARDON, OR REMISSION OF SENTENCE.

(1) WHENEVER A PERSON WHO IS SENTENCED IS CONSIDERED FOR A COMMUTATION, PARDON, OR REMISSION OF SENTENCE, THE DEPARTMENT SHALL NOTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE AS PROVIDED UNDER § 7-805(B) AND (F) OF THE CORRECTIONAL SERVICES ARTICLE.

(2) IF THE PERSON DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION WAS CONVICTED OF A VIOLENT CRIME AS DEFINED IN § 7-101 OF THE CORRECTIONAL SERVICES ARTICLE, A VICTIM OR VICTIM'S REPRESENTATIVE HAS THE ADDITIONAL RIGHTS REGARDING SUBMISSION AND CONSIDERATION OF A VICTIM IMPACT STATEMENT PROVIDED UNDER § 7-805(C) AND (D) OF THE CORRECTIONAL SERVICES ARTICLE.

(E) VIOLATION OF MANDATORY SUPERVISION.

(1) WHENEVER A PERSON CONVICTED OF A CRIME OF VIOLENCE IS FOUND GUILTY OF VIOLATING A CONDITION OF MANDATORY SUPERVISION, THE DEPARTMENT SHALL NOTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE AS PROVIDED UNDER § 7-505(B) OF THE CORRECTIONAL SERVICES ARTICLE.

(2) WHENEVER A WARRANT OR SUBPOENA IS ISSUED FOR A PERSON CONVICTED OF A VIOLENT CRIME AS DEFINED IN § 7-101 OF THE CORRECTIONAL SERVICES ARTICLE FOR AN ALLEGED VIOLATION OF A CONDITION OF MANDATORY SUPERVISION, THE DEPARTMENT SHALL NOTIFY THE VICTIM OR VICTIM'S

REPRESENTATIVE AS PROVIDED UNDER § 7-804 OF THE CORRECTIONAL SERVICES ARTICLE.

(F) NOTIFICATION TO VICTIM OF PREDETERMINED PAROLE RELEASE AGREEMENT.

BEFORE ENTERING INTO A PREDETERMINED PAROLE RELEASE AGREEMENT WITH AN INMATE, THE MARYLAND PAROLE COMMISSION SHALL NOTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE AS PROVIDED UNDER § 7-803 OF THE CORRECTIONAL SERVICES ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 786.

In subsections (c)(1), (d)(2), and (e)(2) of this section, the reference to a violent crime "as defined in § 7-101(l) of the Correctional Services Article" is added for clarity.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (e)(1) refers to "a crime of violence", which is defined in § 1-101 of this article to have the meaning found in Art. 27, § 643B. Most of the other provisions dealing with parole and probation matters, however, use the term "violent crime", a defined term in CS § 7-101. The term "violent crime" is broader than Art. 27, § 643B because "violent crime" includes burglary in the first, second, and third degree. The General Assembly may wish to substitute the broader term "violent crime" for "crime of violence" in this section.

Defined terms: "Crime of violence" § 1-101

"Department" § 1-101

"Inmate" § 1-101

"Victim" § 11-501

"Victim's representative" § 11-501

11-506. VICTIM'S RIGHTS AFTER FINDING OF NOT CRIMINALLY RESPONSIBLE.

WHENEVER A PERSON HAS BEEN COMMITTED TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER § 3-112 OF THIS ARTICLE FOR A CRIME OF VIOLENCE AND A VICTIM OF THE CRIME OR A VICTIM'S REPRESENTATIVE HAS SUBMITTED A WRITTEN REQUEST TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE FOR NOTIFICATION OR SUBMITTED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS TITLE, THE VICTIM OR VICTIM'S REPRESENTATIVE HAS THE RIGHTS PROVIDED UNDER § 3-123 OF THIS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 787.

The reference to commitment "to the Department of Health and Mental Hygiene" is added to state expressly what was only implied in the former law.

Defined terms: "Crime of violence" § 1-101

"Person" § 1-101

"Victim" § 11-501

"Victim's representative" § 11-501

11-507. NOTIFICATION OF PROBATION VIOLATION.

THE DEPARTMENT OR THE DEPARTMENT OF JUVENILE JUSTICE SHALL NOTIFY THE VICTIM OR VICTIM'S REPRESENTATIVE OF AN ALLEGED VIOLATION OF A CONDITION OF PROBATION WHENEVER:

(1) A WARRANT, SUBPOENA, OR WRIT OF ATTACHMENT IS ISSUED FOR THE ALLEGED VIOLATION FOR A PERSON WHO WAS CONVICTED OF A VIOLENT CRIME OR WHO WAS ADJUDGED TO HAVE COMMITTED A DELINQUENT ACT THAT WOULD BE A VIOLENT CRIME IF COMMITTED BY AN ADULT; AND

(2) A VICTIM OF THE CRIME OR DELINQUENT ACT OR A VICTIM'S REPRESENTATIVE HAS SUBMITTED A WRITTEN REQUEST TO THE DEPARTMENT FOR NOTIFICATION OR HAS SUBMITTED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 788.

The references to a victim "of the crime or delinquent act" are added to conform to the terminology of this subtitle.

The reference to a "writ of attachment" is added to describe accurately the document issued for persons brought before juvenile court.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that this section was enacted by Chapters 311 and 312 of 1997. The meaning of "violent crime" is uncertain, because there is no definition of "violent crime" in the Article 27 subheading in which these chapters were placed. It seems likely, however, that the definition in CS § 7-101 was intended, but this cannot be proven. "Violent crime" is broader than "crime of violence" as defined in § 1-101 of this article. Besides including any crime listed as a "crime of violence", "violent crime" includes burglary in the first, second, or third degree. The General Assembly may wish to clarify this matter.

Defined terms: "Delinquent act" § 11-101

"Department" § 1-101

"Person" § 1-101

"Victim" § 11-501

"Victim's representative" § 11-501

11-508. NOTIFICATION OF RELEASE FROM CONFINEMENT.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COMMITMENT UNIT" MEANS A UNIT THAT A COURT ORDERS TO RETAIN CUSTODY OF A DEFENDANT OR A CHILD RESPONDENT AND THAT RECEIVES A NOTIFICATION REQUEST FORM UNDER § 11-104(F)(1) OR (G) OF THIS TITLE.

(3) "RELEASE FROM CONFINEMENT" MEANS WORK RELEASE, HOME DETENTION, OR OTHER ADMINISTRATIVE OR STATUTORILY AUTHORIZED RELEASE OF A DEFENDANT OR CHILD RESPONDENT FROM A CONFINEMENT FACILITY.

(4) "WITNESS" MEANS A PERSON WHO:

(I) KNOWS OF FACTS RELATING TO A CRIME OF VIOLENCE OR CONSPIRACY OR SOLICITATION TO COMMIT A CRIME OF VIOLENCE; AND

(II) 1. MAKES A DECLARATION UNDER OATH THAT IS RECEIVED AS EVIDENCE FOR ANY PURPOSE; OR

2. HAS BEEN SERVED WITH A SUBPOENA ISSUED UNDER THE AUTHORITY OF A COURT OF THIS OR ANY OTHER STATE OR OF THE UNITED STATES.

(B) SCOPE OF SECTION.

THIS SECTION APPLIES TO A VICTIM OR VICTIM'S REPRESENTATIVE WHO HAS SUBMITTED A NOTIFICATION REQUEST FORM UNDER § 11-104 OF THIS TITLE.

(C) WRITTEN REQUEST FOR NOTIFICATION BY WITNESS.

THIS SECTION APPLIES IF A WITNESS REQUESTS IN WRITING THAT A COMMITMENT UNIT NOTIFY THE WITNESS IN WRITING OF THE RELEASE FROM CONFINEMENT OF A DEFENDANT OR CHILD RESPONDENT.

(D) REQUIREMENTS OF NOTIFICATION.

ON RECEIPT OF A NOTIFICATION REQUEST FORM UNDER § 11-104(F)(1) OR (G) OF THIS TITLE OR A WRITTEN REQUEST FROM A WITNESS FOR NOTIFICATION, A COMMITMENT UNIT, IF PRACTICABLE, SHALL NOTIFY THE VICTIM, VICTIM'S REPRESENTATIVE, OR WITNESS OF:

(1) RECEIPT OF THE NOTIFICATION REQUEST FORM;

(2) THE DATE WHEN THE DEFENDANT OR CHILD RESPONDENT WAS PLACED IN THE CUSTODY OF THE COMMITMENT UNIT;

(3) HOW TO CHANGE THE ADDRESS TO RECEIVE NOTICE FOR THE VICTIM, VICTIM'S REPRESENTATIVE, WITNESS, OR THE PERSON TO RECEIVE NOTICE FOR THE VICTIM; AND

(4) HOW TO ELECT NOT TO RECEIVE FUTURE NOTICES.

(E) WHEN NOTICE REQUIRED.

THE COMMITMENT UNIT SHALL NOTIFY A VICTIM, VICTIM'S REPRESENTATIVE, OR WITNESS, IN ADVANCE IF PRACTICABLE, IF ANY OF THE FOLLOWING EVENTS OCCUR CONCERNING THE DEFENDANT OR CHILD RESPONDENT:

(1) AN ESCAPE;

(2) A RECAPTURE;

(3) A TRANSFER TO ANOTHER COMMITMENT UNIT;

(4) A RELEASE FROM CONFINEMENT AND ANY CONDITIONS ATTACHED TO THE RELEASE; AND

(5) THE DEATH OF THE DEFENDANT OR CHILD RESPONDENT.

(F) DISCLOSURE OF ADDRESS OR PHONE NUMBER PROHIBITED.

A COMMITMENT UNIT MAY NOT DISCLOSE TO A DEFENDANT OR CHILD RESPONDENT THE ADDRESS OR TELEPHONE NUMBER OF A WITNESS, VICTIM, VICTIM'S REPRESENTATIVE, OR PERSON WHO RECEIVES NOTICE FOR THE VICTIM.

(G) IMMUNITY FROM LIABILITY.

AN ELECTED PUBLIC OFFICIAL, PUBLIC EMPLOYEE, OR PUBLIC UNIT HAS THE IMMUNITY DESCRIBED IN §§ 5-302 AND 5-522 OF THE COURTS ARTICLE REGARDING CIVIL LIABILITY FOR DAMAGES ARISING OUT OF AN ACTION RELATING TO THIS SECTION, UNLESS THE OFFICIAL, EMPLOYEE, OR UNIT ACTS WITH GROSS NEGLIGENCE OR IN BAD FAITH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 789.

In subsection (a)(2) of this section, the defined term "[c]ommitment unit" is substituted for the former defined term commitment "agency" to conform to the terminology of other revised articles of the Code. Correspondingly, the reference to a "unit" is substituted for the former reference to a "department or facility". Similarly, in subsection (g) of this section, the reference to public "unit" is substituted for the former reference to public "agency".

In subsection (a)(4) of this section, the former references to a crime of violence "as defined under § 643B of this article [former Article 27]" are deleted as surplusage in light of the definition of crime of violence in § 1-101 of this article.

In subsection (a)(4)(i) of this section, the former reference to "the existence" of facts is deleted as unnecessary in light of the reference to "facts".

Subsection (b) of this section is revised as a restriction on the applicability

of this section on victims to avoid confusion resulting from the fact that "victim" is already defined for this subtitle. *See* § 11-501(b) of this subtitle.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (c) of this section is silent as to whether a witness who seeks notification of a defendant's release from confinement may use the victim's notification request form and, if so, who distributes the forms to witnesses. The General Assembly may wish to clarify this matter.

Defined terms: "Child respondent" § 11-101

"Crime of violence" § 1-101

"Defendant" § 11-101

"Victim" § 11-501

"Victim's representative" § 11-501

SUBTITLE 6. RESTITUTION AND OTHER PAYMENTS.

PART I. RESTITUTION.

11-601. DEFINED TERMS.

(A) IN GENERAL.

IN PART I OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 805A(a).

The former qualification "unless the context of their use indicates otherwise" is deleted as an unnecessary statement of a standard rule of statutory construction that applies to all definitions.

(B) CENTRAL COLLECTION UNIT.

"CENTRAL COLLECTION UNIT" MEANS THE CENTRAL COLLECTION UNIT IN THE DEPARTMENT OF BUDGET AND MANAGEMENT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 810(a).

(C) CHILD.

"CHILD" MEANS A PERSON UNDER THE AGE OF 18 YEARS.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 805A(c).

(D) CRIME.

(1) "CRIME" MEANS AN ACT COMMITTED BY A PERSON IN THE STATE THAT IS A CRIME AS DEFINED:

(I) AT COMMON LAW;

(II) IN ARTICLE 27;

(III) IN THIS ARTICLE; OR

(IV) UNDER § 3-218, § 3-305(C)(2), § 3-409(A) OR (C), § 3-803(B), § 3-807(I), § 3-808(D), § 3-811(C), § 8-801, § 8-802, § 9-602(E), § 11-702(B)(8), § 11-703(D)(5)(III), § 11-706(B)(8), § 11-708(B)(8)(II), § 11-711(H)(2), § 11-712(C)(6)(II), § 11-714(C)(6), § 11-715(G)(2), § 11-716(H)(2), § 11-723(B)(8), OR § 11-726 OF THE CORRECTIONAL SERVICES ARTICLE.

(2) "CRIME" INCLUDES A VIOLATION OF THE TRANSPORTATION ARTICLE THAT IS PUNISHABLE BY A TERM OF CONFINEMENT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 805A(e), except as it related to delinquent acts.

In item (1)(iii) of this subsection, the phrase "in this article" is added to reflect that some provisions that formerly were in Article 27 are revised in this article.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the definition of "crime" in this subsection is cumbersome and too narrow. Some serious prohibited acts do not fall under the definition of crime in this subsection because they appear elsewhere in the Code. Child abduction by a relative, for example, appears at FL § 9-304. The General Assembly may wish to substantively revise the definition of "crime".

Defined term: "Person" § 1-101

(E) DEFENDANT.

"DEFENDANT" MEANS A PERSON:

(1) WHO HAS RECEIVED PROBATION BEFORE JUDGMENT;

(2) WHO HAS BEEN FOUND GUILTY OF A CRIME, EVEN IF THE DEFENDANT HAS BEEN FOUND NOT CRIMINALLY RESPONSIBLE; OR

(3) WHOSE PLEA OF NOLO CONTENDERE TO A CRIME HAS BEEN ACCEPTED BY THE COURT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 805A(f), except as it related to delinquent acts.

Defined terms: "Crime" § 11-601

"Nolo contendere" § 1-101

(F) DIVISION.

"DIVISION" MEANS THE DIVISION OF PAROLE AND PROBATION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 805A(g).

(G) JUDGMENT OF RESTITUTION.

"JUDGMENT OF RESTITUTION" MEANS A DIRECT ORDER FOR PAYMENT OF RESTITUTION OR AN ORDER FOR PAYMENT OF RESTITUTION THAT IS A CONDITION OF PROBATION IN AN ORDER OF PROBATION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 805A(i).

(H) LIABLE PARENT.

"LIABLE PARENT" MEANS A PARENT:

(1) WHOSE CHILD HAS COMMITTED A CRIME OR DELINQUENT ACT; AND

(2) WHO HAS BEEN ORDERED TO PAY RESTITUTION UNDER § 11-604 OF THIS TITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 805A(j).

In item (1) of this subsection, the defined term "delinquent act" is added for clarity. *See* General Revisor's Note to this title.

Defined terms: "Child" § 11-601

"Delinquent act" § 11-101

(I) RESTITUTION OBLIGOR.

"RESTITUTION OBLIGOR" MEANS A DEFENDANT, CHILD RESPONDENT, OR LIABLE PARENT AGAINST WHOM A JUDGMENT OF RESTITUTION HAS BEEN ENTERED.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the phrase "defendant, child respondent, or liable parent".

Defined terms: "Child respondent" § 11-101

"Defendant" § 11-601

"Liable parent" 11-601

(J) VICTIM.

"VICTIM" MEANS:

(1) A PERSON WHO SUFFERS PERSONAL INJURY OR PROPERTY DAMAGE OR LOSS AS A DIRECT RESULT OF A CRIME OR DELINQUENT ACT; OR

(2) IF THE PERSON IS DECEASED, THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE PERSON.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 805A(l)(1).

Item (2) of this subsection states expressly what was only implied in the former law, a personal representative of the estate of a deceased person acts in the place of the person.

As for the addition of the defined term "delinquent act" to the defined term "crime", *see* General Revisor's Note to title.

Defined terms: "Crime" § 11-601

"Delinquent act" § 11-101

"Person" § 1-101

REVISOR'S NOTE TO SECTION:

Former Art. 27, § 805A(d), which defined "[c]ourt" to mean the Court of Appeals, Court of Special Appeals, circuit court, juvenile court, and District Court of Maryland, or any of them, unless the context clearly requires a contrary meaning, is deleted as unnecessary because that definition did not add to the meaning of the word "court" as it is commonly understood.

Former Art. 27, § 805A(h), which defined "[j]udge" to mean a judge of a court, is deleted as unnecessary because that definition did not add to the meaning of the word "judge" as it is commonly understood.

Former Art. 27, § 805A(k), which defined "[p]roperty" to mean both real and personal property, is deleted as unnecessary because that definition did not add to the meaning of the word "property" as it is commonly understood.

11-602. PERSONS WHO MAY ACT ON BEHALF OF VICTIM.

ON CONVICTION, THE FINDING OF A DELINQUENT ACT, ACCEPTANCE OF A PLEA OF NOLO CONTENDERE, OR IMPOSITION OF PROBATION BEFORE JUDGMENT FOR A CRIME UNDER ARTICLE 27, § 267 OF THE CODE, THE FOLLOWING PERSONS MAY ACT ON BEHALF OF A VICTIM:

(1) THE OWNER OF THE BURIAL SITE; AND

(2) A PERSON RELATED BY BLOOD OR MARRIAGE TO THE PERSON BURIED IN THE BURIAL SITE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 805A(l)(2).

This section, which formerly was part of a definition, is revised as a section granting power to certain persons to act on behalf of victims, for clarity.

In item (2) of this section, the defined term "person" is substituted for the former reference to an "individual" to conform to the terminology used throughout this article.

Defined terms: "Delinquent act" § 11-101

"Nolo contendere" § 1-101

"Person" § 1-101

"Victim" § 11-601

11-603. RESTITUTION DETERMINATION.

(A) CONDITIONS FOR JUDGMENT OF RESTITUTION.

A COURT MAY ENTER A JUDGMENT OF RESTITUTION THAT ORDERS A DEFENDANT OR CHILD RESPONDENT TO MAKE RESTITUTION IN ADDITION TO ANY OTHER PENALTY FOR THE COMMISSION OF A CRIME OR DELINQUENT ACT, IF:

(1) AS A DIRECT RESULT OF THE CRIME OR DELINQUENT ACT, PROPERTY OF THE VICTIM WAS STOLEN, DAMAGED, DESTROYED, CONVERTED, OR UNLAWFULLY OBTAINED, OR ITS VALUE SUBSTANTIALLY DECREASED;

(2) AS A DIRECT RESULT OF THE CRIME OR DELINQUENT ACT, THE VICTIM SUFFERED:

(I) ACTUAL MEDICAL, DENTAL, HOSPITAL, COUNSELING, FUNERAL, OR BURIAL EXPENSES;

(II) ANY OTHER DIRECT OUT-OF-POCKET LOSS; OR

(III) LOSS OF EARNINGS;

(3) THE VICTIM INCURRED MEDICAL EXPENSES THAT WERE PAID BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OR ANY OTHER GOVERNMENTAL UNIT;

(4) A GOVERNMENTAL UNIT INCURRED EXPENSES IN REMOVING, TOWING, TRANSPORTING, PRESERVING, STORING, SELLING, OR DESTROYING AN ABANDONED VEHICLE AS DEFINED IN § 25-201 OF THE TRANSPORTATION ARTICLE;

(5) THE CRIMINAL INJURIES COMPENSATION BOARD PAID BENEFITS TO A VICTIM; OR

(6) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OR OTHER GOVERNMENTAL UNIT PAID EXPENSES INCURRED UNDER SUBTITLE 2, PART II OF THIS TITLE.

(B) RIGHT OF VICTIMS TO RESTITUTION.

A VICTIM IS PRESUMED TO HAVE A RIGHT TO RESTITUTION UNDER SUBSECTION (A) OF THIS SECTION IF:

(1) THE VICTIM OR THE STATE REQUESTS RESTITUTION; AND

(2) THE COURT IS PRESENTED WITH COMPETENT EVIDENCE OF ANY ITEM LISTED IN SUBSECTION (A) OF THIS SECTION.

(C) EFFECT OF JUDGMENT OF RESTITUTION.

(1) A JUDGMENT OF RESTITUTION DOES NOT PRECLUDE THE PROPERTY OWNER OR THE 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.

(2) A CIVIL VERDICT SHALL BE REDUCED BY THE AMOUNT PAID UNDER THE CRIMINAL JUDGMENT OF RESTITUTION.

(D) ACTS OF GRAFFITI.

IN MAKING A DISPOSITION ON A FINDING THAT A CHILD AT LEAST 13 YEARS OLD HAS COMMITTED AN ACT OF GRAFFITI UNDER ARTICLE 27, § 111(F) OF THE CODE, THE COURT SHALL ORDER THE CHILD TO PERFORM COMMUNITY SERVICE OR PAY RESTITUTION OR BOTH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 813, 805A(b), and 807(a) and (e).

In subsection (a)(3), (4), and (6) of this section, the reference to a governmental "unit" is substituted for the former reference to a governmental "entity" to conform to the terminology used in other revised articles of the Code.

Throughout this section, the defined term "delinquent act" and the defined term "child respondent" are added for clarity. *See* General Revisor's Note to title.

Defined terms: "Child" § 11-601

"Child respondent" § 11-101

"Crime" § 11-601

"Defendant" § 11-601

"Delinquent act" § 11-101

"Judgment of restitution" § 11-601

"Restitution obligor" § 11-601

"Victim" § 11-601

11-604. PAYERS OF RESTITUTION.

(A) RESTITUTION ALLOWED AGAINST CHILD, PARENT, OR BOTH.

NOTWITHSTANDING ANY OTHER LAW, IF A CHILD IS THE DEFENDANT OR CHILD RESPONDENT, THE COURT MAY ORDER THE CHILD, THE CHILD'S PARENT, OR BOTH TO PAY RESTITUTION TO A VICTIM.

(B) $10,000 LIMIT.

A JUDGMENT OF RESTITUTION FOR $10,000 ISSUED UNDER PART I OF THIS SUBTITLE IS THE ABSOLUTE LIMIT FOR ALL ACTS ARISING OUT OF A SINGLE INCIDENT AND IS THE ABSOLUTE LIMIT AGAINST ONE CHILD, THE CHILD'S PARENT, OR BOTH.

(C) RIGHTS OF PARENTS.

(1) A COURT MAY NOT ENTER A JUDGMENT OF RESTITUTION AGAINST A PARENT UNDER PART I OF THIS SUBTITLE UNLESS THE PARENT HAS BEEN AFFORDED A REASONABLE OPPORTUNITY TO BE HEARD AND TO PRESENT EVIDENCE.

(2) A HEARING UNDER THIS SUBSECTION MAY BE HELD AS PART OF THE SENTENCING OR DISPOSITION HEARING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 807(a)(3).

In subsection (a) of this section, the defined term "child respondent" is added. *See* General Revisor's Note to title.

In subsections (b) and (c)(1) of this section, the references to "Part I of this subtitle" are substituted for the former references to this "section" to reflect the reorganization of former Art. 27, § 807, in the revision of Part I of this subtitle.

In subsection (b) of this section, the former phrase "may not exceed" is deleted as unnecessary in light of the reference to an "absolute limit".

In subsection (c)(1) of this section, the former references to "appropriate" evidence and to evidence "on the parent's behalf" are deleted as surplusage.

In subsection (c)(2) of this section, the reference to this "subsection" is substituted for the former overly broad reference to this "section" for clarity.

Defined terms: "Child" § 11-601

"Child respondent" § 11-101

"Defendant" § 11-601

"Judgment of restitution" § 11-601

"Victim" § 11-601

11-605. WHEN RESTITUTION NEED NOT BE ORDERED.

(A) IN GENERAL.

A COURT NEED NOT ISSUE A JUDGMENT OF RESTITUTION UNDER PART I OF THIS SUBTITLE IF THE COURT FINDS:

(1) THAT THE RESTITUTION OBLIGOR DOES NOT HAVE THE ABILITY TO PAY THE JUDGMENT OF RESTITUTION; OR

(2) THAT THERE ARE EXTENUATING CIRCUMSTANCES THAT MAKE A JUDGMENT OF RESTITUTION INAPPROPRIATE.

(B) REFUSAL OF RESTITUTION.

A COURT THAT REFUSES TO ORDER RESTITUTION THAT IS REQUESTED UNDER PART I OF THIS SUBTITLE SHALL STATE ON THE RECORD THE REASONS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 807(a)(4) and (8).

In subsection (a)(2) of this section, the former reference to a judgment of restitution inappropriate "in a case" is deleted as implicit in the reference to "judgment".

Also in subsection (a)(2) of this section, the former reference to "[g]ood cause to establish" extenuating circumstances is deleted as implicit in the reference to a court finding "that there are" extenuating circumstances.

Defined terms: "Judgment of restitution" § 11-601

"Restitution obligor" § 11-601

11-606. PAYMENT OF RESTITUTION.

(A) RESTITUTION RECIPIENTS.

THE COURT MAY ORDER THAT RESTITUTION BE PAID TO:

(1) THE VICTIM;

(2) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, THE CRIMINAL INJURIES COMPENSATION BOARD, OR ANY OTHER GOVERNMENTAL UNIT; OR

(3) A THIRD-PARTY PAYOR, INCLUDING AN INSURER, OR ANY OTHER PERSON THAT HAS COMPENSATED THE VICTIM FOR A PROPERTY OR PECUNIARY LOSS UNDER PART I OF THIS SUBTITLE.

(B) PRIORITY OF RESTITUTION PAYMENTS.

(1) PAYMENT OF RESTITUTION TO THE VICTIM HAS PRIORITY OVER:

(I) PAYMENT OF RESTITUTION TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OR OTHER GOVERNMENTAL UNIT; AND

(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, PAYMENT OF RESTITUTION TO A THIRD-PARTY PAYOR.

(2) IF THE VICTIM HAS BEEN FULLY COMPENSATED FOR THE VICTIM'S LOSS BY A THIRD-PARTY PAYOR, THE COURT MAY ISSUE A JUDGMENT OF RESTITUTION THAT DIRECTS THE RESTITUTION OBLIGOR TO PAY RESTITUTION TO THE THIRD-PARTY PAYOR.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 807(a)(5) through (7).

In subsections (a)(2) and (b)(1)(i) of this section, the references to a governmental "unit" are substituted for the former references to a governmental "entity". *See* General Revisor's Note to article.

In subsection (a)(3) of this section, the reference to "Part I of this subtitle" is substituted for the former reference to this "subsection" to reflect the reorganization of former Art. 27, § 807, in the revision of Part I of this subtitle.

In subsection (a)(3) of this section, the former reference to a payor "which has made payment to the victim" is deleted as unnecessary in light of the phrase "compensated the victim".

In subsection (b)(1) of this section, the former reference to restitution to the victim "under this subsection" is deleted as surplusage.

Defined terms: "Judgment of restitution" § 11-601

"Person" § 1-101

"Restitution obligor" § 11-601

"Victim" § 11-601

11-607. COMPLIANCE WITH RESTITUTION JUDGMENT.

(A) COMPLIANCE AS REQUIREMENT OR CONDITION.

(1) WHEN A JUDGMENT OF RESTITUTION HAS BEEN ENTERED UNDER § 11-603 OF THIS SUBTITLE, COMPLIANCE WITH THE JUDGMENT OF RESTITUTION:

(I) MAY BE A REQUIREMENT IN THE JUDGMENT OF CONVICTION OR DISPOSITION IN A JUVENILE DELINQUENCY PROCEEDING;

(II) IF WORK RELEASE IS ORDERED, SHALL BE A CONDITION OF WORK RELEASE;

(III) IF PROBATION IS ORDERED, SHALL BE A CONDITION OF PROBATION:

1. IN ADDITION TO A SENTENCE OR DISPOSITION; OR

2. INSTEAD OF A SENTENCE IF THE PROBATION IS ORDERED BEFORE JUDGMENT UNDER § 6-220 OF THIS ARTICLE.

(2) SUBJECT TO FEDERAL LAW, THE DEPARTMENT OR THE DEPARTMENT OF JUVENILE JUSTICE SHALL OBTAIN THE SOCIAL SECURITY NUMBER OF THE RESTITUTION OBLIGOR TO FACILITATE THE COLLECTION OF RESTITUTION.

(B) ADMINISTRATION OF PAYMENTS.

(1) THE RESTITUTION OBLIGOR SHALL MAKE RESTITUTION TO THE DIVISION OR THE DEPARTMENT OF JUVENILE JUSTICE UNDER THE TERMS AND CONDITIONS OF THE JUDGMENT OF RESTITUTION.

(2) THE DIVISION OR THE DEPARTMENT OF JUVENILE JUSTICE:

(I) SHALL KEEP RECORDS OF PAYMENTS OR RETURN OF PROPERTY IN SATISFACTION OF THE JUDGMENT OF RESTITUTION;

(II) SHALL FORWARD PROPERTY OR PAYMENTS IN ACCORDANCE WITH THE JUDGMENT OF RESTITUTION AND PART I OF THIS SUBTITLE TO:

1. THE VICTIM;

2. THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OR OTHER GOVERNMENTAL UNIT; OR

3. THE THIRD-PARTY PAYOR; AND

(III) MAY REQUIRE THE RESTITUTION OBLIGOR TO PAY ADDITIONAL FEES NOT EXCEEDING 2% OF THE AMOUNT OF THE JUDGMENT OF RESTITUTION TO PAY FOR THE ADMINISTRATIVE COSTS OF COLLECTING PAYMENTS OR PROPERTY.

(C) FAILURE TO MAKE RESTITUTION.

(1) WHENEVER A RESTITUTION OBLIGOR FAILS TO MAKE RESTITUTION AS ORDERED, THE DIVISION OR THE DEPARTMENT OF JUVENILE JUSTICE SHALL NOTIFY THE COURT.

(2) THE COURT MAY HOLD A HEARING TO DETERMINE WHETHER THE RESTITUTION OBLIGOR IS IN CONTEMPT OF COURT OR HAS VIOLATED THE TERMS OF THE PROBATION.

(3) IF THE COURT FINDS THAT THE RESTITUTION OBLIGOR INTENTIONALLY BECAME IMPOVERISHED TO AVOID PAYMENT OF THE RESTITUTION, THE COURT MAY FIND THE DEFENDANT OR CHILD RESPONDENT IN CONTEMPT OF COURT OR IN VIOLATION OF PROBATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 807(b) through (d).

In subsection (a)(1)(i) of this section, the reference to a juvenile delinquency "proceeding" is substituted for the former reference to a juvenile delinquency "case" to conform to the terminology used throughout this title.

In subsection (b)(2)(iii) of this section, the reference to the authority of the Division or the Department of Juvenile Justice to "require the restitution obligor to pay additional fees" is substituted for the former reference to the authority to assess fees that "shall be paid by the defendant or liable parent" for brevity.

As for the addition of the defined term "child respondent" in subsection (c)(3) of this section, *see* General Revisor's Note to title.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (c)(3) of this section does not state that the court may find a liable parent in contempt. The General Assembly may wish to add a reference to "liable parent".

Defined terms: "Child respondent" § 11-101

"Defendant" § 11-601

"Department" § 1-101

"Division" § 11-601

"Judgment of restitution" § 11-601

"Restitution obligor" § 11-601

11-608. RECORDING AND INDEXING OF JUDGMENT.

IF A JUDGMENT OF RESTITUTION THAT REQUIRES THE PAYMENT OF MONEY IS RECORDED AND INDEXED IN THE CIVIL JUDGMENT INDEX:

(1) THE JUDGMENT OF RESTITUTION IS A MONEY JUDGMENT IN FAVOR OF THE PERSON, GOVERNMENTAL UNIT, OR THIRD-PARTY PAYOR TO WHOM THE RESTITUTION OBLIGOR HAS BEEN ORDERED TO PAY RESTITUTION;

(2) THE JUDGMENT OF RESTITUTION MAY BE ENFORCED BY THE PERSON, GOVERNMENTAL UNIT, OR THIRD-PARTY PAYOR TO WHOM THE RESTITUTION OBLIGOR HAS BEEN ORDERED TO PAY RESTITUTION IN THE SAME MANNER AS A MONEY JUDGMENT IN A CIVIL ACTION; AND

(3) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED UNDER PART I OF THIS SUBTITLE, A PERSON, GOVERNMENTAL UNIT, OR THIRD-PARTY PAYOR TO WHOM A RESTITUTION OBLIGOR HAS BEEN ORDERED TO PAY RESTITUTION HAS ALL THE RIGHTS AND OBLIGATIONS OF A MONEY JUDGMENT CREDITOR UNDER THE MARYLAND RULES, INCLUDING THE OBLIGATION UNDER MARYLAND RULE 2-626 OR 3-626 ON RECEIVING ALL AMOUNTS DUE UNDER THE JUDGMENT TO FILE A STATEMENT THAT THE JUDGMENT HAS BEEN SATISFIED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 807(f).

The references to a governmental "unit" are substituted for the former references to a governmental "entity" to conform to the terminology of other revised articles.

The defined term "person" is substituted for the former reference to an "individual" to conform to the terminology used throughout this article.

The former reference to a judgment of restitution that is second and indexed "under subsection (g) or subsection (h) of this section" is deleted as unnecessary.

Defined terms: "Judgment of restitution" § 11-601

"Person" § 1-101

"Restitution obligor" § 11-601

11-609. JUDGMENT OF CIRCUIT COURT.

(A) RECORDING AND INDEXING REQUIREMENTS.

A JUDGMENT OF RESTITUTION THAT A CIRCUIT COURT ORDERS UNDER PART I OF THIS SUBTITLE SHALL BE RECORDED AND INDEXED IN THE CIVIL JUDGMENT INDEX BY THE CLERK OF THE CIRCUIT COURT AS A MONEY JUDGMENT AS THE MARYLAND RULES PROVIDE.

(B) JUDGMENT AS LIEN.

A JUDGMENT OF RESTITUTION THAT IS RECORDED AND INDEXED IN THE CIVIL JUDGMENT INDEX AS A MONEY JUDGMENT UNDER SUBSECTION (A) OF THIS SECTION:

(1) IN THE COUNTY OF ENTRY OF THE JUDGMENT, IS A LIEN FROM THE DATE OF ENTRY IN THE AMOUNT OF THE JUDGMENT ON THE RESTITUTION OBLIGOR'S INTEREST IN LAND LOCATED IN THE COUNTY OF THE ENTRY OF THE JUDGMENT; BUT

(2) IN A COUNTY OTHER THAN THE COUNTY OF ENTRY OF THE JUDGMENT, IS A LIEN FROM THE DATE OF RECORDING IN THE AMOUNT OF THE JUDGMENT ON THE RESTITUTION OBLIGOR'S INTEREST IN LAND LOCATED IN THAT COUNTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 807(g).

Defined terms: "County" § 1-101

"Judgment of restitution" § 11-601

"Restitution obligor" § 11-601

11-610. JUDGMENT OF DISTRICT COURT.

(A) REQUIREMENTS FOR RECORDING AND INDEXING.

A JUDGMENT OF RESTITUTION THAT THE DISTRICT COURT ORDERS UNDER PART I OF THIS SUBTITLE MAY NOT BE RECORDED AND INDEXED AS A MONEY JUDGMENT IN THE DISTRICT COURT UNTIL THE PERSON OR GOVERNMENTAL UNIT TO WHOM THE RESTITUTION OBLIGOR HAS BEEN ORDERED TO PAY RESTITUTION FILES WITH THE CLERK OF THE DISTRICT COURT A WRITTEN REQUEST FOR THE RECORDING AND INDEXING.

(B) REQUIREMENTS FOR CLERK OF COURT.

IF A JUDGMENT OF RESTITUTION IS RECORDED AND INDEXED AS A MONEY JUDGMENT UNDER SUBSECTION (A) OF THIS SECTION:

(1) THE CLERK OF THE DISTRICT COURT SHALL IMMEDIATELY FORWARD A NOTICE OF LIEN OF JUDGMENT TO THE CIRCUIT COURT FOR THE COUNTY OF ENTRY OF JUDGMENT; AND

(2) ON THE RECEIPT OF THE WRITTEN STATEMENT FROM THE PERSON OR GOVERNMENTAL UNIT TO WHOM A RESTITUTION OBLIGOR HAS BEEN ORDERED TO PAY RESTITUTION, THE CLERK OF THE DISTRICT COURT SHALL FORWARD A NOTICE OF LIEN OF JUDGMENT TO THE CIRCUIT COURT OF ANY OTHER COUNTY AS THE MARYLAND RULES PROVIDE.

(C) RECORDING AND INDEXING OF LIEN NOTICE.

WHENEVER THE CLERK OF THE DISTRICT COURT FORWARDS A NOTICE OF LIEN UNDER SUBSECTION (B) OF THIS SECTION TO A CIRCUIT COURT, THE CLERK OF THE CIRCUIT COURT SHALL RECORD AND INDEX THE NOTICE OF LIEN AS THE MARYLAND RULES PROVIDE.

(D) JUDGMENT AS LIEN.

(1) A JUDGMENT OF RESTITUTION THAT IS ISSUED BY THE DISTRICT COURT AND IS RECORDED AND INDEXED AS A MONEY JUDGMENT AS ALLOWED BY SUBSECTION (A) OF THIS SECTION IS A LIEN IN THE AMOUNT OF THE JUDGMENT ON THE RESTITUTION OBLIGOR'S INTEREST IN LAND IN A COUNTY.

(2) THE LIEN IS IN EFFECT FROM THE DATE THAT A NOTICE OF LIEN IS RECORDED AND INDEXED IN THE CIRCUIT COURT OF THE COUNTY.

(E) CONTENTS OF NOTICE OF RESTITUTION.

(1) IF THE DISTRICT COURT ENTERS A JUDGMENT OF RESTITUTION UNDER PART I OF THIS SUBTITLE, THE CLERK OF THE DISTRICT COURT SHALL SEND A WRITTEN NOTICE TO THE PERSON OR GOVERNMENTAL UNIT IN WHOSE FAVOR THE JUDGMENT OF RESTITUTION IS ENTERED.

(2) THE NOTICE SHALL SAY IN SUBSTANCE:

"THE DISTRICT COURT HAS AWARDED YOU A JUDGMENT OF RESTITUTION.

"THE JUDGMENT OF RESTITUTION IS NOT A MONEY JUDGMENT UNTIL IT IS RECORDED AND INDEXED IN THE CIVIL JUDGMENT RECORDS OF THE DISTRICT COURT.

"ON YOUR WRITTEN REQUEST AND WITHOUT CHARGE, THE CLERK OF THE DISTRICT COURT WILL RECORD AND INDEX THE JUDGMENT OF RESTITUTION AS A MONEY JUDGMENT. THEN, WITHOUT CHARGE, THE CLERK OF THE DISTRICT COURT WILL ALSO SEND A NOTICE OF LIEN TO THE CIRCUIT COURT FOR THE COUNTY, AND, WITHOUT CHARGE, THE NOTICE OF LIEN WILL BE RECORDED AND INDEXED IN THE CIRCUIT COURT FOR THE COUNTY.

"ON YOUR FURTHER WRITTEN REQUEST, THE CLERK OF THE DISTRICT COURT WILL SEND A NOTICE OF LIEN TO THE CIRCUIT COURT FOR ANY OTHER COUNTY THAT YOU SPECIFY."

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 807(h).

Throughout this section, the reference to a governmental "unit" is substituted for the former reference to a governmental "entity". *See* General Revisor's Note to article. In addition, the former reference to a "third-party payor" is deleted as included in the defined term "person".

In subsection (b)(1) of this section, the reference to the county "of entry of judgment" is substituted for the former reference to "that" county for clarity.

In subsection (d)(2) of this section, the reference to the lien that "is in effect" is added for clarity.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (a) of this section the reference to a "person" is substituted for the former reference to an "individual" so that this subsection applies to corporate entities as well as individuals who are to receive restitution from restitution obligors.

Defined terms: "County" § 1-101

"Judgment of restitution" § 11-601

"Person" § 1-101

"Restitution obligor" § 11-601

11-611. NO COSTS FOR RECORDING OR INDEXING.

A COURT MAY NOT ASSESS COSTS ON A PERSON OR GOVERNMENTAL UNIT TO WHOM A RESTITUTION OBLIGOR HAS BEEN ORDERED TO PAY RESTITUTION:

(1) FOR RECORDING AND INDEXING AN ORDER OF RESTITUTION AS A MONEY JUDGMENT IN THE COURT IN WHICH THE JUDGMENT OF RESTITUTION WAS ISSUED; OR

(2) FOR RECORDING AND INDEXING A NOTICE OF LIEN THAT THE DISTRICT COURT FORWARDS TO A CIRCUIT COURT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 807(i).

In the introductory language of this section, the word "unit" is substituted for the former reference to "entity". *See* General Revisor's Note to article.

Also in the introductory language of this section, the former reference to "third-party payor" is deleted as included in the defined term "person".

Defined terms: "Judgment of restitution" § 11-601

"Person" § 1-101

"Restitution obligor" § 11-601

11-612. TERMINATION OF JUDGMENT OR PROBATION.

(A) REQUIREMENTS OF CLERK OF COURT.

(1) IF A DISTRICT COURT DECIDES TO TERMINATE A JUDGMENT OF RESTITUTION THAT HAS NOT BEEN RECORDED AND INDEXED AS A MONEY JUDGMENT OR TO TERMINATE A PROBATION BEFORE A JUDGMENT OF RESTITUTION HAS BEEN RECORDED AND INDEXED AS A MONEY JUDGMENT, THE COURT SHALL DIRECT THE CLERK OF THE COURT:

(I) TO RECORD AND INDEX THE JUDGMENT OF RESTITUTION AS A MONEY JUDGMENT AND FORWARD A NOTICE OF LIEN TO THE CIRCUIT COURT OF THE COUNTY OF ENTRY OF JUDGMENT BEFORE TERMINATING THE JUDGMENT OF RESTITUTION AND PROBATION; AND

(II) TO FORWARD A WRITTEN NOTICE TO THE PERSON OR GOVERNMENTAL UNIT TO WHOM THE RESTITUTION OBLIGOR WAS ORDERED TO PAY RESTITUTION.

(2) THE WRITTEN NOTICE SHALL STATE THAT:

(I) THE JUDGMENT OF RESTITUTION HAS BEEN RECORDED AND INDEXED AS A MONEY JUDGMENT IN THE DISTRICT COURT; AND

(II) A NOTICE OF LIEN HAS BEEN FORWARDED TO THE CIRCUIT COURT OF THE COUNTY OF ENTRY OF JUDGMENT.

(B) EFFECT OF TERMINATION OR PROBATION.

SUBJECT TO THE MARYLAND RULES, UNLESS A RESTITUTION OBLIGOR PAYS COMPLETE RESTITUTION, TERMINATION OF A JUDGMENT OF RESTITUTION OR

PROBATION BY A COURT DOES NOT AFFECT A MONEY JUDGMENT THAT HAS BEEN RECORDED AND INDEXED UNDER PART I OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 807(j).

In subsection (a)(1) of this section, the former references to a money judgment "under subsection (h) of this section" are deleted as unnecessary.

In subsection (a)(1)(i) and (2)(ii) of this section, the reference to the county "of entry of judgment" is substituted for the former reference to "that" county for clarity.

In subsection (a)(1)(ii) of this section, the reference to a governmental "unit" is substituted for the former reference to a governmental "entity". *See* General Revisor's Note to article.

Also in subsection (a)(1)(ii) of this section, the former reference to a "third-party payor" is deleted as included in the defined term "person".

Defined terms: "County" § 1-101

"Judgment of restitution" § 11-601

"Person" § 1-101

"Restitution obligor" § 11-601

11-613. STAY OF EXECUTION OF SENTENCE.

(A) IN GENERAL.

NOTWITHSTANDING ANY OTHER PROVISION OF PART I OF THIS SUBTITLE AND EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A VICTIM OR OTHER PERSON OR GOVERNMENTAL UNIT MAY NOT EXECUTE ON A JUDGMENT RECORDED AND INDEXED UNDER PART I OF THIS SUBTITLE IF THE RESTITUTION OBLIGOR:

(1) FILES A MOTION UNDER THE MARYLAND RULES TO STAY EXECUTION OF SENTENCE OR THE JUDGMENT OF RESTITUTION THAT HAS NOT BEEN DETERMINED BY THE COURT; AND

(2) CHALLENGES THE CONVICTION, SENTENCE, OR JUDGMENT OF RESTITUTION BY:

(I) FILING AN APPEAL IN A STATE COURT OR IN FEDERAL COURT;

(II) APPLYING FOR LEAVE TO APPEAL FOLLOWING A PLEA OF GUILTY IN A CIRCUIT COURT;

(III) FILING A MOTION FOR EXERCISE OF REVISORY POWER BY THE SENTENCING COURT UNDER THE MARYLAND RULES;

(IV) FILING AN APPLICATION FOR REVIEW OF CRIMINAL SENTENCE UNDER TITLE 8 OF THIS ARTICLE; OR

(V) FILING A NOTICE FOR IN BANC REVIEW UNDER THE MARYLAND RULES.

(B) DELAY ON EXECUTION ON JUDGMENT.

IF A RESTITUTION OBLIGOR FILES AN ACTION DESCRIBED IN SUBSECTION (A) OF THIS SECTION, A PERSON OR GOVERNMENTAL UNIT MAY NOT EXECUTE ON A JUDGMENT RECORDED AND INDEXED UNDER PART I OF THIS SUBTITLE UNTIL A COURT ISSUES A FINAL JUDGMENT THAT UPHOLDS THE CONVICTION, SENTENCE, OR JUDGMENT OF RESTITUTION.

(C) REQUIREMENTS FOR EXECUTION.

A PERSON OR GOVERNMENTAL UNIT MAY NOT EXECUTE ON A JUDGMENT RECORDED AND INDEXED UNDER PART I OF THIS SUBTITLE UNTIL THE TIME HAS EXPIRED IN WHICH A RESTITUTION OBLIGOR MAY FILE ANY OF THE ACTIONS LISTED UNDER SUBSECTION (A)(2)(I) THROUGH (V) OF THIS SECTION.

(D) ENFORCEMENT OF JUDGMENT.

THE JUDGMENT OF RESTITUTION MAY BE ENFORCED IN THE SAME WAY THAT A MONETARY JUDGMENT IS ENFORCED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 807(k).

Throughout this section, the reference to a governmental "unit" is substituted for the former reference to a governmental "entity". *See* General Revisor's Note to article.

In subsections (b) and (c) of this section, the defined term "person" is substituted for the former references to an "individual" and "third-party payor" to conform to the terminology used throughout this article.

In the introductory language of subsection (a) of this section, the reference to a "governmental unit" is added to conform to the terminology of subsections (b) and (c) of this section.

Defined terms: "Judgment of restitution" § 11-601

"Person" § 1-101

"Restitution obligor" § 11-601

"Victim" § 11-601

11-614. NOTIFICATION OF VICTIMS OF RIGHT TO RESTITUTION.

(A) IN GENERAL.

IF PRACTICABLE, THE STATE'S ATTORNEY SHOULD:

(1) NOTIFY AN ELIGIBLE VICTIM OF THE VICTIM'S RIGHT TO REQUEST RESTITUTION; AND

(2) HELP THE VICTIM TO PREPARE THE REQUEST AND ADVISE THE VICTIM AS TO THE STEPS FOR COLLECTING RESTITUTION THAT IS AWARDED.

(B) VICTIMS UNABLE TO BE LOCATED.

IF A VICTIM CANNOT BE LOCATED, ALL MONEY COLLECTED FROM A JUDGMENT OF RESTITUTION SHALL BE TREATED AS ABANDONED PROPERTY UNDER TITLE 17 OF THE COMMERCIAL LAW ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 807(l) and (m).

Defined terms: "Judgment of restitution" § 11-601

"Victim" § 11-601

11-615. LEGALLY SUFFICIENT EVIDENCE AT RESTITUTION HEARING.

(A) FAIR AND REASONABLE CHARGES.

IN A RESTITUTION HEARING HELD UNDER § 11-603 OF THIS SUBTITLE, A WRITTEN STATEMENT OR BILL FOR MEDICAL, DENTAL, HOSPITAL, COUNSELING, FUNERAL, OR BURIAL EXPENSES IS LEGALLY SUFFICIENT EVIDENCE THAT A CHARGE SHOWN ON THE WRITTEN STATEMENT OR BILL IS A FAIR AND REASONABLE CHARGE FOR THE SERVICES OR MATERIALS PROVIDED.

(B) BURDEN OF PROOF.

A PERSON WHO CHALLENGES THE FAIRNESS AND REASONABLENESS OF THE AMOUNT ON THE STATEMENT OR BILL HAS THE BURDEN OF PROVING THAT THE AMOUNT IS NOT FAIR AND REASONABLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 808.

In subsection (a) of this section, the phrase "legally sufficient" evidence is substituted for the former reference to "prima facie" evidence for clarity.

Defined term: "Person" § 1-101

11-616. OVERDUE RESTITUTION.

(A) REFERRAL OF OVERDUE ACCOUNTS.

THE DIVISION OR THE DEPARTMENT OF JUVENILE JUSTICE:

(1) IN ADDITION TO OTHER ACTIONS AUTHORIZED UNDER PART I OF THIS SUBTITLE, MAY REFER AN OVERDUE RESTITUTION ACCOUNT FOR COLLECTION TO THE CENTRAL COLLECTION UNIT; AND

(2) IF PROBATION OR OTHER SUPERVISION IS TERMINATED AND RESTITUTION IS STILL OWED, SHALL REFER THE OVERDUE RESTITUTION ACCOUNT FOR COLLECTION TO THE CENTRAL COLLECTION UNIT.

(B) CENTRAL COLLECTION UNIT.

SUBJECT TO SUBSECTION (C) OF THIS SECTION, THE CENTRAL COLLECTION UNIT MAY:

(1) COLLECT OVERDUE RESTITUTION IN ACCORDANCE WITH TITLE 3, SUBTITLE 3 OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND

(2) CERTIFY A RESTITUTION OBLIGOR WHO IS IN ARREARS ON RESTITUTION PAYMENTS EXCEEDING $30 UNDER THE JUDGMENT OF RESTITUTION TO:

(I) THE COMPTROLLER FOR INCOME TAX REFUND INTERCEPTION IN ACCORDANCE WITH TITLE 13, SUBTITLE 9, PART III OF THE TAX - GENERAL ARTICLE; AND

(II) THE STATE LOTTERY AGENCY FOR STATE LOTTERY PRIZE INTERCEPTION IN ACCORDANCE WITH § 11-618 OF THIS SUBTITLE.

(C) VICTIM CONSENT REQUIRED FOR COMPROMISE AND SETTLEMENT.

(1) THE CENTRAL COLLECTION UNIT MAY NOT COMPROMISE AND SETTLE A JUDGMENT OF RESTITUTION UNLESS THE DIVISION OR THE DEPARTMENT OF JUVENILE JUSTICE OBTAINS THE CONSENT OF THE VICTIM.

(2) THE DIVISION OR THE DEPARTMENT OF JUVENILE JUSTICE SHALL CONTACT THE VICTIM TO DETERMINE WHETHER THE VICTIM CONSENTS TO COMPROMISE AND SETTLE A JUDGMENT OF RESTITUTION.

(D) NOTIFICATION OF PAYMENT OR COMPROMISE AND SETTLEMENT.

IF COMPLETE RESTITUTION AND INTEREST HAVE BEEN PAID OR A JUDGMENT OF RESTITUTION HAS BEEN COMPROMISED AND SETTLED AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE DIVISION, THE DEPARTMENT OF JUVENILE JUSTICE, OR THE CENTRAL COLLECTION UNIT IMMEDIATELY SHALL NOTIFY:

(1) THE COURT THAT ISSUED THE JUDGMENT BY FILING THE STATEMENT AS PROVIDED UNDER § 11-608(3) OF THIS SUBTITLE THAT THE JUDGMENT HAS BEEN SATISFIED; AND

(2) THE LAST KNOWN EMPLOYER OF A RESTITUTION OBLIGOR TO TERMINATE AN EARNINGS WITHHOLDING ORDER ISSUED UNDER § 11-617 OF THIS SUBTITLE.

(E) DETERMINATION OF OVERDUE PAYMENTS.

(1) RESTITUTION IS OVERDUE IF THE RESTITUTION OR A RESTITUTION PAYMENT IS NOT PAID:

(I) BY THE DATE THAT THE COURT ORDERS; OR

(II) IF NO DATE IS ORDERED, BY THE LATER OF:

1. THE DATE THE DIVISION OR THE DEPARTMENT OF JUVENILE JUSTICE DIRECTS THE RESTITUTION OBLIGOR TO PAY RESTITUTION OR MAKE A RESTITUTION PAYMENT; OR

2. 30 DAYS AFTER THE COURT ENTERS A JUDGMENT OF RESTITUTION.

(2) IF RESTITUTION IS OVERDUE, THE AMOUNT OF THE ARREARAGE IS THE AMOUNT OF RESTITUTION ORDERED AND ANY INTEREST ALLOWED BY LAW, MINUS ANY AMOUNT PREVIOUSLY PAID OR RECEIVED UNDER THE JUDGMENT OF RESTITUTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 809.

In subsections (a), (b)(1), and (e)(1) of this section, the reference to "overdue" restitution is substituted for the former reference to "delinquent" restitution to avoid confusion with meanings applicable in juvenile law, *e.g.*, "delinquent act".

Subsection (a)(2) of this section is revised to clarify that it is the obligation of the Division or the Department of Juvenile Justice to refer overdue restitution accounts if probation or other supervision is terminated.

Defined terms: "Central Collection Unit" § 11-601

"Division" § 11-601

"Judgment of restitution" § 11-601

"Restitution obligor" § 11-601

"Victim" § 11-601

11-617. EARNINGS WITHHOLDING ORDERS.

(A) ISSUANCE OF ORDER.

(1) IF A COURT ISSUES A JUDGMENT OF RESTITUTION UNDER § 11-603 OF THIS SUBTITLE, THE COURT MAY ENTER AN IMMEDIATE AND CONTINUING EARNINGS WITHHOLDING ORDER IN AN AMOUNT SUFFICIENT TO PAY THE RESTITUTION.

(2) THE COURT MAY ENTER THE ORDER:

(I) AT THE SENTENCING OR DISPOSITION HEARING;

(II) WHEN THE DEFENDANT OR CHILD RESPONDENT IS PLACED ON WORK RELEASE OR PROBATION; OR

(III) WHEN THE PAYMENT OF RESTITUTION IS OVERDUE.

(B) PRIORITY OF EXECUTION.

SUBJECT TO FEDERAL LAW, THE ORDER OF PRIORITY OF EXECUTION OF AN EARNINGS WITHHOLDING ORDER IS:

(1) FIRST, AN EARNINGS WITHHOLDING ORDER ISSUED UNDER § 10-126 OF THE FAMILY LAW ARTICLE;

(2) SECOND, AN EARNINGS WITHHOLDING ORDER ISSUED UNDER THIS SECTION; AND

(3) LASTLY, ANY OTHER LIEN OR LEGAL PROCESS.

(C) EXECUTION OF ORDER.

(1) THIS SUBSECTION APPLIES WHENEVER A COURT ORDERS AN EARNINGS WITHHOLDING ORDER UNDER THIS SECTION.

(2) ON ENTRY OF THE ORDER, THE CLERK OF THE COURT IMMEDIATELY SHALL:

(I) SERVE A COPY ON ANY CURRENT OR SUBSEQUENT EMPLOYER OF THE RESTITUTION OBLIGOR, IF KNOWN; AND

(II) MAIL A COPY TO THE RESTITUTION OBLIGOR AT THE LAST KNOWN ADDRESS OR PLACE OF INCARCERATION OR COMMITMENT OF THE RESTITUTION OBLIGOR.

(3) A RESTITUTION OBLIGOR IMMEDIATELY SHALL NOTIFY THE COURT AND THE DIVISION OR DEPARTMENT OF JUVENILE JUSTICE OF:

(I) ANY OBJECTION TO AN EARNINGS WITHHOLDING ORDER;

(II) THE CURRENT HOME ADDRESS OF THE RESTITUTION OBLIGOR;

(III) THE NAME OF THE EMPLOYER;

(IV) THE WORK ADDRESS OF THE RESTITUTION OBLIGOR; AND

(V) ANY CHANGE OF EMPLOYER, HOME ADDRESS, OR WORK ADDRESS OF THE RESTITUTION OBLIGOR.

(4) AN EMPLOYER WHO IS SERVED WITH AN EARNINGS WITHHOLDING ORDER UNDER THIS SECTION IMMEDIATELY SHALL NOTIFY THE COURT AND THE DIVISION OR DEPARTMENT OF JUVENILE JUSTICE OF:

(I) ANY JUSTIFICATION FOR THE EMPLOYER'S INABILITY TO COMPLY WITH THE EARNINGS WITHHOLDING ORDER;

(II) THE HOME ADDRESS OF THE RESTITUTION OBLIGOR ON THE TERMINATION OF EMPLOYMENT;

(III) INFORMATION REGARDING THE NEW PLACE OF EMPLOYMENT OF THE RESTITUTION OBLIGOR; OR

(IV) THE EMPLOYER'S REEMPLOYMENT OF THE RESTITUTION OBLIGOR.

(5) UNLESS THE INFORMATION HAS BEEN PROVIDED TO THE COURT, THE DIVISION, DEPARTMENT OF JUVENILE JUSTICE, OR THE CENTRAL COLLECTION UNIT SHALL NOTIFY THE COURT OF A CURRENT OR SUBSEQUENT HOME ADDRESS OF THE RESTITUTION OBLIGOR AND THE EMPLOYER AND WORK ADDRESS OF THE RESTITUTION OBLIGOR.

(D) CONTENTS OF ORDER.

(1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AN EARNINGS WITHHOLDING ORDER ISSUED UNDER THIS SECTION SHALL:

(I) COMPLY WITH THE REQUIREMENTS OF §§ 10-126(A) AND 10-127(A) THROUGH (C) OF THE FAMILY LAW ARTICLE; AND

(II) SET FORTH THE OBLIGATIONS AND RESPONSIBILITIES OF AN EMPLOYER AND A RESTITUTION OBLIGOR UNDER AN EARNINGS WITHHOLDING ORDER AND THE CONSEQUENCES OF VIOLATING THIS SECTION.

(2) EACH AMOUNT WITHHELD IN AN EARNINGS WITHHOLDING ORDER UNDER THIS SECTION IS PAYABLE TO THE DIVISION OR DEPARTMENT OF JUVENILE JUSTICE.

(3) AN EARNINGS WITHHOLDING ORDER IS BINDING ON EACH PRESENT AND FUTURE EMPLOYER OF THE RESTITUTION OBLIGOR WHO IS SERVED WITH THE ORDER.

(E) PAYMENT.

(1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, THE PAYMENT AMOUNT UNDER AN EARNINGS WITHHOLDING ORDER UNDER THIS SECTION IS 20% OF THE EARNINGS OF A RESTITUTION OBLIGOR.

(2) IF THE RESTITUTION OBLIGATION OF THE RESTITUTION OBLIGOR IS OVERDUE, THE COURT MAY IMPOSE A PAYMENT EXCEEDING THE AMOUNT ALLOWED IN PARAGRAPH (1) OF THIS SUBSECTION.

(3) (I) THE AMOUNT OF AN EARNINGS WITHHOLDING ORDER ISSUED UNDER THIS SECTION MAY NOT EXCEED THE LIMITS OF THE FEDERAL CONSUMER CREDIT PROTECTION ACT.

(II) THE COURT SHALL REDUCE AN AMOUNT OF AN EARNINGS WITHHOLDING ORDER THAT EXCEEDS THE LIMITS OF THE FEDERAL CONSUMER CREDIT PROTECTION ACT TO THE MAXIMUM ALLOWED UNDER THE ACT.

(F) PENALTY.

(1) THIS SUBSECTION APPLIES TO A RESTITUTION OBLIGOR AND THE EMPLOYER OF A RESTITUTION OBLIGOR.

(2) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A FINE NOT EXCEEDING $250.

(3) A FINE COLLECTED UNDER THIS SECTION SHALL BE DISTRIBUTED IN THE SAME WAY AS COSTS ARE DISTRIBUTED UNDER § 7-409 OF THE COURTS ARTICLE.

(4) IN ADDITION TO A FINE IMPOSED UNDER THIS SUBSECTION, AN EMPLOYER IS LIABLE FOR DAMAGES FOR THE FAILURE TO DEDUCT THE EARNINGS OF A RESTITUTION OBLIGOR OR FAILURE TO MAKE A TIMELY PAYMENT AS REQUIRED IN THE EARNINGS WITHHOLDING ORDER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 811.

In subsections (a)(2)(iii) and (e)(2) of this section, the word "overdue" which modifies restitution, is substituted for the former reference to "delinquent" restitution to avoid confusion with meanings applicable in juvenile law, *e.g.*, "delinquent act".

In subsection (a)(2)(ii) of this section, the defined term "child respondent" is added for clarity. *See* General Revisor's Note to title.

In subsection (c)(2) of this section, the phrase "[o]n entry of the order" is added to clarify when the clerk of the court must serve and mail copies of the earnings withholding order to specified persons.

In subsection (c)(2)(ii) of this section, the phrase "place of commitment" of the child respondent is added for accuracy.

In subsection (e)(3)(i) of this section, the reference to "limits" of the federal Consumer Protection Act is substituted for the former reference to the "requirements" of this Act to conform to the terminology of FL § 10-131.

Former Art. 27, § 806(a), which stated that if restitution or reparation is not immediately and fully made the court must order execution against certain property or restitution not exceeding a certain amount, is deleted

as unnecessary in light of subsection (e) of this section.

Former Art. 27, § 806(b), which stated that a victim is not prevented from bringing a civil action against a person, is deleted as unnecessary in light of § 11-603(c) of this subtitle.

Defined terms: "Central Collection Unit" § 11-601

"Child respondent" § 11-101

"Defendant" § 11-601

"Division" § 11-601

"Judgment of restitution" § 11-601

"Liable parent" § 11-601

"Person" § 1-101

"Restitution obligor" § 11-601

11-618. STATE LOTTERY INTERCEPTION.

(A) CONTENTS OF CERTIFICATION.

A CERTIFICATION OF ARREARAGE ON RESTITUTION PAYMENTS THAT THE CENTRAL COLLECTION UNIT SENDS TO THE STATE LOTTERY AGENCY UNDER § 11-616 OF THIS SUBTITLE SHALL CONTAIN:

(1) THE FULL NAME OF THE RESTITUTION OBLIGOR AND ANY OTHER NAME KNOWN TO BE USED BY THE RESTITUTION OBLIGOR;

(2) THE SOCIAL SECURITY NUMBER OF THE RESTITUTION OBLIGOR; AND

(3) THE AMOUNT OF THE ARREARAGE.

(B) NOTICE OF INTERCEPTION.

IF A RESTITUTION OBLIGOR WHO IS OVERDUE IN RESTITUTION PAYMENTS WINS A LOTTERY PRIZE TO BE PAID BY CHECK DIRECTLY BY THE STATE LOTTERY AGENCY, THE STATE LOTTERY AGENCY SHALL SEND A NOTICE TO THE RESTITUTION OBLIGOR THAT:

(1) THE RESTITUTION OBLIGOR HAS WON A PRIZE TO BE PAID BY THE STATE LOTTERY AGENCY;

(2) THE STATE LOTTERY AGENCY HAS RECEIVED NOTICE FROM THE CENTRAL COLLECTION UNIT OF THE RESTITUTION OBLIGOR'S RESTITUTION ARREARAGE IN THE SPECIFIED AMOUNT;

(3) STATE LAW REQUIRES THE STATE LOTTERY AGENCY TO WITHHOLD THE PRIZE AND TO PAY IT TOWARDS THE RESTITUTION OBLIGOR'S RESTITUTION ARREARAGE;

(4) THE RESTITUTION OBLIGOR MAY APPEAL TO THE CENTRAL COLLECTION UNIT IF THE RESTITUTION OBLIGOR DISPUTES THE EXISTENCE OR THE AMOUNT OF THE ARREARAGE; AND

(5) IF AN APPEAL IS NOT FILED WITHIN 15 DAYS AFTER THE DATE OF THE NOTICE, THE STATE LOTTERY AGENCY WILL TRANSFER THE PRIZE OR THE PART OF THE PRIZE THAT EQUALS THE RESTITUTION ARREARAGE TO THE CENTRAL COLLECTION UNIT.

(C) WITHHOLDING ARREARAGE; PRIORITIES.

(1) THE STATE LOTTERY AGENCY SHALL WITHHOLD ALL OR PART OF THE PRIZE UP TO THE AMOUNT OF THE ARREARAGE UNTIL THE CENTRAL COLLECTION UNIT NOTIFIES THE STATE LOTTERY AGENCY AS TO WHOM THE WITHHELD PRIZE MONEY IS TO BE PAID.

(2) THE STATE LOTTERY AGENCY SHALL HONOR LOTTERY PRIZE INTERCEPTION REQUESTS IN THE FOLLOWING ORDER:

(I) AN INTERCEPTION REQUEST UNDER § 10-113.1 OF THE FAMILY LAW ARTICLE; AND

(II) AN INTERCEPTION REQUEST UNDER THIS SECTION.

(D) APPEALS.

(1) ON RECEIPT OF A NOTICE FROM THE STATE LOTTERY AGENCY, A RESTITUTION OBLIGOR WHO DISPUTES THE EXISTENCE OR AMOUNT OF THE ARREARAGE MAY APPEAL THE PROPOSED TRANSFER.

(2) IF AN APPEAL IS NOT FILED WITHIN 15 DAYS AFTER THE DATE OF THE NOTICE, THE STATE LOTTERY AGENCY SHALL TRANSFER THE AMOUNT OF THE PRIZE WITHHELD TO THE CENTRAL COLLECTION UNIT.

(3) IF THE RESTITUTION OBLIGOR APPEALS THE PROPOSED TRANSFER, AFTER A HEARING THE CENTRAL COLLECTION UNIT SHALL NOTIFY THE STATE LOTTERY AGENCY THAT THE WITHHELD PRIZE SHALL BE:

(I) PAID TO THE RESTITUTION OBLIGOR;

(II) TRANSFERRED TO THE CENTRAL COLLECTION UNIT; OR

(III) IN SPECIFIED AMOUNTS, PARTLY PAID TO THE RESTITUTION OBLIGOR AND PARTLY TRANSFERRED TO THE CENTRAL COLLECTION UNIT.

(E) REGULATIONS.

THE SECRETARY OF BUDGET AND MANAGEMENT AND THE DIRECTOR OF THE STATE LOTTERY AGENCY MAY JOINTLY ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 810(b) through (i).

In the introductory language of subsection (b) of this section, the word "overdue", which modifies restitution, is substituted for the former reference to "delinquent" restitution to avoid confusion with meanings applicable in juvenile law, *e.g.*, "delinquent act".

In the introductory language of subsection (a) of this section, the reference to a certification "of arrearage on restitution payments that the Central Collection Unit sends" is added for clarity.

In subsection (b) of this section, the former reference to the provision in a notice to a winner stating that the State Lottery Agency proposes to transfer the prize, or that part of it that is equal to the restitution arrearage, to the Central Collection Unit if no appeal is filed within 15 days is deleted as unnecessary in light of subsection (b)(5) of this section, which states that the State Lottery Agency will make the transfer if an appeal is not filed.

In subsection (e) of this section, as to the substitution of the phrase "carry out" for the former reference to "implement", *see* General Revisor's Note to article.

Defined terms: "Central Collection Unit" § 11-601

"Restitution obligor" § 11-601

11-619. RESERVED.

11-620. RESERVED.

PART II. NOTORIETY OF CRIMES CONTRACTS.

11-621. DEFINITIONS.

(A) IN GENERAL.

IN PART II OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 854(a)(1).

(B) DEFENDANT.

(1) "DEFENDANT" MEANS A PERSON CHARGED WITH OR CONVICTED OF A CRIME IN THE STATE THAT INVOLVES OR CAUSES PERSONAL INJURY, DEATH, OR PROPERTY LOSS AS A DIRECT RESULT OF THE CRIME.

(2) "DEFENDANT" INCLUDES A PERSON FOUND NOT CRIMINALLY RESPONSIBLE FOR CRIMINAL CONDUCT UNDER § 3-109 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 854(a)(2).

Defined term: "Person" § 1-101

(C) NOTORIETY OF CRIMES CONTRACT.

"NOTORIETY OF CRIMES CONTRACT" MEANS A CONTRACT OR OTHER AGREEMENT WITH A DEFENDANT, OR A REPRESENTATIVE OR ASSIGNEE OF A DEFENDANT, WITH RESPECT TO:

(1) THE REENACTMENT OF A CRIME IN A MOVIE, BOOK, MAGAZINE ARTICLE, TAPE RECORDING, PHONOGRAPH RECORD, RADIO OR TELEVISION PRESENTATION, OR LIVE ENTERTAINMENT OF ANY KIND;

(2) THE EXPRESSION OF THE DEFENDANT'S THOUGHTS, FEELINGS, OPINIONS, OR EMOTIONS REGARDING A CRIME INVOLVING OR CAUSING PERSONAL INJURY, DEATH, OR PROPERTY LOSS AS A DIRECT RESULT OF THE CRIME; OR

(3) THE PAYMENT OR EXCHANGE OF MONEY OR OTHER CONSIDERATION OR THE PROCEEDS OR PROFITS THAT DIRECTLY OR INDIRECTLY RESULT FROM A CRIME, A SENTENCE, OR THE NOTORIETY OF A CRIME OR SENTENCE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 854(a)(5).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the media listed in item (1) of this subsection in which a crime may be reenacted do not include the Internet.

Defined term: "Defendant" § 11-621

(D) VICTIM.

"VICTIM" MEANS A PERSON WHO SUFFERS PERSONAL INJURY, DEATH, OR PROPERTY LOSS AS A DIRECT RESULT OF CRIME.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 854(a)(4)(i).

Defined term: "Person" § 1-101

(E) VICTIM'S REPRESENTATIVE.

"VICTIM'S REPRESENTATIVE" INCLUDES THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED VICTIM AND A BENEFICIARY UNDER A WRONGFUL DEATH ACTION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 854(a)(4)(ii).

The reference to "the personal representative" is added for clarity.

The former reference to "Title 3, Subtitle 9 of the Courts Article" is deleted as unnecessarily specific.

Defined term: "Victim" § 11-621

11-622. SUBMISSIONS TO ATTORNEY GENERAL.

A PERSON WHO MAKES A NOTORIETY OF CRIMES CONTRACT WITH A DEFENDANT OR A REPRESENTATIVE OR ASSIGNEE OF THAT DEFENDANT SHALL:

(1) SUBMIT TO THE ATTORNEY GENERAL A COPY OF ALL WRITTEN TERMS AND A SUMMARY OF ALL ORAL TERMS OF THE NOTORIETY OF CRIMES CONTRACT; AND

(2) PAY OVER TO THE ATTORNEY GENERAL ANY MONEY OR OTHER CONSIDERATION NOT SUBJECT TO AN ORDER OF RESTITUTION UNDER § 11-603 OF THIS SUBTITLE THAT BY THE TERMS OF THE NOTORIETY OF CRIMES CONTRACT OTHERWISE WOULD BE OWED TO THE DEFENDANT OR A REPRESENTATIVE OR ASSIGNEE OF THE DEFENDANT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(b).

In item (1) of this section, the reference to "all written terms and a summary of all oral terms" of the notoriety of crimes contract is substituted for the former reference to "summary of the terms of an oral agreement" to avoid the erroneous implication that an oral agreement would not be part of a notoriety of crimes contract.

Defined terms: "Defendant" § 11-621

"Notoriety of crimes contract" § 11-621

"Person" § 1-101

11-623. DECISION BY ATTORNEY GENERAL.

(A) NOTICE OF RECEIPT OF COPY.

ON RECEIPT OF A SUBMISSION UNDER § 11-622 OF PART II OF THIS SUBTITLE, THE ATTORNEY GENERAL SHALL MAIL NOTICE OF THE RECEIPT TO EACH VICTIM OR VICTIM'S REPRESENTATIVE AT THE LAST KNOWN ADDRESS OF THE VICTIM OR VICTIM'S REPRESENTATIVE.

(B) DEADLINE FOR DECISION.

THE ATTORNEY GENERAL SHALL DECIDE WHETHER A CONTRACT IS A NOTORIETY OF CRIMES CONTRACT:

(1) AFTER 30 DAYS BUT BEFORE 180 DAYS FOLLOWING RECEIPT OF THE SUBMISSION UNDER § 11-622 OF PART II OF THIS SUBTITLE; OR

(2) AFTER 180 DAYS, FOR CAUSE.

(C) REBUTTABLE PRESUMPTION.

(1) FOR A DECISION UNDER THIS SECTION, THERE IS A REBUTTABLE PRESUMPTION THAT THE CONTRACT IS A NOTORIETY OF CRIMES CONTRACT.

(2) THE DEFENDANT OR DEFENDANT'S ASSIGNEE MAY REBUT THIS PRESUMPTION BY ESTABLISHING TO THE SATISFACTION OF THE ATTORNEY GENERAL THAT THE SUBJECT MATTER OF THE CONTRACT ONLY TANGENTIALLY OR INCIDENTALLY RELATES TO THE CRIME.

(D) NOTIFICATION OF DECISION.

THE ATTORNEY GENERAL:

(1) SHALL NOTIFY THE DEFENDANT OR DEFENDANT'S ASSIGNEE AND THE VICTIM OR VICTIM'S REPRESENTATIVE OF THE DECISION UNDER THIS SECTION; AND

(2) MAY NOT DISBURSE MONEY COLLECTED UNDER § 11-622 OF PART II OF THIS SUBTITLE UNTIL 60 DAYS AFTER THE DEFENDANT OR DEFENDANT'S ASSIGNEE AND THE VICTIM OR VICTIM'S REPRESENTATIVE HAVE BEEN NOTIFIED OF THE DECISION.

(E) APPEAL.

(1) THE DECISION OF THE ATTORNEY GENERAL UNDER THIS SECTION IS A FINAL DECISION AND MAY BE APPEALED BY A DEFENDANT OR DEFENDANT'S ASSIGNEE OR A VICTIM OR VICTIM'S REPRESENTATIVE ONLY IN ACCORDANCE WITH § 11-630 OF PART II OF THIS SUBTITLE AND WITHIN 60 DAYS AFTER RECEIVING NOTICE OF THE DECISION.

(2) IF THE DECISION IS APPEALED, THE ATTORNEY GENERAL SHALL KEEP ANY MONEY COLLECTED IN ESCROW UNTIL THE ATTORNEY GENERAL RECEIVES A FINAL ORDER OF THE COURT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(c).

In subsections (c)(2), (d), and (e)(1) of this section, references to "defendant's assignee" are added to conform to the language of § 11-622 of Part II of this subtitle.

In subsection (c)(1) of this section, the former reference to "the purposes of" a decision is deleted as surplusage.

Defined terms: "Defendant" § 11-621

"Notoriety of crimes contract" § 11-621

"Victim" § 11-621

"Victim's representative" § 11-621

11-624. ESCROW ACCOUNT.

(A) DEPOSIT BY ATTORNEY GENERAL.

THE ATTORNEY GENERAL SHALL DEPOSIT MONEY RECEIVED UNDER THIS SUBTITLE IN AN INTEREST BEARING ESCROW ACCOUNT.

(B) MONEY FOR VICTIMS.

EXCEPT AS PROVIDED IN § 11-625 OF PART II OF THIS SUBTITLE AND SUBSECTION (E) OF THIS SECTION, THE ATTORNEY GENERAL SHALL HOLD MONEY FOR THE BENEFIT OF AND PAYABLE TO THE VICTIM OR VICTIM'S REPRESENTATIVE, AS PROVIDED IN SUBSECTION (C) OF THIS SECTION.

(C) MONEY JUDGMENT OR RESTITUTION AWARD TO BE PAID FROM ESCROW MONEY.

(1) SUBJECT TO THE PRIORITY OF CLAIMS STATED IN § 11-628 OF PART II OF THIS SUBTITLE, THE ATTORNEY GENERAL SHALL PAY TO THE VICTIM OR VICTIM'S REPRESENTATIVE MONEY FROM THE ESCROW ACCOUNT TO THE EXTENT OF THE MONEY JUDGMENT OR THE AMOUNT OF RESTITUTION IF, WITHIN 5 YEARS AFTER THE ESCROW ACCOUNT IS ESTABLISHED, THE VICTIM OR VICTIM'S REPRESENTATIVE:

(I) BRINGS OR HAS PENDING A CIVIL ACTION AGAINST THE DEFENDANT IN A COURT OF COMPETENT JURISDICTION;

(II) HAS RECOVERED A MONEY JUDGMENT FOR DAMAGES AGAINST THE DEFENDANT; OR

(III) HAS BEEN AWARDED RESTITUTION.

(2) ANY MONEY THAT THEN REMAINS IN THE ESCROW ACCOUNT SHALL BE PAID AS THIS SECTION PROVIDES.

(3) MONEY MAY NOT BE PAID UNDER THIS SUBSECTION UNTIL THE DEFENDANT:

(I) HAS BEEN FOUND GUILTY;

(II) HAS PLEADED NOLO CONTENDERE;

(III) HAS BEEN PLACED ON PROBATION BEFORE JUDGMENT; OR

(IV) HAS BEEN FOUND NOT CRIMINALLY RESPONSIBLE FOR CRIMINAL CONDUCT UNDER § 3-109 OF THIS ARTICLE.

(D) NOTICE OF AVAILABILITY OF MONEY.

(1) AT LEAST ONCE EVERY 6 MONTHS FOR 5 YEARS AFTER THE DATE THE ATTORNEY GENERAL RECEIVES MONEY OR OTHER CONSIDERATION UNDER THIS SUBTITLE, THE ATTORNEY GENERAL SHALL PUBLISH A LEGAL NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE CRIME WAS COMMITTED AND IN COUNTIES CONTIGUOUS TO THAT COUNTY.

(2) THE NOTICE SHALL ADVISE THE VICTIM OR VICTIM'S REPRESENTATIVE THAT ESCROW MONEY IS AVAILABLE TO SATISFY MONEY JUDGMENTS UNDER THIS SUBTITLE.

(3) THE ATTORNEY GENERAL MAY PROVIDE FOR ANY FURTHER NOTICE THAT THE ATTORNEY GENERAL CONSIDERS NECESSARY.

(E) CONDITIONS FOR PAYMENT.

EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, THE ATTORNEY GENERAL SHALL PAY OVER TO THE DEFENDANT ALL OF THE MONEY FROM THE ESCROW ACCOUNT IF:

(1) THE CHARGES AGAINST THE DEFENDANT ARE DISMISSED;

(2) A NOLLE PROSEQUI IS ENTERED;

(3) THE DEFENDANT IS ACQUITTED;

(4) THE DEFENDANT IS FOUND TO BE INCOMPETENT TO STAND TRIAL UNDER § 3-106 OF THIS ARTICLE AND AT LEAST 5 YEARS HAVE PASSED SINCE THAT FINDING WITHOUT A FURTHER DISPOSITION OF THE CHARGE; OR

(5) THE CHARGES AGAINST THE DEFENDANT ARE PLACED ON THE STET DOCKET, AND AT LEAST 3 YEARS HAVE PASSED.

(F) MONEY TO BE PAID TO DEFENDANT.

NOTWITHSTANDING § 11-628 OF PART II OF THIS SUBTITLE, IF A DEFENDANT WAS CONVICTED BEFORE JULY 1, 1987, THE ATTORNEY GENERAL SHALL PAY OVER TO THE DEFENDANT:

(1) ALL MONEY IN THE ESCROW ACCOUNT IF:

(I) AT LEAST 5 YEARS HAVE PASSED SINCE THE ESCROW ACCOUNT WAS ESTABLISHED; AND

(II) NO ACTION BY THE VICTIM OR VICTIM'S REPRESENTATIVE IS PENDING AGAINST THE DEFENDANT; OR

(2) ALL MONEY REMAINING IN THE ESCROW ACCOUNT AFTER PAYMENT OF THE CLAIMS DESCRIBED IN § 11-628 OF PART II OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(e).

Throughout this section, the word "money" is substituted for the former reference to "funds" for consistency and to avoid confusion with entities that have been established as funds.

In subsection (d)(1) of this section, the phrase "under this subtitle" is added for clarity.

In subsection (e)(5) of this section, the former reference to "a period of" at least 3 years is deleted as unnecessary.

Defined terms: "County" § 1-101

"Defendant" § 11-621

"Nolle prosequi" § 1-101

"Nolo contendere" § 1-101

"Victim" § 11-621

"Victim's representative" § 11-621

11-625. PAYMENTS FROM ESCROW ACCOUNT.

(A) PAYMENTS TO HIRE LEGAL COUNSEL.

THE ATTORNEY GENERAL SHALL PAY THE DEFENDANT FROM THE ESCROW ACCOUNT THE MONEY THAT A COURT OF COMPETENT JURISDICTION:

(1) FINDS WILL BE USED TO HIRE LEGAL COUNSEL AT ANY STAGE OF THE CRIMINAL CASE, INCLUDING AN APPEAL; AND

(2) ORDERS TO BE PAID TO THE DEFENDANT.

(B) FOR PRODUCTION EXPENSES.

AFTER NOTICE TO EACH VICTIM OR VICTIM'S REPRESENTATIVE, THE ATTORNEY GENERAL SHALL PAY MONEY FROM THE ESCROW ACCOUNT TO A REPRESENTATIVE OF A DEFENDANT FOR THE NECESSARY EXPENSES OF PRODUCTION OF THE MONEY PAID INTO THE ESCROW ACCOUNT IF THE ATTORNEY GENERAL FINDS THAT THE PAYMENTS ARE NECESSARY AND ARE NOT CONTRARY TO PUBLIC POLICY.

(C) FOR LEGAL NOTICES.

THE ATTORNEY GENERAL MAY PAY FROM THE ESCROW ACCOUNT THE COSTS OF LEGAL NOTICES REQUIRED UNDER § 11-624 OF PART II OF THIS SUBTITLE.

(D) LIMIT ON PAYMENTS.

THE TOTAL OF ALL PAYMENTS MADE FROM THE ESCROW ACCOUNT UNDER THIS SECTION MAY NOT EXCEED 25% OF THE TOTAL PAYMENTS THAT ARE:

(1) MADE INTO THE ESCROW ACCOUNT; AND

(2) AVAILABLE TO SATISFY JUDGMENTS OBTAINED BY THE VICTIM OR VICTIM'S REPRESENTATIVE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(f).

In subsection (a) of this section, the word "money" is substituted for the former reference to "funds" for consistency and to avoid confusion with entities that have been established as funds.

In subsections (b) and (d) of this section, the former references to victims "of the crime" and "of crime" are deleted in light of the defined term "victim".

Defined terms: "Defendant" § 11-621

"Victim" § 11-621

"Victim's representative" § 11-621

11-626. LIMITATIONS ON BRINGING CIVIL ACTION.

NOTWITHSTANDING ANY OTHER LAW, INCLUDING THE STATUTE OF LIMITATIONS FOR A WRONGFUL DEATH ACTION, A VICTIM OR VICTIM'S REPRESENTATIVE WHO SEEKS TO BRING A CIVIL ACTION UNDER PART II OF THIS SUBTITLE SHALL BRING THE ACTION AGAINST A DEFENDANT WITHIN 5 YEARS AFTER THE ATTORNEY GENERAL ESTABLISHES AN ESCROW ACCOUNT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(g).

The reference to a victim "who seeks to bring a civil action" under Part II of this subtitle is added for clarity.

Defined terms: "Defendant" § 11-621

"Victim" § 11-621

"Victim's representative" § 11-621

11-627. ACTIONS VOID AS AGAINST PUBLIC POLICY.

ANY ACTION THAT A DEFENDANT TAKES TO DEFEAT THE PURPOSE OF PART II OF THIS SUBTITLE, INCLUDING AN EXECUTION OF A POWER OF ATTORNEY, CREATION OF A CORPORATE ENTITY, OR DESIGNATION OF THE DEFENDANT'S INTEREST, IS VOID AS AGAINST PUBLIC POLICY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(h).

Defined term: "Defendant" § 11-621

11-628. PRIORITIES FOR CLAIMS.

(A) CLAIMS.

NOTWITHSTANDING ANY OTHER LAW, A CLAIM ON MONEY IN THE ESCROW ACCOUNT HAS THE FOLLOWING PRIORITIES IN THIS ORDER:

(1) PAYMENTS ORDERED BY THE ATTORNEY GENERAL OR A COURT UNDER § 11-625 OF PART II OF THIS SUBTITLE;

(2) SUBROGATION CLAIMS OF THE STATE UNDER § 11-817 OF THIS TITLE;

(3) A COURT ORDER OF RESTITUTION UNDER § 11-603 OF THIS SUBTITLE;

(4) A CIVIL JUDGMENT OF A VICTIM OR VICTIM'S REPRESENTATIVE; AND

(5) A CIVIL JUDGMENT OF A PERSON, OTHER THAN A VICTIM OR VICTIM'S REPRESENTATIVE, ARISING OUT OF THE CRIME.

(B) INTERPLEADER OR DECLARATORY JUDGMENT ALLOWED.

THE ATTORNEY GENERAL MAY BRING AN ACTION OF INTERPLEADER OR AN ACTION FOR DECLARATORY JUDGMENT WHEN THE ATTORNEY GENERAL IS UNABLE TO DETERMINE THE PRIORITY OF CLAIMS AND THE PROPER DISPOSITION OF THE ESCROW ACCOUNT.

(C) REMAINING MONEY INTO ESCROW ACCOUNT.

AFTER PAYMENT OF THE CLAIMS DESCRIBED IN SUBSECTION (A) OF THIS SECTION, THE ATTORNEY GENERAL SHALL DEPOSIT THE MONEY REMAINING IN THE ESCROW ACCOUNT IN THE STATE VICTIMS OF CRIME FUND THAT IS ESTABLISHED UNDER § 11-916 OF THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(i) and (l).

In the introductory language of subsection (a) of this section, the phrase "in this order" is added for clarity.

In subsection (a)(4) and (5) of this section, the former reference to the victim "of the crime" is deleted as included in the definition of "victim".

In subsection (c) of this section, the former reference to the State Victims of Crime Fund "Account" is deleted to conform to the terminology used in practice and throughout this title.

Defined terms: "Person" § 1-101

"Victim" § 11-621

"Victim's representative" § 11-621

11-629. POWERS OF ATTORNEY GENERAL.

(A) EXCLUSIVE JURISDICTION AND CONTROL.

NOTWITHSTANDING ANY OTHER LAW, THE ATTORNEY GENERAL HAS EXCLUSIVE JURISDICTION AND CONTROL AS ESCROW AGENT OVER MONEY OR OTHER CONSIDERATION SUBJECT TO PART II OF THIS SUBTITLE.

(B) DISTRIBUTION OF MONEY.

MONEY IN AN ESCROW ACCOUNT MAY BE DISTRIBUTED ONLY BY A DETERMINATION AND ORDER OF THE ATTORNEY GENERAL UNDER PART II OF THIS SUBTITLE.

(C) REGULATIONS.

THE ATTORNEY GENERAL MAY ADOPT REGULATIONS TO CARRY OUT PART II OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(m).

As for the substitution of the phrase "carry out" for the former reference to "implement", *see* General Revisor's Note to article.

11-630. APPEALS.

A PERSON AGGRIEVED BY A FINAL DETERMINATION AND ORDER OF THE ATTORNEY GENERAL UNDER PART II OF THIS SUBTITLE MAY SEEK JUDICIAL REVIEW.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(n).

Defined term: "Person" § 1-101

11-631. CIVIL PENALTIES.

(A) PROHIBITED ACTS.

A PERSON MAY NOT WILLFULLY FAIL:

(1) TO SUBMIT TO THE ATTORNEY GENERAL A COPY OF ALL WRITTEN TERMS AND A SUMMARY OF ALL ORAL TERMS OF A NOTORIETY OF CRIMES CONTRACT DESCRIBED IN § 11-622 OF PART II OF THIS SUBTITLE; OR

(2) TO PAY OVER TO THE ATTORNEY GENERAL ANY MONEY OR OTHER CONSIDERATION AS THIS SUBTITLE REQUIRES.

(B) PENALTY.

(1) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN $10,000 FOR EACH OFFENSE AND NOT EXCEEDING 3 TIMES THE NOTORIETY OF CRIMES CONTRACT AMOUNT.

(2) IF TWO OR MORE PERSONS ARE SUBJECT TO THE PENALTIES PROVIDED IN THIS SECTION, THOSE PERSONS SHALL BE JOINTLY AND SEVERALLY LIABLE FOR THE PAYMENT OF THE PENALTY IMPOSED.

(3) AFTER NOTICE AND OPPORTUNITY TO BE HEARD IS PROVIDED, THE ATTORNEY GENERAL BY ORDER MAY ASSESS THE PENALTIES DESCRIBED IN THIS SUBSECTION.

(4) A PENALTY ASSESSED UNDER THIS SUBSECTION THAT IS NOT PAID WITHIN 30 DAYS AFTER THE DATE OF THE ORDER SHALL BEAR INTEREST AT THE RATE OF 1% PER MONTH, COMPOUNDED MONTHLY.

(5) (I) AN ACTION TO RECOVER A CIVIL PENALTY ASSESSED UNDER THIS SUBSECTION MAY BE BROUGHT BY THE ATTORNEY GENERAL IN A COURT OF COMPETENT JURISDICTION WITHIN 6 YEARS AFTER THE CAUSE OF ACTION ACCRUES.

(II) ANY MONEY RECOVERED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE PAID INTO THE STATE VICTIMS OF CRIME FUND THAT IS ESTABLISHED UNDER § 11-916 OF THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(o).

In subsection (a)(1) of this section, the reference to "all written terms and a summary of all oral terms" of a notoriety of crimes contract is added to conform to the terminology used in § 11-622 of this subtitle.

Defined terms: "Notoriety of crimes contract" § 11-621

"Person" § 1-101

11-632. RESTRAINING ORDERS AND INJUNCTIONS.

(A) PROCEEDING BROUGHT BY ATTORNEY GENERAL.

THE ATTORNEY GENERAL MAY BRING A PROCEEDING IN A COURT OF COMPETENT JURISDICTION AGAINST A PERSON WHO VIOLATES OR THREATENS TO VIOLATE PART II OF THIS SUBTITLE TO RESTRAIN THE PERSON FROM CONTINUING THE VIOLATION OR CARRYING OUT THE THREAT.

(B) JURISDICTION OF COURT.

IN A PROCEEDING UNDER THIS SECTION, A COURT HAS JURISDICTION TO GRANT TO THE ATTORNEY GENERAL, WITHOUT BOND OR OTHER UNDERTAKING, A PROHIBITORY OR MANDATORY INJUNCTION AS THE FACTS MAY WARRANT, INCLUDING TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS TO PREVENT PAYMENTS UNDER A NOTORIETY OF CRIMES CONTRACT THAT VIOLATES PART II OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(p).

Defined terms: "Notoriety of crimes contract" § 11-621

"Person" § 1-101

11-633. PROHIBITED ACTS.

A PERSON MAY NOT:

(1) CONCEAL THE EXISTENCE OF A NOTORIETY OF CRIMES CONTRACT; OR

(2) EXCEPT AS OTHERWISE PROVIDED IN PART II OF THIS SUBTITLE, MAKE OR RECEIVE PAYMENTS UNDER A NOTORIETY OF CRIMES CONTRACT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(d).

In this section, the former references to a contract "described in subsection (b) of this section" are deleted in light of the defined term "notoriety of crimes contract".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the prohibited acts of concealing the existence of and making or receiving payments under a notoriety of crimes contract do not carry a penalty.

Defined terms: "Notoriety of crimes contract" § 11-621

"Person" § 1-101

GENERAL REVISOR'S NOTE TO PART: The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that this Part revises Art. 27, § 854 of the Code, which is based on New York's "Son of Sam" law. The U.S. Supreme Court found the New York law to be unconstitutional in *Simon and Schuster v. New York Crime Victims Board*, 112 S. Ct. 501 (1991), and § 854 was subsequently amended to address the concerns raised by the Supreme Court.

In *Curran v. Price*, 334 Md. 149 (1991), however, the Maryland Court of Appeals strongly suggested that § 854 still suffered from many constitutional flaws.

First, the Court noted that a notoriety of crimes contract is defined in terms of "the reenactment of a crime or the expression of the defendant's thoughts, feelings, opinions, or emotions regarding a crime". These terms require the Attorney General to consider the subject matter of the work in determining whether the contract falls under the statute. Content-based statutes are presumptively inconsistent with the First Amendment because they raise the specter that the Government may effectively drive certain ideas or viewpoints

from the marketplace.

The Court further hinted that the Maryland statute is overbroad to the extent that a substantial portion of the burden it places on speech does not advance the State's interests -- preventing criminals from profiting from crimes and compensating victims of crimes. Under the statute, works that are only remotely related to the crime would have to be submitted to the Attorney General.

Further, the Court said the statute failed to meet the standards for testing the constitutionality of prior restraint that were set out in *Freedman v. State of Maryland*, 380 U.S. 51 (1965). The statute fails in three ways: (1) it imposes on the defendant the burden of proving that his or her speech falls outside the statute; (2) by making any restraint imposed by the Attorney General final, it imposes on the defendant or publisher the onus to seek judicial review; and (3) by setting a 180-day period for the court to grant review, the statute opens the possibility that a judicial review, if sought, would not take place within a time frame that would be acceptable under past Supreme Court decisions.

Finally, the Maryland Court found that the statute could not require a defendant to submit at the State's behest a contract that meets the description of a notoriety of crimes contract without thereby implicitly acknowledging the commission of a crime and thus violating the Fifth Amendment.

SUBTITLE 7. REGISTRATION OF CERTAIN OFFENDERS.

11-701. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 792(a)(1).

(B) CHILD SEXUAL OFFENDER.

"CHILD SEXUAL OFFENDER" MEANS A PERSON WHO:

(1) HAS BEEN CONVICTED OF VIOLATING THE ABUSE OF CHILDREN STATUTE UNDER ARTICLE 27, § 35C OF THE CODE FOR A CRIME INVOLVING SEXUAL ABUSE OF A CHILD UNDER THE AGE OF 18 YEARS;

(2) HAS BEEN CONVICTED OF VIOLATING ANY OF THE PROVISIONS OF THE RAPE OR SEXUAL OFFENSE STATUTES UNDER ARTICLE 27, §§ 462 THROUGH 464B OF THE CODE FOR A CRIME INVOLVING A CHILD UNDER THE AGE OF 15 YEARS;

(3) HAS BEEN CONVICTED OF VIOLATING THE FOURTH DEGREE SEXUAL OFFENSE STATUTE UNDER ARTICLE 27, § 464C OF THE CODE FOR A CRIME INVOLVING

A CHILD UNDER THE AGE OF 15 YEARS AND HAS BEEN ORDERED BY THE COURT TO REGISTER UNDER THIS SUBTITLE; OR

(4) HAS BEEN CONVICTED IN ANOTHER STATE OR IN A FEDERAL, MILITARY, OR NATIVE AMERICAN TRIBAL COURT OF A CRIME THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE ONE OF THE CRIMES LISTED IN ITEMS (1) AND (2) OF THIS SUBSECTION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 792(a)(2).

In this subsection, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

In item (1) of this subsection, the reference to sexual abuse "of a child under the age of 18 years" is added for clarity.

In items (2) and (3) of this subsection, the references to a "child" are substituted for the former references to an "individual" to conform to the terminology of item (1) of this subsection.

As for the substitution of the reference to "person" for the reference to "individual", *see* General Revisor's Note to article.

Defined terms: "Person" § 1-101

"State" § 1-101

(C) LOCAL LAW ENFORCEMENT UNIT.

"LOCAL LAW ENFORCEMENT UNIT" MEANS THE LAW ENFORCEMENT UNIT IN A COUNTY THAT HAS BEEN DESIGNATED BY RESOLUTION OF THE COUNTY GOVERNING BODY OR CREATED BY LAW AS THE PRIMARY LAW ENFORCEMENT UNIT IN THE COUNTY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 792(a)(5).

As for the substitution of the reference to "unit" for the former reference to "agency", *see* General Revisor's Note to article.

The reference to a law enforcement unit that has been "created by law" as the primary law enforcement unit in the county is added for clarity and to reflect the practice of county governing bodies.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that, in practice, county governing bodies do not designate primary law enforcement units by resolution.

Defined term: "County" § 1-101

(D) OFFENDER.

"OFFENDER" MEANS A PERSON WHO IS ORDERED BY A COURT TO REGISTER UNDER THIS SUBTITLE AND WHO:

(1) HAS BEEN CONVICTED OF VIOLATING CHILD ABDUCTION OR KIDNAPPING STATUTES UNDER ARTICLE 27, § 1, § 2, OR § 338 OF THE CODE;

(2) HAS BEEN CONVICTED OF VIOLATING THE KIDNAPPING STATUTE UNDER ARTICLE 27, § 337 OF THE CODE OR THE FOURTH DEGREE SEXUAL OFFENSE STATUTE UNDER ARTICLE 27, § 464C OF THE CODE, IF THE VICTIM IS UNDER THE AGE OF 18 YEARS;

(3) HAS BEEN CONVICTED OF THE COMMON LAW CRIME OF FALSE IMPRISONMENT, IF THE VICTIM IS UNDER THE AGE OF 18 YEARS AND THE PERSON IS NOT THE VICTIM'S PARENT;

(4) HAS BEEN CONVICTED OF A CRIME THAT INVOLVES SOLICITING A PERSON UNDER THE AGE OF 18 YEARS TO ENGAGE IN SEXUAL CONDUCT;

(5) HAS BEEN CONVICTED OF VIOLATING THE CHILD PORNOGRAPHY STATUTE UNDER ARTICLE 27, § 419A OF THE CODE;

(6) HAS BEEN CONVICTED OF VIOLATING THE PROSTITUTION STATUTE UNDER ARTICLE 27, § 15 OF THE CODE OR ANY OF THE PANDERING STATUTES UNDER ARTICLE 27, §§ 426 THROUGH 433 OF THE CODE IF THE INTENDED PROSTITUTE IS UNDER THE AGE OF 18 YEARS;

(7) HAS BEEN CONVICTED OF A CRIME THAT INVOLVES CONDUCT THAT BY ITS NATURE IS A SEXUAL OFFENSE AGAINST A PERSON UNDER THE AGE OF 18 YEARS;

(8) HAS BEEN CONVICTED OF AN ATTEMPT TO COMMIT A CRIME LISTED IN ITEMS (1) THROUGH (7) OF THIS SUBSECTION; OR

(9) HAS BEEN CONVICTED IN ANOTHER STATE OR IN A FEDERAL, MILITARY, OR NATIVE AMERICAN TRIBAL COURT OF A CRIME THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE ONE OF THE CRIMES LISTED IN ITEMS (1) THROUGH (8) OF THIS SUBSECTION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 792(a)(6).

In item (4) of this subsection, the reference to "a person under the age of 18 years" is substituted for the former reference to a "minor" to conform to the terminology used throughout this subsection.

In item (9) of this subsection, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

As for the substitution of the reference to a "person" for the former reference to an "individual", *see* General Revisor's Note to article.

Defined terms: "Person" § 1-101

"State" § 1-101

(E) RELEASE.

(1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, "RELEASE" MEANS ANY TYPE OF RELEASE FROM THE CUSTODY OF A SUPERVISING AUTHORITY.

(2) "RELEASE" INCLUDES:

(I) RELEASE ON PAROLE, MANDATORY SUPERVISION, AND WORK RELEASE; AND

(II) EXCEPT FOR LEAVE THAT IS GRANTED ON AN EMERGENCY BASIS, ANY TYPE OF TEMPORARY LEAVE.

(3) "RELEASE" DOES NOT INCLUDE AN ESCAPE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 792(a)(8).

Defined term: "Supervising authority" § 11-701

(F) SEXUALLY VIOLENT OFFENDER.

"SEXUALLY VIOLENT OFFENDER" MEANS A PERSON WHO:

(1) HAS BEEN CONVICTED OF A SEXUALLY VIOLENT OFFENSE;

(2) HAS BEEN CONVICTED OF AN ATTEMPT TO COMMIT A SEXUALLY VIOLENT OFFENSE; OR

(3) HAS BEEN CONVICTED IN ANOTHER STATE OR IN A FEDERAL, MILITARY, OR NATIVE AMERICAN TRIBAL COURT OF A CRIME THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE A SEXUALLY VIOLENT OFFENSE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 792(a)(10).

In item (3) of this subsection, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

As for the substitution of the reference to a "person" for the former reference to an "individual", *see* General Revisor's Note to article.

Defined terms: "Person" § 1-101

"Sexually violent offense" § 11-701

"State" § 1-101

(G) SEXUALLY VIOLENT OFFENSE.

"SEXUALLY VIOLENT OFFENSE" MEANS:

(1) A VIOLATION OF ARTICLE 27, § 462, § 463, § 464, § 464A, § 464B, OR § 464F OF THE CODE; OR

(2) ASSAULT WITH INTENT TO COMMIT RAPE IN THE FIRST OR SECOND DEGREE OR A SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE AS PROHIBITED ON OR BEFORE SEPTEMBER 30, 1996, UNDER FORMER ARTICLE 27, § 12 OF THE CODE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 792(a)(11).

In item (2) of this subsection, the reference to an assault or sexual offense "as prohibited on or before September 30, 1996, under former Article 27, § 12 of the Code" is substituted for the former reference to an assault or offense "as previously proscribed under former § 12 of this article" for clarity. Section 1 of Chapter 632, Acts of the General Assembly of 1996, repealed former Article 27, § 12 and enacted a new statute in its place. The new statute became effective on October 1, 1996.

(H) SEXUALLY VIOLENT PREDATOR.

"SEXUALLY VIOLENT PREDATOR" MEANS A PERSON WHO:

(1) IS CONVICTED OF A SUBSEQUENT SEXUALLY VIOLENT OFFENSE; AND

(2) HAS BEEN DETERMINED IN ACCORDANCE WITH THIS SUBTITLE TO BE AT RISK OF COMMITTING ANOTHER SEXUALLY VIOLENT OFFENSE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 792(a)(12).

In item (1) of this subsection, the former reference to a "second" offense is deleted as unnecessary in light of the reference to a "subsequent" offense.

As for the substitution of the reference to a "person" for the former reference to an "individual", *see* General Revisor's Note to article.

Defined terms: "Person" § 1-101

"Sexually violent offense" § 11-701

(I) SUPERVISING AUTHORITY.

"SUPERVISING AUTHORITY" MEANS:

(1) THE SECRETARY, IF THE REGISTRANT IS IN THE CUSTODY OF A CORRECTIONAL FACILITY OPERATED BY THE DEPARTMENT;

(2) THE ADMINISTRATOR OF A LOCAL CORRECTIONAL FACILITY, IF THE REGISTRANT, INCLUDING A PARTICIPANT IN A HOME DETENTION PROGRAM, IS IN THE CUSTODY OF THE LOCAL CORRECTIONAL FACILITY;

(3) THE COURT THAT GRANTED THE PROBATION OR SUSPENDED SENTENCE, EXCEPT AS PROVIDED IN ITEM (11) OF THIS SUBSECTION, IF THE REGISTRANT IS GRANTED PROBATION BEFORE JUDGMENT, PROBATION AFTER JUDGMENT, OR A SUSPENDED SENTENCE;

(4) THE DIRECTOR OF THE PATUXENT INSTITUTION, IF THE REGISTRANT IS IN THE CUSTODY OF THE PATUXENT INSTITUTION;

(5) THE SECRETARY OF HEALTH AND MENTAL HYGIENE, IF THE REGISTRANT IS IN THE CUSTODY OF A FACILITY OPERATED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;

(6) THE COURT IN WHICH THE REGISTRANT WAS CONVICTED, IF THE REGISTRANT'S SENTENCE DOES NOT INCLUDE A TERM OF IMPRISONMENT;

(7) THE SECRETARY, IF THE REGISTRANT IS IN THE STATE UNDER TERMS AND CONDITIONS OF THE UNIFORM ACT FOR OUT-OF-STATE PAROLEE SUPERVISION, SET FORTH IN TITLE 6, SUBTITLE 2 OF THE CORRECTIONAL SERVICES ARTICLE, OR THE INTERSTATE CORRECTIONS COMPACT, SET FORTH IN TITLE 8, SUBTITLE 6 OF THE CORRECTIONAL SERVICES ARTICLE;

(8) THE SECRETARY, IF THE REGISTRANT MOVES TO THIS STATE AND WAS CONVICTED IN ANOTHER STATE OF A CRIME THAT WOULD REQUIRE THE REGISTRANT TO REGISTER IF THE CRIME WAS COMMITTED IN THIS STATE;

(9) THE SECRETARY, IF THE REGISTRANT MOVES TO THIS STATE FROM ANOTHER STATE WHERE THE REGISTRANT WAS REQUIRED TO REGISTER;

(10) THE SECRETARY, IF THE REGISTRANT IS NOT A RESIDENT OF THIS STATE; OR

(11) THE DIRECTOR OF PAROLE AND PROBATION, IF THE REGISTRANT IS UNDER THE SUPERVISION OF THE DIVISION OF PAROLE AND PROBATION.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 792(a)(13).

In item (2) of this subsection, the defined term "local correctional facility" is substituted for the former reference to a "local or regional detention center" to conform to the terminology used throughout this article.

In item (8) of this subsection, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used

throughout this article.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that items (6) and (10) of this subsection may conflict. If the registrant is not a resident of this State, then according to item (10) the Secretary is the supervising authority. However, according to item (6), if a Maryland Court was the venue in which the registrant was convicted, that court is the supervising authority.

Defined terms: "Correctional facility" § 1-101

"Department" § 1-101

"Local correctional facility" § 1-101

"Secretary" § 1-101

"State" § 1-101

11-702. ELEMENTS OF CONVICTION.

FOR THE PURPOSES OF THIS SUBTITLE, A PERSON IS CONVICTED WHEN THE PERSON:

(1) IS FOUND GUILTY OF A CRIME BY A JURY OR JUDICIAL OFFICER;

(2) ENTERS A PLEA OF GUILTY OR NOLO CONTENDERE;

(3) IS GRANTED A PROBATION BEFORE JUDGMENT AFTER A FINDING OF GUILT FOR A CRIME IF THE COURT, AS A CONDITION OF PROBATION, ORDERS COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBTITLE; OR

(4) IS FOUND NOT CRIMINALLY RESPONSIBLE FOR A CRIME.

REVISOR'S NOTE: Items (1) and (2) of this section are new language added for clarity.

Items (3) and (4) of this section are new language derived without substantive change from former Art. 27, § 792(a)(3).

In this section, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

Defined terms: "Nolo contendere" § 1-101

"Person" § 1-101

11-703. DETERMINATION OF PREDATOR STATUS.

(A) REQUEST FOR DETERMINATION.

(1) SUBJECT TO SUBSECTIONS (B) AND (C) OF THIS SECTION, IF A PERSON IS CONVICTED OF A SUBSEQUENT SEXUALLY VIOLENT OFFENSE, THE STATE'S ATTORNEY BEFORE SENTENCING MAY ASK THE COURT TO DETERMINE WHETHER THE PERSON IS A SEXUALLY VIOLENT PREDATOR.

(2) IF THE STATE'S ATTORNEY MAKES A REQUEST UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL DETERMINE, BEFORE OR AT SENTENCING, WHETHER THE PERSON IS A SEXUALLY VIOLENT PREDATOR.

(B) FACTORS IN DETERMINATION.

IN MAKING A DETERMINATION UNDER SUBSECTION (A) OF THIS SECTION, THE COURT SHALL CONSIDER:

(1) EVIDENCE THAT THE COURT CONSIDERS APPROPRIATE TO THE DETERMINATION OF WHETHER THE PERSON IS A SEXUALLY VIOLENT PREDATOR, INCLUDING THE PRESENTENCING INVESTIGATION AND SEXUALLY VIOLENT OFFENDER'S INMATE RECORD;

(2) EVIDENCE INTRODUCED BY THE PERSON CONVICTED; AND

(3) AT THE REQUEST OF THE STATE'S ATTORNEY, EVIDENCE THAT A VICTIM OF THE SEXUALLY VIOLENT OFFENSE PRESENTS.

(C) NOTICE REQUIRED.

THE STATE'S ATTORNEY MAY NOT ASK A COURT TO DETERMINE WHETHER A PERSON IS A SEXUALLY VIOLENT PREDATOR UNDER THIS SECTION UNLESS THE STATE'S ATTORNEY SERVES WRITTEN NOTICE OF INTENT TO MAKE THE REQUEST ON THE DEFENDANT OR THE DEFENDANT'S COUNSEL AT LEAST 30 DAYS BEFORE TRIAL.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(b).

In subsection (a)(1) of this section, the former reference to a "second" sexually violent offense is deleted in light of the reference to a "subsequent" offense.

As for the substitution of the reference to a "person" for the former reference to an "individual", *see* General Revisor's Note to article.

Defined terms: "Inmate" § 1-101

"Person" § 1-101

"Sexually violent offender" § 11-701

"Sexually violent offense" § 11-701

"Sexually violent predator" § 11-701

11-704. REGISTRATION REQUIRED.

A PERSON SHALL REGISTER WITH THE PERSON'S SUPERVISING AUTHORITY IF THE PERSON IS:

(1) A CHILD SEXUAL OFFENDER;

(2) AN OFFENDER;

(3) A SEXUALLY VIOLENT OFFENDER;

(4) A SEXUALLY VIOLENT PREDATOR;

(5) A CHILD SEXUAL OFFENDER WHO, BEFORE MOVING INTO THIS STATE, WAS REQUIRED TO REGISTER IN ANOTHER STATE OR BY A FEDERAL, MILITARY, OR NATIVE AMERICAN TRIBAL COURT FOR A CRIME THAT OCCURRED BEFORE OCTOBER 1, 1995;

(6) AN OFFENDER, SEXUALLY VIOLENT OFFENDER, OR SEXUALLY VIOLENT PREDATOR WHO, BEFORE MOVING INTO THIS STATE, WAS REQUIRED TO REGISTER IN ANOTHER STATE OR BY A FEDERAL, MILITARY, OR NATIVE AMERICAN TRIBAL COURT FOR A CRIME THAT OCCURRED BEFORE JULY 1, 1997; OR

(7) A CHILD SEXUAL OFFENDER, OFFENDER, SEXUALLY VIOLENT OFFENDER, OR SEXUALLY VIOLENT PREDATOR WHO IS REQUIRED TO REGISTER IN ANOTHER STATE, WHO IS NOT A RESIDENT OF THIS STATE, AND WHO ENTERS THIS STATE:

(I) TO CARRY ON EMPLOYMENT OR A VOCATION THAT IS FULL-TIME OR PART-TIME FOR A PERIOD EXCEEDING 14 DAYS OR FOR AN AGGREGATE PERIOD EXCEEDING 30 DAYS DURING A CALENDAR YEAR, WHETHER FINANCIALLY COMPENSATED, VOLUNTARY, OR FOR A GOVERNMENTAL OR EDUCATIONAL BENEFIT; OR

(II) TO ATTEND A PUBLIC OR PRIVATE EDUCATIONAL INSTITUTION, INCLUDING A SECONDARY SCHOOL, TRADE OR PROFESSIONAL INSTITUTION, OR INSTITUTION OF HIGHER EDUCATION, AS A FULL-TIME OR PART-TIME STUDENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(a)(7) and the introductory language of (c)(1).

This section, which in large part is a revision of a former definition provision, conforms to the format used in other revised articles by stating a licensing or registration requirement in a substantive provision.

In items (5) and (6) of this section, the references to a "crime" are substituted for the former references to an "offense" to conform to the terminology used throughout this article.

Defined terms: "Child sexual offender" § 11-701

"Offender" § 11-701

"Sexually violent offender" § 11-701

"Sexually violent predator" § 11-701

"State" § 1-101

"Supervising authority" § 11-701

11-705. DEADLINE FOR REGISTRATION.

(A) "RESIDENT" DEFINED.

IN THIS SECTION, "RESIDENT" MEANS A PERSON WHO LIVES IN THIS STATE WHEN THE PERSON:

(1) IS RELEASED;

(2) IS GRANTED PROBATION BEFORE JUDGMENT;

(3) IS GRANTED PROBATION AFTER JUDGMENT;

(4) IS GRANTED A SUSPENDED SENTENCE; OR

(5) RECEIVES A SENTENCE THAT DOES NOT INCLUDE A TERM OF IMPRISONMENT.

(B) REGISTRATION WITH SUPERVISING AUTHORITY.

A REGISTRANT SHALL REGISTER WITH THE SUPERVISING AUTHORITY:

(1) IF THE REGISTRANT IS A RESIDENT, ON OR BEFORE THE DATE THAT THE REGISTRANT:

(I) IS RELEASED;

(II) IS GRANTED PROBATION BEFORE JUDGMENT;

(III) IS GRANTED PROBATION AFTER JUDGMENT;

(IV) IS GRANTED A SUSPENDED SENTENCE; OR

(V) RECEIVES A SENTENCE THAT DOES NOT INCLUDE A TERM OF IMPRISONMENT;

(2) IF THE REGISTRANT MOVES INTO THE STATE, WITHIN 7 DAYS AFTER THE EARLIER OF THE DATE THAT THE REGISTRANT:

(I) ESTABLISHES A TEMPORARY OR PERMANENT RESIDENCE IN THE STATE; OR

(II) APPLIES FOR A DRIVER'S LICENSE IN THE STATE; OR

(3) IF THE REGISTRANT IS NOT A RESIDENT, WITHIN 14 DAYS AFTER THE REGISTRANT:

(I) BEGINS EMPLOYMENT IN THE STATE; OR

(II) REGISTERS AS A STUDENT IN THE STATE.

(C) ADDITIONAL REGISTRATION FOR CHILD SEXUAL OFFENDERS.

(1) A CHILD SEXUAL OFFENDER SHALL ALSO REGISTER IN PERSON WITH THE LOCAL LAW ENFORCEMENT UNIT OF THE COUNTY WHERE THE CHILD SEXUAL OFFENDER WILL RESIDE:

(I) WITHIN 7 DAYS AFTER RELEASE, IF THE CHILD SEXUAL OFFENDER IS A RESIDENT; OR

(II) WITHIN 7 DAYS AFTER REGISTERING WITH THE SUPERVISING AUTHORITY, IF THE REGISTRANT IS MOVING INTO THIS STATE.

(2) WITHIN 7 DAYS AFTER REGISTERING WITH THE SUPERVISING AUTHORITY, A CHILD SEXUAL OFFENDER WHO IS NOT A RESIDENT AND WHO WORKS OR ATTENDS SCHOOL IN THIS STATE SHALL ALSO REGISTER IN PERSON WITH THE LOCAL LAW ENFORCEMENT UNIT OF THE COUNTY WHERE THE CHILD SEXUAL OFFENDER WILL WORK OR ATTEND SCHOOL.

(3) A CHILD SEXUAL OFFENDER MAY BE REQUIRED TO GIVE TO THE LOCAL LAW ENFORCEMENT UNIT MORE INFORMATION THAN REQUIRED UNDER § 11-706 OF THIS SUBTITLE.

(D) CHANGE OF REGISTRANT'S RESIDENCE.

A REGISTRANT WHO CHANGES RESIDENCES SHALL SEND WRITTEN NOTICE OF THE CHANGE TO THE DEPARTMENT WITHIN 7 DAYS AFTER THE CHANGE OCCURS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(a)(9) and (c).

In subsection (a) of this section, as for the substitution of the reference to a "person" for the former reference to an "individual", *see* General Revisor's Note to article.

Defined terms: "Child sexual offender" § 11-701

"County" § 1-101

"Department" § 1-101

"Law enforcement unit" § 11-701

"Person" § 1-101

"Supervising authority" § 11-701

11-706. REGISTRATION STATEMENTS.

(A) CONTENTS GENERALLY.

A REGISTRATION STATEMENT SHALL INCLUDE:

(1) THE REGISTRANT'S NAME AND ADDRESS;

(2) (I) FOR A REGISTRANT UNDER § 11-704(7)(I) OF THIS SUBTITLE, THE REGISTRANT'S PLACE OF EMPLOYMENT; OR

(II) FOR A REGISTRANT UNDER § 11-704(7)(II) OF THIS SUBTITLE, THE REGISTRANT'S PLACE OF EDUCATIONAL INSTITUTION OR SCHOOL ENROLLMENT;

(3) A DESCRIPTION OF THE CRIME FOR WHICH THE REGISTRANT WAS CONVICTED, GRANTED PROBATION BEFORE JUDGMENT, OR FOUND NOT CRIMINALLY RESPONSIBLE;

(4) THE DATE THAT THE REGISTRANT WAS CONVICTED, GRANTED PROBATION BEFORE JUDGMENT, OR FOUND NOT CRIMINALLY RESPONSIBLE;

(5) THE JURISDICTION IN WHICH THE REGISTRANT WAS CONVICTED, GRANTED PROBATION BEFORE JUDGMENT, OR FOUND NOT CRIMINALLY RESPONSIBLE;

(6) A LIST OF ANY ALIASES THAT THE REGISTRANT HAS USED;

(7) THE REGISTRANT'S SOCIAL SECURITY NUMBER; AND

(8) THE REGISTRANT'S SIGNATURE AND DATE SIGNED.

(B) FURTHER CONTENTS FOR PREDATORS.

IF THE REGISTRANT IS A SEXUALLY VIOLENT PREDATOR, THE REGISTRATION STATEMENT SHALL ALSO INCLUDE:

(1) IDENTIFYING FACTORS, INCLUDING A PHYSICAL DESCRIPTION;

(2) ANTICIPATED FUTURE RESIDENCE, IF KNOWN AT THE TIME OF REGISTRATION;

(3) OFFENSE HISTORY; AND

(4) DOCUMENTATION OF TREATMENT RECEIVED FOR A MENTAL ABNORMALITY OR PERSONALITY DISORDER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(e).

In subsection (a)(2) of this section, the former references to an "individual who qualifies as" a registrant are deleted in light of the term "registrant".

Defined term: "Sexually violent predator" § 11-701

11-707. TERM OF REGISTRATION.

(A) IN GENERAL.

(1) A CHILD SEXUAL OFFENDER SHALL REGISTER ANNUALLY IN PERSON WITH A LOCAL LAW ENFORCEMENT UNIT FOR THE TERM PROVIDED UNDER PARAGRAPH (4) OF THIS SUBSECTION.

(2) AN OFFENDER AND A SEXUALLY VIOLENT OFFENDER SHALL REGISTER ANNUALLY WITH THE DEPARTMENT IN ACCORDANCE WITH § 11-711(A) OF THIS SUBTITLE AND FOR THE TERM PROVIDED UNDER PARAGRAPH (4) OF THIS SUBSECTION.

(3) A SEXUALLY VIOLENT PREDATOR SHALL REGISTER EVERY 90 DAYS IN ACCORDANCE WITH § 11-711(B) OF THIS SUBTITLE AND FOR THE TERM PROVIDED UNDER PARAGRAPH (4)(II) OF THIS SUBSECTION.

(4) THE TERM OF REGISTRATION IS:

(I) 10 YEARS; OR

(II) LIFE, IF:

1. THE REGISTRANT HAS BEEN DETERMINED TO BE A SEXUALLY VIOLENT PREDATOR IN ACCORDANCE WITH THE PROCEDURES DESCRIBED IN § 11-703 OF THIS SUBTITLE;

2. THE REGISTRANT HAS BEEN CONVICTED OF ANY VIOLATION OF ARTICLE 27, §§ 462 THROUGH 464B OF THE CODE; OR

3. THE REGISTRANT HAS BEEN PREVIOUSLY REQUIRED TO REGISTER AND HAS BEEN CONVICTED OF A SUBSEQUENT CRIME AS A CHILD SEXUAL OFFENDER OR AN OFFENDER OR HAS BEEN CONVICTED OF A SUBSEQUENT SEXUALLY VIOLENT OFFENSE.

(5) A REGISTRANT WHO IS NOT A RESIDENT OF THE STATE SHALL REGISTER FOR THE APPROPRIATE TIME SPECIFIED IN THIS SUBSECTION OR UNTIL THE REGISTRANT'S EMPLOYMENT OR STUDENT ENROLLMENT IN THE STATE ENDS.

(B) COMPUTATION OF TERMS.

A TERM OF REGISTRATION DESCRIBED IN THIS SECTION SHALL BE COMPUTED FROM:

(1) THE LAST DATE OF RELEASE; OR

(2) THE DATE GRANTED PROBATION OR A SUSPENDED SENTENCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(d).

In subsection (b)(2) of this section, the former references to "probation before judgment" and "probation after judgment" are deleted as included in the reference to "probation". In addition, the former reference to "[t]he date of receiving a sentence that does not include a term of imprisonment" is deleted as included in the reference to "a suspended sentence".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (b)(2) of this section is unclear as

to the starting date of the term of registration: the date granted probation or the date granted a suspended sentence?

Defined terms: "Child sexual offender" § 11-701

"Local law enforcement unit" § 11-701

"Offender" § 11-701

"Person" § 1-101

"Sexually violent offense" § 11-701

"Sexually violent predator" § 11-701

11-708. DUTIES OF SUPERVISING AUTHORITY.

(A) AT TIME OF REGISTRATION.

WHEN A REGISTRANT REGISTERS, THE SUPERVISING AUTHORITY SHALL:

(1) GIVE WRITTEN NOTICE TO THE REGISTRANT OF THE REQUIREMENTS OF THIS SUBTITLE;

(2) EXPLAIN THE REQUIREMENTS OF THIS SUBTITLE TO THE REGISTRANT, INCLUDING:

(I) THE DUTIES OF A REGISTRANT WHEN THE REGISTRANT CHANGES RESIDENCE ADDRESS IN THIS STATE;

(II) THE REQUIREMENT FOR A CHILD SEXUAL OFFENDER TO REGISTER IN PERSON WITH THE LOCAL LAW ENFORCEMENT UNIT OF THE COUNTY WHERE THE CHILD SEXUAL OFFENDER WILL RESIDE OR WHERE THE CHILD SEXUAL OFFENDER WHO IS NOT A RESIDENT OF THIS STATE WILL WORK OR ATTEND SCHOOL; AND

(III) THE REQUIREMENT THAT IF THE REGISTRANT CHANGES RESIDENCE ADDRESS, EMPLOYMENT, OR SCHOOL ENROLLMENT TO ANOTHER STATE THAT HAS A REGISTRATION REQUIREMENT, THE REGISTRANT SHALL REGISTER WITH THE DESIGNATED LAW ENFORCEMENT UNIT OF THAT STATE WITHIN 7 DAYS AFTER THE CHANGE; AND

(3) OBTAIN A STATEMENT SIGNED BY THE REGISTRANT ACKNOWLEDGING THAT THE SUPERVISING AUTHORITY EXPLAINED THE REQUIREMENTS OF THIS SUBTITLE AND GAVE WRITTEN NOTICE OF THE REQUIREMENTS TO THE REGISTRANT.

(B) PHOTOGRAPH AND FINGERPRINTS TO BE OBTAINED.

THE SUPERVISING AUTHORITY SHALL OBTAIN A PHOTOGRAPH AND FINGERPRINTS OF THE REGISTRANT AND ATTACH THE PHOTOGRAPH AND FINGERPRINTS TO THE REGISTRATION STATEMENT.

(C) COPY TO LOCAL LAW ENFORCEMENT UNIT.

WITHIN 5 DAYS AFTER OBTAINING A REGISTRATION STATEMENT, THE SUPERVISING AUTHORITY SHALL SEND A COPY OF THE REGISTRATION STATEMENT WITH THE ATTACHED FINGERPRINTS AND PHOTOGRAPH OF THE REGISTRANT TO THE LOCAL LAW ENFORCEMENT UNIT IN THE COUNTY WHERE THE REGISTRANT WILL RESIDE OR WHERE A REGISTRANT WHO IS NOT A RESIDENT WILL WORK OR ATTEND SCHOOL.

(D) REGISTRATION STATEMENT TO BE SUBMITTED TO DEPARTMENT.

AS SOON AS POSSIBLE BUT NOT LATER THAN 5 WORKING DAYS AFTER THE REGISTRATION IS COMPLETE, A SUPERVISING AUTHORITY THAT IS NOT A UNIT OF THE DEPARTMENT SHALL SEND THE REGISTRATION STATEMENT TO THE DEPARTMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(f).

Defined terms: "Child sexual offender" § 11-701

"County" § 1-101

"Department" § 1-101

"Local law enforcement unit" § 11-701

"State" § 1-101

"Supervising authority" § 11-701

11-709. NOTIFICATION REQUIREMENTS OF LOCAL LAW ENFORCEMENT UNIT.

(A) NOTICE TO DEPARTMENT.

EACH YEAR WITHIN 5 DAYS AFTER A CHILD SEXUAL OFFENDER COMPLETES THE REGISTRATION REQUIREMENTS OF § 11-707(A) OF THIS SUBTITLE, A LOCAL LAW ENFORCEMENT UNIT SHALL SEND NOTICE OF THE CHILD SEXUAL OFFENDER'S ANNUAL REGISTRATION TO THE DEPARTMENT.

(B) NOTICE TO SUPERINTENDENTS AND PRINCIPALS.

(1) AS SOON AS POSSIBLE BUT NOT LATER THAN 5 WORKING DAYS AFTER RECEIVING A REGISTRATION STATEMENT OF A CHILD SEXUAL OFFENDER, A LOCAL LAW ENFORCEMENT UNIT SHALL SEND WRITTEN NOTICE OF THE REGISTRATION STATEMENT TO THE COUNTY SUPERINTENDENT, AS DEFINED IN § 1-101 OF THE EDUCATION ARTICLE, IN THE COUNTY WHERE THE CHILD SEXUAL OFFENDER IS TO RESIDE OR WHERE A CHILD SEXUAL OFFENDER WHO IS NOT A RESIDENT OF THE STATE WILL WORK OR ATTEND SCHOOL.

(2) AS SOON AS POSSIBLE BUT NOT LATER THAN 5 WORKING DAYS AFTER RECEIVING NOTICE FROM THE LOCAL LAW ENFORCEMENT UNIT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COUNTY SUPERINTENDENT SHALL SEND WRITTEN NOTICE OF THE REGISTRATION STATEMENT TO PRINCIPALS OF THE SCHOOLS UNDER THE SUPERINTENDENT'S SUPERVISION THAT THE SUPERINTENDENT CONSIDERS NECESSARY TO PROTECT THE STUDENTS OF A SCHOOL FROM A CHILD SEXUAL OFFENDER.

(C) NOTICE AFTER REGISTRANT'S RELEASE OR ESCAPE.

A LOCAL LAW ENFORCEMENT UNIT THAT RECEIVES A NOTICE FROM A SUPERVISING AUTHORITY UNDER THIS SECTION SHALL SEND A COPY OF THE NOTICE TO THE POLICE DEPARTMENT, IF ANY, OF A MUNICIPAL CORPORATION IF THE REGISTRANT:

(1) IS TO RESIDE IN THE MUNICIPAL CORPORATION AFTER RELEASE; OR

(2) ESCAPES FROM A CORRECTIONAL FACILITY BUT RESIDED IN THE MUNICIPAL CORPORATION BEFORE BEING COMMITTED TO THE CUSTODY OF A SUPERVISING AUTHORITY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(g)(1), (2), and (4).

Defined terms: "Child sexual offender" § 11-701

"Correctional facility" § 1-101

"County" § 1-101

"Department" § 1-101

"Local law enforcement unit" § 11-701

"Supervising authority" § 11-701

11-710. NOTICE OF REGISTRANT'S CHANGE OF ADDRESS.

AS SOON AS POSSIBLE BUT NOT LATER THAN 5 WORKING DAYS AFTER RECEIPT OF NOTICE OF A REGISTRANT'S CHANGE OF ADDRESS, THE DEPARTMENT SHALL GIVE NOTICE OF THE CHANGE:

(1) IF THE REGISTRATION IS PREMISED ON A CONVICTION UNDER FEDERAL, MILITARY, OR NATIVE AMERICAN TRIBAL LAW, TO THE DESIGNATED FEDERAL UNIT; AND

(2) (I) TO THE LOCAL LAW ENFORCEMENT UNIT IN WHOSE COUNTY THE NEW RESIDENCE IS LOCATED; OR

(II) IF THE NEW RESIDENCE IS IN A DIFFERENT STATE THAT HAS A REGISTRATION REQUIREMENT, TO THE DESIGNATED LAW ENFORCEMENT UNIT IN THAT STATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(h)(2).

In item (1) of this section, as for the substitution of the word federal "unit" for the former reference to "agency", *see* General Revisor's Note to article.

In item (2)(i) of this section, the conjunction "or" is substituted for the former conjunction "and" to reflect that a new residence will be located either in a county of this State or in a different state.

Defined terms: "Department" § 1-101

"Local law enforcement unit" § 11-701

11-711. VERIFICATION FORMS.

(A) OFFENDERS AND SEXUALLY VIOLENT OFFENDERS.

(1) THE DEPARTMENT SHALL MAIL ANNUALLY A VERIFICATION FORM TO THE LAST REPORTED ADDRESS OF EACH OFFENDER AND SEXUALLY VIOLENT OFFENDER.

(2) THE VERIFICATION FORM MAY NOT BE FORWARDED.

(3) WITHIN 10 DAYS AFTER RECEIVING THE VERIFICATION FORM, THE OFFENDER OR SEXUALLY VIOLENT OFFENDER SHALL SIGN THE VERIFICATION FORM AND MAIL IT TO THE DEPARTMENT.

(B) SEXUALLY VIOLENT PREDATORS.

(1) A LOCAL LAW ENFORCEMENT UNIT SHALL MAIL A VERIFICATION FORM EVERY 90 DAYS TO THE LAST REPORTED ADDRESS OF A SEXUALLY VIOLENT PREDATOR.

(2) THE VERIFICATION FORM MAY NOT BE FORWARDED.

(3) WITHIN 10 DAYS AFTER RECEIVING THE VERIFICATION FORM, THE SEXUALLY VIOLENT PREDATOR SHALL SIGN THE FORM AND MAIL IT TO THE LOCAL LAW ENFORCEMENT UNIT.

(4) WITHIN 5 DAYS AFTER RECEIVING A VERIFICATION FORM FROM A SEXUALLY VIOLENT PREDATOR, A LOCAL LAW ENFORCEMENT UNIT SHALL SEND A COPY OF THE VERIFICATION FORM TO THE DEPARTMENT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(g)(3) and (h)(3).

Defined terms: "Department" § 1-101

"Local law enforcement unit" § 11-701

"Offender" § 11-701

"Sexually violent offender" § 11-701

"Sexually violent predator" § 11-701

11-712. NOTICE OF ESCAPE AND RECAPTURE.

(A) ESCAPE.

IF A REGISTRANT ESCAPES FROM A CORRECTIONAL FACILITY, THE SUPERVISING AUTHORITY OF THE CORRECTIONAL FACILITY BY THE MOST REASONABLE AND EXPEDIENT MEANS AVAILABLE SHALL IMMEDIATELY NOTIFY:

(1) THE LOCAL LAW ENFORCEMENT UNIT IN THE JURISDICTION WHERE THE REGISTRANT RESIDED BEFORE THE REGISTRANT WAS COMMITTED TO THE CUSTODY OF THE SUPERVISING AUTHORITY; AND

(2) EACH PERSON WHO IS ENTITLED TO RECEIVE NOTICE UNDER § 11-715(A) OF THIS SUBTITLE.

(B) RECAPTURE.

IF THE REGISTRANT IS RECAPTURED, THE SUPERVISING AUTHORITY SHALL SEND NOTICE, AS SOON AS POSSIBLE BUT NOT LATER THAN 2 WORKING DAYS AFTER THE SUPERVISING AUTHORITY LEARNS OF THE RECAPTURE, TO:

(1) THE LOCAL LAW ENFORCEMENT UNIT IN THE JURISDICTION WHERE THE REGISTRANT RESIDED BEFORE THE REGISTRANT WAS COMMITTED TO THE CUSTODY OF THE SUPERVISING AUTHORITY; AND

(2) EACH PERSON WHO IS ENTITLED TO RECEIVE NOTICE UNDER § 11-715(A) OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(i).

As for the substitution of the reference to a "person" for the former reference to an "individual", *see* General Revisor's Note to article.

Defined terms: "Correctional facility" § 1-101

"Local law enforcement unit" § 11-701

"Person" § 1-101

"Supervising authority" § 11-701

11-713. DUTIES OF DEPARTMENT.

THE DEPARTMENT:

(1) AS SOON AS POSSIBLE BUT NOT LATER THAN 5 WORKING DAYS AFTER RECEIVING THE CONVICTION DATA AND FINGERPRINTS OF A REGISTRANT, SHALL TRANSMIT THE DATA AND FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION IF THE BUREAU DOES NOT HAVE THAT INFORMATION;

(2) SHALL KEEP A CENTRAL REGISTRY OF REGISTRANTS;

(3) SHALL REIMBURSE SUPERVISING AUTHORITIES FOR THE COST OF PROCESSING THE REGISTRATION STATEMENTS OF REGISTRANTS, INCLUDING THE COST OF TAKING FINGERPRINTS AND PHOTOGRAPHS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(h)(1).

Defined term: "Department" § 1-101

11-714. PROVIDING REGISTRATION STATEMENTS -- IN GENERAL.

A REGISTRATION STATEMENT GIVEN TO A PERSON UNDER THIS SUBTITLE SHALL INCLUDE A COPY OF THE COMPLETED REGISTRATION FORM AND A COPY OF THE REGISTRANT'S PHOTOGRAPH, BUT NEED NOT INCLUDE THE FINGERPRINTS OF THE REGISTRANT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(j)(1).

Defined term: "Person" § 1-101

11-715. SAME -- SUPERVISING AUTHORITY.

(A) COPIES TO BE SENT ON WRITTEN REQUEST.

(1) ON REQUEST FOR A COPY OF A REGISTRATION STATEMENT ABOUT A SPECIFIC PERSON, THE SUPERVISING AUTHORITY SHALL SEND A COPY TO:

(I) EACH WITNESS WHO TESTIFIED AGAINST THE REGISTRANT IN A COURT PROCEEDING INVOLVING THE CRIME; AND

(II) EACH PERSON SPECIFIED IN WRITING BY THE STATE'S ATTORNEY.

(2) SUBJECT TO ITEM (3) OF THIS SUBSECTION, THE SUPERVISING AUTHORITY SHALL SEND A COPY OF A REGISTRATION STATEMENT TO EACH:

(I) VICTIM OF THE CRIME FOR WHICH THE REGISTRANT WAS CONVICTED; OR

(II) VICTIM'S REPRESENTATIVE AS DEFINED IN § 11-104 OF THIS TITLE.

(3) A COPY OF THE REGISTRATION STATEMENT SHALL BE SENT IF:

(I) A REQUEST IS MADE IN WRITING ABOUT A SPECIFIC REGISTRANT; OR

(II) A NOTIFICATION REQUEST FORM HAS BEEN FILED UNDER § 11-104 OF THIS TITLE.

(B) CONFIDENTIALITY OF INFORMATION.

INFORMATION ABOUT A PERSON WHO RECEIVES A COPY OF A REGISTRATION STATEMENT UNDER THIS SECTION IS CONFIDENTIAL AND MAY NOT BE DISCLOSED TO THE REGISTRANT OR ANY OTHER PERSON.

(C) ADDRESS FOR NOTICE.

A SUPERVISING AUTHORITY SHALL SEND A NOTICE REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION OR § 11-712(A)(2) OR (B)(2) OF THIS SUBTITLE TO THE LAST ADDRESS GIVEN TO THE SUPERVISING AUTHORITY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(j)(2), (3), and (4).

In subsection (a)(2)(ii) of this section, the reference to a "victim's representative as defined in § 11-104 of this title" is substituted for the narrow former reference to "if the victim is a minor, the parents or legal guardian of the victim" in light of the former requirement that, to receive a copy of a registration statement, a victim must file a form "under § 770 of this article". The provisions of former § 770 - now § 11-104 of this title - apply to victim's representatives.

As for the substitution of the reference to "person" for the former reference to an "individual", *see* General Revisor's Note to article.

Defined terms: "Person" § 1-101

"Supervising authority" § 11-701

11-716. SAME -- TO LOCAL LAW ENFORCEMENT UNIT.

(A) COPIES TO BE SENT ON WRITTEN REQUEST.

SUBJECT TO SUBSECTION (B) OF THIS SECTION, ON WRITTEN REQUEST TO A LOCAL LAW ENFORCEMENT UNIT, THE UNIT:

(1) SHALL SEND TO THE PERSON WHO SUBMITTED THE REQUEST ONE COPY OF THE REGISTRATION STATEMENT OF EACH CHILD SEXUAL OFFENDER AND EACH SEXUALLY VIOLENT PREDATOR ON RECORD WITH THE UNIT; AND

(2) MAY SEND TO THE PERSON WHO SUBMITTED THE REQUEST ONE COPY OF THE REGISTRATION STATEMENT OF ANY REGISTRANT NOT DESCRIBED IN ITEM (1) OF THIS SUBSECTION ON RECORD WITH THE UNIT.

(B) CONTENTS OF REQUEST.

A REQUEST UNDER SUBSECTION (A) OF THIS SECTION SHALL CONTAIN:

(1) THE NAME AND ADDRESS OF THE PERSON WHO SUBMITS THE REQUEST; AND

(2) THE REASON FOR THE REQUEST.

(C) LOCAL LAW ENFORCEMENT UNIT TO KEEP RECORDS.

A LOCAL LAW ENFORCEMENT UNIT SHALL KEEP RECORDS OF ALL WRITTEN REQUESTS RECEIVED UNDER SUBSECTION (A) OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(j)(5).

As for the substitution of the reference to a "person" for the former reference to an "individual", *see* General Revisor's Note to article.

Defined terms: "Child sexual offender" § 11-701

"Local law enforcement unit" § 11-701

"Person" § 1-101

"Sexually violent predator" § 11-701

11-717. REGISTRATION STATEMENTS TO BE MADE AVAILABLE TO PUBLIC; POSTING ON INTERNET.

(A) DEPARTMENT TO MAKE AVAILABLE REGISTRATION STATEMENTS.

THE DEPARTMENT SHALL MAKE AVAILABLE TO THE PUBLIC REGISTRATION STATEMENTS OR INFORMATION ABOUT REGISTRATION STATEMENTS.

(B) POSTING ON INTERNET.

THE DEPARTMENT MAY POST ON THE INTERNET A CURRENT LISTING OF EACH REGISTRANT'S NAME, CRIME, AND OTHER IDENTIFYING INFORMATION.

(C) REGULATIONS.

THE DEPARTMENT SHALL ESTABLISH REGULATIONS TO CARRY OUT THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(j)(6).

In subsection (b) of this section, the reference to a "crime" is substituted for the former reference to an "offense" for consistency throughout this article.

In subsection (c) of this section, the reference to the Department's duty to establish regulations "to carry out this section" is added for clarity.

Defined term: "Department" § 1-101

11-718. NOTICE TO PROTECT PUBLIC.

(A) IN GENERAL.

(1) IF THE DEPARTMENT OR A LOCAL LAW ENFORCEMENT UNIT FINDS THAT, TO PROTECT THE PUBLIC FROM A SPECIFIC REGISTRANT, IT IS NECESSARY TO GIVE NOTICE OF A REGISTRATION STATEMENT TO A PARTICULAR PERSON, THEN THE DEPARTMENT OR A LOCAL LAW ENFORCEMENT UNIT SHALL GIVE NOTICE OF THE REGISTRATION STATEMENT TO THAT PERSON.

(2) THIS NOTICE IS IN ADDITION TO THE NOTICE REQUIRED UNDER § 11-709(B)(1) OF THIS SUBTITLE.

(B) NOTIFICATION PROCEDURES.

THE DEPARTMENT AND LOCAL LAW ENFORCEMENT UNITS SHALL ESTABLISH PROCEDURES TO CARRY OUT THE NOTIFICATION REQUIREMENTS OF THIS SECTION, INCLUDING THE CIRCUMSTANCES UNDER AND MANNER IN WHICH NOTIFICATION SHALL BE PROVIDED.

(C) RELEASE OF IDENTITY OF VICTIM PROHIBITED.

A LOCAL LAW ENFORCEMENT UNIT AND THE DEPARTMENT MAY NOT RELEASE THE IDENTITY OF A VICTIM OF A CRIME THAT REQUIRES REGISTRATION UNDER THIS SUBTITLE.

(D) EFFECT OF SECTION.

A DISCLOSURE UNDER THIS SECTION DOES NOT LIMIT OR PROHIBIT ANY OTHER DISCLOSURE ALLOWED OR REQUIRED UNDER LAW.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(j)(7) and (8).

In subsection (a)(1) of this section, the former reference to a notification that may "serve to" protect the public is deleted as implicit in the word "protect".

In subsection (c) of this section, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this article.

Defined terms: "Department" § 1-101

"Local law enforcement unit" § 11-701

"Person" § 1-101

11-719. IMMUNITY FOR PUBLIC OFFICIALS, EMPLOYEES, AND UNITS.

AN ELECTED PUBLIC OFFICIAL, PUBLIC EMPLOYEE, OR PUBLIC UNIT HAS THE IMMUNITY DESCRIBED IN §§ 5-302 AND 5-522 OF THE COURTS ARTICLE REGARDING CIVIL LIABILITY FOR DAMAGES ARISING OUT OF ANY ACTION RELATING TO THE PROVISIONS OF THIS SUBTITLE, UNLESS IT IS PROVEN THAT THE OFFICIAL, EMPLOYEE, OR UNIT ACTED WITH GROSS NEGLIGENCE OR IN BAD FAITH.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(k).

As for the substitution of the word "unit" for the former reference to an "agency", *see* General Revisor's Note to article.

11-720. REGULATIONS.

WITH ADVICE FROM THE CRIMINAL JUSTICE INFORMATION ADVISORY BOARD ESTABLISHED UNDER § 10-207 OF THIS ARTICLE, THE SECRETARY SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(m).

As for the substitution of the phrase "carry out" for the former reference to "implement", *see* General Revisor's Note to article.

Defined term: "Secretary" § 1-101

11-721. PROHIBITED ACT; PENALTY.

(A) PROHIBITED ACT.

A REGISTRANT MAY NOT KNOWINGLY FAIL TO REGISTER OR KNOWINGLY PROVIDE FALSE INFORMATION OF A MATERIAL FACT AS REQUIRED BY THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

(C) STATUTE OF LIMITATIONS AND IN BANC REVIEW.

A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 792(l).

Subsection (c) of this section is substituted for the former statement that a violation of this section subjects the registrant to imprisonment "in the penitentiary", for clarity and consistency within this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

SUBTITLE 8. CRIMINAL INJURIES COMPENSATION BOARD.

11-801. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 815(a).

The only changes are in style.

(B) BOARD.

"BOARD" MEANS THE CRIMINAL INJURIES COMPENSATION BOARD.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 815(b).

No changes are made.

(C) CLAIMANT.

"CLAIMANT" MEANS THE PERSON FILING A CLAIM UNDER THIS SUBTITLE.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 815(c).

The reference to this "subtitle" is substituted for the former overly broad reference to this "article" to reflect the appropriate statutory unit governing the criminal injuries compensation law.

The only other changes are in style.

Defined term: "Person" § 1-101

(D) CRIME.

(1) "CRIME" MEANS:

(I) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A CRIMINAL OFFENSE UNDER STATE, FEDERAL, OR COMMON LAW THAT IS COMMITTED IN:

1. THIS STATE; OR

2. ANOTHER STATE AGAINST A RESIDENT OF THIS STATE; OR

(II) AN ACT OF INTERNATIONAL TERRORISM AS DEFINED IN TITLE 18, § 2331 OF THE UNITED STATES CODE THAT IS COMMITTED OUTSIDE OF THE UNITED STATES AGAINST A RESIDENT OF THIS STATE.

(2) "CRIME" DOES NOT INCLUDE AN ACT INVOLVING THE OPERATION OF A VESSEL OR MOTOR VEHICLE UNLESS THE ACT IS:

(I) OPERATING A MOTOR VEHICLE IN VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE; OR

(II) OPERATING A MOTOR VEHICLE OR VESSEL THAT RESULTS IN AN INTENTIONAL INJURY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 815(d)(2) and (1)(i) through (v).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in paragraph (1) of this subsection, the references to "state" are substituted for the former reference to "State" to clarify that this definition extends to the laws of any state in the United States and not only to the laws of Maryland.

Defined term: "State" § 1-101

(E) DEPENDENT.

"DEPENDENT" MEANS:

(1) A SURVIVING SPOUSE OR CHILD OF A PERSON; OR

(2) A PERSON WHO IS DEPENDENT ON ANOTHER PERSON FOR PRINCIPAL SUPPORT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 819(a)(2), (3), (5), and (6).

The term "dependent" is defined for purposes of this subtitle to allow concise and consistent reference to persons who, because of relationship or dependence on a victim who dies, may be eligible for an award under this subtitle.

The former law specified that persons eligible for awards include:

(1) a surviving spouse or child of "a victim of a crime who died as a direct result of a crime" or "a person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in the person's presence or trying to apprehend a person who had committed a crime in the person's presence or had, in fact, committed a felony"; and

(2) a person dependent for principal support upon "a victim of a crime who died as a result of a crime" or "any person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in the person's presence or trying to apprehend a person who had committed a crime in the person's presence or had, in fact, committed a felony".

This subsection deletes as redundant these descriptions of victims and other persons to whom dependents are attached because the defined term "dependent" is always used in connection with the defined term "victim", in whose definition the identical descriptions appear.

Defined term: "Person" § 1-101

(F) VICTIM.

"VICTIM" MEANS A PERSON:

(1) WHO SUFFERS PHYSICAL INJURY OR DEATH AS A RESULT OF A CRIME OR DELINQUENT ACT;

(2) WHO SUFFERS PSYCHOLOGICAL INJURY AS A DIRECT RESULT OF:

(I) A FOURTH DEGREE SEXUAL OFFENSE OR A DELINQUENT ACT THAT WOULD BE A FOURTH DEGREE SEXUAL OFFENSE IF COMMITTED BY AN ADULT;

(II) A FELONY OR A DELINQUENT ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT; OR

(III) PHYSICAL INJURY OR DEATH DIRECTLY RESULTING FROM A CRIME OR DELINQUENT ACT; OR

(3) WHO SUFFERS PHYSICAL INJURY OR DEATH AS A DIRECT RESULT OF:

(I) TRYING TO PREVENT A CRIME OR DELINQUENT ACT OR AN ATTEMPTED CRIME OR DELINQUENT ACT FROM OCCURRING IN THE PERSON'S PRESENCE;

(II) TRYING TO APPREHEND AN OFFENDER WHO HAD COMMITTED A CRIME OR DELINQUENT ACT IN THE PERSON'S PRESENCE OR HAD COMMITTED A FELONY OR A DELINQUENT ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT; OR

(III) HELPING A LAW ENFORCEMENT OFFICER IN THE PERFORMANCE OF THE OFFICER'S DUTIES OR HELPING A MEMBER OF A FIRE DEPARTMENT WHO IS BEING OBSTRUCTED FROM PERFORMING THE MEMBER'S DUTIES.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, §§ 815(f) and 819(a)(4) and (7).

In this subsection, the definition of "victim" is revised for purposes of this subtitle to include those persons who, while not included in the definition of "victim" under former law, were eligible, and whose surviving spouses, children, and dependents were eligible, for criminal injuries compensation awards as a result of the person being injured or killed as a direct result of crime or delinquent act.

As for the addition in items (2) and (3) of this subsection of the defined term "delinquent act" to the defined term "crime", *see* General Revisor's Note to this title.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in item (3) of this subsection, the phrase "who suffers physical injury or death as a direct result of" is substituted for the former phrase "who is injured or killed while" for accuracy and

consistency to expressly state the implied requirement under former law that there be a causal link between the injury or death and the criminal activity.

The Criminal Procedure Article Review Committee also notes, for consideration by the General Assembly, that apparently subsection (f)(1) of this section does not apply to a person who:

(1) suffers a psychological injury but does not personally suffer physical injury or death as a result of a crime or delinquent act; or

(2) is not the intended victim of the crime or delinquent act, *e.g.*, the rape or robbery victim.

For example, a person would not be a "victim" under this subtitle by suffering psychological injury because the person was a victim of stalking, because a spouse was murdered, or because a daughter was raped. Additionally, a person would not be a "victim" by suffering psychological injury after witnessing a crime in which a stranger was brutally injured or killed.

Defined terms: "Crime" § 11-801

"Delinquent act" § 11-101

GENERAL REVISOR'S NOTE TO SECTION:

Former Art. 27, § 815(d)(1)(vi), which defined "crime" in part to mean a "delinquent act", is deleted as unnecessary in light of the defined term "delinquent act" that is used throughout this title. *See* § 11-101 to title.

Former Art. 27, § 815(e), which defined "family" for purposes of this subtitle, is deleted as obsolete and unnecessary because, although the term "family" appeared in the former law, the term was not used in a context indicating the definition stated in Art. 27, § 815(e).

11-802. LEGISLATIVE POLICY.

(A) LEGISLATIVE POLICY.

THE GENERAL ASSEMBLY FINDS:

(1) THAT MANY INNOCENT PERSONS SUFFER PERSONAL PHYSICAL OR PSYCHOLOGICAL INJURY OR DIE BECAUSE OF CRIMES OR DELINQUENT ACTS OR IN THEIR EFFORTS TO PREVENT THEM OR APPREHEND PERSONS COMMITTING OR ATTEMPTING TO COMMIT THEM;

(2) THAT THESE PERSONS OR THEIR DEPENDENTS MAY AS A RESULT SUFFER DISABILITY, INCUR FINANCIAL HARDSHIPS, OR BECOME RELIANT ON PUBLIC ASSISTANCE; AND

(3) THAT THERE IS A NEED FOR GOVERNMENT FINANCIAL ASSISTANCE FOR THESE VICTIMS.

(B) STATEMENT OF POLICY.

THE POLICY OF THE STATE IS THAT HELP, CARE, AND SUPPORT BE PROVIDED BY THE STATE, AS A MATTER OF MORAL RESPONSIBILITY, FOR THESE VICTIMS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 816.

The defined term "delinquent act" is added. *See* General Revisor's Note to title.

Defined terms: "Crime" § 11-801

"Delinquent act" § 11-101

"Dependent" § 11-801

"Victim" § 11-801

11-803. SECRETARY'S DESIGNEE.

THE SECRETARY MAY DESIGNATE A PERSON TO CARRY OUT THE DUTIES OF THE SECRETARY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 815(g).

The former definition provision is revised as a general provision for clarity.

Defined terms: "Person" § 1-101

"Secretary" § 1-101

11-804. CRIMINAL INJURIES COMPENSATION BOARD.

(A) ESTABLISHED.

THERE IS A CRIMINAL INJURIES COMPENSATION BOARD IN THE DEPARTMENT.

(B) COMPOSITION; APPOINTMENT OF MEMBERS.

(1) THE BOARD CONSISTS OF FIVE MEMBERS.

(2) OF THE FIVE MEMBERS OF THE BOARD:

(I) NO MORE THAN FOUR MAY BELONG TO THE SAME POLITICAL PARTY; AND

(II) ONE SHALL HAVE BEEN ADMITTED TO PRACTICE LAW IN THE STATE FOR AT LEAST 5 YEARS IMMEDIATELY PRECEDING THE APPOINTMENT.

(3) THE SECRETARY SHALL APPOINT THE MEMBERS OF THE BOARD, WITH THE APPROVAL OF THE GOVERNOR AND THE ADVICE AND CONSENT OF THE SENATE.

(C) TENURE.

(1) THE TERM OF A MEMBER IS 5 YEARS.

(2) A MEMBER WHO IS APPOINTED TO FILL A VACANCY OCCURRING OTHER THAN BY EXPIRATION OF A TERM SERVES FOR THE REST OF THE UNEXPIRED TERM.

(D) CHAIRMAN.

(1) WITH THE APPROVAL OF THE GOVERNOR, THE SECRETARY SHALL DESIGNATE ONE MEMBER OF THE BOARD AS CHAIRMAN.

(2) THE CHAIRMAN SERVES AT THE PLEASURE OF THE SECRETARY.

(E) COMPENSATION.

(1) EACH MEMBER OF THE BOARD SHALL DEVOTE THE TIME NECESSARY TO PERFORM THE DUTIES LISTED UNDER THIS SUBTITLE.

(2) EACH MEMBER OF THE BOARD IS ENTITLED TO:

(I) COMPENSATION IN ACCORDANCE WITH THE STATE BUDGET; AND

(II) REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 817.

In subsection (b)(2)(ii) of this section, the reference to 5 years "immediately" preceding the appointment is substituted for the former reference to 5 years "next" preceding the appointment for clarity.

Subsection (e)(2)(ii) of this section is standard language added to reflect that, under SF § 10-203, the Board of Public Works has adopted regulations for reimbursement of expenses. *See* COMAR 23.02.01.01 through 12.

Defined terms: "Board" § 11-801

"Department" § 1-101

"Secretary" § 1-101

11-805. POWERS AND DUTIES OF BOARD.

(A) IN GENERAL.

SUBJECT TO THE AUTHORITY OF THE SECRETARY AS SET FORTH IN TITLE 2, SUBTITLE 1 OF THE CORRECTIONAL SERVICES ARTICLE, THE BOARD HAS THE FOLLOWING POWERS AND DUTIES:

(1) TO ESTABLISH AND MAINTAIN AN OFFICE AND TO APPOINT AND PRESCRIBE THE DUTIES OF A CLAIMS EXAMINER, A SECRETARY, CLERKS, AND ANY OTHER EMPLOYEES AND AGENTS AS MAY BE NECESSARY;

(2) TO ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS AND PURPOSES OF THIS SUBTITLE, INCLUDING PROCEDURES FOR THE REVIEW AND EVALUATION OF CLAIMS AND REGULATIONS FOR THE APPROVAL OF ATTORNEYS' FEES FOR REPRESENTATION BEFORE THE BOARD OR BEFORE THE COURT ON JUDICIAL REVIEW;

(3) TO REQUEST FROM THE STATE'S ATTORNEY, THE DEPARTMENT OF STATE POLICE, OR COUNTY OR MUNICIPAL POLICE DEPARTMENTS ANY INVESTIGATION AND INFORMATION THAT WILL HELP THE BOARD TO DETERMINE:

(I) WHETHER A CRIME OR A DELINQUENT ACT WAS COMMITTED OR ATTEMPTED; AND

(II) WHETHER AND TO WHAT EXTENT THE VICTIM OR CLAIMANT WAS RESPONSIBLE FOR THE VICTIM'S OR CLAIMANT'S OWN INJURY;

(4) TO HEAR AND DETERMINE EACH CLAIM FOR AN AWARD FILED WITH THE BOARD UNDER THIS SUBTITLE AND TO REINVESTIGATE OR REOPEN A CASE AS THE BOARD DETERMINES TO BE NECESSARY;

(5) TO DIRECT MEDICAL EXAMINATION OF VICTIMS;

(6) TO HOLD HEARINGS, ADMINISTER OATHS, EXAMINE ANY PERSON UNDER OATH, AND ISSUE SUBPOENAS REQUIRING THE ATTENDANCE AND TESTIMONY OF WITNESSES OR REQUIRING THE PRODUCTION OF DOCUMENTS OR OTHER EVIDENCE;

(7) TO TAKE OR CAUSE TO BE TAKEN AFFIDAVITS OR DEPOSITIONS WITHIN OR OUTSIDE THE STATE; AND

(8) TO SUBMIT EACH YEAR TO THE GOVERNOR, TO THE SECRETARY, AND, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY A WRITTEN REPORT OF THE ACTIVITIES OF THE BOARD.

(B) EMPLOYEES.

EXCEPT AS OTHERWISE PROVIDED BY LAW, AN EMPLOYEE OF THE BOARD IS SUBJECT TO THE STATE PERSONNEL AND PENSIONS ARTICLE.

(C) DELEGATION OF HEARING POWERS; APPLICATION OF MARYLAND RULES TO SUBPOENAS.

(1) THE BOARD MAY DELEGATE TO A MEMBER OR EMPLOYEE OF THE BOARD ITS POWERS UNDER THIS SECTION TO HOLD HEARINGS, ADMINISTER OATHS, EXAMINE A PERSON UNDER OATH, AND ISSUE SUBPOENAS.

(2) A SUBPOENA ISSUED UNDER THIS SECTION IS SUBJECT TO THE MARYLAND RULES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 818.

In subsections (a)(6) and (c) of this section, the term "subpoena[s]" is substituted for the former term "summons" to reflect the appropriate use of those terms under the Maryland Rules.

In subsections (a)(6) and (c)(1) of this section, the former references to "affirmation[s]" are deleted in light of the term "oath", which includes affirmation. *See* Art. 1, § 9.

In subsection (a) of this section, the former references to "rules" are deleted in light of the term "regulations". *See* General Revisor's Note to article.

Also in subsection (a) of this section, the former requirement that rules be "suitable" is deleted as implicit in Title 10, Subtitle 1 of the State Government Article, which requires that regulations be adopted according to a procedure designed to ensure suitableness. *See, e.g.*, SG § 10-111.1(b).

In subsection (a)(3)(i) of this section, the defined term "delinquent act" is added. *See* General Revisor's Note to title.

Defined terms: "Board" § 11-801

"Claimant" § 11-801

"County" § 1-101

"Crime" § 11-801

"Delinquent act" § 11-101

"Secretary" § 1-101

"Victim" § 11-801

11-806. RECORDS OF PROCEEDINGS.

(A) IN GENERAL.

EXCEPT AS PROVIDED UNDER SUBSECTION (B) OF THIS SECTION, THE RECORD OF A PROCEEDING BEFORE THE BOARD OR A BOARD MEMBER IS A PUBLIC RECORD.

(B) CONFIDENTIAL RECORDS OR REPORTS.

IF THE CONFIDENTIALITY OF A RECORD OR REPORT THAT THE BOARD OBTAINS IS PROTECTED BY LAW OR REGULATION, THE RECORD OR REPORT SHALL REMAIN CONFIDENTIAL, SUBJECT TO THE LAW OR REGULATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 827.

Defined term: "Board" § 11-801

11-807. CRIMINAL INCIDENT REPORT.

(A) "LAW ENFORCEMENT UNIT" DEFINED.

IN THIS SECTION, "LAW ENFORCEMENT UNIT" MEANS:

(1) THE DEPARTMENT OF STATE POLICE;

(2) THE POLICE DEPARTMENT OF BALTIMORE CITY;

(3) THE POLICE DEPARTMENT, BUREAU, OR FORCE OF A COUNTY;

(4) THE POLICE DEPARTMENT, BUREAU, OR FORCE OF A MUNICIPAL CORPORATION;

(5) THE OFFICE OF THE SHERIFF OF A COUNTY;

(6) THE OFFICE OF THE STATE'S ATTORNEY FOR A COUNTY;

(7) THE OFFICE OF THE ATTORNEY GENERAL; OR

(8) THE OFFICE OF THE STATE PROSECUTOR.

(B) INFORMING VICTIMS ABOUT COMPENSATION.

WHEN A REPORT OF A VIOLENT CRIME IS FILED WITH A LAW ENFORCEMENT UNIT, THE LAW ENFORCEMENT UNIT SHALL GIVE TO A VICTIM OF THAT VIOLENT CRIME WRITTEN INFORMATION THAT THE BOARD SUPPLIES ABOUT COMPENSATION FOR VICTIMS.

(C) FAILURE TO COMPLY WITH SECTION NOT GROUNDS FOR ACTION.

A FAILURE TO COMPLY WITH THIS SECTION IS NOT GROUNDS FOR ANY CIVIL OR CRIMINAL ACTION AGAINST A LAW ENFORCEMENT UNIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 832.

In subsection (b) of this section, the reference to a report filed "with a law enforcement unit" is added to state expressly the implication under former law that the law enforcement unit that receives the report of the crime has the duty to provide information concerning compensation for crime victims to victims.

Defined terms: "Board" § 11-801

"County" § 1-101

"Crime" § 11-801

"Victim" § 11-801

11-808. ELIGIBILITY FOR AWARDS.

(A) IN GENERAL.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE FOLLOWING PERSONS ARE ELIGIBLE FOR AWARDS UNDER THIS SUBTITLE:

(I) A VICTIM;

(II) A DEPENDENT OF A VICTIM WHO DIED AS A DIRECT RESULT OF:

1. A CRIME OR DELINQUENT ACT;

2. TRYING TO PREVENT A CRIME OR DELINQUENT ACT OR AN ATTEMPTED CRIME OR DELINQUENT ACT FROM OCCURRING IN THE VICTIM'S PRESENCE OR TRYING TO APPREHEND A PERSON WHO HAD COMMITTED A CRIME OR DELINQUENT ACT IN THE VICTIM'S PRESENCE OR HAD COMMITTED A FELONY OR A DELINQUENT ACT THAT WOULD BE CONSIDERED A FELONY IF COMMITTED BY AN ADULT; OR

3. HELPING A LAW ENFORCEMENT OFFICER PERFORM THE OFFICER'S DUTIES OR HELPING A MEMBER OF A FIRE DEPARTMENT WHO IS OBSTRUCTED FROM PERFORMING THE MEMBER'S DUTIES; AND

(III) ANY PERSON WHO PAID OR ASSUMED RESPONSIBILITY FOR THE FUNERAL EXPENSES OF A VICTIM WHO DIED AS A DIRECT RESULT OF:

1. A CRIME OR DELINQUENT ACT;

2. TRYING TO PREVENT A CRIME OR DELINQUENT ACT OR AN ATTEMPTED CRIME OR DELINQUENT ACT FROM OCCURRING IN THE VICTIM'S PRESENCE OR TRYING TO APPREHEND A PERSON WHO HAD COMMITTED A CRIME OR DELINQUENT ACT IN THE VICTIM'S PRESENCE OR HAD COMMITTED A FELONY; OR

3. HELPING A LAW ENFORCEMENT OFFICER PERFORM THE OFFICER'S DUTIES OR HELPING A MEMBER OF A FIRE DEPARTMENT WHO IS OBSTRUCTED FROM PERFORMING THE MEMBER'S DUTIES.

(2) A PERSON WHO COMMITS THE CRIME OR DELINQUENT ACT THAT IS THE BASIS OF A CLAIM, OR AN ACCOMPLICE OF THE PERSON, IS NOT ELIGIBLE TO RECEIVE AN AWARD WITH RESPECT TO THE CLAIM.

(B) STATE RESIDENTS AS VICTIMS IN OTHER STATES.

A RESIDENT OF THE STATE IS ELIGIBLE FOR AN AWARD UNDER THIS SUBTITLE IF THE RESIDENT BECOMES A VICTIM IN ANOTHER STATE OTHER THAN THIS STATE THAT:

(1) DOES NOT OPERATE A CRIMINAL INJURIES COMPENSATION PROGRAM;

(2) OPERATES A CRIMINAL INJURIES COMPENSATION PROGRAM FOR WHICH THE VICTIM IS INELIGIBLE; OR

(3) OPERATES A CRIMINAL INJURIES COMPENSATION PROGRAM FOR WHICH MONEY HAS NOT BEEN APPROPRIATED OR MADE AVAILABLE.

(C) WHO MAY FILE CLAIM.

(1) A PERSON ELIGIBLE TO RECEIVE AN AWARD UNDER SUBSECTION (A) OR (B) OF THIS SECTION MAY FILE A CLAIM UNDER THIS SUBTITLE.

(2) IF A PERSON ELIGIBLE TO RECEIVE AN AWARD IS UNDER 18 YEARS OF AGE, THE PERSON'S PARENT OR GUARDIAN MAY FILE A CLAIM UNDER THIS SUBTITLE.

(3) IF A PERSON ELIGIBLE TO RECEIVE AN AWARD IS MENTALLY INCOMPETENT, THE PERSON'S GUARDIAN OR OTHER PERSON AUTHORIZED TO ADMINISTER THE PERSON'S ESTATE MAY FILE THE CLAIM ON THE PERSON'S BEHALF.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 819(a), (b)(1), and (c) and 820(a).

In subsection (a) of this section, the defined term "delinquent act" is added for clarity. *See* General Revisor's Note to title.

In subsection (a)(2) of this section, the reference to a person who "commits" an act is substituted for the former reference to a person who "is criminally responsible" to encompass "delinquent acts".

Also in subsection (a)(2) of this section, the former phrase "except as provided in paragraph (2) of this subsection" is deleted because former paragraph (2), now § 11-809(e) of this subtitle, did not provide an exception to the ineligibility for awards of criminally responsible persons and their accomplices.

In subsection (b) of this section, the former reference to eligibility for an award if a resident "[m]eets the requirements of this subheading" is deleted to avoid the potential implication that eligibility under this subtitle is limited to residents of Maryland. The Federal Victims of Crime Act (42 U.S.C. § 10602) provides that for a state crime victim compensation program to be eligible for annual federal grants, the program must, "as to compensable crimes occurring within the state, [make] compensation awards to victims who are nonresidents of the state on the basis of the same criteria used to make awards to victims who are residents".

In subsection (b)(3) of this section, the reference to "money" is substituted

for the former reference to "funds" to conform to the terminology used throughout this article.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (b) of this section literally applies only to residents who become victims. It does not apply to a resident *dependent* on a victim of a crime occurring in another state.

Defined terms: "Crime" § 11-801

"Delinquent act" § 11-101

"Dependent" § 11-801

"Person" § 1-101

"State" § 1-101

"Victim" § 11-801

11-809. FILING OF CLAIMS.

(A) TIME OF FILING.

(1) A CLAIMANT SHALL FILE A CLAIM NOT LATER THAN:

(I) 180 DAYS AFTER THE OCCURRENCE OF THE CRIME OR DELINQUENT ACT ON WHICH THE CLAIM IS BASED; OR

(II) 180 DAYS AFTER THE DEATH OF THE VICTIM.

(2) FOR GOOD CAUSE, THE BOARD MAY EXTEND THE TIME FOR FILING UP TO 2 YEARS AFTER THE OCCURRENCE OF THE CRIME OR DELINQUENT ACT OR THE DEATH OF THE VICTIM.

(3) IN A CASE OF CHILD ABUSE, A CLAIMANT MAY FILE A CLAIM UP TO 2 YEARS AFTER THE CLAIMANT KNEW OR SHOULD HAVE KNOWN OF THE CHILD ABUSE.

(B) PLACE OF FILING; ACCEPTANCE REQUIRED.

(1) CLAIMS SHALL BE FILED IN THE OFFICE OF THE BOARD IN PERSON OR BY MAIL.

(2) THE BOARD SHALL:

(I) ACCEPT FOR FILING EACH CLAIM THAT MEETS THE REQUIREMENTS OF THIS SUBTITLE AND THE REGULATIONS OF THE BOARD; AND

(II) NOTIFY THE CLAIMANT WITHIN 10 DAYS AFTER RECEIPT OF THE CLAIM.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 820(b), (c), and (d).

In subsection (b) of this section, the former reference to "rules" is deleted in

light of the term "regulations". *See* General Revisor's Note to article.

As for the addition of the defined term "delinquent act" to the defined term "crime", *see* General Revisor's Note to this title.

Defined terms: "Board" § 11-101

"Claimant" § 11-801

"Crime" § 11-801

"Delinquent act" § 11-101

"Victim" § 11-801

11-810. CONDITIONS FOR AWARDS ON CLAIMS.

(A) IN GENERAL.

(1) THE BOARD MAY MAKE AN AWARD ONLY IF THE BOARD FINDS THAT:

(I) A CRIME OR DELINQUENT ACT WAS COMMITTED;

(II) 1. THE CRIME OR DELINQUENT ACT DIRECTLY RESULTED IN PHYSICAL INJURY TO OR DEATH OF THE VICTIM; OR

2. A FOURTH DEGREE SEXUAL OFFENSE, A FELONY, OR A DELINQUENT ACT THAT WOULD BE A FOURTH DEGREE SEXUAL OFFENSE OR A FELONY IF COMMITTED BY AN ADULT DIRECTLY RESULTED IN PSYCHOLOGICAL INJURY TO THE VICTIM;

(III) POLICE, OTHER LAW ENFORCEMENT, OR JUDICIAL RECORDS SHOW THAT THE CRIME OR DELINQUENT ACT OR THE DISCOVERY OF CHILD ABUSE WAS REPORTED TO THE PROPER AUTHORITIES WITHIN 48 HOURS AFTER THE OCCURRENCE OF THE CRIME OR DELINQUENT ACT OR THE DISCOVERY OF THE CHILD ABUSE; AND

(IV) THE VICTIM HAS COOPERATED FULLY WITH ALL LAW ENFORCEMENT UNITS.

(2) FOR GOOD CAUSE, THE BOARD MAY WAIVE THE REQUIREMENTS OF PARAGRAPH (1)(III) AND (IV) OF THIS SUBSECTION.

(B) SERIOUS FINANCIAL HARDSHIP.

(1) (I) THE BOARD MAY MAKE AN AWARD UNDER THIS SUBTITLE ONLY IF THE BOARD DETERMINES THAT, WITHOUT THE AWARD, THE CLAIMANT WILL SUFFER SERIOUS FINANCIAL HARDSHIP FROM THE LOSS OF EARNINGS OR SUPPORT AND MEDICAL AND OTHER EXPENSES INCURRED AS A RESULT OF THE INJURY OR DEATH.

(II) 1. IN DETERMINING WHETHER THE CLAIMANT WILL SUFFER SERIOUS FINANCIAL HARDSHIP, THE BOARD SHALL CONSIDER ALL OF THE FINANCIAL RESOURCES OF THE CLAIMANT.

2. UNLESS TOTAL DEPENDENCY IS ESTABLISHED, FAMILY MEMBERS ARE CONSIDERED TO BE PARTLY DEPENDENT ON A PARENT WITH WHOM THEY RESIDE WITHOUT REGARD TO ACTUAL EARNINGS.

(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO A CLAIM IF THE VICTIM SUFFERED PHYSICAL INJURY OR DEATH AS A DIRECT RESULT OF TRYING TO PREVENT A CRIME OR DELINQUENT ACT OR AN ATTEMPTED CRIME OR DELINQUENT ACT FROM OCCURRING IN THE VICTIM'S PRESENCE OR TRYING TO APPREHEND AN OFFENDER WHO HAD COMMITTED A CRIME OR DELINQUENT ACT IN THE VICTIM'S PRESENCE OR HAD COMMITTED A FELONY.

(3) THE BOARD MAY NOT FIND THAT A CLAIMANT FAILS TO SUFFER SERIOUS FINANCIAL HARDSHIP BECAUSE A CLAIMANT IS INDIGENT OR JUDGMENT PROOF.

(C) MINIMUM ALLOWABLE CLAIM.

THE BOARD MAY MAKE AN AWARD ONLY IF THE CLAIMANT, AS A RESULT OF THE INJURY ON WHICH THE CLAIM IS BASED, HAS:

(1) INCURRED AT LEAST $100 IN UNREIMBURSED AND UNREIMBURSABLE EXPENSES OR INDEBTEDNESS REASONABLY INCURRED FOR MEDICAL CARE, INCLUDING EXPENSES FOR EYEGLASSES AND OTHER CORRECTIVE LENSES, MENTAL HEALTH COUNSELING, FUNERAL EXPENSES, OR OTHER NECESSARY SERVICES; OR

(2) LOST AT LEAST 2 CONTINUOUS WEEKS' EARNINGS OR SUPPORT.

(D) CONTRIBUTORY CONDUCT.

(1) (I) EXCEPT AS PROVIDED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, IN CONSIDERING A CLAIM AND IN DETERMINING THE AMOUNT OF AN AWARD, THE BOARD SHALL DETERMINE WHETHER THE VICTIM'S CONDUCT CONTRIBUTED TO THE INFLICTION OF THE VICTIM'S INJURY, AND, IF SO, REDUCE THE AMOUNT OF THE AWARD OR REJECT THE CLAIM.

(II) THE BOARD MAY DISREGARD THE RESPONSIBILITY OF THE VICTIM FOR THE VICTIM'S OWN INJURY IF THAT RESPONSIBILITY IS ATTRIBUTABLE TO EFFORTS BY THE VICTIM:

1. TO PREVENT A CRIME OR DELINQUENT ACT OR AN ATTEMPTED CRIME OR DELINQUENT ACT FROM OCCURRING IN THE VICTIM'S PRESENCE; OR

2. TO APPREHEND AN OFFENDER WHO HAD COMMITTED A CRIME OR DELINQUENT ACT IN THE VICTIM'S PRESENCE OR HAD COMMITTED A FELONY OR DELINQUENT ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT.

(2) A CLAIMANT FILING FOR INJURIES INCURRED AS THE OCCUPANT OF A MOTOR VEHICLE OR A DEPENDENT OF AN OCCUPANT OF A MOTOR VEHICLE OPERATED IN VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE MAY NOT RECEIVE AN AWARD UNLESS THE CLAIMANT PROVES THAT THE OCCUPANT DID NOT KNOW OR COULD NOT HAVE KNOWN OF THE CONDITION OF THE OPERATOR OF THE VEHICLE.

(3) A CLAIMANT MAY NOT RECEIVE AN AWARD IF:

(I) THE VICTIM INITIATED, CONSENTED TO, PROVOKED, OR UNREASONABLY FAILED TO AVOID A PHYSICAL CONFRONTATION WITH THE OFFENDER; OR

(II) THE VICTIM WAS PARTICIPATING IN A CRIME OR DELINQUENT ACT WHEN THE INJURY WAS INFLICTED.

(E) FAMILY AND HOUSEHOLD MEMBERS.

(1) A VICTIM OR DEPENDENT MAY NOT BE DENIED COMPENSATION SOLELY BECAUSE THE VICTIM:

(I) IS A RELATIVE OF THE OFFENDER; OR

(II) WAS LIVING WITH THE OFFENDER AS A FAMILY MEMBER OR HOUSEHOLD MEMBER AT THE TIME OF THE INJURY OR DEATH.

(2) IF THE BOARD CAN REASONABLY DETERMINE THAT THE OFFENDER WILL NOT RECEIVE ANY ECONOMIC BENEFIT OR UNDUE ENRICHMENT FROM THE COMPENSATION, THE BOARD MAY AWARD COMPENSATION TO A VICTIM OR DEPENDENT WHO IS A RELATIVE, FAMILY MEMBER, OR HOUSEHOLD MEMBER OF THE OFFENDER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 819(b)(2) and (3), 821, 825(a)(1) and (2), (e), and (f).

In subsection (b)(1)(i) of this section, the former requirement that the Board "shall deny an award [if the Board finds the claimant will *not* suffer] serious financial hardship" is restated as a requirement that the Board "may make an award ... only if the Board [finds that] the claimant *will* suffer serious financial hardship" (italics added) for clarity.

Also in subsection (b)(1)(i) of this section, the phrase "medical and other expenses incurred as a result of the injury or death" is substituted for the former phrase "out-of-pocket expenses" for clarity.

In subsections (b)(1)(ii)2 and (e) of this section, the term "family", formerly defined in Art. 27, § 815(e) for purposes of the subheading that included Art. 27, §§ 819(b) and 825(f)(1), is now used as an undefined term. The context in which the term "family member" was used in former Art. 27, §§

819(b) and 825(f)(1) clearly indicated a more narrow definition than the definition formerly stated in Art. 27, § 815(e). No substantive change is intended.

The defined term "delinquent act" is added for clarity. *See* General Revisor's Note to title.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(1)(ii)2 of this section, the reference to "a fourth degree sexual offense, a felony, or a delinquent act that would be a fourth degree sexual offense if committed by an adult directly resulted in psychological injury to the victim" is substituted for the former narrower reference to a "sexual assault or child abuse, [that directly resulted in] psychological or emotional injury" to conform to the terminology used in the definition of "victim" in § 11-801(f) of this subtitle. The Committee made this change to ensure that a person who qualifies as a "victim" under this subtitle will be entitled to an award.

Defined terms: "Board" § 11-801

"Claimant" § 11-801

"Crime" § 11-801

"Delinquent act" § 11-101

"Dependent" § 11-801

"Victim" § 11-801

11-811. AMOUNT OF AWARD.

(A) IN GENERAL.

(1) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, AN AWARD UNDER THIS SUBTITLE SHALL BE MADE IN ACCORDANCE WITH THE SCHEDULE OF BENEFITS, AS IT EXISTED ON JANUARY 1, 1989, AND DEGREE OF DISABILITY AS SPECIFIED IN TITLE 9, SUBTITLE 6 OF THE LABOR AND EMPLOYMENT ARTICLE AND ANY OTHER APPLICABLE PROVISIONS OF THE LABOR AND EMPLOYMENT ARTICLE, EXCEPT FOR TITLE 9, SUBTITLE 8 OF THE LABOR AND EMPLOYMENT ARTICLE.

(II) FOR DETERMINING THE AMOUNT OF AN AWARD UNDER THIS SUBTITLE, THE TERM "AVERAGE WEEKLY WAGES" DOES NOT INCLUDE TIPS, GRATUITIES, AND WAGES THAT ARE UNDECLARED ON THE CLAIMANT'S STATE OR FEDERAL INCOME TAX RETURNS FOR THE APPLICABLE YEARS.

(III) IF A CLAIMANT DOES NOT HAVE "AVERAGE WEEKLY WAGES" TO QUALIFY UNDER THE FORMULA IN TITLE 9, SUBTITLE 6 OF THE LABOR AND EMPLOYMENT ARTICLE, THE AWARD SHALL BE IN AN AMOUNT EQUAL TO THE AVERAGE OF THE MAXIMUM AND MINIMUM AWARDS LISTED IN THE APPLICABLE PORTION OF THAT SUBTITLE.

(2) AN AWARD FOR LOSS OF EARNINGS OR SUPPORT MADE UNDER THIS SUBTITLE MAY BE UP TO TWO-THIRDS OF THE VICTIM'S GROSS AVERAGE WAGE, BUT

MAY NOT BE LESS THAN THE AMOUNT PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION.

(3) AN AWARD FOR FUNERAL EXPENSES MAY NOT EXCEED $5,000.

(4) SUBJECT TO THE LIMITATION UNDER SUBSECTION (B)(3) OF THIS SECTION AND § 11-812 OF THIS TITLE, A PERSON WHO IS ELIGIBLE FOR AN AWARD AS THE RESULT OF THE DEATH OF A VICTIM OR PSYCHOLOGICAL INJURY MAY BE ELIGIBLE, UNDER THE REGULATIONS THAT THE BOARD ADOPTS, TO RECEIVE PSYCHIATRIC, PSYCHOLOGICAL, OR MENTAL HEALTH COUNSELING.

(B) LIMITS.

COMPENSATION AWARDED UNDER THIS SUBTITLE MAY NOT EXCEED:

(1) $25,000 FOR A DISABILITY-RELATED OR DEPENDENCY-RELATED CLAIM;

(2) $45,000 FOR A MEDICAL CLAIM;

(3) $5,000 FOR EACH CLAIMANT FOR PSYCHIATRIC, PSYCHOLOGICAL, OR MENTAL HEALTH COUNSELING; OR

(4) A TOTAL OF $45,000, INCLUDING ANY SUBSEQUENT AND SUPPLEMENTAL AWARDS.

(C) REQUIRED REDUCTIONS.

AN AWARD MADE UNDER THIS SUBTITLE SHALL BE REDUCED BY THE AMOUNT OF ANY PAYMENTS RECEIVED OR TO BE RECEIVED AS A RESULT OF THE INJURY:

(1) FROM OR ON BEHALF OF THE OFFENDER;

(2) FROM ANY OTHER PUBLIC OR PRIVATE SOURCE, INCLUDING AN AWARD OF THE STATE WORKERS' COMPENSATION COMMISSION UNDER THE MARYLAND WORKERS' COMPENSATION ACT; OR

(3) AS AN EMERGENCY AWARD UNDER § 11-813 OF THIS SUBTITLE.

(D) APPORTIONMENT AMONG CLAIMANTS.

IF THERE ARE TWO OR MORE PERSONS ENTITLED TO AN AWARD AS A RESULT OF THE DEATH OF A VICTIM, THE AWARD SHALL BE APPORTIONED AMONG THE CLAIMANTS.

(E) NEGOTIATION WITH HEALTH CARE PROVIDERS.

THE BOARD MAY NEGOTIATE A SETTLEMENT WITH A HEALTH CARE PROVIDER FOR THE MEDICAL AND MEDICALLY RELATED EXPENSES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 825(a)(3)(iv), (4), and (5), (b), (c), and (d).

In subsection (a)(1)(iii) of this section, the former reference to an "arithmetic" average of maximum and minimum awards is deleted as surplusage.

In subsections (a)(4) and (d) of this section, the former references to the death of a victim which is "the direct result of a crime" are deleted as included in the defined term "victim".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that, in subsection (a)(1) of this section, an award of benefits is made in accordance with a schedule as it existed on January 1, 1989. The General Assembly may wish to consider whether it is appropriate to state that date and allow benefits to be modified without reference to a particular year.

Defined terms: "Board" § 11-801

"Claimant" § 11-801

"Person" § 1-101

"Victim" § 11-801

11-812. FUNDING, LENGTH, AND TERMINATION OF AWARDS.

(A) APPROPRIATION AND AVAILABILITY OF FUNDS.

THE BOARD MAY NOT MAKE AN AWARD UNLESS MONEY IS APPROPRIATED AND AVAILABLE FOR THE FULL AMOUNT OF THE AWARD.

(B) MULTIYEAR AWARDS.

IF A MULTIYEAR AWARD IS MADE, THE TOTAL AMOUNT OF THE AWARD SHALL BE OBLIGATED AND HELD FOR THE TIME NECESSARY TO COMPLETE PAYMENT IN ACCORDANCE WITH THE PROVISIONS OF THE AWARD.

(C) TERMINATED AWARDS.

IF PAYMENT OF AN AWARD IS TERMINATED FOR ANY REASON AFTER JUNE 30 OF THE FISCAL YEAR IN WHICH THE AWARD WAS MADE, THE REST OF THE AWARD SHALL REVERT TO THE CRIMINAL INJURIES COMPENSATION FUND ESTABLISHED UNDER § 11-819 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 825(a)(3)(i) through (iii).

Defined term: "Board" § 11-801

11-813. EMERGENCY AWARD PENDING FINAL DECISION.

(A) WHEN AUTHORIZED.

THE BOARD MAY MAKE AN EMERGENCY AWARD TO THE CLAIMANT BEFORE MAKING A FINAL DECISION IN THE CASE, IF THE BOARD DETERMINES, BEFORE TAKING ACTION ON THE CLAIM, THAT:

(1) AN AWARD LIKELY WILL BE MADE ON THE CLAIM; AND

(2) THE CLAIMANT WILL SUFFER UNDUE HARDSHIP UNLESS IMMEDIATE PAYMENT IS MADE.

(B) LIMITATION ON AMOUNT; DEDUCTION FROM FINAL AWARD; REPAYMENT OF EXCESS.

(1) THE AMOUNT OF AN EMERGENCY AWARD UNDER THIS SECTION:

(I) MAY NOT EXCEED $1,000; AND

(II) SHALL BE DEDUCTED FROM ANY FINAL AWARD MADE TO THE CLAIMANT.

(2) A CLAIMANT SHALL REPAY THE BOARD:

(I) THE EXCESS OF THE AMOUNT OF THE EMERGENCY AWARD OVER ANY FINAL AWARD; OR

(II) IF A FINAL AWARD IS NOT MADE, ALL OF THE EMERGENCY AWARD.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 824.

In the introductory language of subsection (a) of this section, the phrase "if the Board determines" is substituted for the former phrase "if it appears to the Board" to conform to the terminology used throughout this article.

In subsection (a) of this section, the former phrase "[n]otwithstanding the provisions of §§ 820 and 822 of this subheading" is deleted as surplusage, because former Art. 27, §§ 820 and 822, which now appear in §§ 11-808, 11-809, and 11-814 of this subtitle, did not forbid the granting of emergency awards.

Defined terms: "Board" § 11-801

"Claimant" § 11-801

11-814. BOARD DECISIONS ON CLAIMS; REVIEW BY SECRETARY.

(A) NOTIFICATION IF ADDITIONAL MATERIAL IS REQUIRED.

WITHIN 30 DAYS AFTER THE RECEIPT OF A CLAIM, THE BOARD SHALL NOTIFY THE CLAIMANT IF ADDITIONAL MATERIAL IS REQUIRED.

(B) REPORT OF BOARD DECISION.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, WITHIN 90 DAYS AFTER THE RECEIPT OF A CLAIM AND ALL NECESSARY SUPPORTING MATERIAL, THE BOARD SHALL:

(I) COMPLETE THE REVIEW AND EVALUATION OF EACH CLAIM; AND

(II) FILE WITH THE SECRETARY A WRITTEN REPORT SETTING FORTH THE DECISION AND THE REASONS IN SUPPORT OF THE DECISION.

(2) FOR GOOD CAUSE SHOWN, FOR A PERIOD NOT TO EXCEED 1 YEAR THE BOARD MAY EXTEND THE TIME TO FILE ITS REPORT WITH THE SECRETARY AFTER RECEIPT OF THE CLAIM AND ALL NECESSARY SUPPORTING MATERIAL UNTIL THE FIRST TO OCCUR OF THE FOLLOWING EVENTS:

(I) THE CLAIMANT NO LONGER HAS EXPENSES RELATED TO THE CRIME; OR

(II) THE CLAIMANT HAS BEEN AWARDED THE MAXIMUM AMOUNT AUTHORIZED UNDER §§ 11-811(B) AND 11-812 OF THIS SUBTITLE.

(C) SECRETARY REVIEW OF BOARD DECISION.

WITHIN 30 DAYS AFTER THE RECEIPT OF A WRITTEN REPORT FROM THE BOARD, THE SECRETARY SHALL MODIFY, AFFIRM, OR REVERSE THE DECISION OF THE BOARD.

(D) FINALITY OF SECRETARY'S ACTION.

THE DECISION OF THE SECRETARY TO AFFIRM, MODIFY, OR REVERSE THE DECISION OF THE BOARD IS FINAL.

(E) COPY TO CLAIMANT.

THE CLAIMANT SHALL BE GIVEN A COPY OF THE FINAL REPORT ON REQUEST.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 822.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (e) of this section, it is unclear what document is meant by the "final report" and who is responsible for giving it out.

Defined terms: "Board" § 11-801

"Claimant" § 11-801

"Crime" § 11-801

"Secretary" § 1-101

11-815. JUDICIAL REVIEW.

WITHIN 30 DAYS AFTER THE FINAL DECISION OF THE SECRETARY, A CLAIMANT AGGRIEVED BY THAT DECISION MAY APPEAL THE DECISION UNDER §§ 10-222 AND 10-223 OF THE STATE GOVERNMENT ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 823.

The reference to the final decision "of the Secretary" is added for clarity.

The former reference to "the applicable provisions of the Administrative Procedure Act" is deleted in light of the specific reference to §§ 10-222 and 10-223 of the State Government Article.

Defined terms: "Claimant" § 11-801

"Secretary" § 1-101

11-816. PAYMENT OF AWARD.

(A) IN GENERAL.

AN AWARD UNDER THIS SUBTITLE SHALL BE PAID IN THE MANNER THAT THE BOARD SPECIFIES IN ITS DECISION.

(B) EXECUTION OR ATTACHMENT OF AWARD.

AN AWARD UNDER THIS SUBTITLE IS NOT SUBJECT TO EXECUTION OR ATTACHMENT OTHER THAN FOR EXPENSES RESULTING FROM THE INJURY THAT IS THE BASIS FOR THE CLAIM.

(C) LUMP SUM PAYMENT.

IN EACH CASE UNDER THIS SUBTITLE THAT PROVIDES FOR COMPENSATION, THE BOARD MAY CONVERT THE COMPENSATION TO BE PAID IN A PARTIAL OR TOTAL LUMP SUM WITHOUT DISCOUNT, IF IN THE BOARD'S OPINION THE FACTS AND CIRCUMSTANCES OF THE CASE WARRANT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 826.

In subsection (c) of this section, the former reference to a case that provides compensation to "an employee or the employee's dependent" is deleted as too narrow. The Criminal Procedure Article Review Committee calls this deletion to the attention of the General Assembly.

Defined term: "Board" § 11-801

11-817. SUBROGATION.

ACCEPTANCE OF AN AWARD MADE UNDER THIS SUBTITLE SUBROGATES THE STATE, TO THE EXTENT OF THE AWARD, TO ANY RIGHT OR RIGHT OF ACTION OF THE CLAIMANT OR THE VICTIM TO RECOVER PAYMENTS ON ACCOUNT OF LOSSES RESULTING FROM THE CRIME OR DELINQUENT ACT WITH RESPECT TO WHICH THE AWARD IS MADE, INCLUDING THE RIGHT TO RECOVER RESTITUTION ORDERED UNDER § 11-603 OF THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 828.

Defined terms: "Claimant" § 11-801

"Crime" § 11-801

"Delinquent act" § 11-101

"Victim" § 11-801

11-818. FALSE CLAIMS.

(A) IN GENERAL.

A PERSON MAY NOT ASSERT A FALSE CLAIM UNDER THIS SUBTITLE.

(B) PENALTY.

A PERSON WHO VIOLATES THIS SECTION:

(1) IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT LESS THAN $500 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH; AND

(2) SHALL FORFEIT ANY BENEFIT RECEIVED AND REIMBURSE THE STATE FOR PAYMENTS RECEIVED OR PAID ON THE PERSON'S BEHALF UNDER THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 829.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (b)(1) of this section indicates that the minimum fine for a violation of this section is $500 but that the subsection does not specify the maximum fine.

Defined term: "Person" § 1-101

11-819. CRIMINAL INJURIES COMPENSATION FUND.

(A) IN GENERAL.

(1) THERE IS A CRIMINAL INJURIES COMPENSATION FUND.

(2) THE FUND CONSISTS OF:

(I) MONEYS DISTRIBUTED TO THE FUND FROM THE ADDITIONAL COURT COSTS COLLECTED FROM DEFENDANTS UNDER § 7-409 OF THE COURTS ARTICLE;

(II) ANY INVESTMENT EARNINGS OR FEDERAL MATCHING FUNDS RECEIVED BY THE STATE FOR CRIMINAL INJURIES COMPENSATION; AND

(III) FUNDS MADE AVAILABLE TO THE FUND FROM ANY OTHER SOURCE.

(3) THE FUND IS A SPECIAL CONTINUING, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(4) THE TREASURER SHALL SEPARATELY HOLD THE FUND AND THE COMPTROLLER SHALL ACCOUNT FOR IT.

(5) THE FUND SHALL BE INVESTED AND REINVESTED IN THE SAME MANNER AS OTHER STATE FUNDS.

(6) THE FUND IS SUBJECT TO AUDIT BY THE OFFICE OF LEGISLATIVE AUDITS AS PROVIDED IN § 2-1220 OF THE STATE GOVERNMENT ARTICLE.

(B) USES.

THE CRIMINAL INJURIES COMPENSATION FUND:

(1) SHALL BE USED TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE; AND

(2) MAY BE USED FOR:

(I) ANY AWARD GIVEN UNDER THIS SUBTITLE; AND

(II) THE COSTS OF CARRYING OUT THIS SUBTITLE.

(C) EFFECT OF SECTION.

THIS SECTION DOES NOT PROHIBIT THE FUND FROM RECEIVING MONEY FROM ANY OTHER SOURCE.

REVISOR'S NOTE: Subsection (a)(1), (2)(ii), (3), and (4), (b), and (c) of this section are new language derived without substantive change from former Art. 27, § 831.

Subsection (a)(2)(i) of this section is added to state explicitly what was only implied in the former law, that moneys from additional court costs are sources of the Fund. *See* CJ § 7-409(e)(4) in Chapter_____, Acts of 2001, which enacted this article.

Subsection (a)(2)(iii) of this section is added to state in standard language a source of funds for the Criminal Injuries Compensation Fund.

SUBTITLE 9. VICTIMS AND WITNESSES -- SERVICES.

PART I. PROTECTION AND RELOCATION OF VICTIMS AND WITNESSES.

11-901. DEFINITIONS.

(A) IN GENERAL.

IN PART I OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language used as the standard introductory language to a definition section.

(B) PROGRAM.

"PROGRAM" MEANS THE VICTIM AND WITNESS PROTECTION AND RELOCATION PROGRAM.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the full title of the Victim and Witness Protection and Relocation Program.

(C) FUND.

"FUND" MEANS THE VICTIM AND WITNESS PROTECTION AND RELOCATION FUND.

REVISOR'S NOTE: This subsection is new language added to avoid repetition of the full title of the Victim and Witness Protection and Relocation Fund.

11-902. VICTIM AND WITNESS PROTECTION AND RELOCATION PROGRAM.

THERE IS A VICTIM AND WITNESS PROTECTION AND RELOCATION PROGRAM.

REVISOR'S NOTE: This section formerly was Art. 27, § 835(a).

No changes are made.

11-903. ADMINISTRATION.

THE STATE'S ATTORNEYS' COORDINATOR SHALL CARRY OUT THE PROGRAM IN ACCORDANCE WITH REGULATIONS THAT THE STATE'S ATTORNEYS' COORDINATION COUNCIL ADOPTS UNDER ARTICLE 10, § 41D OF THE CODE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 835(b).

The reference to the requirement that the State's Attorneys' Coordinator

shall "carry out" the Program is substituted for the former requirement that the Coordinator "administer[ed]" the Program to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

The former reference to the State's Attorneys' Coordinator "under Article 10, § 41B of the Code" is deleted as unnecessary.

The former requirement to consult "with the State Board of Victim Services" is deleted in light of Art. 10, § 41D(f), which requires the State's Attorneys' Coordination Council to consult with the State Board of Victim Services before adopting regulations for the Program.

Defined term: "Program" § 11-901

11-904. PURPOSE; FEDERAL FUNDS; EXPENDITURES.

(A) PURPOSE.

MONEY APPROPRIATED TO THE PROGRAM SHALL BE USED:

(1) TO PROTECT VICTIMS AND WITNESSES AND THE FAMILIES OF VICTIMS AND WITNESSES;

(2) TO RELOCATE VICTIMS AND WITNESSES TO PROTECT THEM OR TO FACILITATE THEIR PARTICIPATION IN COURT PROCEEDINGS; AND

(3) TO PAY THE COSTS OF CARRYING OUT THE PROGRAM.

(B) FEDERAL FUNDS AND PROGRAMS.

TO THE EXTENT POSSIBLE, THE PROGRAM SHALL BE USED TO MAXIMIZE THE USE OF FEDERAL MATCHING FUNDS OR PROGRAMS.

(C) EXPENDITURES.

EXPENDITURES UNDER THIS SECTION SHALL BE MADE IN ACCORDANCE WITH THE STATE BUDGET.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 835(c), (d), and (e).

In subsection (a)(3) of this section, the reference to "carrying out" the Program is substituted for the former reference to "administering" the Program to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

In subsection (b) of this section, the former reference to an "appropriation approved by the General Assembly in the annual" budget is deleted in light of the comprehensive requirement that expenditures be made "in accordance with the State budget".

Defined term: "Program" § 11-901

11-905. VICTIM AND WITNESS PROTECTION AND RELOCATION FUND.

(A) ESTABLISHED.

THERE IS A VICTIM AND WITNESS PROTECTION AND RELOCATION FUND.

(B) PURPOSE.

THE FUND SHALL BE USED TO PAY FOR THE PROGRAM.

REVISOR'S NOTE: This section formerly was Art. 27, § 836(a)(1) and (b).

The only changes are in style.

Defined terms: "Fund" § 11-901

"Program" § 11-901

11-906. STATUS; INVESTMENTS; CONSTRUCTION.

(A) STATUS.

(1) THE FUND IS A SPECIAL CONTINUING, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) THE TREASURER SHALL SEPARATELY HOLD THE FUND AND THE COMPTROLLER SHALL ACCOUNT FOR IT.

(B) INVESTMENTS AND FEDERAL MATCHING FUNDS.

(1) THE FUND SHALL BE INVESTED AND REINVESTED IN THE SAME MANNER AS OTHER STATE FUNDS.

(2) ANY INVESTMENT EARNINGS OR FEDERAL MATCHING FUNDS RECEIVED BY THE STATE FOR VICTIM AND WITNESS PROTECTION OR RELOCATION SHALL BE CREDITED TO THE FUND.

(C) CONSTRUCTION.

THIS SECTION DOES NOT PROHIBIT THE FUND FROM RECEIVING MONEY FROM ANY SOURCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 836(a)(2) through (5) and (7).

In subsection (c) of this section, the reference to "money" is substituted for the former reference to "funds" to avoid confusion with the defined term "Fund". *See* § 11-901 of this subtitle.

Defined term: "Fund" § 11-901

11-907. AUDITS.

BOTH THE PROGRAM AND THE FUND ARE SUBJECT TO AN AUDIT BY THE OFFICE OF LEGISLATIVE AUDITS UNDER § 2-1220 OF THE STATE GOVERNMENT ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 835(f) and 836(a)(6).

Defined terms: "Fund" § 11-901

"Program" § 11-901

11-908. RESERVED.

11-909. RESERVED.

PART II. STATE BOARD OF VICTIM SERVICES.

11-910. DEFINITIONS.

(A) IN GENERAL.

IN PART II OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 837(a).

(B) BOARD.

"BOARD" MEANS THE STATE BOARD OF VICTIM SERVICES.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 837(b).

No changes are made.

(C) CRIME.

"CRIME" MEANS CONDUCT THAT IS A CRIME UNDER:

(1) COMMON LAW;

(2) THIS ARTICLE;

(3) ARTICLE 27 OF THE CODE; OR

(4) § 3-218, § 3-305(C)(2), § 3-409(A) OR (C), § 3-803(B), § 3-807(I), § 3-808(D), § 3-811(C), § 8-801, § 8-802, § 9-602(E), § 11-702(B)(8), § 11-703(D)(5)(III), § 11-706(B)(8), § 11-708(B)(8)(II), § 11-711(H)(2), § 11-712(C)(6)(II), § 11-714(C)(6), § 11-715(G)(2), § 11-716(H)(2), § 11-723(B)(8), OR § 11-726 OF THE CORRECTIONAL SERVICES ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 837(c).

In this subsection, the former reference to conduct "that is committed by any person in the State" is deleted as implied in the word "crime".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the definition of "crime" in this subsection is cumbersome and too narrow. The definition does not apply to some crimes that are in articles other than those listed.

(D) EXECUTIVE DIRECTOR.

"EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 837(d).

No changes are made.

(E) FUND.

"FUND" MEANS THE STATE VICTIMS OF CRIME FUND.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 837(e).

In this subsection, the name of the Fund is conformed to the substantive provision that creates the Fund. *See* § 11-916 of this subtitle.

The former reference to the Fund "established under [former Art. 27,] § 854 of this subtitle" is deleted as obsolete.

(F) VICTIM.

"VICTIM" MEANS A PERSON WHO SUFFERS DIRECT OR THREATENED PHYSICAL, EMOTIONAL, OR FINANCIAL HARM AS A DIRECT RESULT OF A CRIME OR OF A VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 837(f), except as it related to a family member of a minor, incompetent, or homicide victim.

The reference to "§ 21-902 of the Transportation Article" concerns driving a vehicle while intoxicated or while under the influence of drugs or alcohol.

The defined term "person" is substituted for the former reference to "individual" to conform to the terminology used throughout this article.

Defined terms: "Crime" § 11-910

"Person" § 1-101

(G) VICTIM'S REPRESENTATIVE.

"VICTIM'S REPRESENTATIVE" INCLUDES A FAMILY MEMBER OR GUARDIAN OF A VICTIM WHO IS:

(1) A MINOR;

(2) DECEASED; OR

(3) DISABLED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 837(f), as it related to a family member of a minor, incompetent, or homicide victim.

The reference to a victim who is "deceased" or "disabled" is substituted for the former narrower references to an "incompetent" and a "homicide victim" to conform to the terminology used in § 11-105 of this title.

The defined term "[v]ictim's representative" is added for clarity.

Defined term: "Victim" § 11-910

REVISOR'S NOTE TO SECTION:

This revision incorporates former Art. 27, § 854(j) and (k) into Part II of this subtitle. *See* §§ 11-916 through 11-918 of this Part II. Thus, the defined terms of Part II apply to provisions to which those defined terms formerly did not apply. However, the defined terms are merely convenient, short labels, and no substantive change results.

Former Art. 27, § 837(g), which defined "Victim Services Coordinator", is deleted in light of § 11-915 of this subtitle, which establishes the position of "Victim Services Coordinator".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the definitions of "crime" and "victim" fail to use the term "delinquent act". In practice, the State Board of Victim Services does serve victims of delinquent acts. The General Assembly may wish to add "delinquent act" to these definitions.

11-911. STATE BOARD OF VICTIM SERVICES -- ESTABLISHED.

THERE IS A STATE BOARD OF VICTIM SERVICES IN THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION CREATED BY EXECUTIVE ORDER 01.01.1995.18.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 839.

The former reference to "any successor unit" is deleted as implicit in the reference to "the Governor's Office of Crime Control and Prevention".

11-912. SAME -- MEMBERSHIP.

(A) COMPOSITION.

THE BOARD CONSISTS OF THE FOLLOWING 22 MEMBERS:

(1) AS EX OFFICIO MEMBERS:

(I) THE GOVERNOR OR THE GOVERNOR'S DESIGNEE;

(II) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE;

(III) THE CHAIRMAN OF THE MARYLAND CRIMINAL INJURIES COMPENSATION BOARD;

(IV) THE SECRETARY OF HUMAN RESOURCES OR THE SECRETARY'S DESIGNEE;

(V) THE SECRETARY OF JUVENILE JUSTICE OR THE SECRETARY'S DESIGNEE;

(VI) THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES OR THE SECRETARY'S DESIGNEE; AND

(VII) THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE; AND

(2) 14 PERSONS APPOINTED BY THE GOVERNOR AS FOLLOWS:

(I) TWO STATE'S ATTORNEYS, RECOMMENDED BY THE ATTORNEY GENERAL;

(II) SIX MEMBERS OF THE PUBLIC, RECOMMENDED BY THE EXECUTIVE DIRECTOR;

(III) FOUR PROFESSIONAL VICTIM SERVICE PROVIDERS, RECOMMENDED BY THE EXECUTIVE DIRECTOR;

(IV) ONE REPRESENTATIVE OF THE MARYLAND CHIEFS OF POLICE;

(V) ONE REPRESENTATIVE OF THE MARYLAND STATE SHERIFF'S ASSOCIATION; AND

(3) ONE MEMBER OF THE JUDICIARY OF THE STATE, APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS.

(B) TENURE; VACANCIES.

(1) THE TERM OF AN APPOINTED MEMBER IS 5 YEARS.

(2) THE TERMS OF APPOINTED MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1, 2001.

(3) AT THE END OF A TERM, AN APPOINTED MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(C) REMOVAL.

THE GOVERNOR MAY REMOVE A MEMBER FOR INCOMPETENCE OR MISCONDUCT.

(D) CHAIRMAN.

THE GOVERNOR OR THE GOVERNOR'S DESIGNEE SHALL SERVE AS CHAIRMAN.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 840(b) and (c) and except as it related to compensation, (a) which is now addressed in § 11-913 of this subtitle.

In subsection (b) of this section, the former reference to the terms of the members serving on July 1, 1988, is deleted as obsolete. As to subsection (b)(2) of this section, the terms of the appointed members serving as of October 1, 2001, expire as follows: 3 in 2002; 3 in 2003; 3 in 2004; 3 in 2005; and 3 in 2006.

Defined terms: "Board" § 11-910

"Executive Director" § 11-910

11-913. SAME -- QUORUM; MEETINGS; COMPENSATION.

(A) QUORUM.

A MAJORITY OF THE MEMBERS THEN SERVING ON THE BOARD IS A QUORUM.

(B) MEETINGS.

THE BOARD SETS THE TIMES AND PLACES OF ITS MEETINGS.

(C) COMPENSATION AND REIMBURSEMENT FOR EXPENSES.

A MEMBER OF THE BOARD:

(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE BOARD; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

REVISOR'S NOTE: Subsection (a) of this section is new language added as an express provision establishing the number of members that constitutes a quorum. In the absence of an express provision, case law indicates that a majority of members of a body is a quorum and a majority of the quorum can act if all members have notice and an opportunity to be present. *See Gemeny v. Prince George's County*, 264 Md. 85, 285 A.2d 602 (1972); *Zeiler v. Central Ry*., 84 Md. 304, 35 A. 932 (1896); and *Heiskell v. Mayor of Baltimore*, 65 Md. 125, 4 A. 116 (1886).

Subsection (b) of this section is new language added for clarity.

Subsection (c)(1) of this section is new language derived without substantive change from former Art. 27, § 840(a)(1), as it related to compensation.

Subsection (c)(2) of this section is new language added to reflect that, under SF § 10-203, the Board of Public Works has adopted regulations for reimbursement of expenses. *See* COMAR 23.02.01.01 through .12.

Defined term: "Board" § 11-910

11-914. SAME -- DUTIES.

SUBJECT TO THE AUTHORITY OF THE EXECUTIVE DIRECTOR, THE BOARD SHALL:

(1) SUBMIT TO THE GOVERNOR AN ANNUAL WRITTEN REPORT OF ITS ACTIVITIES, INCLUDING ITS ADMINISTRATION OF THE FUND;

(2) MONITOR THE SERVICE NEEDS OF VICTIMS;

(3) ADVISE THE GOVERNOR ON THE NEEDS OF VICTIMS;

(4) RECOMMEND THE APPOINTMENT OF THE VICTIM SERVICES COORDINATOR TO THE EXECUTIVE DIRECTOR;

(5) REVIEW AND APPROVE THE VICTIM SERVICES COORDINATOR'S PLANS AND ANNUAL REPORTS, AND THE VICTIM SERVICES COORDINATOR'S IMPLEMENTATION, OPERATION, AND REVISION OF PROGRAMS;

(6) APPROVE OR DISAPPROVE EACH GRANT APPLICATION SUBMITTED BY THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION;

(7) ADVISE THE STATE'S ATTORNEYS' COORDINATION COUNCIL ON THE ADOPTION OF REGULATIONS GOVERNING THE ADMINISTRATION OF THE VICTIM AND WITNESS PROTECTION AND RELOCATION PROGRAM ESTABLISHED UNDER § 11-902 OF THIS SUBTITLE;

(8) ADVISE THE STATE'S ATTORNEYS' COORDINATOR ON THE ADMINISTRATION OF THE VICTIM AND WITNESS PROTECTION AND RELOCATION PROGRAM;

(9) DEVELOP PAMPHLETS TO NOTIFY VICTIMS OF THE RIGHTS, SERVICES, AND PROCEDURES PROVIDED UNDER ARTICLE 47 OF THE MARYLAND DECLARATION OF RIGHTS OR STATE LAW, INCLUDING:

(I) ONE PAMPHLET RELATING TO THE TIME BEFORE AND AFTER THE FILING OF A CHARGING DOCUMENT OTHER THAN AN INDICTMENT OR INFORMATION IN CIRCUIT COURT; AND

(II) A SECOND PAMPHLET RELATING TO THE TIME AFTER THE FILING OF AN INDICTMENT OR INFORMATION IN CIRCUIT COURT; AND

(10) DEVELOP A NOTIFICATION REQUEST FORM IN CONSULTATION WITH THE ADMINISTRATIVE OFFICE OF THE COURTS, THROUGH WHICH A VICTIM MAY REQUEST TO BE NOTIFIED UNDER § 11-104 OF THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 841.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the meaning of item (5) of this section is unclear. In this item, the Board is required to "review and approve" plans, annual reports, program revisions, etc. of the Victim Services Coordinator. The General Assembly may wish to decide whether this "approval" power precludes the Victim Services Coordinator from instituting a plan or program before obtaining the Board's approval.

Furthermore, in § 11-915 of this subtitle, there is no complementary requirement that the Victim Services Coordinator submit plans, program revisions, or any other materials to the Board, except for the requirement that the Victim Services Coordinator submit an annual report to the Board.

Defined terms: "Board" § 11-910

"Charging document" § 1-101

"Executive Director" § 11-910

"Fund" § 11-910

"Victim" § 11-910

11-915. VICTIM SERVICES COORDINATOR.

(A) APPOINTMENT.

THE EXECUTIVE DIRECTOR SHALL APPOINT A VICTIM SERVICES COORDINATOR.

(B) DUTIES.

SUBJECT TO THE AUTHORITY OF THE EXECUTIVE DIRECTOR, THE VICTIM SERVICES COORDINATOR SHALL:

(1) PROVIDE STAFF SUPPORT TO THE BOARD ON VICTIM SERVICES MATTERS;

(2) MONITOR, ASSESS, AND MAKE RECOMMENDATIONS ON STATE AND LOCAL VICTIM COMPENSATION PROGRAMS AND PROCEDURES;

(3) PROVIDE TECHNICAL ASSISTANCE TO LOCAL PUBLIC AND PRIVATE PROGRAMS THAT PROVIDE VICTIM ASSISTANCE;

(4) RESEARCH AND GATHER DATA ON VICTIMS AND VICTIM ASSISTANCE PROGRAMS, AND DISSEMINATE THE DATA TO THE PUBLIC;

(5) SUBMIT TO THE GOVERNOR, THE ATTORNEY GENERAL, THE SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, AND THE BOARD AN ANNUAL REPORT THAT INCLUDES RECOMMENDATIONS ON HOW TO IMPROVE VICTIM ASSISTANCE PROGRAMS;

(6) ENSURE THAT THE RIGHTS OF VICTIMS ARE OBSERVED;

(7) HELP VICTIMS TO GET THE INFORMATION TO WHICH THEY HAVE A RIGHT; AND

(8) MONITOR COMPLIANCE WITH THE GUIDELINES FOR TREATMENT OF AND ASSISTANCE TO VICTIMS AND WITNESSES UNDER §§ 11-1002 AND 11-1003 OF THIS TITLE.

(C) COMPENSATION.

THE VICTIM SERVICES COORDINATOR IS ENTITLED TO COMPENSATION AS PROVIDED IN THE STATE BUDGET.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 842 and 843.

In subsection (b)(4) of this section, the former reference to "perform" research is deleted as surplusage.

In subsection (c) of this section, the phrase "is entitled to compensation" is substituted for the former phrase "shall receive an annual salary" for accuracy. *See* General Revisor's Note to article.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (b)(2) of this section is vague. This paragraph provides that the Victim Services Coordinator must make recommendations on State and victim compensation programs and procedures without specifying who should receive these recommendations.

Subsection (b)(5) of this section may provide some guidance to this issue

because it requires the Victim Services Coordinator to submit an annual report, including recommendations on how to improve victim assistance programs, to the Governor, the Attorney General, the Secretary of Public Safety and Correctional Services, and the Board. If these are the same entities who should receive the recommendations, the General Assembly may wish to combine these two paragraphs.

The Criminal Procedure Article Review Committee also notes, for consideration by the General Assembly, that subsection (b)(5) of this section does not include a requirement that the Victim Services Coordinator's plan and annual reports be approved by the Board.

Defined terms: "Board" § 11-910

"Executive Director" § 11-910

"Victim" § 11-910

11-916. STATE VICTIMS OF CRIME FUND -- IN GENERAL.

(A) ESTABLISHED.

THERE IS A STATE VICTIMS OF CRIME FUND.

(B) PURPOSE.

(1) THE FUND SHALL BE USED TO PAY FOR CARRYING OUT:

(I) ARTICLE 47 OF THE MARYLAND DECLARATION OF RIGHTS;

(II) THE GUIDELINES FOR THE TREATMENT AND ASSISTANCE FOR VICTIMS AND WITNESSES OF CRIMES AND DELINQUENT ACTS PROVIDED IN §§ 11-1002 AND 11-1003 OF THIS TITLE; AND

(III) ANY LAWS ENACTED TO BENEFIT VICTIMS AND WITNESSES OF CRIMES AND DELINQUENT ACTS.

(2) THE FUND MAY PAY FOR THE ADMINISTRATIVE COSTS OF THE FUND.

(C) ADMINISTRATION.

THE BOARD SHALL ADMINISTER THE FUND.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(k) and (j)(1).

In subsection (a) of this section, the reference to the "State" is substituted for the former reference to "Maryland" to avoid the use of duplicative terms "Maryland" and "State" and to correspond with other designations used in this article. In addition, the former reference to an "Account" is deleted to conform to practice and to § 11-910 of this subtitle and other designations used in this article when referring to the Fund.

In subsection (b)(1) of this section, as to the substitution of the reference to "carrying out" for the former reference to "implementation of", *see* General Revisor's Note to article.

In subsection (b)(1)(ii) and (iii) of this section, the defined term "delinquent act[s]" is added to reflect that, in practice, the Fund is used for both victims and witnesses of delinquent acts as well as crimes.

In subsection (c) of this section, the former reference to "[former] §§ 837 through 844 of this subtitle" is deleted as surplusage.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that, in subsection (a) of this section, the former reference to a State Victims of Crime Fund "in the General Fund of the State" is deleted to conform to § 11-917 of this subtitle (former Art. 27, § 854(j)(2) and (3)), which provides that the Fund is a special continuing, nonlapsing fund.

Defined terms: "Board" § 11-910

"Crime" § 11-910

"Delinquent act" § 11-101

"Fund" § 11-910

"Victim" § 11-910

11-917. SAME -- STATUS; INVESTMENTS; CONSTRUCTION.

(A) STATUS.

(1) THE FUND IS A SPECIAL CONTINUING, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) THE TREASURER SHALL SEPARATELY HOLD AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(3) THE COMPTROLLER SHALL MAKE PAYMENTS FROM THE FUND THAT THE BOARD APPROVES.

(B) INVESTMENTS.

(1) THE FUND SHALL BE INVESTED AND REINVESTED IN THE SAME MANNER AS OTHER STATE FUNDS.

(2) ANY INVESTMENT EARNINGS SHALL BE CREDITED TO THE FUND.

(C) CONSTRUCTION.

THIS SECTION DOES NOT PROHIBIT THE FUND FROM RECEIVING MONEY FROM ANY SOURCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 854(j)(2), (3), (4), (5), and (8) and 830(e)(5).

In subsection (c) of this section, the word "money" is substituted for the former reference to "funds" to avoid confusion with the defined term "Fund". *See* § 11-910 of this subtitle. Also the former reference to money from any "other" source is deleted because a source of money is not identified in this section.

Defined terms: "Board" § 11-910

"Fund" § 11-910

11-918. SAME -- AUDIT; DISBURSEMENTS.

(A) AUDIT.

THE FUND IS SUBJECT TO AN AUDIT BY THE OFFICE OF LEGISLATIVE AUDITS UNDER § 2-1220 OF THE STATE GOVERNMENT ARTICLE.

(B) DISBURSEMENTS.

DISBURSEMENTS FROM THE FUND SHALL SUPPLEMENT AND MAY NOT BE A SUBSTITUTE FOR ANY STATE, LOCAL GOVERNMENT, OR OTHER FUNDS EXISTING ON JULY 1, 1991, FOR ASSISTANCE TO CRIME VICTIMS OR WITNESSES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 854(j)(6) and (7).

Defined term: "Fund" § 11-910

11-919. GRANT PROGRAM.

(A) ESTABLISHED.

THERE IS A GRANT PROGRAM.

(B) REGULATIONS; SUBMISSION OF APPLICATIONS.

THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION SHALL:

(1) ADOPT REGULATIONS FOR THE ADMINISTRATION AND AWARD OF GRANTS UNDER PART II OF THIS SUBTITLE; AND

(2) SUBMIT ALL APPROVED GRANT APPLICATIONS TO THE BOARD.

(C) BOARD ACTION REQUIRED.

THE BOARD SHALL APPROVE EACH GRANT APPLICATION RECEIVED BY THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION BEFORE ANY MONEY IS RELEASED FROM THE FUND.

REVISOR'S NOTE: Subsection (a) of this section is new language added to state expressly what was only implied in the former law -- a grant program exists.

Subsections (b) and (c) of this section are new language derived without substantive change from former Art. 27, § 844.

Defined terms: "Board" § 11-908

"Fund" § 11-908

11-920. RESERVED.

11-921. RESERVED.

PART III. HELP FOR VICTIMS OF SEXUAL ASSAULT OFFENSES.

11-922. "SEXUAL ASSAULT" DEFINED.

IN THIS PART, "SEXUAL ASSAULT" MEANS RAPE OR A SEXUAL OFFENSE IN ANY DEGREE THAT IS SPECIFIED IN THE SEXUAL OFFENSES SUBHEADING IN ARTICLE 27 OF THE CODE.

REVISOR'S NOTE: This section is new language added to provide a convenient, brief reference to "rape and sexual offenses".

11-923. SEXUAL ASSAULT CRISIS PROGRAMS.

(A) LEGISLATIVE FINDINGS.

THE GENERAL ASSEMBLY FINDS THAT AN INCREASING NUMBER OF SEXUAL ASSAULT OFFENSE VICTIMS IN THE STATE:

(1) LACK NECESSARY COUNSELING AND FOLLOW-UP SERVICES; AND

(2) IN SOME PARTS OF THE STATE, HAVE ONLY THE HELP OF EXTREMELY LIMITED SUPPORT SERVICES.

(B) STATEMENT OF PURPOSE.

THE PURPOSE OF THIS SECTION IS TO PROVIDE FOR SEXUAL ASSAULT CRISIS PROGRAMS THAT ADDRESS THE SPECIAL NEEDS OF SEXUAL ASSAULT VICTIMS.

(C) DEPARTMENT OF HUMAN RESOURCES TO HELP ESTABLISH PROGRAM.

(1) THE DEPARTMENT OF HUMAN RESOURCES SHALL HELP ESTABLISH SEXUAL ASSAULT CRISIS PROGRAMS IN THE STATE.

(2) THE PROGRAMS SHALL BE DEVELOPED AND LOCATED TO FACILITATE THEIR USE BY ALLEGED VICTIMS RESIDING IN SURROUNDING AREAS.

(3) THE PROGRAMS SHALL:

(I) PROVIDE SPECIALIZED SUPPORT SERVICES TO ADULT AND MINOR ALLEGED VICTIMS OF SEXUAL ASSAULT CRIMES; AND

(II) INCLUDE A HOTLINE AND COUNSELING SERVICE.

(D) PROGRAM CONTRACTS.

THE DEPARTMENT OF HUMAN RESOURCES MAY CONTRACT WITH PUBLIC OR PRIVATE NONPROFIT ORGANIZATIONS TO OPERATE THE SEXUAL ASSAULT CRISIS PROGRAMS.

(E) FUNDING.

MONEY FOR THE SEXUAL ASSAULT CRISIS PROGRAMS SHALL BE AS PROVIDED IN THE ANNUAL STATE BUDGET AND SHALL BE USED TO SUPPLEMENT, BUT NOT SUPPLANT, MONEY THAT THE PROGRAMS RECEIVE FROM OTHER SOURCES.

(F) REPORTING REQUIREMENT.

THE SECRETARY OF HUMAN RESOURCES SHALL INCLUDE A REPORT ON THE SEXUAL ASSAULT CRISIS PROGRAMS IN THE DEPARTMENT OF HUMAN RESOURCES ANNUAL REPORT TO THE GENERAL ASSEMBLY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 793.

In subsection (f) of this section, the references to the Secretary "of Human Resources" and "the Department of Human Resources" annual report are added for clarity.

Defined term: "Sexual assault" § 11-922

11-924. TRANSPORTING ALLEGED SEXUAL ASSAULT VICTIMS.

(A) DESIGNATION OF NEAREST FACILITY.

THE NEAREST FACILITY TO WHICH A VICTIM OF SEXUAL ASSAULT MAY BE TAKEN SHALL BE DESIGNATED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN COOPERATION WITH:

(1) THE MEDICAL AND CHIRURGICAL FACULTY OF THE STATE OF MARYLAND; AND

(2) THE STATE'S ATTORNEY IN THE SUBDIVISION WHERE THE SEXUAL ASSAULT OCCURRED.

(B) DUTY OF POLICE AND SHERIFFS.

(1) A POLICE OFFICER, SHERIFF, OR DEPUTY SHERIFF WHO RECEIVES A REPORT OF AN ALLEGED SEXUAL ASSAULT SHALL OFFER THE ALLEGED VICTIM THE OPPORTUNITY TO BE TAKEN IMMEDIATELY TO THE NEAREST FACILITY.

(2) THE OFFER SHALL BE MADE WITHOUT REGARD FOR THE PLACE OF THE ALLEGED SEXUAL ASSAULT OR WHERE IT IS REPORTED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 790.

Defined term: "Sexual assault" § 11-922

11-925. HEALTH CARE SERVICES.

APPLICABLE HEALTH CARE SERVICES SHALL BE GIVEN WITHOUT CHARGE TO A VICTIM OF SEXUAL ABUSE, AS PROVIDED UNDER § 15-127 OF THE HEALTH - GENERAL ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 795.

Defined term: "Sexual assault" § 11-922

GENERAL REVISOR'S NOTE TO SUBTITLE:

Former Art. 27, § 794, which cross-referenced the requirement that each institution of higher education must adopt a written policy on sexual assault, is deleted in light of ED § 11-601 to the same effect.

Former Art. 27, § 838, which provided legislative findings for the establishment of the Board of Victim Services and the transfer of the Victim Services Program, is deleted as obsolete.

SUBTITLE 10. TREATMENT AND HELP.

11-1001. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 847(a).

The reference to this "subtitle" is substituted for the former reference to "§§ 847 through 850 of this subheading". This subtitle also includes the revision of former Art. 27, § 856; thus, this new subsection makes the definitions applicable to provisions to which those definitions formerly did not apply. No substantive change is intended.

(B) CRIME.

"CRIME" MEANS CONDUCT THAT IS A CRIME UNDER THE LAW OF THIS STATE OR FEDERAL LAW.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 847(b).

The former reference to conduct that "would be considered a crime except for the fact that the perpetrator was found to be not criminally responsible or not competent to stand trial" is deleted as unnecessary to the definition of "crime".

(C) DISPOSITION.

(1) "DISPOSITION" MEANS THE SENTENCING OR DETERMINATION OF PENALTY OR PUNISHMENT TO BE IMPOSED ON A PERSON CONVICTED OF A CRIME OR AGAINST WHOM A FINDING OF SUFFICIENT FACTS FOR CONVICTION IS MADE.

(2) "DISPOSITION" INCLUDES DISMISSAL OF CHARGES OR OTHER DISPOSITION UNDER A PLEA BARGAIN AGREEMENT.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 847(d).

No changes are made.

Defined terms: "Crime" § 11-1001

"Person" § 1-101

(D) RESTITUTION.

"RESTITUTION" MEANS MONEY OR SERVICES THAT A DEFENDANT IS ORDERED TO PAY OR RENDER TO A VICTIM OR VICTIM'S REPRESENTATIVE.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 847(f).

The only changes are in style.

Defined terms: "Victim" § 11-1001

"Victim's representative" § 11-1001

(E) VICTIM.

"VICTIM" MEANS A PERSON WHO SUFFERS DIRECT OR THREATENED PHYSICAL, EMOTIONAL, OR FINANCIAL HARM AS A RESULT OF A CRIME.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 847(c), except as it related to family members of a minor, incompetent, or homicide victim.

The former reference to a "[c]rime victim" is deleted as unnecessary.

Defined terms: "Crime" § 11-1001

"Person" § 1-101

(F) VICTIM'S REPRESENTATIVE.

"VICTIM'S REPRESENTATIVE" INCLUDES:

(1) A SPOUSE, CHILD, SIBLING, OR A PARENT OF A VICTIM WHO IS A MINOR, INCOMPETENT, OR A VICTIM OF A HOMICIDE; OR

(2) A GUARDIAN OF A MINOR OR AN INCOMPETENT.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 847(e) and, as it related to family members of a minor, incompetent, or homicide victim (c).

The defined term "[v]ictim's representative" is added for clarity.

(G) WITNESS.

"WITNESS" MEANS A PERSON WHO IS OR EXPECTS TO BE A STATE'S WITNESS.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 847(g).

The only changes are in style.

Defined term: "Person" § 1-101

11-1002. GUIDELINES FOR TREATMENT OF VICTIM OF CRIME, VICTIM'S REPRESENTATIVE, OR WITNESS.

(A) RESPONSIBILITY OF CRIMINAL JUSTICE UNITS.

THE APPROPRIATE CRIMINAL JUSTICE UNIT SHOULD INFORM A VICTIM OF A CRIME, A VICTIM'S REPRESENTATIVE, OR A WITNESS OF THE GUIDELINES LISTED IN SUBSECTION (B) OF THIS SECTION.

(B) GUIDELINES.

A VICTIM OF A CRIME, VICTIM'S REPRESENTATIVE, OR WITNESS:

(1) SHOULD BE TREATED WITH DIGNITY, RESPECT, COURTESY, AND SENSITIVITY;

(2) SHOULD RECEIVE CRISIS INTERVENTION HELP, IF NEEDED, OR BE TOLD BY THE APPROPRIATE CRIMINAL JUSTICE UNIT WHERE CRISIS INTERVENTION HELP, EMERGENCY MEDICAL TREATMENT, CREDITOR INTERCESSION SERVICES, OR OTHER SOCIAL SERVICES AND COUNSELING MAY BE OBTAINED;

(3) SHOULD BE NOTIFIED IN ADVANCE OF DATES AND TIMES OF TRIAL COURT PROCEEDINGS IN THE CASE AND, ON WRITTEN REQUEST, OF POSTSENTENCING PROCEEDINGS, AND BE NOTIFIED IF THE COURT PROCEEDINGS TO WHICH THE VICTIM OF A CRIME, VICTIM'S REPRESENTATIVE, OR WITNESS HAS BEEN SUBPOENAED WILL NOT PROCEED AS SCHEDULED;

(4) SHOULD BE TOLD OF THE PROTECTION AVAILABLE, AND, ON REQUEST, BE PROTECTED BY A CRIMINAL JUSTICE UNIT, TO THE EXTENT REASONABLE, PRACTICABLE, AND, IN THE UNIT'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;

(5) DURING EACH PHASE OF THE INVESTIGATIVE OR COURT PROCEEDINGS, SHOULD BE PROVIDED, TO THE EXTENT PRACTICABLE, WITH A WAITING AREA THAT IS SEPARATE FROM A SUSPECT AND THE FAMILY AND FRIENDS OF A SUSPECT;

(6) SHOULD BE TOLD BY THE APPROPRIATE CRIMINAL JUSTICE UNIT OF FINANCIAL ASSISTANCE, CRIMINAL INJURIES COMPENSATION, AND ANY OTHER SOCIAL SERVICES AVAILABLE TO THE VICTIM OF A CRIME OR VICTIM'S REPRESENTATIVE AND RECEIVE HELP OR INFORMATION ON HOW TO APPLY FOR SERVICES;

(7) SHOULD BE TOLD OF AND, ON REQUEST, SHOULD BE GIVEN EMPLOYER INTERCESSION SERVICES, WHEN APPROPRIATE, BY THE STATE'S ATTORNEY'S OFFICE OR OTHER AVAILABLE RESOURCE TO SEEK EMPLOYER COOPERATION IN MINIMIZING AN EMPLOYEE'S LOSS OF PAY OR OTHER BENEFITS RESULTING FROM PARTICIPATION IN THE CRIMINAL JUSTICE PROCESS;

(8) ON WRITTEN REQUEST, SHOULD BE KEPT REASONABLY INFORMED BY THE POLICE OR THE STATE'S ATTORNEY OF THE ARREST OF A SUSPECT AND CLOSING OF THE CASE, AND SHOULD BE TOLD WHICH OFFICE TO CONTACT FOR INFORMATION ABOUT THE CASE;

(9) SHOULD BE TOLD OF THE RIGHT TO HAVE STOLEN OR OTHER PROPERTY PROMPTLY RETURNED AND, ON WRITTEN REQUEST, SHOULD HAVE THE PROPERTY PROMPTLY RETURNED BY A LAW ENFORCEMENT UNIT WHEN EVIDENTIARY REQUIREMENTS FOR PROSECUTION CAN BE SATISFIED BY OTHER MEANS, UNLESS THERE IS A COMPELLING LAW ENFORCEMENT REASON FOR KEEPING IT;

(10) FOR A CRIME OF VIOLENCE, ON WRITTEN REQUEST, SHOULD BE KEPT INFORMED BY PRETRIAL RELEASE PERSONNEL, THE STATE'S ATTORNEY, OR THE ATTORNEY GENERAL, AS APPROPRIATE, OF EACH PROCEEDING THAT AFFECTS THE CRIME VICTIM'S INTEREST, INCLUDING:

(I) BAIL HEARING;

(II) DISMISSAL;

(III) NOLLE PROSEQUI;

(IV) STETTING OF CHARGES;

(V) TRIAL; AND

(VI) DISPOSITION;

(11) ON REQUEST OF THE STATE'S ATTORNEY AND IN THE DISCRETION OF THE COURT, SHOULD BE ALLOWED TO ADDRESS THE COURT OR JURY OR HAVE A VICTIM IMPACT STATEMENT READ BY THE COURT OR JURY AT:

(I) SENTENCING BEFORE THE IMPOSITION OF THE SENTENCE; OR

(II) ANY HEARING TO CONSIDER ALTERING THE SENTENCE;

(12) SHOULD BE TOLD, IN APPROPRIATE CASES, BY THE STATE'S ATTORNEY OF THE RIGHT TO REQUEST RESTITUTION AND, ON REQUEST, SHOULD BE HELPED TO PREPARE THE REQUEST AND SHOULD BE GIVEN ADVICE AS TO THE COLLECTION OF THE PAYMENT OF ANY RESTITUTION AWARDED;

(13) SHOULD BE ENTITLED TO A SPEEDY DISPOSITION OF THE CASE TO MINIMIZE THE LENGTH OF TIME THE PERSON MUST ENDURE RESPONSIBILITY AND STRESS IN CONNECTION WITH THE CASE;

(14) ON WRITTEN REQUEST TO THE PAROLE AUTHORITY, SHOULD BE TOLD EACH TIME THERE IS TO BE A HEARING ON PROVISIONAL RELEASE FROM CUSTODY AND EACH TIME THE CRIMINAL WILL RECEIVE A PROVISIONAL RELEASE;

(15) ON WRITTEN REQUEST TO THE PATUXENT INSTITUTION, DIVISION OF CORRECTION, OR PAROLE COMMISSION, AS APPROPRIATE, SHOULD HAVE A VICTIM IMPACT STATEMENT READ AT A HEARING TO CONSIDER TEMPORARY LEAVE STATUS OR A PROVISIONAL RELEASE; AND

(16) ON WRITTEN REQUEST TO THE UNIT THAT HAS CUSTODY OF THE OFFENDER AFTER SENTENCING, SHOULD BE TOLD BY THE UNIT WHENEVER THE CRIMINAL ESCAPES OR RECEIVES A MANDATORY SUPERVISION RELEASE.

(C) AVAILABILITY OF GUIDELINES.

(1) THE DEPARTMENT SHALL MAKE THE GUIDELINES IN SUBSECTION (B) OF THIS SECTION AVAILABLE TO THE UNITS INVOLVED WITH CARRYING OUT THE GUIDELINES.

(2) TO THE EXTENT FEASIBLE, THE GUIDELINES IN SUBSECTION (B) OF THIS SECTION SHALL BE PRINTED BY STATE USE INDUSTRIES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 848 and 849.

In subsection (b)(3) of this section, the reference to "subpoenaed" is substituted for the former reference to "summoned" for accuracy. Unlike a summons, which requires a defendant to appear in court, a subpoena is issued to require a witness to testify in court.

In subsection (b)(8) of this section, the reference to the "arrest" of a suspect is substituted for the former reference to the "apprehension" of a suspect for clarity.

In subsection (b)(10) of this section, the former specific reference to each proceeding "at hearing, trial, or appellate level" is deleted in light of the comprehensive reference to "each" proceeding.

In subsection (b)(13) of this section, the former reference to an "individual [who] is involved as a crime victim or witness" is deleted as implicit in the reference to a "person".

In subsection (b)(14) and (16) of this section, the references to "criminal" are substituted for the former references to "offender" to conform to the terminology used throughout this article.

In subsection (c)(1) of this section, the reference to units that are involved "with carrying out the guidelines" is added to state expressly what formerly was only implied.

In subsection (c)(2) of this section, the former reference to "the inmates employed by" State Use Industries is deleted as implicit in the reference to "State Use Industries".

Throughout this section, the references to a "unit" are substituted for the former references to an "agency" for consistency with other revised articles of the Code. *See* General Revisor's Note to article.

Defined terms: "Crime" § 11-1001

"Crime of violence" § 1-101

"Department" § 1-101

"Disposition" § 11-1001

"Nolle prosequi" § 1-101

"Person" § 1-101

"Restitution" § 11-1001

"Victim" § 11-1001

"Victim's representative" § 11-1001

"Witness" § 11-1001

11-1003. GUIDELINES FOR TREATMENT OF VICTIM OF DELINQUENT ACT, VICTIM'S REPRESENTATIVE, OR WITNESS.

(A) RESPONSIBILITY OF JUVENILE JUSTICE UNITS.

THE APPROPRIATE JUVENILE JUSTICE UNIT SHOULD TELL A VICTIM OF A DELINQUENT ACT, VICTIM'S REPRESENTATIVE, OR WITNESS OF THE GUIDELINES LISTED IN SUBSECTION (B) OF THIS SECTION.

(B) GUIDELINES.

A VICTIM OF A DELINQUENT ACT, VICTIM'S REPRESENTATIVE, OR WITNESS:

(1) SHOULD BE TREATED WITH DIGNITY, RESPECT, COURTESY, AND SENSITIVITY;

(2) SHOULD BE TOLD IN ADVANCE OF DATES AND TIMES OF JUVENILE COURT PROCEEDINGS IN THE CASE AND SHOULD BE TOLD IF THE COURT PROCEEDINGS TO WHICH THE VICTIM OR WITNESS HAS BEEN SUMMONED WILL NOT PROCEED AS SCHEDULED;

(3) DURING ANY PHASE OF THE INVESTIGATIVE OR COURT PROCEEDINGS, SHOULD BE PROVIDED, TO THE EXTENT PRACTICABLE, WITH A WAITING AREA THAT IS SEPARATE FROM A CHILD RESPONDENT AND THE FAMILY AND FRIENDS OF THE CHILD RESPONDENT;

(4) SHOULD BE TOLD BY THE APPROPRIATE JUVENILE JUSTICE UNIT OF FINANCIAL HELP, CRIMINAL INJURIES COMPENSATION, AND ANY OTHER SOCIAL SERVICES AVAILABLE TO THE VICTIM AND RECEIVE HELP OR INFORMATION ON HOW TO APPLY FOR SERVICES;

(5) ON WRITTEN REQUEST, SHOULD BE KEPT REASONABLY INFORMED BY THE POLICE OR THE STATE'S ATTORNEY OF THE APPREHENSION OF A CHILD RESPONDENT AND OF THE CLOSING OF THE CASE, AND SHOULD BE TOLD WHICH OFFICE TO CONTACT FOR INFORMATION ABOUT THE CASE;

(6) SHOULD BE TOLD OF THE RIGHT TO HAVE STOLEN OR OTHER PROPERTY PROMPTLY RETURNED AND, ON WRITTEN REQUEST, HAVE THE PROPERTY PROMPTLY RETURNED BY A LAW ENFORCEMENT UNIT WHEN EVIDENTIARY REQUIREMENTS FOR PROSECUTION CAN BE SATISFIED BY OTHER MEANS UNLESS THERE IS A COMPELLING LAW ENFORCEMENT REASON FOR KEEPING IT;

(7) SHOULD BE TOLD, IN APPROPRIATE CASES, BY THE STATE'S ATTORNEY OF THE RIGHT TO REQUEST RESTITUTION AND, ON REQUEST, SHOULD BE HELPED TO PREPARE THE REQUEST AND SHOULD BE GIVEN ADVICE AS TO THE COLLECTION OF THE PAYMENT OF ANY RESTITUTION AWARDED; AND

(8) ON WRITTEN REQUEST TO THE APPROPRIATE UNIT, SHOULD BE TOLD ANY TIME THAT THE CHILD RESPONDENT IS TO BE RELEASED OR ESCAPES.

(C) AVAILABILITY OF GUIDELINES.

THE DEPARTMENT OF JUVENILE JUSTICE SHALL MAKE THE GUIDELINES IN SUBSECTION (B) OF THIS SECTION AVAILABLE TO THE UNITS INVOLVED WITH CARRYING OUT THE GUIDELINES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 851(a) and (b).

In subsection (c) of this section, the reference to units involved "with carrying out the guidelines" is added to state expressly what formerly was only implied.

Throughout this section, the references to a "unit" are substituted for the former references to an "agency" for consistency with other revised articles of the Code. *See* General Revisor's Note to article.

Defined terms: "Child respondent" § 11-101

"Delinquent act" § 11-1001

"Restitution" § 11-1001

"Victim" § 11-1001

"Victim's representative" § 11-1001

"Witness" § 11-1001

11-1004. EFFECT OF SUBTITLE.

THIS SUBTITLE DOES NOT CREATE A CAUSE OF ACTION ON BEHALF OF A PERSON AGAINST A PUBLIC OFFICIAL, PUBLIC EMPLOYEE, A STATE OR LOCAL GOVERNMENT, OR UNIT, INCLUDING A UNIT RESPONSIBLE FOR THE GUIDELINES SET FORTH IN THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 850 and 851(c).

The references to "unit" are substituted for the former references to an "agency" for consistency with other revised articles of the Code. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

11-1005. VICTIM AND RESPONSIBLE RELATIVE; COST OF HEALTH SERVICES.

AS PROVIDED UNDER § 16-203(A)(4) OF THE HEALTH - GENERAL ARTICLE, A VICTIM OF SEXUAL ABUSE, PHYSICAL ABUSE, OR A CRIME OF VIOLENCE WHO IS A RESPONSIBLE RELATIVE OF THE PERPETRATOR MAY NOT BE HELD LIABLE FOR THE COST OF HEALTH SERVICES PROVIDED TO THE PERPETRATOR OF THE OFFENSE BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 856.

Defined term: "Crime of violence" § 1-101

GENERAL REVISOR'S NOTE TO TITLE:

The term "delinquent act" is added to each reference to a "crime" and the reference to a "child respondent" is added to each reference to a "defendant" to reflect that this title applies to juvenile court as well as criminal court.

TITLE 12. FORFEITURE -- CONTROLLED DANGEROUS SUBSTANCES VIOLATIONS.

SUBTITLE 1. DEFINITIONS; PROPERTY SUBJECT TO FORFEITURE.

12-101. DEFINITIONS.

(A) IN GENERAL.

IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(1).

(B) CHIEF EXECUTIVE OFFICER.

"CHIEF EXECUTIVE OFFICER" MEANS:

(1) FOR BALTIMORE CITY, THE MAYOR;

(2) FOR A CHARTER COUNTY, THE COUNTY EXECUTIVE OR, IF THERE IS NO COUNTY EXECUTIVE, THE COUNTY COUNCIL;

(3) FOR A CODE COUNTY, THE COUNTY COMMISSIONERS OR COUNTY COUNCIL;

(4) FOR A COUNTY COMMISSIONER COUNTY, THE COUNTY COMMISSIONERS; OR

(5) FOR A MUNICIPAL CORPORATION, THE LEGISLATIVE BODY ESTABLISHED BY MUNICIPAL CHARTER.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(2).

(C) CONTROLLED DANGEROUS SUBSTANCES LAW.

"CONTROLLED DANGEROUS SUBSTANCES LAW" MEANS THE HEALTH - CONTROLLED DANGEROUS SUBSTANCES SUBHEADING OF ARTICLE 27 OF THE CODE.

REVISOR'S NOTE: This subsection is new language added to avoid the necessity of repeating the phrase "the Health - Controlled Dangerous Substances Subheading of Article 27 of the Code".

(D) CONVICTED.

"CONVICTED" MEANS FOUND GUILTY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(3).

The former reference to a finding of guilt "by a court of competent jurisdiction" is deleted as surplusage.

(E) FINAL DISPOSITION.

"FINAL DISPOSITION" MEANS A DISMISSAL, ENTRY OF A NOLLE PROSEQUI, THE MARKING OF A CRIMINAL CHARGE "STET" ON THE DOCKET, ENTRY OF A NOT GUILTY VERDICT, THE PRONOUNCEMENT OF SENTENCE, OR IMPOSITION OF PROBATION UNDER § 6-220 OF THIS ARTICLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(4).

The reference to "the marking of a criminal charge `stet' on the docket" is substituted for the former reference to "stet" for clarity.

The former reference to "the date on which any criminal charge giving rise to a forfeiture under this section is terminated" is deleted as misleading and unnecessary, because "final disposition" in its ordinary meaning does not mean a date but does imply the termination of a criminal charge.

Defined term: "Nolle prosequi" § 1-101

(F) FORFEITING AUTHORITY.

"FORFEITING AUTHORITY" MEANS:

(1) THE UNIT OR PERSON DESIGNATED BY AGREEMENT BETWEEN THE STATE'S ATTORNEY FOR A COUNTY AND THE CHIEF EXECUTIVE OFFICER OF THE GOVERNING BODY HAVING JURISDICTION OVER ASSETS SUBJECT TO FORFEITURE TO ACT ON BEHALF OF THE GOVERNING BODY REGARDING THOSE ASSETS; OR

(2) IF THE SEIZING AUTHORITY IS A UNIT OF THE STATE, A UNIT OR PERSON THAT THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE DESIGNATES BY AGREEMENT WITH A STATE'S ATTORNEY, COUNTY ATTORNEY, OR MUNICIPAL ATTORNEY TO ACT ON BEHALF OF THE STATE REGARDING ASSETS SUBJECT TO FORFEITURE BY THE STATE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(5).

In item (1) of this subsection, the phrase "to act on behalf of the governing body regarding those assets" is added for clarity.

Also in item (1) of this subsection, the former reference to "from time to time" is deleted as unnecessary in determining who is the forfeiting authority.

Defined terms: "Chief executive officer" § 12-101

"County" § 1-101

"Person" § 1-101

"Seizing authority" § 12-101

(G) GOVERNING BODY.

"GOVERNING BODY" INCLUDES:

(1) THE STATE, IF THE SEIZING AUTHORITY IS A UNIT OF THE STATE;

(2) A COUNTY, IF THE SEIZING AUTHORITY IS A UNIT OF A COUNTY;

(3) A MUNICIPAL CORPORATION, IF THE SEIZING AUTHORITY IS A UNIT OF A MUNICIPALITY; AND

(4) BALTIMORE CITY, IF THE SEIZING AUTHORITY IS THE POLICE DEPARTMENT OF BALTIMORE CITY.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(6).

In item (3) of this subsection, the reference to a "municipal corporation" is substituted for the former reference to a "municipality" to conform to the terminology used in the Md. Constitution, Art. XI-E.

Defined terms: "County" § 1-101

"Seizing authority" § 12-101

(H) LIEN.

"LIEN" INCLUDES A MORTGAGE, DEED OF TRUST, PLEDGE, SECURITY INTEREST, ENCUMBRANCE, OR RIGHT OF SETOFF.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(7).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that a right of setoff is not normally included in the definition of "lien".

(I) LIENHOLDER.

"LIENHOLDER" MEANS A PERSON WHO HAS A LIEN OR A SECURED INTEREST ON PROPERTY CREATED BEFORE THE SEIZURE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(8).

Defined terms: "Lien" § 12-101

"Person" § 1-101

"Property" § 12-101

(J) LOCAL FINANCIAL AUTHORITY.

"LOCAL FINANCIAL AUTHORITY" MEANS:

(1) IF THE SEIZING AUTHORITY IS A UNIT OF A COUNTY, THE TREASURER OR DIRECTOR OF FINANCE OF THE COUNTY; OR

(2) IF THE SEIZING AUTHORITY IS A UNIT OF A MUNICIPAL CORPORATION, THE TREASURER OR DIRECTOR OF FINANCE OF THAT MUNICIPAL CORPORATION.

REVISOR'S NOTE: This subsection is new language added to avoid the necessity of repeating the phrase "the treasurer or director of finance of a county, or the treasurer or director of finance of a municipal corporation".

Defined terms: "County" § 1-101

"Seizing authority" § 12-101

(K) OWNER.

(1) "OWNER" MEANS A PERSON HAVING A LEGAL, EQUITABLE, OR POSSESSORY INTEREST IN PROPERTY.

(2) "OWNER" INCLUDES:

(I) A CO-OWNER;

(II) A LIFE TENANT;

(III) A REMAINDERMAN TO A LIFE TENANCY IN REAL PROPERTY;

(IV) A HOLDER OF AN INCHOATE INTEREST IN REAL PROPERTY; AND

(V) A BONA FIDE PURCHASER FOR VALUE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(9).

Defined term: "Real property" § 12-101

(L) PROCEEDS.

"PROCEEDS" INCLUDES PROPERTY DERIVED DIRECTLY OR INDIRECTLY IN CONNECTION WITH OR AS A RESULT OF A CRIME UNDER THE CONTROLLED DANGEROUS SUBSTANCES LAW.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(10).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that this subsection refers to a "crime" under the Controlled Dangerous Substances law but does not refer to a delinquent act that, if committed by an adult, would be a crime.

Defined terms: "Controlled Dangerous Substances law" § 12-101

"Property" § 12-101

(M) PROPERTY.

(1) "PROPERTY" INCLUDES:

(I) REAL PROPERTY AND ANYTHING GROWING ON OR ATTACHED TO REAL PROPERTY;

(II) TANGIBLE AND INTANGIBLE PERSONAL PROPERTY, INCLUDING:

1. SECURITIES;

2. NEGOTIABLE AND NONNEGOTIABLE INSTRUMENTS;

3. VEHICLES AND CONVEYANCES OF ANY TYPE;

4. PRIVILEGES;

5. INTERESTS;

6. CLAIMS; AND

7. RIGHTS;

(III) AN ITEM, OBJECT, TOOL, SUBSTANCE, DEVICE, OR WEAPON USED IN CONNECTION WITH A CRIME UNDER THE CONTROLLED DANGEROUS SUBSTANCES LAW; AND

(IV) MONEY.

(2) "PROPERTY" DOES NOT INCLUDE:

(I) AN ITEM UNLAWFULLY IN THE POSSESSION OF A PERSON OTHER THAN THE OWNER WHEN USED IN CONNECTION WITH A CRIME UNDER THE CONTROLLED DANGEROUS SUBSTANCES LAW; OR

(II) A LESSOR'S INTEREST IN PROPERTY SUBJECT TO A BONA FIDE LEASE, UNLESS THE FORFEITING AUTHORITY CAN SHOW THAT THE LESSOR PARTICIPATED IN A CRIME UNDER THE CONTROLLED DANGEROUS SUBSTANCES LAW OR THAT THE PROPERTY WAS THE PROCEEDS OF A CRIME UNDER THE CONTROLLED DANGEROUS SUBSTANCES LAW.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(11).

In this subsection, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used throughout this title.

In paragraph (1)(iii) of this subsection, the reference to a crime "under the Controlled Dangerous Substances law" is added for clarity.

Defined terms: "Controlled Dangerous Substances law" § 12-101

"Forfeiting authority" § 12-101

"Person" § 12-101

"Proceeds" § 12-101

"Real property" § 12-101

(N) REAL PROPERTY.

(1) "REAL PROPERTY" MEANS LAND OR AN IMPROVEMENT TO LAND.

(2) "REAL PROPERTY" INCLUDES:

(I) A LEASEHOLD OR OTHER LIMITED INTEREST IN REAL PROPERTY;

(II) AN EASEMENT; AND

(III) A REVERSIONARY INTEREST IN A 99-YEAR GROUND LEASE RENEWABLE FOREVER.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(12).

(O) SEIZING AUTHORITY.

"SEIZING AUTHORITY" MEANS A LAW ENFORCEMENT UNIT IN THE STATE THAT IS AUTHORIZED TO INVESTIGATE VIOLATIONS OF THE CONTROLLED DANGEROUS SUBSTANCES LAW AND THAT HAS SEIZED PROPERTY UNDER THIS TITLE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 297(a)(13).

Defined terms: "Controlled Dangerous Substances law" § 12-101

"Property" § 12-101

REVISOR'S NOTE TO SECTION: Throughout this section, the reference to a State "unit" is substituted for the former terms "authority" and "instrumentality" to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

12-102. PROPERTY SUBJECT TO FORFEITURE.

(A) IN GENERAL.

THE FOLLOWING ARE SUBJECT TO FORFEITURE:

(1) CONTROLLED DANGEROUS SUBSTANCES MANUFACTURED, DISTRIBUTED, DISPENSED, ACQUIRED, OR POSSESSED IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW;

(2) RAW MATERIALS, PRODUCTS, AND EQUIPMENT USED, OR INTENDED FOR USE, IN MANUFACTURING, COMPOUNDING, PROCESSING, DELIVERING, IMPORTING, OR EXPORTING A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW;

(3) PROPERTY USED OR INTENDED FOR USE AS A CONTAINER FOR PROPERTY DESCRIBED IN ITEM (1) OR (2) OF THIS SUBSECTION;

(4) EXCEPT AS PROVIDED IN § 12-103 OF THIS SUBTITLE, CONVEYANCES, INCLUDING AIRCRAFT, VEHICLES, OR VESSELS USED OR INTENDED TO BE USED TO TRANSPORT, OR FACILITATE THE TRANSPORTATION, SALE, RECEIPT, POSSESSION, OR CONCEALMENT OF PROPERTY DESCRIBED IN ITEM (1) OR (2) OF THIS SUBSECTION;

(5) BOOKS, RECORDS, AND RESEARCH, INCLUDING FORMULAS, MICROFILM, TAPES, AND DATA USED OR INTENDED FOR USE IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW;

(6) SUBJECT TO SUBSECTION (B) OF THIS SECTION, MONEY OR WEAPONS USED OR INTENDED TO BE USED IN CONNECTION WITH THE UNLAWFUL MANUFACTURE, DISTRIBUTION, DISPENSING, OR POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE OR CONTROLLED PARAPHERNALIA;

(7) DRUG PARAPHERNALIA UNDER ARTICLE 27, § 287A OF THE CODE;

(8) CONTROLLED PARAPHERNALIA UNDER ARTICLE 27, § 287 OF THE CODE;

(9) EXCEPT AS PROVIDED IN § 12-103 OF THIS SUBTITLE, THE REMAINING BALANCE OF THE PROCEEDS OF A SALE BY A HOLDER OF AN INSTALLMENT SALE AGREEMENT UNDER § 12-626 OF THE COMMERCIAL LAW ARTICLE OF GOODS SEIZED UNDER THIS SUBTITLE;

(10) EXCEPT AS PROVIDED IN § 12-103 OF THIS SUBTITLE, REAL PROPERTY; AND

(11) EVERYTHING OF VALUE FURNISHED, OR INTENDED TO BE FURNISHED, IN EXCHANGE FOR A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW, ALL PROCEEDS TRACEABLE TO THE EXCHANGE, AND ALL NEGOTIABLE INSTRUMENTS AND SECURITIES USED, OR INTENDED TO BE USED, TO FACILITATE ANY VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW.

(B) MONEY AND WEAPONS.

(1) (I) MONEY OR WEAPONS THAT ARE FOUND IN CLOSE PROXIMITY TO A CONTRABAND CONTROLLED DANGEROUS SUBSTANCE, CONTROLLED PARAPHERNALIA, OR FORFEITABLE RECORDS OF THE IMPORTATION, MANUFACTURE, OR DISTRIBUTION OF CONTROLLED DANGEROUS SUBSTANCES ARE CONTRABAND AND PRESUMED TO BE FORFEITABLE.

(II) A CLAIMANT OF MONEY OR WEAPONS HAS THE BURDEN TO REBUT THE PRESUMPTION.

(2) ALL RIGHTS IN, TITLE TO, AND INTEREST IN THE MONEY OR WEAPONS IMMEDIATELY SHALL VEST IN:

(I) THE STATE, IF THE SEIZING AUTHORITY WAS A STATE UNIT;

(II) THE COUNTY IN WHICH THE MONEY OR WEAPONS WERE SEIZED, IF THE SEIZING AUTHORITY WAS A COUNTY LAW ENFORCEMENT UNIT, INCLUDING A SHERIFF'S OFFICE; OR

(III) THE MUNICIPAL CORPORATION IN WHICH THE MONEY OR WEAPONS WERE SEIZED, IF THE SEIZING AUTHORITY WAS A LAW ENFORCEMENT UNIT OF A MUNICIPAL CORPORATION.

(3) THE MONEY OR WEAPONS MAY BE RETURNED TO THE CLAIMANT ONLY AS THIS TITLE PROVIDES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(b)(1) through the introductory language of (4) and (5) through (10).

In this section, the former references to "coin" and "currency" are deleted in light of the reference to "money".

In subsection (a)(9) of this section, the former reference to goods seized by a "department, bureau or force" is deleted in light of the reference to "goods seized under this subtitle".

In subsection (b)(3) of this section, the former reference to the prohibition against returning money or weapons to a person claiming it "or to any other person" is deleted as meaningless because each person who seeks possession of seized property must notify the clerk of the proper court or make a request. *See* §§ 12-208(a) and 12-304(c) of this title.

In subsection (b)(2)(iii) of this section, the reference to the municipal corporation "in which the money or weapons were seized" is added to state what was only implied in the former reference to "if seized by municipal authorities".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (b)(3) of this section, money or weapons may be returned to the claimant of the property rather than to the owner of the property.

Defined terms: "Controlled Dangerous Substances law" § 12-101

"County" § 1-101

"Proceeds" § 12-101

"Property" § 12-101

"Real property" § 12-101

"Seizing authority" § 12-101

12-103. CONDITIONS EXCLUDING PROPERTY FROM FORFEITURE.

(A) NO KNOWLEDGE OF VIOLATION.

PROPERTY OR AN INTEREST IN PROPERTY DESCRIBED IN § 12-102(A)(4), (10), AND (11) OF THIS SUBTITLE MAY NOT BE FORFEITED IF THE OWNER ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW WAS COMMITTED WITHOUT THE OWNER'S ACTUAL KNOWLEDGE.

(B) NO CONSENT OR PRIVITY TO VIOLATION.

(1) A CONVEYANCE USED AS A COMMON CARRIER OR VEHICLE FOR HIRE IN THE TRANSACTION OF BUSINESS AS A COMMON CARRIER OR VEHICLE FOR HIRE MAY NOT BE SEIZED OR FORFEITED UNDER THIS TITLE UNLESS IT APPEARS THAT THE OWNER OR OTHER PERSON IN CHARGE OF THE CONVEYANCE WAS A CONSENTING PARTY OR PRIVY TO A VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW.

(2) A CONVEYANCE MAY NOT BE FORFEITED UNDER THIS TITLE FOR AN ACT OR OMISSION THAT THE OWNER SHOWS WAS COMMITTED OR OMITTED BY A PERSON OTHER THAN THE OWNER WHILE THE PERSON OTHER THAN THE OWNER POSSESSED THE CONVEYANCE IN CRIMINAL VIOLATION OF FEDERAL LAW OR THE LAW OF ANY STATE.

(C) NO FORFEITURE OF REAL PROPERTY FOR DRUG OR DRUG PARAPHERNALIA VIOLATION.

AN OWNER'S INTEREST IN REAL PROPERTY MAY NOT BE FORFEITED FOR A VIOLATION OF ARTICLE 27, § 287 OR § 287A OF THE CODE.

(D) PRINCIPAL FAMILY RESIDENCE -- IN GENERAL.

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE MAY NOT BE FORFEITED UNDER THIS SUBTITLE UNLESS ONE OF THE OWNERS OF THE REAL PROPERTY WAS CONVICTED OF A VIOLATION OF ARTICLE 27, § 286, § 286A, § 286B, § 286C, OR § 290 OF THE CODE.

(2) WITHOUT A CONVICTION, A COURT MAY ORDER A FORFEITURE OF REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE IF THE OWNER OF THE FAMILY RESIDENCE:

(I) FAILS TO APPEAR FOR A REQUIRED COURT APPEARANCE; AND

(II) FAILS TO SURRENDER TO THE JURISDICTION OF THE COURT WITHIN 180 DAYS AFTER THE REQUIRED COURT APPEARANCE.

(E) SAME -- USE BY SPOUSES.

REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE BY A HUSBAND AND WIFE AND HELD BY THE HUSBAND AND WIFE AS TENANTS BY THE ENTIRETY MAY NOT BE FORFEITED UNLESS:

(1) THE PROPERTY WAS USED IN CONNECTION WITH A VIOLATION OF ARTICLE 27, § 286, § 286A, § 286B, § 286C, OR § 290 OF THE CODE; AND

(2) BOTH THE HUSBAND AND WIFE ARE CONVICTED OF A VIOLATION OF ARTICLE 27, § 286, § 286A, § 286B, § 286C, OR § 290 OF THE CODE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(c), (b)(4)(i) and (ii), (m)(1)(ii) and (2), (n)(2) and (l)(1), as it related to violations of Article 27, and (2).

In subsection (b) of this section, the reference to "this title" is substituted for the former overly broad reference to "this subheading" for clarity.

In subsection (d) of this section, the former phrase "it is shown" is deleted for brevity and clarity.

In subsection (e) of this section, the former introductory language "[e]xcept as provided in subsections (l)(2) and (n)(2) of this section" is deleted as erroneous. If given full weight, the former language would void the effect of this subsection because the conditions of former subsections (l)(2) and (n)(2) - now subsection (d) of this section - would encompass the situation contemplated by this subsection.

Defined terms: "Controlled Dangerous Substances law" § 12-101

"Owner" § 12-101

"Person" § 1-101

"Property" § 12-101

"Real property" § 12-101

SUBTITLE 2. SEIZURE.

12-201. SEIZURE AND SUMMARY FORFEITURE OF CONTRABAND.

(A) SCHEDULE I SUBSTANCES -- POSSESSION, TRANSFERENCE, AND SALE.

A SCHEDULE I SUBSTANCE LISTED IN ARTICLE 27, § 279 OF THE CODE SHALL BE SEIZED AND SUMMARILY FORFEITED TO THE STATE IF THE SUBSTANCE IS:

(1) POSSESSED, TRANSFERRED, SOLD, OR OFFERED FOR SALE IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW; OR

(2) POSSESSED BY THE STATE AND ITS OWNER IS NOT KNOWN.

(B) SCHEDULE I OR II SUBSTANCES -- PLANTING OR CULTIVATION.

A PLANT MAY BE SEIZED AND SUMMARILY FORFEITED TO THE STATE IF THE PLANT:

(1) IS ONE FROM WHICH A SCHEDULE I OR SCHEDULE II SUBSTANCE LISTED IN ARTICLE 27, § 279 OF THE CODE MAY BE DERIVED; AND

(2) (I) HAS BEEN PLANTED OR CULTIVATED IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW;

(II) HAS AN UNKNOWN OWNER OR CULTIVATOR; OR

(III) IS A WILD GROWTH.

(C) FAILURE TO PROVIDE REGISTRATION OR PROOF OF IDENTITY.

THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE MAY SEIZE AND SUBJECT A PLANT TO FORFEITURE IF THE PERSON THAT OCCUPIES OR CONTROLS THE PLACE WHERE THE PLANT IS GROWING OR BEING STORED FAILS, ON DEMAND FROM THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, TO PRODUCE AN APPROPRIATE REGISTRATION OR PROOF THAT THE PERSON IS THE HOLDER OF A REGISTRATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(g).

In subsection (a) of this section, the former reference to substances that "shall be deemed contraband" is deleted in light of the requirement that the substances be seized and summarily forfeited to the State.

In subsection (a)(2) of this section, the former reference to substances that are "seized [by the State]" is deleted as included in the reference to substances that are "possessed" by the State.

In subsections (b) and (c) of this section, the former reference to a "species of" plant is deleted as unnecessary.

In subsection (c) of this section, the former reference to a "duly authorized agent" is deleted as implicit in the reference to the Department of Health and Mental Hygiene.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (c) of this section, the meaning of the reference to an "appropriate" registration is unclear.

Defined terms: "Controlled Dangerous Substances law" § 12-101

"Owner" § 12-101

"Person" § 1-101

12-202. SEIZURE OF PROPERTY SUBJECT TO FORFEITURE.

(A) SEIZURE WITH OR WITHOUT WARRANT.

PROPERTY SUBJECT TO FORFEITURE UNDER THIS TITLE MAY BE SEIZED:

(1) ON A WARRANT ISSUED BY A COURT THAT HAS JURISDICTION OVER THE PROPERTY; AND

(2) WITHOUT A WARRANT WHEN:

(I) THE SEIZURE IS INCIDENT TO AN ARREST OR A SEARCH UNDER A SEARCH WARRANT;

(II) THE SEIZURE IS INCIDENT TO AN INSPECTION UNDER AN ADMINISTRATIVE INSPECTION WARRANT;

(III) THE PROPERTY SUBJECT TO SEIZURE HAS BEEN THE SUBJECT OF A PRIOR JUDGMENT IN FAVOR OF THE STATE IN A CRIMINAL INJUNCTION OR FORFEITURE PROCEEDING UNDER THIS TITLE;

(IV) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY IS DIRECTLY OR INDIRECTLY DANGEROUS TO HEALTH OR SAFETY; OR

(V) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY HAS BEEN USED OR IS INTENDED TO BE USED IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW OR THIS TITLE.

(B) PHOTOGRAPHING OF CONTRABAND MONEY.

THE SEIZING AUTHORITY THAT SEIZES MONEY THAT IS CONTRABAND SHALL IMMEDIATELY:

(1) PHOTOGRAPH THE CONTRABAND MONEY AND RECORD THE QUANTITY OF EACH DENOMINATION OF COIN OR CURRENCY SEIZED; AND

(2) DEPOSIT THE MONEY TO THE ACCOUNT OF THE APPROPRIATE LOCAL FINANCIAL AUTHORITY.

(C) PHOTOGRAPHS AS EVIDENCE.

A PHOTOGRAPH TAKEN UNDER SUBSECTION (B) OF THIS SECTION MAY BE SUBSTITUTED FOR MONEY AS EVIDENCE IN A CRIMINAL OR FORFEITURE PROCEEDING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(d)(1) and, as it related to seizure with or without process, § 297A.

Throughout this section, the references to "money" are substituted for the former references to "coin and currency" for brevity.

In subsection (a) of this section, the reference to a "warrant" is substituted for the former reference to a "process" for clarity.

In subsection (b) of this section, the former reference to a seizing authority being required to "cause it [money] to be" immediately photographed is deleted for brevity.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (b) of this section, the State Treasurer is not included along with local financial authorities to whose account contraband money is to be deposited.

Defined terms: "Controlled Dangerous Substances law" § 12-101

"Local financial authority" § 12-101

"Property" § 12-101

"Seizing authority" § 12-101

12-203. SEIZED PROPERTY NOT REPLEVIABLE; SEQUESTERING AND REMOVING SEIZED PROPERTY.

(A) PROPERTY NOT REPLEVIABLE.

PROPERTY SEIZED UNDER THIS TITLE:

(1) IS NOT REPLEVIABLE; BUT

(2) IS IN THE CUSTODY OF THE SEIZING AUTHORITY, SUBJECT ONLY TO THE ORDERS, JUDGMENTS, AND DECREES OF THE COURT OR THE OFFICIAL HAVING JURISDICTION OVER THE PROPERTY.

(B) SEQUESTERING AND REMOVING PROPERTY.

A SEIZING AUTHORITY MAY PLACE SEIZED PROPERTY UNDER SEAL AND REMOVE THE PROPERTY TO A PLACE DESIGNATED BY THE COURT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(e).

In subsection (a) of this section, the reference to "this title" is substituted for the former reference to "this section" in light of this revision, which has revised former Art. 27, § 297 as Title 12 of this article.

Also in subsection (a) of this section, the reference to property that is "seized" is substituted for the former reference to property that is "taken or detained" to conform to the terminology used in subsection (b) of this section.

In subsection (b) of this section, the former reference to property seized "under the provisions of this subheading" is deleted as unnecessary.

Also in subsection (b) of this section, the defined term "seizing authority" is substituted for the former reference to a seizing "agency" to conform to the terminology used throughout this title.

Defined terms: "Property" § 12-101

"Seizing authority" § 12-101

12-204. SEIZURE OF MOTOR VEHICLES -- IN GENERAL.

(A) SEIZING AUTHORITY TO APPLY STANDARDS.

IN EXERCISING THE AUTHORITY TO SEIZE MOTOR VEHICLES UNDER THIS TITLE, A SEIZING AUTHORITY SHALL APPLY THE STANDARDS LISTED IN SUBSECTION (B) OF THIS SECTION.

(B) APPLICABLE STANDARDS.

A MOTOR VEHICLE USED IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW OR THIS TITLE SHALL BE SEIZED AND FORFEITURE SHALL BE RECOMMENDED TO THE FORFEITING AUTHORITY IF:

(1) ANY QUANTITY OF A CONTROLLED DANGEROUS SUBSTANCE IS SOLD OR ATTEMPTED TO BE SOLD IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW OR THIS TITLE;

(2) AN AMOUNT OF THE CONTROLLED DANGEROUS SUBSTANCE OR PARAPHERNALIA IS FOUND THAT REASONABLY SHOWS THAT THE VIOLATOR INTENDED TO SELL THE CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW; OR

(3) THE TOTAL CIRCUMSTANCES OF THE CASE AS LISTED IN SUBSECTION (C) OF THIS SECTION DICTATE THAT SEIZURE AND FORFEITURE ARE JUSTIFIED.

(C) CIRCUMSTANCES OF CASE.

CIRCUMSTANCES TO BE CONSIDERED IN DECIDING WHETHER SEIZURE AND FORFEITURE ARE JUSTIFIED INCLUDE:

(1) THE POSSESSION OF CONTROLLED DANGEROUS SUBSTANCES;

(2) AN EXTENSIVE CRIMINAL RECORD OF THE VIOLATOR;

(3) A PREVIOUS CONVICTION OF THE VIOLATOR FOR A CONTROLLED DANGEROUS SUBSTANCES CRIME;

(4) EVIDENCE THAT THE MOTOR VEHICLE WAS ACQUIRED BY USE OF PROCEEDS FROM A TRANSACTION INVOLVING A CONTROLLED DANGEROUS SUBSTANCE;

(5) CIRCUMSTANCES OF THE ARREST; AND

(6) THE WAY IN WHICH THE MOTOR VEHICLE WAS USED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(i)(1).

In subsection (b)(2) of this section, the former clause "[a]lthough the violator has not sold or attempted to sell controlled dangerous substances in violation of this subtitle" is deleted as unnecessary because it does not restrain the operation of this subsection.

In subsection (c) of this section, the reference to circumstances "to be considered in deciding whether seizure and forfeiture are justified" is added for clarity.

Also in subsection (c) of this section, the former reference to circumstances that may include "but are not limited to" factors is deleted as unnecessary because the word "include" is used by way of illustration and not by way of limitation. *See* Art. 1, § 30.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that: (1) in subsection (b)(1) of this section, the sale of or the attempt to sell controlled dangerous substances is said to be a standard used in determining whether a motor vehicle should be seized, but the subsection fails to characterize the distribution of or attempt to distribute a controlled dangerous substance as a similar standard; and (2) in subsection (c)(2) and (3) of this section, the identity of "the violator" is unclear.

Defined terms: "Controlled Dangerous Substances law" § 12-101

"Forfeiting authority" § 12-101

"Proceeds" § 12-101

"Seizing authority" § 12-101

12-205. SAME -- EXCEPTIONS.

A MOTOR VEHICLE USED IN VIOLATION OF THIS TITLE MAY NOT BE SEIZED AND FORFEITURE MAY NOT BE RECOMMENDED TO THE FORFEITING AUTHORITY IF:

(1) THE MOTOR VEHICLE FALLS WITHIN § 12-103(B) OF THIS TITLE;

(2) (I) AN INNOCENT REGISTERED OWNER LENDS THE MOTOR VEHICLE TO ANOTHER PERSON; AND

(II) THAT PERSON, OR SOMEONE INVITED INTO THE MOTOR VEHICLE BY THAT PERSON, BRINGS A CONTROLLED DANGEROUS SUBSTANCE OR PARAPHERNALIA INTO THE MOTOR VEHICLE WITHOUT THE REGISTERED OWNER'S KNOWLEDGE; OR

(3) (I) A MEMBER OF THE FAMILY OTHER THAN THE REGISTERED OWNER USES THE MOTOR VEHICLE, AND A CONTROLLED DANGEROUS SUBSTANCE OR PARAPHERNALIA IS IN THE MOTOR VEHICLE IN AN AMOUNT INSUFFICIENT TO SUGGEST A SALE IS CONTEMPLATED;

(II) A SALE WAS NOT MADE OR ATTEMPTED; AND

(III) THE REGISTERED OWNER DID NOT KNOW THAT THE CONTROLLED DANGEROUS SUBSTANCE OR PARAPHERNALIA WAS IN THE MOTOR VEHICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(i)(2).

Defined terms: "Forfeiting authority" § 12-101

"Owner" § 12-101

"Person" § 1-101

12-206. RECOMMENDATION OF FORFEITURE BY SEIZING AUTHORITY.

(A) REQUIREMENTS FOR RECOMMENDATION.

THE CHIEF LAW ENFORCEMENT OFFICER OF THE SEIZING AUTHORITY THAT SEIZES A MOTOR VEHICLE USED IN VIOLATION OF THIS TITLE SHALL RECOMMEND TO THE APPROPRIATE FORFEITING AUTHORITY IN WRITING THAT THE MOTOR VEHICLE BE FORFEITED ONLY IF THE OFFICER:

(1) DETERMINES FROM THE RECORDS OF THE MOTOR VEHICLE ADMINISTRATION THE NAMES AND ADDRESSES OF ALL REGISTERED OWNERS AND SECURED PARTIES AS DEFINED IN THE CODE;

(2) PERSONALLY REVIEWS THE FACTS AND CIRCUMSTANCES OF THE SEIZURE; AND

(3) PERSONALLY DETERMINES, ACCORDING TO THE STANDARDS LISTED IN § 12-204(B) OF THIS SUBTITLE, AND REPRESENTS IN WRITING THAT FORFEITURE IS WARRANTED.

(B) CHIEF LAW ENFORCEMENT OFFICER.

(1) A SWORN AFFIDAVIT BY THE CHIEF LAW ENFORCEMENT OFFICER THAT THE OFFICER FOLLOWED THE REQUIREMENTS OF THIS PARAGRAPH IS ADMISSIBLE IN EVIDENCE IN A PROCEEDING UNDER THIS SECTION.

(2) THE CHIEF LAW ENFORCEMENT OFFICER MAY NOT BE SUBPOENAED OR COMPELLED TO APPEAR AND TESTIFY IF ANOTHER LAW ENFORCEMENT OFFICER WITH PERSONAL KNOWLEDGE OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE SEIZURE AND THE RECOMMENDATION OF FORFEITURE APPEARS AND TESTIFIES AT THE PROCEEDING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(i)(3).

In subsection (a)(3) of this section, the reference to "standards listed in § 12-204(b) of this subtitle" is substituted for the former reference to "the

above guidelines" for clarity.

Defined terms: "Forfeiting authority" § 12-101

"Seizing authority" § 12-101

12-207. RETURN OF VEHICLE TO OWNER AFTER SEIZURE.

(A) SURRENDER OF MOTOR VEHICLE TO OWNER.

THE FORFEITING AUTHORITY SHALL SURRENDER THE MOTOR VEHICLE ON REQUEST TO THE OWNER IF THE FORFEITING AUTHORITY DETERMINES, INDEPENDENT OF THE DECISION OF THE SEIZING AUTHORITY, THAT:

(1) THE MOTOR VEHICLE FALLS WITHIN THE PURVIEW OF § 12-205 OF THIS SUBTITLE; OR

(2) THE STANDARDS LISTED UNDER § 12-204(B) OF THIS SUBTITLE WERE NOT MET.

(B) COURT REVIEW.

IN A PROCEEDING UNDER THIS TITLE, THE COURT MAY DETERMINE, BASED ON THE STANDARDS LISTED IN § 12-204(B) OF THIS SUBTITLE, WHETHER THE SEIZING AUTHORITY OR FORFEITING AUTHORITY ABUSED ITS DISCRETION OR WAS CLEARLY ERRONEOUS:

(1) IN RECOMMENDING THE FORFEITURE OF A MOTOR VEHICLE; OR

(2) IN NOT SURRENDERING ON REQUEST A MOTOR VEHICLE TO AN OWNER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(j) and (k)(1).

In subsection (b) of this section, the defined term seizing "authority" is substituted for the former reference to a "seizing agency" to conform to the terminology used throughout this title.

Defined terms: "Forfeiting authority" § 12-101

"Owner" § 12-101

"Seizing authority" § 12-101

12-208. OWNER OBTAINING POSSESSION OF SEIZED PROPERTY.

(A) NOTICE REQUIRED.

(1) EXCEPT AS PROVIDED IN §§ 12-209 AND 12-210 OF THIS SUBTITLE, AN OWNER OF SEIZED PROPERTY WHO WISHES TO OBTAIN POSSESSION OF THE PROPERTY, TO CONVEY AN INTEREST IN REAL PROPERTY, OR TO REMOVE A BUILDING OR FIXTURE FROM REAL PROPERTY SHALL NOTIFY THE CLERK OF THE PROPER COURT.

(2) IF FORFEITURE PROCEEDINGS HAVE BEGUN, THE PROPER COURT IS THE COURT WHERE THE PROCEEDINGS HAVE BEGUN.

(3) IF CRIMINAL PROCEEDINGS HAVE BEGUN BUT FORFEITURE PROCEEDINGS HAVE NOT BEGUN, THE PROPER COURT IS THE COURT WHERE THE CRIMINAL PROCEEDINGS HAVE BEGUN.

(4) IF NEITHER FORFEITURE NOR CRIMINAL PROCEEDINGS HAVE BEGUN, THE PROPER COURT IS THE CIRCUIT COURT FOR THE COUNTY WHERE THE PROPERTY WAS SEIZED.

(B) APPRAISAL FOR MOTOR VEHICLE.

(1) UNLESS THE FORFEITING AUTHORITY AND THE OWNER AGREE TO A BOND IN ANOTHER AMOUNT, IF A MOTOR VEHICLE IS NOT NEEDED FOR EVIDENTIARY PURPOSES IN A JUDICIAL PROCEEDING:

(I) THE COURT SHALL APPRAISE THE VALUE OF THE MOTOR VEHICLE ON THE BASIS OF THE AVERAGE VALUE OF THE MOTOR VEHICLE SET FORTH IN THE NATIONAL AUTOMOBILE DEALER'S ASSOCIATION OFFICIAL USED CAR GUIDE; OR

(II) IF THE OWNER SHOWS THAT A LIEN IS ON THE MOTOR VEHICLE AND THE OWNER AGREES TO MAKE THE REQUIRED PAYMENTS TO THE LIENHOLDER, THE COURT SHALL REQUIRE A BOND IN AN AMOUNT OF THE AVERAGE VALUE OF THE MOTOR VEHICLE SET FORTH IN THE NATIONAL AUTOMOBILE DEALER'S ASSOCIATION OFFICIAL USED CAR GUIDE, LESS THE AMOUNT OWED ON THE LIEN.

(2) FOR A MOTOR VEHICLE, THE COURT SHALL APPRAISE THE VALUE IN THE MANNER PROVIDED IN THIS SUBSECTION AND PROVIDE THE APPRAISAL IN WRITING TO THE CLERK OF THE COURT.

(C) APPRAISAL FOR PROPERTY OTHER THAN MOTOR VEHICLE.

(1) IF PROPERTY OTHER THAN A MOTOR VEHICLE IS NOT NEEDED FOR EVIDENTIARY PURPOSES IN A JUDICIAL PROCEEDING, THE CLERK SHALL OBTAIN AN INDEPENDENT APPRAISAL OF THE VALUE OF THE PROPERTY.

(2) THE SHERIFF OR OTHER PERSON RESPONSIBLE FOR AN APPRAISAL UNDER THIS SUBSECTION SHALL PROMPTLY:

(I) INSPECT AND APPRAISE THE VALUE OF THE PROPERTY; AND

(II) RETURN THE APPRAISAL IN WRITING UNDER OATH TO THE CLERK OF THE COURT.

(D) NOTICE TO LIENHOLDERS.

NOTICE OF THE APPRAISAL SHALL BE SENT TO ALL LIENHOLDERS SHOWN IN THE RECORDS REQUIRED BY LAW FOR NOTICE OR THE PERFECTION OF THE LIEN.

(E) BONDS.

(1) ON THE FILING OF AN APPRAISAL, THE OWNER MAY GIVE BOND PAYABLE TO THE CLERK OF THE COURT IN AN AMOUNT EQUAL TO THE GREATER OF:

(I) THE APPRAISED VALUE OF THE PROPERTY PLUS ANY ACCRUED COSTS; OR

(II) THE AGGREGATE AMOUNT OF THE LIENS ON THE PROPERTY THAT ARE SHOWN IN THE RECORDS REQUIRED BY LAW FOR THE NOTICE OR PERFECTION OF LIENS.

(2) A PERSON MAY GIVE A BOND UNDER THIS SECTION BY CASH, THROUGH A SURETY, THROUGH A LIEN ON REAL PROPERTY, OR BY OTHER MEANS THAT THE CLERK APPROVES.

(3) A BOND AUTHORIZED UNDER THIS SECTION:

(I) SHALL BE CONDITIONED FOR PERFORMANCE ON FINAL JUDGMENT BY THE COURT;

(II) SHALL BE FILED IN THE DISTRICT COURT OR CIRCUIT COURT WHERE THE CRIMINAL ACTION THAT GAVE RISE TO THE SEIZURE IS PENDING; AND

(III) UNLESS A COMPLAINT FOR FORFEITURE HAS BEEN FILED, SHALL BE PART OF THE SAME CRIMINAL PROCEEDING.

(4) IF A CRIMINAL ACTION IS NOT PENDING OR A FORFEITURE COMPLAINT HAS NOT BEEN FILED, THE BOND SHALL BE FILED IN THE CIRCUIT COURT OR DISTRICT COURT WHERE THE PROPERTY WAS SEIZED.

(F) JUDGMENT TO BE ENTERED AGAINST OBLIGORS.

(1) IF THE COURT ORDERS THAT PROPERTY OR AN INTEREST OR EQUITY IN THE PROPERTY OR PROCEEDS BE FORFEITED UNDER THIS TITLE, THE COURT SHALL ENTER JUDGMENT IN THE AMOUNT OF THE BOND AGAINST THE OBLIGORS ON THE BOND WITHOUT FURTHER PROCEEDINGS.

(2) PAYMENT OF THE AMOUNT OF THE BOND SHALL BE APPLIED AS PROVIDED UNDER § 12-402(D)(2) OF THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(o).

In subsection (a)(1) of this section, the former references to real property "regardless of whether the forfeiture proceedings have been commenced" and real property "where forfeiture proceedings have been commenced against the real property" are deleted in light of subsection (a)(2), (3), and (4) of this section.

In subsection (f) of this section, as for the substitutions of the references to

"this title" for the former references to "this section", *see* General Revisor's Note to this title.

Also in subsection (f) of this section, the reference to "§ 12-402(d)(2) of this title" - which revises former Art. 27, § 297(k)(3)(iv) - is substituted for the former erroneous reference to "(k)(2)(iv) of this section" for accuracy.

Also in subsection (f) of this section, the former reference to a forfeiture "to be discharged by payment of the amount of the bond, on which judgment may issue" is deleted as implicit in this subsection.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that subsection (e)(4) of this section varies from subsection (a)(4) of this section. Subsection (e)(4) of this section states that "[i]f a criminal action is not pending or a forfeiture complaint has not been filed, the bond shall be filed in the circuit court or District Court where the property was seized". Under the same conditions, however, subsection (a)(4) of this section requires that an owner who wishes to obtain possession of property must notify only the circuit court.

Defined terms: "County" § 1-101

"Forfeiting authority" § 12-101

"Lien" § 12-101

"Lienholder" § 12-101

"Owner" § 12-101

"Person" § 1-101

"Proceeds" § 12-101

"Property" § 12-101

"Real property" § 12-101

12-209. SEIZURE OF REAL PROPERTY.

SEIZURE OF REAL PROPERTY OCCURS ON THE EARLIER OF THE FILING:

(1) OF A COMPLAINT FOR FORFEITURE UNDER THIS TITLE; OR

(2) OF A NOTICE OF PENDING LITIGATION IN THE CIRCUIT COURT OF THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(m)(4).

In item (2) of this section, the reference to a "notice of pending litigation" is substituted for the former reference to "lis pendens" for clarity.

Also in item (2) of this section, the reference to the circuit court of the "county" is substituted for the former reference to the circuit court of the "jurisdiction" for clarity.

Defined terms: "County" § 1-101

"Real property" § 12-101

12-210. POSSESSION OF SEIZED REAL PROPERTY BY OWNERS OR TENANTS.

(A) RIGHT TO POSSESS UNTIL FORFEITURE.

SUBJECT TO THE RIGHTS OF A LIENHOLDER TO SELL THE REAL PROPERTY, AN OWNER OR OWNER'S TENANT MAY REMAIN IN POSSESSION OF SEIZED REAL PROPERTY UNTIL FORFEITURE IS ORDERED.

(B) APPOINTMENT OF RECEIVER ALLOWED.

THE FORFEITING AUTHORITY MAY APPLY TO THE COURT FOR THE APPOINTMENT OF A RECEIVER TO APPLY INCOME FROM INCOME-PRODUCING PROPERTY.

(C) SURRENDER OF PROPERTY.

IF A PERSON WHO IS AN OWNER OR OWNER'S TENANT AND REMAINS IN POSSESSION OF THE REAL PROPERTY AND THE PERSON'S INTEREST IN THE REAL PROPERTY IS FORFEITED, THE PERSON SHALL IMMEDIATELY SURRENDER THE REAL PROPERTY TO THE SEIZING AUTHORITY IN SUBSTANTIALLY THE SAME CONDITION AS WHEN SEIZED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(p).

The defined term "seizing authority" is substituted for the former reference to a seizing "agency" to conform to the terminology used throughout this title.

Defined terms: "Forfeiting authority" § 12-101

"Lienholder" § 12-101

"Owner" § 12-101

"Person" § 1-101

"Property" § 12-101

"Real property" § 12-101

"Seizing authority" § 12-101

12-211. PROHIBITED ACTS.

(A) SCOPE.

THIS SECTION DOES NOT APPLY IF:

(1) AN ACT IS AGREED TO BY A FORFEITING AUTHORITY OR IS ORDERED BY THE COURT; OR

(2) AN OWNER POSTS A BOND UNDER § 12-208 OF THIS SUBTITLE.

(B) IN GENERAL.

SUBJECT TO SUBSECTION (A) OF THIS SECTION, UNTIL THE COURT ENTERS JUDGMENT IN FAVOR OF THE OWNER, AN OWNER MAY NOT ATTEMPT:

(1) TO CONVEY OR ENCUMBER AN INTEREST IN SEIZED REAL PROPERTY; OR

(2) TO REMOVE A BUILDING OR FIXTURE ON SEIZED REAL PROPERTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(m)(5).

Defined terms: "Forfeiting authority" § 12-101

"Owner" § 12-101

"Real property" § 12-101

SUBTITLE 3. FORFEITURE PROCEEDINGS.

12-301. IN GENERAL.

EXCEPT AS PROVIDED IN § 12-304(C) OF THIS SUBTITLE, IF PROPERTY IS SEIZED UNDER § 12-202(A)(2)(IV) AND (V) OF THIS TITLE BECAUSE THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY IS DIRECTLY OR INDIRECTLY DANGEROUS TO HEALTH OR SAFETY AND THAT THE PROPERTY WAS OR WILL BE USED TO VIOLATE THIS TITLE, FORFEITURE PROCEEDINGS UNDER THIS SUBTITLE SHALL BE FILED PROMPTLY.

REVISOR'S NOTE: This section is new language derived without substantive change from the first clause of former Art. 27, § 297(d)(2)(i).

In this section, the phrase "because there is probable cause to believe that the property is directly or indirectly dangerous to health or safety and that the property was or will be used to violate this title" is added for clarity. Similarly, the reference to "forfeiture" proceedings under this "subtitle" is added for clarity.

Defined term: "Property" § 12-101

12-302. FORFEITURE OF MONEY.

(A) FORFEITURE APPLICATION.

TO APPLY FOR THE FORFEITURE OF MONEY, THE APPROPRIATE LOCAL FINANCIAL AUTHORITY OR THE ATTORNEY GENERAL SHALL FILE A COMPLAINT AND AFFIDAVIT IN THE DISTRICT COURT OR THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE MONEY WAS SEIZED.

(B) SERVICE OF COMPLAINT AND AFFIDAVIT.

THE COMPLAINT AND AFFIDAVIT SHALL BE SERVED IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(d)(2)(ii) and (iii).

In subsection (a) of this section, the reference to the circuit court of the county "in which the money was seized" is added for clarity.

Also in subsection (a) of this section, the former reference to "currency" is deleted as included in the reference to "money".

In subsection (b) of this section, the reference to a complaint and affidavit that are served "in accordance with the Maryland Rules of Procedure" is substituted for the former reference to service "in the first instance pursuant to Md. Rule 2-121 or 3-121(a), and thereafter, the summons having been returned non est, the director of finance of Baltimore City, county treasurer or appropriate county finance officer, municipal treasurer, or Attorney General may proceed pursuant to Md. Rule 2-122 or 3-121(b) or (c)" for brevity.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (a)(1) of this section, the Attorney General applies for forfeiture of money in connection with the controlled dangerous substances. In the matter of cash seized in connection with gambling operations, however, the State Treasurer -- not the Attorney General -- is the State official charged with applying for forfeiture. *See* former Art. 27, § 264(c)(1) now § 13-105(b) of this article.

Defined terms: "County" § 1-101

"Financial authority" § 12-101

12-303. PROCEEDINGS FILED BY FORFEITING AUTHORITY.

EXCEPT AS PROVIDED IN § 12-302 OF THIS TITLE AND § 4-401(9) OF THE COURTS ARTICLE, THE APPROPRIATE FORFEITING AUTHORITY SHALL FILE PROCEEDINGS UNDER THIS TITLE IN THE CIRCUIT COURT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(h)(1).

In this section, the reference to "this title" is substituted for the former reference to "this section" in light of this revision, which has revised former Art. 27, § 297 as Title 12 of this article.

Defined term: "Forfeiting authority" § 12-101

12-304. DEADLINES FOR FILING COMPLAINT SEEKING FORFEITURE.

(A) IN GENERAL.

EXCEPT AS PROVIDED UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION, A COMPLAINT SEEKING FORFEITURE SHALL BE FILED WITHIN THE EARLIER OF:

(1) 90 DAYS AFTER THE SEIZURE; OR

(2) 1 YEAR AFTER THE FINAL DISPOSITION OF THE CRIMINAL CHARGE FOR THE VIOLATION GIVING RISE TO THE FORFEITURE.

(B) FORFEITURE OF MOTOR VEHICLE.

A COMPLAINT FOR THE FORFEITURE OF A MOTOR VEHICLE SHALL BE FILED WITHIN 45 DAYS AFTER THE MOTOR VEHICLE IS SEIZED.

(C) PROCEEDINGS ABOUT MONEY.

(1) A PROCEEDING ABOUT MONEY SHALL BE FILED WITHIN 90 DAYS AFTER THE FINAL DISPOSITION OF CRIMINAL PROCEEDINGS THAT ARISE OUT OF THE CONTROLLED DANGEROUS SUBSTANCES LAW.

(2) IF THE STATE OR A POLITICAL SUBDIVISION DOES NOT FILE PROCEEDINGS ABOUT MONEY WITHIN THE 90-DAY PERIOD, THE MONEY SEIZED UNDER THIS TITLE SHALL BE RETURNED TO THE OWNER ON REQUEST BY THE OWNER.

(3) IF THE OWNER FAILS TO ASK THE RETURN OF THE MONEY WITHIN 1 YEAR AFTER THE FINAL DISPOSITION OF CRIMINAL PROCEEDINGS, AS PROVIDED UNDER § 12-403 OF THIS TITLE, THE MONEY SHALL REVERT TO:

(I) THE POLITICAL SUBDIVISION IN WHICH THE MONEY WAS SEIZED; OR

(II) THE STATE, IF THE MONEY WAS SEIZED BY STATE AUTHORITIES.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(h)(2) and (d)(3) and, as it related to proceedings about money, (2)(i).

In subsection (a)(2) of this section, the former reference to a violation "for a violation under this subheading" giving rise to the forfeiture is deleted as unnecessary.

In subsection (c)(1) of this section, the former reference to "currency" is deleted as included in the reference to "money".

In subsection (c)(2) and (3) of this section, the reference to an "owner" is substituted for the former reference to a "defendant" for clarity.

In subsection (c)(3)(i) and (ii) of this section, the reference to "the political subdivision in which the money was seized; or ... the State, if the money was seized by State authorities" is substituted for the former erroneous

reference to a "treasury as provided by subsection (f) of this section". The reference to a "treasury" did not appear in former Art. 27, § 297(f).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsections (a) and (b) of this section, there is no indication regarding the consequences of the failure to meet the deadline for filing a complaint.

Defined terms: "Controlled Dangerous Substances law" § 12-101

"Final disposition" § 12-101

"Owner" § 12-101

12-305. CONTENTS AND DISTRIBUTION OF COMPLAINT.

(A) CONTENTS.

A COMPLAINT SEEKING FORFEITURE SHALL CONTAIN:

(1) A DESCRIPTION OF THE PROPERTY SEIZED;

(2) THE DATE AND PLACE OF THE SEIZURE;

(3) THE NAME OF THE OWNER, IF KNOWN;

(4) THE NAME OF THE PERSON IN POSSESSION, IF KNOWN;

(5) THE NAME OF EACH LIENHOLDER, IF KNOWN OR REASONABLY SUBJECT TO DISCOVERY;

(6) AN ALLEGATION THAT THE PROPERTY IS SUBJECT TO FORFEITURE;

(7) IF THE FORFEITING AUTHORITY SEEKS TO FORFEIT A LIENHOLDER'S INTEREST IN PROPERTY, AN ALLEGATION THAT THE LIEN WAS CREATED WITH ACTUAL KNOWLEDGE THAT THE PROPERTY WAS BEING OR WAS TO BE USED IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW;

(8) A STATEMENT OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE SEIZURE;

(9) A STATEMENT SETTING FORTH THE SPECIFIC GROUNDS FOR FORFEITURE; AND

(10) AN OATH OR AFFIRMATION BY THE FORFEITING AUTHORITY THAT THE CONTENTS OF THE COMPLAINT ARE TRUE TO THE BEST OF THE FORFEITING AUTHORITY'S KNOWLEDGE, INFORMATION, AND BELIEF.

(B) SERVICE.

WITHIN 20 DAYS AFTER THE FILING OF THE COMPLAINT, COPIES OF THE SUMMONS AND COMPLAINT SHALL BE SENT BY CERTIFIED MAIL REQUESTING "RESTRICTED DELIVERY - SHOW TO WHOM, DATE, ADDRESS OF DELIVERY" AND

FIRST CLASS MAIL TO ALL KNOWN OWNERS AND LIENHOLDERS WHOSE IDENTITIES ARE REASONABLY SUBJECT TO DISCOVERY, INCLUDING ALL REAL PROPERTY OWNERS AND LIENHOLDERS SHOWN IN THE RECORDS REQUIRED BY LAW FOR NOTICE OR PERFECTION OF THE LIEN.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(h)(3) and (4)(i).

In subsection (a) of this section, the reference to a complaint "seeking forfeiture" is added for clarity.

In subsection (a)(2) of this section, the reference to a "date" is substituted for the former reference to a "time" to conform to the terminology used in § 12-306(a)(3) of this subtitle.

In subsection (a)(3) and (4) of this section, the references to "the name" of the owner and "the name" of the person in possession are added for clarity and to conform to the language of subsection (a)(5) of this section.

In subsection (a)(9) of this section, the former reference to "causes" is deleted in light of reference to "grounds".

Defined terms: "Controlled Dangerous Substances law" § 12-101

"Forfeiting authority" § 12-101

"Lien" § 12-101

"Lienholder" § 12-101

"Owner" § 12-101

"Person" § 1-101

"Property" § 12-101

12-306. NOTICE.

(A) CONTENTS OF NOTICE.

A NOTICE SHALL BE SIGNED BY THE CLERK AND SHALL:

(1) INCLUDE THE CAPTION OF THE CASE;

(2) DESCRIBE THE SUBSTANCE OF THE COMPLAINT AND THE RELIEF SOUGHT;

(3) STATE THE LATEST DATE ON WHICH A RESPONSE MAY BE FILED;

(4) STATE THAT THE PROPERTY SHALL BE FORFEITED IF A RESPONSE IS NOT FILED ON TIME;

(5) STATE THAT THE OWNER OF THE PROPERTY MAY HAVE POSSESSION OF THE PROPERTY PENDING FORFEITURE BY POSTING A BOND AS PROVIDED IN § 12-208 OF THIS TITLE; AND

(6) TELL WHERE TO FILE A RESPONSE AND WHOM TO CONTACT FOR MORE INFORMATION CONCERNING THE FORFEITURE.

(B) POSTING AND PUBLISHING OF NOTICE.

WITHIN 20 DAYS AFTER THE FILING OF THE COMPLAINT, THE NOTICE SHALL BE:

(1) POSTED BY THE SHERIFF ON THE DOOR OF THE COURTHOUSE WHERE THE ACTION IS PENDING OR ON A BULLETIN BOARD WITHIN THE IMMEDIATE VICINITY OF THE DOOR;

(2) POSTED BY THE SHERIFF IN A CONSPICUOUS PLACE ON THE LAND, IF FORFEITURE OF REAL PROPERTY IS SOUGHT; AND

(3) PUBLISHED AT LEAST ONCE A WEEK IN EACH OF 3 SUCCESSIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION PUBLISHED IN THE COUNTY IN WHICH THE ACTION IS PENDING, UNLESS THE PROPERTY IS A BOAT OR MOTOR VEHICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(h)(4)(ii).

In subsection (a)(1) and (2) of this section, the references to "the caption of the case" and "substance of the complaint and the relief sought" are substituted for the former reference to "a description of the property, the date and place of seizure, the known owners and lienholders of the property, the violation or violations of law alleged to be the basis for forfeiture" for clarity and to conform to terminology used in Md. Rule 2-122(c). Similarly, throughout this subsection, the reference to a "response" is substituted for the former reference to an "answer".

In subsection (a)(3) of this section, the reference to the "latest date on which a response may be filed" is added to clarify the former reference to an answer that is "timely filed".

Defined terms: "County" § 1-101

"Property" § 12-101

"Real property" § 12-101

12-307. ANSWER TO COMPLAINT.

THE ANSWER TO A COMPLAINT SHALL:

(1) COMPLY WITH THE MARYLAND RULES;

(2) STATE THE NATURE AND EXTENT OF THE PERSON'S RIGHT IN, TITLE TO, OR INTEREST IN THE PROPERTY;

(3) STATE HOW AND WHEN THE PERSON ACQUIRED A RIGHT IN, TITLE TO, OR INTEREST IN THE PROPERTY; AND

(4) CONTAIN A REQUEST FOR RELIEF AND A REQUEST FOR A PROMPT HEARING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(h)(5).

The reference to an answer "to a complaint" is added for clarity.

As for the specific Md. Rules that apply to item (1) of this section, *see* Md. Rules 2-321, 2-322, and 2-323.

Defined terms: "Person" § 1-101

"Property" § 12-101

12-308. HEARING ON FORFEITURE CLAIM.

(A) HEARING TO BE SET BY COURT.

IF AN ANSWER HAS BEEN FILED ON TIME, THE COURT SHALL SET A HEARING ON THE FORFEITURE CLAIM WITHIN 60 DAYS AFTER THE LATER OF:

(1) POSTING OF NOTICE UNDER § 12-306(B)(1) OR (2) OF THIS SUBTITLE; OR

(2) FINAL PUBLICATION OF NOTICE UNDER § 12-306(B)(3) OF THIS SUBTITLE.

(B) FORFEITURE WITHOUT HEARING.

WITHOUT A HEARING, THE COURT MAY ORDER FORFEITURE OF THE PROPERTY INTEREST OF A PERSON WHO FAILS TO TIMELY FILE AN ANSWER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(h)(6).

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (a) of this section, the court is required only to set a hearing date within 60 days after the later of two events. The General Assembly may wish to require that a hearing actually be held within those 60 days.

Defined terms: "Person" § 1-101

"Property" § 12-101

12-309. FORFEITURE OF INTEREST IN REAL PROPERTY.

EXCEPT AS PROVIDED IN §§ 12-103(E) AND 12-312 OF THIS TITLE, AN OWNER'S INTEREST IN REAL PROPERTY MAY BE FORFEITED IF THE REAL PROPERTY WAS USED

IN CONNECTION WITH A VIOLATION OF § 286, § 286A, § 286B, § 286C, OR § 290 OF ARTICLE 27 OF THE CODE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(m)(1)(i).

The former reference to real property that was used in connection with a violation of certain sections of Article 27 "in relation to these offenses" is deleted as unnecessary.

Defined terms: "Owner" § 12-101

"Real property" § 12-101

12-310. FORFEITURE PROCEEDINGS FOR REAL PROPERTY.

(A) VENUE OF PROCEEDINGS.

FORFEITURE PROCEEDINGS FOR REAL PROPERTY MAY BE BROUGHT IN THE JURISDICTION WHERE:

(1) THE CRIMINAL CHARGES ARE PENDING;

(2) THE OWNER RESIDES; OR

(3) THE REAL PROPERTY IS LOCATED.

(B) NOTICE OF PENDING LITIGATION.

(1) IF FORFEITURE PROCEEDINGS FOR REAL PROPERTY ARE BROUGHT IN A JURISDICTION OTHER THAN WHERE THE REAL PROPERTY IS LOCATED, A NOTICE OF PENDING LITIGATION SHALL BE FILED IN THE JURISDICTION WHERE THE PROPERTY IS LOCATED.

(2) A NOTICE OF PENDING LITIGATION REQUIRED UNDER THIS SUBSECTION SHALL INCLUDE AT LEAST:

(I) THE NAME AND ADDRESS OF THE OWNER OF THE REAL PROPERTY;

(II) A DESCRIPTION OF THE REAL PROPERTY; AND

(III) A DESCRIPTION OF THE REASONS FOR THE FILING OF THE FORFEITURE PROCEEDINGS AND NOTICE OF PENDING LITIGATION.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(m)(3).

In subsection (b) of this section, the reference to a "notice of pending litigation" is substituted for the former reference to "lis pendens" for clarity.

Defined terms: "Owner" § 12-101

"Property" § 12-101

"Real property" § 12-101

12-311. STAY OF FORFEITURE OF PRINCIPAL FAMILY RESIDENCE.

IF AN OWNER OF REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE IS CONVICTED UNDER § 286, § 286A, § 286B, § 286C, OR § 290 OF ARTICLE 27 OF THE CODE AND THE OWNER FILES AN APPEAL OF THE CONVICTION, THE COURT SHALL STAY FORFEITURE PROCEEDINGS UNDER § 12-103(E) OR § 12-312(B) OF THIS TITLE AGAINST THE REAL PROPERTY DURING THE PENDENCY OF THE APPEAL.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(n)(1).

Defined terms: "Owner" § 12-101

"Real property" § 12-101

12-312. FORFEITURE OF OWNERSHIP INTEREST IN PROPERTY.

(A) REBUTTABLE PRESUMPTION THAT PROPERTY IS SUBJECT TO FORFEITURE.

(1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THERE IS A REBUTTABLE PRESUMPTION THAT PROPERTY OR PART OF A PROPERTY IN WHICH A PERSON HAS AN OWNERSHIP INTEREST IS SUBJECT TO FORFEITURE AS PROCEEDS, IF THE STATE ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT:

(I) THE PERSON HAS VIOLATED § 286, § 286A, § 286B, § 286C, OR § 290 OF ARTICLE 27 OF THE CODE;

(II) THE PROPERTY WAS ACQUIRED BY THE PERSON DURING THE VIOLATION OR WITHIN A REASONABLE TIME AFTER THE VIOLATION; AND

(III) THERE WAS NO OTHER LIKELY SOURCE FOR THE PROPERTY.

(2) A CLAIMANT OF THE PROPERTY HAS THE BURDEN OF PROOF TO REBUT THE PRESUMPTION IN PARAGRAPH (1) OF THIS SUBSECTION.

(B) EXCEPTION -- PROPERTY USED AS PRINCIPAL FAMILY RESIDENCE.

REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE MAY NOT BE FORFEITED UNDER THIS SECTION UNLESS:

(1) AN OWNER OF THE REAL PROPERTY WAS CONVICTED OF A CRIME DESCRIBED UNDER SUBSECTION (A)(1) OF THIS SECTION; OR

(2) THE REAL PROPERTY IS COVERED BY § 12-103(D)(2) OF THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(l).

In subsection (a)(1)(iii) of this section, the former reference to real property that was used in connection with a violation of "§ 286, § 286A, § 286B, § 286C, or § 290 [of Article 27 of the Code] in relation to these offenses" is deleted as unnecessary.

Defined terms: "Owner" § 12-101

"Person" § 1-101

"Proceeds" § 12-101

"Property" § 12-101

"Real property" § 12-101

SUBTITLE 4. DISPOSITION.

12-401. POWERS OF COURT.

IN A PROCEEDING UNDER THIS TITLE, A COURT:

(1) MAY GRANT REQUESTS FOR MITIGATION OR REMISSION OF FORFEITURE OR TAKE OTHER ACTION THAT PROTECTS THE RIGHTS OF INNOCENT PERSONS, IS CONSISTENT WITH THIS TITLE, AND IS IN THE INTEREST OF JUSTICE;

(2) MAY RESOLVE CLAIMS ARISING UNDER THIS TITLE; AND

(3) MAY TAKE APPROPRIATE MEASURES TO SAFEGUARD AND MAINTAIN PROPERTY FORFEITED UNDER THIS TITLE PENDING THE DISPOSITION OF THE PROPERTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(s).

In this section, the reference to "this title" is substituted for the former reference to "this section" in light of this revision, which has revised former Art. 27, § 297 as Title 12 of this article.

In item (3) of this section, the former reference to measures that are "necessary" to maintain property is deleted in light of the reference to "appropriate" measures.

Defined terms: "Person" § 1-101

"Property" § 12-101

12-402. POSTHEARING ORDERS.

(A) ORDER FOR RELEASE.

AFTER A FULL HEARING, IF THE COURT DETERMINES THAT THE PROPERTY SHOULD NOT BE FORFEITED, THE COURT SHALL ORDER THAT THE PROPERTY BE RELEASED.

(B) ORDER FOR FORFEITURE.

SUBJECT TO § 12-403(B) OF THIS SUBTITLE, IF THE COURT DETERMINES THAT THE PROPERTY SHOULD BE FORFEITED, THE COURT SHALL ORDER THAT THE PROPERTY BE FORFEITED TO THE APPROPRIATE GOVERNING BODY.

(C) PROPERTY SUBJECT TO LIEN.

IF THE COURT DETERMINES THAT THE FORFEITED PROPERTY IS SUBJECT TO A VALID LIEN CREATED WITHOUT ACTUAL KNOWLEDGE OF THE LIENHOLDER THAT THE PROPERTY WAS BEING OR WAS TO BE USED IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW, THE COURT SHALL ORDER THAT THE PROPERTY BE RELEASED WITHIN 5 DAYS TO THE FIRST PRIORITY LIENHOLDER.

(D) APPLICATION OF PROCEEDS FROM SALE.

(1) THE LIENHOLDER SHALL SELL THE PROPERTY IN A COMMERCIALLY REASONABLE MANNER.

(2) THE PROCEEDS OF THE SALE SHALL BE APPLIED AS FOLLOWS:

(I) TO THE COURT COSTS OF THE FORFEITURE PROCEEDING;

(II) TO THE BALANCE DUE THE LIENHOLDER, INCLUDING ALL REASONABLE COSTS INCIDENT TO THE SALE;

(III) TO PAYMENT OF ALL OTHER EXPENSES OF THE PROCEEDINGS FOR FORFEITURE, INCLUDING EXPENSES OF SEIZURE OR MAINTENANCE OF CUSTODY; AND

(IV) EXCEPT AS PROVIDED IN § 12-403(B) OF THIS SUBTITLE, TO THE GENERAL FUND OF THE STATE OR OF THE POLITICAL SUBDIVISION THAT SEIZED THE PROPERTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(k)(2) and (3)(i) through (iv) and (r)(4)(ii).

Defined terms: "Controlled Dangerous Substances law" § 12-101

"Governing body" § 12-101

"Lien" § 12-101

"Lienholder" § 12-101

"Proceeds" § 12-101

"Property" § 12-101

12-403. DISPOSITION OF FORFEITED PROPERTY.

(A) OPTIONS FOR GOVERNING BODY.

(1) WHENEVER PROPERTY IS FORFEITED UNDER THIS TITLE, THE GOVERNING BODY WHERE THE PROPERTY WAS SEIZED MAY:

(I) KEEP THE PROPERTY FOR OFFICIAL USE;

(II) REQUIRE AN APPROPRIATE UNIT TO TAKE CUSTODY OF THE PROPERTY AND DESTROY OR OTHERWISE DISPOSE OF IT; OR

(III) SELL THE PROPERTY IF:

1. THE LAW DOES NOT REQUIRE THE PROPERTY TO BE DESTROYED; AND

2. THE PROPERTY IS NOT HARMFUL TO THE PUBLIC.

(2) THE PROCEEDS OF A SALE UNDER THIS SUBSECTION SHALL FIRST BE USED TO PAY ALL PROPER EXPENSES OF THE PROCEEDINGS FOR FORFEITURE AND SALE, INCLUDING EXPENSES OF SEIZURE, MAINTENANCE OF CUSTODY, ADVERTISING, AND COURT COSTS.

(B) PROPERTY SEIZED BY STATE LAW ENFORCEMENT UNIT.

IF THE SEIZING AUTHORITY WAS A STATE LAW ENFORCEMENT UNIT:

(1) UNDER § 12-402(B) OF THIS SUBTITLE, THE COURT SHALL ORDER THE PROPERTY TO BE FORFEITED TO THE STATE LAW ENFORCEMENT UNIT; OR

(2) UNDER § 12-402(D)(2)(IV) OF THIS SUBTITLE, THE PROCEEDS OF THE SALE SHALL BE PAID TO THE STATE LAW ENFORCEMENT UNIT.

(C) DUTY OF STATE LAW ENFORCEMENT UNIT.

EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE STATE LAW ENFORCEMENT UNIT THAT RECEIVES FORFEITED PROPERTY OR PROCEEDS FROM A SALE OF FORFEITED PROPERTY UNDER THIS SECTION SHALL:

(1) DISPOSE OF THE FORFEITED PROPERTY AS PROVIDED IN SUBSECTION (A) OF THIS SECTION; AND

(2) PAY TO THE GENERAL FUND OF THE STATE ANY PROCEEDS OF THE SALE OF THE FORFEITED PROPERTY.

(D) SHARING OF PROCEEDS BETWEEN LAW ENFORCEMENT UNITS.

EXCEPT AS OTHERWISE PROVIDED UNDER FEDERAL LAW, A LAW ENFORCEMENT UNIT OTHER THAN A STATE LAW ENFORCEMENT UNIT THAT PARTICIPATED WITH A STATE LAW ENFORCEMENT UNIT IN SEIZING PROPERTY FORFEITED UNDER THIS SECTION:

(1) SHALL BE PAID BY THE STATE LAW ENFORCEMENT UNIT THE SHARE OF THE PROCEEDS FROM THE SALE OF THE FORFEITED PROPERTY AS AGREED BY THE LAW ENFORCEMENT UNITS; OR

(2) MAY ASK THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION TO DETERMINE ITS SHARE.

(E) PROCEEDS TO BE DEPOSITED INTO GENERAL FUND OF APPROPRIATE POLITICAL SUBDIVISION.

PROCEEDS THAT A LAW ENFORCEMENT UNIT OTHER THAN A STATE LAW ENFORCEMENT UNIT RECEIVES UNDER SUBSECTION (D) OF THIS SECTION SHALL BE DEPOSITED IN THE GENERAL FUND OF THE POLITICAL SUBDIVISION OF THAT LAW ENFORCEMENT UNIT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(f) and (k)(3)(v) through (viii).

Throughout this section, the references to a "unit" are substituted for the former references to an "agency" to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

In subsection (a) of this section, the defined term "governing body" is substituted for the former reference to "the political subdivision in which such property was seized, or, if the property was seized by State authorities, the State" for brevity.

Also in subsection (a) of this section, the former requirement that "whenever coin, currency, or property is seized by the Baltimore City police, and forfeited under this subheading, it shall be surrendered to the City of Baltimore for disposition according to this section" is deleted as redundant in light of the term "governing body", which is defined in part to mean "Baltimore City, if the seizing authority is the Police Department of Baltimore City".

Also in subsection (a) of this section, the former phrase "[e]xcept as provided under subsection (k) of this section" is deleted because former subsection (k) did not create an exception to subsection (a) of this section.

In subsection (a)(1) of this section, the precise reference to "title" is substituted for the former overly broad reference to "subheading" for clarity.

In subsection (d) of this section, the former reference to the option of a law enforcement unit to apply to the Governor's Office of Crime Control and Prevention for a determination of the share "of the proceeds of the forfeited property to be paid to that law enforcement agency and the State law enforcement agency shall pay that amount to the other law enforcement agency" is deleted as unnecessary in light of the reference to the option that the Governor's Office of Crime Control and Prevention may be asked

by the law enforcement unit "to determine its share".

Defined terms: "Governing body" § 12-101

"Proceeds" § 12-101

"Property" § 12-101

"Seizing authority" § 12-101

12-404. TERMS OF SALE OF FORFEITED PROPERTY.

A SALE OF PROPERTY ORDERED UNDER THIS TITLE SHALL BE MADE FOR CASH AND GIVES THE PURCHASER CLEAR AND ABSOLUTE TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(q).

Defined term: "Property" § 12-101

SUBTITLE 5. LIENHOLDERS.

12-501. LIENHOLDER SALE OF SEIZED PROPERTY.

(A) NOTICE REQUIRED.

BEFORE EXERCISING THE RIGHT TO SELL PROPERTY THAT HAS BEEN SEIZED UNDER THIS TITLE, A LIENHOLDER SHALL GIVE TO THE FORFEITING AUTHORITY:

(1) WRITTEN NOTICE OF THE INTENTION TO SELL;

(2) COPIES OF DOCUMENTS GIVING RISE TO THE LIEN;

(3) AN AFFIDAVIT UNDER OATH BY THE LIENHOLDER:

(I) STATING THAT THE UNDERLYING OBLIGATION IS IN DEFAULT; AND

(II) STATING THE REASONS FOR THE DEFAULT.

(B) RELEASE OF PROPERTY ON REQUEST.

ON REQUEST OF THE LIENHOLDER, THE FORFEITING AUTHORITY SHALL RELEASE THE PROPERTY TO THE LIENHOLDER.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(r)(2).

In subsection (a) of this section, the reference to "this title" is substituted for the former reference to "this section" in light of this revision, which has revised former Art. 27, § 297 as Title 12 of this article.

Subsection (b) of this section makes explicit what was only implied in the former law - that the forfeiting authority has the duty to release the

property to the lienholder.

Defined terms: "Forfeiting authority" § 12-101

"Lienholder" § 12-101

"Property" § 12-101

12-502. GOVERNING LAW.

(A) DEFAULT SALES LAW TO APPLY.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE LAW GOVERNING THE SALE OF COLLATERAL SECURING AN OBLIGATION IN DEFAULT GOVERNS A LIENHOLDER'S REPOSSESSION AND SALE OF PROPERTY THAT HAS BEEN SEIZED UNDER THIS TITLE.

(B) POSSESSION BEFORE SALE NOT REQUIRED.

A LIENHOLDER MAY NOT BE REQUIRED TO TAKE POSSESSION OF THE PROPERTY BEFORE THE SALE OF THE PROPERTY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(r)(3) and (4)(i).

In subsection (a) of this section, the reference to "the law governing the sale of collateral" is substituted for the former reference to the "rights and duties provided under law to the lienholder for the sale of collateral" for brevity.

Also in subsection (a) of this section, the reference to property "that has been seized under this title" is added for clarity.

Defined terms: "Lienholder" § 12-101

"Property" § 12-101

12-503. PROCEEDS OF SALE.

(A) SEIZING AUTHORITY TO BE PAID OWNER'S PROCEEDS.

ANY PART OF THE PROCEEDS FROM A SALE OF PROPERTY THAT HAS BEEN SEIZED UNDER THIS TITLE THAT WOULD BE PAID TO AN OWNER OF THE PROPERTY UNDER THE APPLICABLE LAW RELATING TO DISTRIBUTION OF PROCEEDS:

(1) SHALL BE PAID TO THE SEIZING AUTHORITY; AND

(2) SHALL BE PROPERTY SUBJECT TO FORFEITURE.

(B) RETURN OF PROCEEDS TO OWNER.

IF AN ORDER OF FORFEITURE IS NOT ENTERED, THE STATE SHALL RETURN TO THE OWNER THAT PART OF THE PROCEEDS AND ANY COSTS OF THE FORFEITURE PROCEEDINGS PAID FROM THE PROCEEDS OF THE SALE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(r)(4)(iii).

In the introductory language of subsection (a) of this section, the reference to proceeds "from a sale of property that has been seized under this title" is added for clarity.

In subsection (a)(1) of this section, the reference to the defined term "seizing authority" is substituted for the former reference to the "seizing agency" to conform to the terminology used throughout this subtitle.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that in subsection (b) of this section, the requirement that only "the State" return part of the proceeds and any costs to the owner may be too narrow. The General Assembly may wish to apply this requirement to other governing bodies as well.

Defined terms: "Owner" § 12-101

"Proceeds" § 12-101

"Property" § 12-101

"Seizing authority" § 12-101

12-504. REDEMPTION OF INTEREST OR REPOSSESSION OF PROPERTY.

(A) NOTICE OF REDEMPTION.

IF THE INTEREST OF THE OWNER IN PROPERTY THAT HAS BEEN SEIZED UNDER THIS TITLE IS REDEEMED, THE LIENHOLDER SHALL MAIL A NOTICE OF THE REDEMPTION TO THE FORFEITING AUTHORITY WITHIN 10 DAYS AFTER THE REDEMPTION.

(B) PROPERTY RETURNED TO SEIZING AUTHORITY BEFORE FORFEITURE.

(1) IF PROPERTY THAT HAS BEEN SEIZED UNDER THIS TITLE HAS BEEN REPOSSESSED OR OTHERWISE LAWFULLY TAKEN BY THE LIENHOLDER, THE LIENHOLDER SHALL RETURN THE PROPERTY TO THE SEIZING AUTHORITY WITHIN 21 DAYS AFTER THE REDEMPTION.

(2) THE SEIZING AUTHORITY AND THE FORFEITING AUTHORITY MAY THEN PROCEED WITH THE FORFEITURE OF THE PROPERTY OR THE PROCEEDS FROM THE SALE OF THE PROPERTY.

(C) TIME LIMITATIONS.

TIME LIMITATIONS REQUIRED UNDER THIS TITLE FOR NOTICE AND FILING OF THE COMPLAINT FOR FORFEITURE RUN FROM THE DATE OF REDEMPTION OR PURCHASE OF THE PROPERTY THAT HAS BEEN SEIZED UNDER THIS TITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(r)(5).

In subsections (a), (b)(1), and (c) of this section, the references to property "that has been seized under this title" are added for clarity. Similarly, in subsection (b)(2) of this section, the reference to the proceeds "from the sale of the property" is added.

In subsection (b) of this section, the references to the defined term "seizing authority" are substituted for the former references to the "seizing agency" to conform to the terminology used throughout this title.

Defined terms: "Forfeiting authority" § 12-101

"Lienholder" § 12-101

"Owner" § 12-101

"Property" § 12-101

"Seizing authority" § 12-101

12-505. EFFECT OF TITLE.

THIS TITLE DOES NOT PROHIBIT A LIENHOLDER FROM EXERCISING RIGHTS UNDER APPLICABLE LAW, INCLUDING THE RIGHT TO SELL PROPERTY THAT HAS BEEN SEIZED UNDER THIS TITLE, IF A DEFAULT OCCURS IN THE OBLIGATION GIVING RISE TO THE LIEN.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297(r)(1).

The reference to "[t]his title" is substituted for the former reference to "[t]his section" in light of this revision, which has revised former Art. 27, § 297 as Title 12 of this article.

Defined terms: "Lien" § 12-101

"Lienholder" § 12-101

"Property" § 12-101

TITLE 13. OTHER FORFEITURES.

SUBTITLE 1. GAMBLING VIOLATIONS.

13-101. DEFINED TERMS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was Art. 27, § 264(e)(1).

No changes are made.

(B) FINAL DISPOSITION.

"FINAL DISPOSITION" INCLUDES AN ACQUITTAL, DISMISSAL, NOLLE PROSEQUI, FINDING OF GUILTY, PROBATION BEFORE JUDGMENT, PLEA OF GUILTY OR OF NOLO CONTENDERE, MARKING THE CHARGE "STET" ON THE DOCKET, AND AN ORDER OF AN APPELLATE COURT ENDING A CRIMINAL CASE.

REVISOR'S NOTE: This subsection is new language derived without substantive change from former Art. 27, § 264(e)(2).

The reference to "marking the charge `stet' on the docket" is substituted for the former reference to "a stet", for clarity.

The former reference to a final disposition "of charges and of indictments" is deleted as implicit in the reference to "an acquittal, dismissal, nolle prosequi, finding of guilty, probation before judgment, plea of guilty or of nolo contendere, marking the charge `stet' on the docket, and an order of an appellate court ending a criminal case".

Defined terms: "Nolle prosequi" § 1-101

"Nolo contendere" § 1-101

(C) FINANCIAL AUTHORITY.

"FINANCIAL AUTHORITY" MEANS:

(1) IF THE SEIZING AUTHORITY IS THE STATE, THE STATE TREASURER;

(2) IF THE SEIZING AUTHORITY IS A UNIT OF A COUNTY, THE TREASURER OR DIRECTOR OF FINANCE OF THAT COUNTY; OR

(3) IF THE SEIZING AUTHORITY IS A UNIT OF A MUNICIPAL CORPORATION, THE TREASURER OR DIRECTOR OF FINANCE OF THAT MUNICIPAL CORPORATION.

REVISOR'S NOTE: This subsection is new language added to avoid the repetition of the phrase "the State Treasurer, the treasurer or director of finance of a county, or the treasurer or director of finance of a municipal corporation".

Defined term: "County" § 1-101

13-102. MONEY PRESUMED TO BE CONTRABAND.

(A) IN GENERAL.

MONEY IS PRIMA FACIE CONTRABAND IF A LAW ENFORCEMENT OFFICER IN THE STATE SEIZES THE MONEY IN CONNECTION WITH AN ARREST FOR:

(1) UNLAWFULLY PLAYING OR OPERATING A BOOKMAKING SCHEME;

(2) UNLAWFULLY BETTING ON A HORSE RACE, ATHLETIC EVENT, LOTTERY, OR GAME; OR

(3) USING AN UNLAWFUL GAMING TABLE OR GAMING DEVICE.

(B) VESTING OF MONEY.

(1) FOR PURPOSES OF THIS SUBSECTION, THE POLICE DEPARTMENT OF BALTIMORE CITY IS NOT A STATE AUTHORITY.

(2) ALL RIGHTS IN, TITLE TO, AND INTEREST IN MONEY SEIZED UNDER SUBSECTION (A) OF THIS SECTION SHALL IMMEDIATELY VEST IN AND TO:

(I) THE COUNTY OR THE MUNICIPAL CORPORATION, IF THE MONEY IS SEIZED BY THE POLICE OF THE LOCAL GOVERNMENT, INCLUDING A SHERIFF'S DEPARTMENT THAT IS THE LOCAL LAW ENFORCEMENT UNIT; OR

(II) THE STATE, IF THE MONEY IS SEIZED BY A STATE AUTHORITY.

REVISOR'S NOTE: This section is new language derived without substantive change from the first, third, and as it related to money as contraband, the second sentences of former Art. 27, § 264(a).

Throughout this section, the former references to "currency" and "cash" are deleted as included in the reference to "money".

In the introductory language of subsection (a) of this section, the former reference to contraband "of law as a gambling device or as a part of a gambling operation" is deleted as unnecessary in light of the reference to "contraband".

Also in the introductory language of subsection (a) of this section, the reference to a "law enforcement" officer is substituted for the narrow former reference to a "police" officer for clarity.

In subsection (a)(1) and (2) of this section, the references to "unlawfully" playing or operating and "unlawfully" betting are added to state explicitly what is merely implied in the reference to an "arrest".

In subsection (a)(2) of this section, the former reference to "wagering" is deleted as redundant in light of the reference to "betting".

In subsection (b)(1) of this section, the phrase "[f]or purposes of this subsection" is substituted for the former phrase "for purposes of this section" because the term "State authority" appears only in this subsection.

In subsection (b)(2)(i) of this section, the reference to a "municipal corporation" is substituted for the former reference to a "municipality" to conform to the terminology of Article 23A of the Code.

Also in subsection (b)(2)(i) of this section, the former reference to a "local" sheriff's department is deleted as redundant in light of the reference to

"the local law enforcement unit".

Also in subsection (b)(2)(i) of this section, the reference to a local law enforcement "unit" is substituted for the former reference to "agency" to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

Defined term: "County" § 1-101

13-103. CONTRABAND TO BE PHOTOGRAPHED AND RECORDED.

(A) DUTIES OF SEIZING AUTHORITY.

THE SEIZING AUTHORITY THAT SEIZES MONEY THAT IS CONTRABAND SHALL IMMEDIATELY:

(1) PHOTOGRAPH THE MONEY AND RECORD THE QUANTITY OF EACH DENOMINATION OF COIN OR CURRENCY SEIZED; AND

(2) DEPOSIT THE MONEY TO THE ACCOUNT OF THE FINANCIAL AUTHORITY.

(B) PHOTOGRAPHS AS EVIDENCE.

A PHOTOGRAPH TAKEN UNDER SUBSECTION (A) OF THIS SECTION MAY BE SUBSTITUTED FOR MONEY AS EVIDENCE IN A CRIMINAL OR FORFEITURE PROCEEDING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 297A, except for the reference to § 297.

In this section, the reference to "money" is substituted for the former references to "coin" and "currency" for brevity.

In subsection (a) of this section, the former reference to "pursuant to § 264 ... of this article" is deleted as unnecessary because former Art. 27, § 264 is revised in this subtitle.

Also in subsection (a) of this section, the former reference to the "Director of Finance of Baltimore City or the municipal treasurer or director of finance of the municipality", is deleted in light of the use of the defined term "financial authority".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the defined term "financial authority" includes the State Treasurer, if the seizing authority is the State. Use of this term conforms to the terminology used in §§ 13-105 and 13-106 of this subtitle.

Defined term: "Financial authority" § 13-101

13-104. SEIZED MONEY TO BE DEPOSITED OR INVESTED.

PENDING FINAL DISPOSITION, THE FINANCIAL AUTHORITY SHALL ACCOUNT FOR AND DEPOSIT SEIZED MONEY IN AN INTEREST-BEARING BANK ACCOUNT OR INVEST THE SEIZED MONEY IN ACCORDANCE WITH ARTICLE 95 OF THE CODE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264(b).

The former reference to pending "trial" is deleted as unnecessary in light of the reference to pending "final disposition".

The former reference to the final disposition "of the charge or charges, indictment or indictments, growing out of any arrest in connection with which any such money, currency or cash may have been so seized or captured" is deleted as unnecessary in light of the defined term "final disposition".

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the defined term "financial authority" includes the State Treasurer, if the seizing authority is the State. Use of this term conforms to the terminology used in §§ 13-105 and 13-106 of this subtitle.

Defined terms: "Final disposition" § 13-101

"Financial authority" § 13-101

13-105. COMPLAINT FOR FORFEITURE.

(A) APPLICATION.

(1) EACH APPLICATION FOR THE FORFEITURE OF CONTRABAND SHALL BE BY COMPLAINT.

(2) A COPY OF THE COMPLAINT AND SHOW CAUSE ORDER SHALL BE SERVED IN ACCORDANCE WITH THE MARYLAND RULES.

(B) REQUEST FROM FINANCIAL AUTHORITY.

(1) IF A CONVICTION, INCLUDING A PLEA OF GUILTY OR PLEA OF NOLO CONTENDERE, IS ENTERED AGAINST A PERSON ARRESTED IN CONNECTION WITH THE SEIZURE OF THE MONEY, THE FINANCIAL AUTHORITY SHALL APPLY TO THE DISTRICT COURT OR CIRCUIT COURT FOR AN ORDER FORFEITING THE MONEY TO THE JURISDICTION THAT THE FINANCIAL AUTHORITY SERVES.

(2) THE FINANCIAL AUTHORITY SHALL APPLY FOR THE ORDER WITHIN 90 DAYS AFTER ENTRY OF THE CONVICTION OR PLEA, UNLESS THE CASE IS APPEALED.

(C) FORFEITURE CONDITIONED ON ABSENCE OF PENDING OR UNDETERMINED SUITS.

BEFORE ORDERING A FORFEITURE OF THE MONEY, THE COURT MUST BE SATISFIED THAT NO UNDETERMINED PROCEEDING TO RECOVER THE MONEY IS PENDING IN COURT AGAINST THE FINANCIAL AUTHORITY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264(c) and (e)(3).

Throughout this section, the former references to "coin" and "currency" are deleted as unnecessary in light of the reference to "money".

In subsection (a) of this section, the reference to a "complaint" is substituted for the former reference to a "petition" to conform to the terminology used in the Maryland Rules.

In subsection (a)(2) of this section, the former reference to "in the first instance" is deleted as surplusage.

In subsection (b) of this section, the former reference to the possibility that "the trial or other ultimate disposition of such charge or charges, indictment or indictments, results in a record of conviction being entered against the person or persons so arrested" is deleted as unnecessary in light of the reference to "conviction, plea of guilty, or plea of nolo contendere".

Also in subsection (b) of this section, the former reference to "such money, currency or cash in the custody of the State Treasurer, director of finance, or county or municipal treasurer" is deleted as unnecessary in light of § 13-104 of this subtitle, which requires that the authority that seizes money that is contraband deposit the money to the account of the financial authority.

In subsection (b)(1) of this section, the former reference to money that may have been "captured" is deleted as unnecessary in light of the reference to "the seizure of the money".

Also in subsection (b)(1) of this section, the reference to an order "forfeiting the money to the jurisdiction that the financial authority serves" is substituted for the former reference to an order "declaring and ordering that such money, currency or cash in the custody of the State Treasurer, director of finance, or county or municipal treasurer shall be forfeited to the sole use and gain of the State, county or city" for brevity.

Also in subsection (b)(1) of this section, the former reference to a "record of" conviction is deleted as implied in the reference to "conviction".

In subsection (b)(2) of this section, the former reference to a case that is appealed "to an appellate court" is deleted as implicit in the word

"appealed".

In subsection (c) of this section, the former reference to a forfeiture "to the State, county or Baltimore City" is deleted as unnecessary in light of subsection (b)(1) of this section, which refers to the "jurisdiction that the financial authority serves".

Also in subsection (c) of this section, the former reference to an application seeking "a return" of the money is deleted as included in the reference to an undetermined proceeding "to recover" the money.

Also in subsection (c) of this section, the former reference to a court "of competent jurisdiction" is deleted as implied in the reference to "court".

Defined terms: "Financial authority" § 13-101

"Nolo contendere" § 1-101

"Person" § 1-101

13-106. COMPLAINT FOR RETURN OF MONEY.

(A) IN GENERAL.

SEIZED MONEY MAY BE RETURNED ONLY AS PROVIDED IN THIS SECTION.

(B) RIGHT TO FILE.

SUBJECT TO SUBSECTION (C) OF THIS SECTION, ON A FINAL DISPOSITION A CLAIMANT MAY ASK THE APPROPRIATE COURT FOR A DETERMINATION THAT THE MONEY IS THE PROPERTY OF THE CLAIMANT AND AN ORDER THAT THE MONEY BE RETURNED.

(C) DEADLINES FOR FILING COMPLAINT.

A CLAIMANT UNDER SUBSECTION (B) OF THIS SECTION MUST:

(1) APPLY WITHIN 1 YEAR AFTER THE JUDGMENT OR ORDER WAS ENTERED OR THE FINAL DISPOSITION WAS TAKEN; AND

(2) GIVE WRITTEN NOTICE TO THE FINANCIAL AUTHORITY AT LEAST 10 DAYS BEFORE FILING THE COMPLAINT.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264(d)(1) and the last clause of the second sentence of (a).

Throughout this section, the former references to "currency" and "cash" are deleted as unnecessary in light of the reference to "money".

In subsection (a) of this section, the former reference to money to be returned "to any person claiming the same, or to any other person" is deleted as surplusage.

In subsection (c)(2) of this section, the reference to a "complaint" is substituted for the former reference to a "petition" to conform to the terminology used in the Maryland Rules.

Defined terms: "Final disposition" § 13-101

"Financial authority" § 13-101

13-107. PRIMA FACIE EVIDENCE -- CONTRABAND.

(A) PRIMA FACIE EVIDENCE THAT MONEY IS NOT CONTRABAND.

IN A PROCEEDING ON A COMPLAINT FOR A RETURN OF MONEY, AN ACQUITTAL, DISMISSAL, OR NOLLE PROSEQUI WITH RESPECT TO THE GAMBLING CHARGES OR INDICTMENTS INVOLVED IN THE SEIZURE OF THE MONEY IS PRIMA FACIE EVIDENCE THAT THE MONEY IS NOT CONTRABAND.

(B) PRIMA FACIE EVIDENCE THAT MONEY IS CONTRABAND.

A CONVICTION, PLEA OF GUILTY OR OF NOLO CONTENDERE, OR PROBATION UNDER § 6-220 OF THIS ARTICLE IS PRIMA FACIE EVIDENCE THAT THE MONEY IS CONTRABAND.

(C) MARKING OF "STET".

MARKING A CHARGE "STET" ON THE DOCKET DOES NOT CREATE ANY PRESUMPTION AS TO WHETHER MONEY IS CONTRABAND.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264(d)(2).

In subsection (a) of this section, the reference to a "complaint" is substituted for the former reference to a "petition" to conform to the terminology used in the Maryland Rules.

Also in subsection (a) of this section, the former references to "currency" and "cash" are deleted as unnecessary in light of the reference to "money".

In subsection (c) of this section, the reference to the "[m]arking a charge `stet' on the docket" is substituted for the former reference to "entry of stet" for clarity.

Defined terms: "Nolle prosequi" § 1-101

"Nolo contendere" § 1-101

13-108. GROUNDS FOR FORFEITURE.

(A) IN GENERAL.

SUBJECT TO SUBSECTION (B) OF THIS SECTION, IF A COMPLAINT IS NOT TIMELY AND PROPERLY FILED OR IF THE ACTION IS FINALLY DECIDED AGAINST THE

CLAIMANT, THE SEIZED MONEY NOT DISPOSED OF SHALL BE FORFEITED TO THE CUSTODIAN WITHOUT FURTHER JUDICIAL ACTION.

(B) TIMELY NOTICE REQUIRED.

FOR THE SEIZED MONEY TO BE FORFEITED, TIMELY NOTICE MUST BE GIVEN BY CERTIFIED MAIL OR OTHER APPROPRIATE MEANS TO ANY KNOWN CLAIMANTS, AT THEIR LAST KNOWN ADDRESSES, OF THE REQUIREMENTS OF THIS SECTION FOR MAKING CLAIM FOR THE RETURN OF SEIZED MONEY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264(d)(3) and (4).

In subsection (a) of this section, the reference to a "complaint" is substituted for the former reference to a "petition" to conform to the terminology used in the Maryland Rules.

In subsection (b) of this section, the former reference to the consequence that, if timely notice is not given, "the seized moneys shall not be forfeited as provided by paragraph (3) of this subsection" is deleted as unnecessary in light of the phrase "[f]or the seized money to be forfeited".

13-109. EFFECT OF SUBTITLE.

THIS SUBTITLE DOES NOT PROHIBIT THE TRIAL JUDGE, AFTER AN ACQUITTAL OR DISMISSAL, FROM ORDERING THE IMMEDIATE RETURN OF ALL PROPERTY SEIZED.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 264(e)(4).

SUBTITLE 2. VIOLATIONS OF GUN LAWS.

13-201. PROPERTY SUBJECT TO SEIZURE AND FORFEITURE.

THE FOLLOWING PROPERTY IS SUBJECT TO SEIZURE AND FORFEITURE:

(1) A HANDGUN WORN, CARRIED, OR TRANSPORTED IN VIOLATION OF ARTICLE 27, § 36B OF THE CODE OR SOLD, RENTED, TRANSFERRED, OR POSSESSED IN VIOLATION OF ARTICLE 27, § 442, § 442A, OR § 445 OF THE CODE; AND

(2) AMMUNITION, HANDGUN PARTS, OR HANDGUN APPURTENANCES THAT ARE:

(I) WORN, CARRIED, OR TRANSPORTED IN VIOLATION OF ARTICLE 27, § 36B OF THE CODE; OR

(II) FOUND IN THE IMMEDIATE VICINITY OF A HANDGUN WORN, CARRIED, OR TRANSPORTED IN VIOLATION OF ARTICLE 27, § 36B OF THE CODE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36C(a).

In item (1) of this section, the former reference to property that "upon forfeiture, no property right shall exist in them" is deleted as unnecessary as included in the common meaning of the word "forfeiture".

In item (2) of this section, the reference to ammunition, handgun parts, or handgun appurtenances that are worn, carried, or transported "in violation of Article 27, § 36B of the Code" is substituted for the former phrase "by such person" for clarity and to conform to the terminology used in item (1) of this section.

13-202. SEIZURE OF PROPERTY.

(A) SEIZURE AS INCIDENT TO ARREST.

AN AUTHORIZED LAW ENFORCEMENT OFFICER MAY SEIZE PROPERTY LISTED UNDER § 13-201 OF THIS SUBTITLE AS AN INCIDENT TO AN ARREST OR SEARCH AND SEIZURE.

(B) PROPERTY AFTER SEIZURE.

AN OFFICER WHO SEIZES PROPERTY UNDER THIS SECTION SHALL PLACE THE PROPERTY UNDER SEAL OR REMOVE THE PROPERTY TO A LOCATION DESIGNATED BY THE DEPARTMENT OF STATE POLICE OR BY THE LAW ENFORCEMENT UNIT HAVING JURISDICTION IN THE LOCALITY.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36C(b).

In subsection (a) of this section, the former reference to a "duly" authorized law enforcement officer is deleted as surplusage.

In subsection (b) of this section, the reference to "law enforcement unit" is substituted for the former reference to "law enforcement agency" to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

13-203. PROCEDURES AFTER SEIZURE.

(A) RETURNING HANDGUN TO OWNER OR APPROPRIATE UNIT.

(1) BY AN APPROPRIATE INQUIRY AND INVESTIGATION, THE SEIZING AUTHORITY SHALL ATTEMPT TO IDENTIFY AND LOCATE THE OWNER OF A HANDGUN THAT IS SEIZED.

(2) IF THE OWNER IS A RESIDENT OF THE STATE, THE SEIZING AUTHORITY MAY RETURN THE HANDGUN TO THE OWNER.

(3) IF THE OWNER OF THE HANDGUN IS NOT A RESIDENT OF THE STATE, THE SEIZING AUTHORITY SHALL SEND THE HANDGUN FOR DISPOSITION TO THE APPROPRIATE LAW ENFORCEMENT UNIT WHERE THE OWNER IS A RESIDENT IF THE HANDGUN:

(I) IS NOT NEEDED FOR INVESTIGATION OR EVIDENCE; OR

(II) IS NOT DISPOSED OF UNDER SUBSECTION (B) OF THIS SECTION.

(B) NOTICE OF OPTION TO REVIEW SEIZURE.

(1) IF THE SEIZING AUTHORITY UNDER SUBSECTION (A) OF THIS SECTION DOES NOT RETURN THE HANDGUN TO ITS OWNER, THE SEIZING AUTHORITY SHALL PROMPTLY NOTIFY THE OWNER THAT THE OWNER MAY APPLY WITHIN 30 DAYS TO THE SEIZING AUTHORITY FOR A REVIEW TO DETERMINE WHETHER THE OWNER KNEW OR SHOULD HAVE KNOWN THAT THE HANDGUN WAS WORN, CARRIED, TRANSPORTED, OR USED IN VIOLATION OF ARTICLE 27, § 36B OF THE CODE, AND WHETHER THE OWNER IS QUALIFIED TO POSSESS THE HANDGUN.

(2) QUALIFICATION FOR POSSESSION OF A HANDGUN IS THE SAME AS FOR SALE OR TRANSFER OF A HANDGUN UNDER ARTICLE 27, § 442 OF THE CODE.

(C) PENALTY FOR FALSE INFORMATION IN APPLICATION.

A PERSON WHO KNOWINGLY GIVES FALSE INFORMATION OR MAKES A MATERIAL MISSTATEMENT IN AN APPLICATION FOR REVIEW OR AN INVESTIGATION RELATING TO AN APPLICATION IS SUBJECT TO THE PENALTIES UNDER ARTICLE 27, § 449 OF THE CODE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36C(c)(1).

In subsection (a) of this section, the former reference to a "reputed" owner is deleted as unnecessary.

In subsection (a)(1) of this section, the former reference to the "address" of the owner of a handgun is deleted in light of the reference to the requirement of the seizing authority to "locate" the owner.

In subsection (a)(3) of this section, the former phrase "as a result of an inquiry or investigation" is deleted as implicit in light of subsection (a)(1) of this section. Similarly, the former reference to the requirement that the seizing authority shall "notify the appropriate law enforcement agency of the jurisdiction of which the owner is a resident" is deleted as included in the reference to the requirement that the seizing authority shall "send the handgun ... for disposition" to the appropriate law enforcement unit where the owner is a resident.

Defined term: "Person" § 1-101

13-204. DETERMINING OWNER'S KNOWLEDGE OF HANDGUN VIOLATION.

(A) INFORMAL REVIEW REQUIRED.

(1) ON TIMELY RECEIPT OF AN APPLICATION, THE SEIZING AUTHORITY SHALL HOLD AN INFORMAL REVIEW TO DETERMINE WHETHER THE OWNER KNEW OR SHOULD HAVE KNOWN OF THE USE OR INTENDED USE OF A HANDGUN THAT IS SEIZED IN VIOLATION OF ARTICLE 27, § 36B OF THE CODE.

(2) THE REVIEW IS NOT SUBJECT TO THE ADMINISTRATIVE PROCEDURE ACT.

(B) DECISION IN FAVOR OF OWNER.

(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE HANDGUN THAT IS SEIZED SHALL BE RELEASED TO THE OWNER IF THE SEIZING AUTHORITY DECIDES IN FAVOR OF THE OWNER AND THE OWNER IS QUALIFIED TO POSSESS THE HANDGUN.

(2) IF THE HANDGUN IS NEEDED AS EVIDENCE IN A CRIMINAL CASE OR INVESTIGATION, THE HANDGUN SHALL BE PROMPTLY RETURNED WHEN THE CASE OR INVESTIGATION ENDS.

(C) DECISION IN FAVOR OF FORFEITURE.

(1) AFTER REVIEW, IF THE SEIZING AUTHORITY DETERMINES THAT THE HANDGUN SHOULD BE FORFEITED TO THE STATE, THE OWNER SHALL BE NOTIFIED AT THE OWNER'S LAST KNOWN ADDRESS.

(2) WITHIN 30 DAYS AFTER NOTIFICATION, THE OWNER MAY ASK THE APPROPRIATE DISTRICT COURT FOR RELEASE OF THE HANDGUN.

(3) THE STATE'S ATTORNEY SHALL REPRESENT THE STATE IN THE ACTION.

(4) THE DISTRICT COURT SHALL HEAR THE MATTER AND GRANT PROPER RELIEF IN ACCORDANCE WITH THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36C(c)(2) and (3).

13-205. SEIZED HANDGUNS IN CRIMINAL CASES.

(A) IN GENERAL.

(1) IN A PROCEEDING IN A CRIMINAL CAUSE INVOLVING A SEIZED HANDGUN, A COURT MAY ORDER FORFEITURE OR RELEASE OF THE SEIZED HANDGUN IN ACCORDANCE WITH THIS SUBSECTION.

(2) A PERSON WHO HAS MADE A WRITTEN CLAIM OF OWNERSHIP OF A HANDGUN TO THE SEIZING AUTHORITY OR THE STATE'S ATTORNEY SHALL BE

NOTIFIED OF THE PROCEEDING AND OF THE CLAIMANT'S RIGHT TO PRESENT THE CLAIM AT THE PROCEEDING.

(3) A CLAIMANT WHO HAS COMPLETED THE REVIEW PROCEDURE PROVIDED FOR BY THIS SUBTITLE IS NOT ENTITLED TO A SECOND REVIEW UNDER THIS SUBSECTION.

(B) IF APPLICATION REVIEW, PETITION, OR RELEASE DOES NOT OCCUR.

IF A TIMELY APPLICATION FOR A REVIEW OR A COMPLAINT TO THE COURT UNDER § 13-204 OF THIS SUBTITLE DOES NOT OCCUR, AND AN ORDER FOR RELEASE UNDER SUBSECTION (A) OF THIS SECTION IS NOT ISSUED, THE HANDGUN SHALL BE:

(1) FORFEITED TO THE STATE WITHOUT FURTHER PROCEEDINGS; AND

(2) DESTROYED BY THE SEIZING AUTHORITY OR DISPOSED OF IN ACCORDANCE WITH § 13-206 OF THIS SUBTITLE.

(C) IF OWNER IS NOT LOCATED.

IF AN OWNER OF A SEIZED HANDGUN IS NOT IDENTIFIED AND LOCATED, THE HANDGUN IS FORFEITED TO THE STATE WITHOUT FURTHER PROCEEDINGS.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36C(c)(4), (5), and (6).

In subsection (b) of this section, the reference to a "complaint" is substituted for the former reference to a "petition" to conform to the terminology used in the Maryland Rules.

In subsection (c) of this section, the former phrase "pursuant to inquiry or investigation conducted under paragraph (1) of this subsection" is deleted as implicit in light of § 13-201 of this subtitle.

Also in subsection (c) of this section, the former reference to a "reputed" owner is deleted as unnecessary.

Defined term: "Person" § 1-101

13-206. DISPOSITION OF FORFEITED PROPERTY.

(A) OPTIONS FOR LAW ENFORCEMENT UNIT.

WHENEVER PROPERTY IS FORFEITED UNDER THIS SUBTITLE, THE LAW ENFORCEMENT UNIT THAT SOUGHT FORFEITURE OF THE PROPERTY MAY ONLY:

(1) ORDER THE PROPERTY RETAINED FOR THE OFFICIAL USE OF THE LAW ENFORCEMENT UNIT;

(2) DESTROY THE FORFEITED PROPERTY; OR

(3) SELL, EXCHANGE, OR TRANSFER THE FORFEITED PROPERTY TO ANOTHER LAW ENFORCEMENT UNIT FOR OFFICIAL USE BY THAT UNIT.

(B) NOTICE TO STATE POLICE.

WITHIN 30 DAYS AFTER DISPOSING OF FORFEITED PROPERTY, A LAW ENFORCEMENT UNIT SHALL SEND TO THE SECRETARY OF THE STATE POLICE:

(1) A DESCRIPTION OF THE PROPERTY FORFEITED;

(2) THE TYPE OF DISPOSITION MADE; AND

(3) THE IDENTITY OF THE PERSON TO WHOM THE PROPERTY WAS TRANSFERRED FOR DISPOSAL, RETENTION, OR OFFICIAL USE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 36C(d).

In subsection (a) of this section, the reference to "law enforcement unit" is substituted for the former reference to "law enforcement agency" to conform to the terminology used throughout this article. *See* General Revisor's Note to article.

Defined term: "Person" § 1-101

GENERAL REVISOR'S NOTE TO ARTICLE:

The Department of Legislative Services is charged with revising the law in a clear, concise, and organized manner, without changing the effect of the law. One precept of revision has been that, once something is said, it should be said in the same way every time. To that end, the Criminal Procedure Article Review Committee conformed the language and organization of this article to that of previously enacted revised articles to the extent possible.

Noted below are conventions frequently observed for material revised in this article. To avoid confusion, however, these conventions are not always observed for material that formerly appeared in other revised articles in the Maryland Code or that are part of a national uniform law.

-- The word "regulations" is substituted for former references to "rules and regulations" to distinguish, to the extent possible, between regulations of executive units and rules of judicial or legislative units and to establish consistency in the use of the words. This substitution conforms to the practice of the Division of State Documents. The word "rules" is used only in connection with some entity that has the authority to pass rules, for example, the Maryland Court of Appeals.

-- For consistency and to avoid unnecessary confusion, the singular verb "adopt" is used in relation to rules or regulations, and verbs such as "prescribe" and "promulgate" are deleted. The procedures to be followed in adopting regulations are set forth in Title 10, Subtitle 1 of the State Government Article.

-- Also, for consistency, references to adopting regulations or rules to "carry out" particular provisions of this article are substituted for former references to adopting regulations for "the implementation of" or to "administer", "implement", "accomplish the purpose of", or "accomplish the objectives of" the relevant provisions.

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

-- The term "unit" is substituted for former references such as "agency", "department", "administration", "commission", and "office", except when a former reference indicated a specific entity or was included as part of a defined term. The term "unit" is used as the general term for an organization in the State government because it is broad enough to include all such entities.

-- The term "correctional facility" is defined broadly in Title 1 of this article and, for consistency, is used throughout the article as a substitute for former references such as "reformatory", "jail", "prison", "penal institution", "institution", "lock-up", and "detention center". The term "correctional facility" includes former references to more specific terms such as "community correctional facility", "work-release facility", and "prerelease facility". The terms "State correctional facility" and "local correctional facility" are also defined in Title 1 of this article.

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

-- For accuracy and consistency, the term "crime" is substituted for former references to an "offense" when referring to a misdemeanor or felony under State or federal law, unless it: (1) is not punishable by imprisonment; or (2) is widely known or categorized under law as an "offense". Thus, for example, references to any of the group of criminal acts categorized under Article 27 of the Code as "sexual offenses" remain unchanged.

References to current units and positions are substituted for obsolete references to entities and positions that have been abolished or have otherwise ceased to exist.

A reference to a person found guilty of a misdemeanor being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to a person "subject to imprisonment in the penitentiary". Besides not conforming to the term "correctional facility" that is used throughout this article, provisions that make persons who are convicted of certain crimes liable for imprisonment "in the penitentiary" are obsolete in light of the superseding law that commits all persons convicted of crimes to "the jurisdiction of the Division of Correction", notwithstanding any law requiring the imprisonment to be served at a specific State correctional facility. *See* CS § 9-103(a). Two elements of penitentiary misdemeanors should be noted: (1) although most misdemeanors are subject to a 1-year limitation period,

prosecution of those which specify a punishment of imprisonment in the penitentiary is not limited; and (2) penitentiary misdemeanors are subject to the right of in banc review under Md. Constitution, Art. IV, § 22. These two elements are retained by the revision of § 5-106(b) of the Courts Article that is included in this Act.

Former Art. 27, § 618 is deleted. The former statute, with certain exceptions, barred a citizen of the State committed to the custody of an "officer" for a criminal matter from being transferred into the custody of another officer. Exceptions to this rule included the delivery of a prisoner "to a constable or other inferior officer ... or from one place to another within the said county or an adjoining county, in order to his discharge or trial in due course of law, or in case of sudden fire or infection, or other necessity". Finally, a prisoner could be removed if the prisoner was charged "with treason, felony, or other crime alleged to be done" in another state.

The statute, which was first enacted in 1809, is obsolete. If read literally, the statute would have barred, for example, a transfer of a prisoner from Baltimore County to Frederick County, because the two counties are not adjoining and therefore would not fall under an exception to the no-transfer rule. In addition, in its use of the word "officer", the statute apparently contemplated a sheriff, who has statutory authority to receive individuals and place them under custody until they are discharged by law. However, current law authorizes others to have custody over prisoners. *See, e.g.*, CS § 5-201 (giving the Division of Pretrial Detention and Services of the Department of Public Safety and Correctional Services the same custodial authority as sheriffs), and Art. 87, § 48 (Anne Arundel County Council may provide for the transportation of prisoners by certified law enforcement officers other than the Sheriff). Finally, the removal of prisoners to other states is governed by the Uniform Criminal Extradition Act. *See* Title 9 of this article.

Title 12 of this article concerns forfeiture of property involved with controlled dangerous substance violations, and Title 13 of this article concerns forfeiture of property involved in gambling and gun law violations. In Maryland, forfeiture laws generally are civil in rem actions. *See Baltimore v. 1995 Corvette*, 119 Md. App. 691 (1998), *Director of Finance of Prince George's County v. Cole*, 296 Md. 607 (1983) and *Gatewood v. State*, 264 Md. 301 (1972). The placement of these titles in this article is for convenience only and is not intended to change the civil nature of these forfeiture laws.

In some instances, the staff of the Department of Legislative Services may create "Special Revisor's Notes" to reflect the substantive effect of legislation enacted during the 2001 Session on some provisions of this article.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article 2B - Alcoholic Beverages

16-509. INDICTMENT FOR UNLAWFUL SALE OF LIQUOR OR BEER.

A CHARGING DOCUMENT MAY CHARGE AN UNLAWFUL SALE OR DISPOSITION OF AN ALCOHOLIC BEVERAGE WITHOUT STATING THE PARTICULAR KIND OF ALCOHOLIC BEVERAGE. ON APPLICATION BY THE DEFENDANT BEFORE TRIAL, THE STATE'S ATTORNEY SHALL GIVE TO THE DEFENDANT A STATEMENT OF THE PARTICULAR KIND OF ALCOHOLIC BEVERAGE.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which is new language derived without substantive change from former Art. 27, § 614.

The reference to a "charging document" is substituted for the former narrow reference to an "indictment" for clarity.

The reference to "alcoholic beverage" is substituted for the former references to "spirituous or fermented liquors or lager beer" and "intoxicating liquor" for brevity.

The former reference to a statement of the particular kind of alcoholic beverage "excepted to be proved" is deleted as surplusage.

Article 27 - Crimes and Punishments

612.

IN A TRIAL FOR FORGING, UTTERING, DISPOSING OF, PUTTING OFF, PASSING, ALTERING, STEALING, EMBEZZLING, OR DESTROYING ANY INSTRUMENT, OR FOR OBTAINING PROPERTY BY FALSE PRETENSES, IT IS SUFFICIENT TO PROVE THAT THE DEFENDANT DID THE ACT CHARGED WITH AN INTENT TO DEFRAUD WITHOUT PROVING AN INTENT BY THE DEFENDANT TO DEFRAUD A PARTICULAR PERSON.

REVISOR'S NOTE: Chapter ___, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which repeals and reenacts with amendments the second clause of the first sentence of Art. 27, § 612.

The balance of Art. 27, § 612 is revised at § 4-108 of the Criminal Procedure Article.

Article - Courts and Judicial Proceedings

1-609. WARRANTS; WRITS.

(A) WARRANTS.

WHEN AND IN THE MANNER AUTHORIZED BY LAW, A DISTRICT COURT JUDGE MAY ISSUE:

(1) WARRANTS OF ARREST; AND

(2) WARRANTS FOR SEARCH AND SEIZURE OR FOR INTERCEPTION OF COMMUNICATIONS.

(B) WRITS.

A DISTRICT COURT JUDGE MAY ISSUE:

(1) WRITS OF HABEAS CORPUS AD TESTIFICANDUM OR AD PROSEQUENDUM; AND

(2) WRITS OF ERROR CORAM NOBIS.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section which formerly was Art. 27, § 594D.

The only changes are in style.

2-107. ARREST WARRANTS.

(A) FORM; CONTENTS.

IN A CIRCUIT COURT, AN ARREST WARRANT SHALL BE ISSUED ON A FORM THAT:

(1) IS 8 1/2 BY 11 INCHES IN SIZE;

(2) CONTAINS THE FOLLOWING INFORMATION, IF KNOWN, ABOUT THE PERSON FOR WHOM THE WARRANT IS ISSUED:

(I) FULL NAME;

(II) LAST ADDRESS;

(III) RACE;

(IV) SEX;

(V) HEIGHT;

(VI) WEIGHT;

(VII) HAIR COLOR;

(VIII) EYE COLOR;

(IX) DRIVER'S LICENSE NUMBER;

(X) SOCIAL SECURITY NUMBER;

(XI) DISTINGUISHING BODY MARKS OR SCARS; AND

(XII) ANY OTHER PERTINENT IDENTIFYING INFORMATION; AND

(3) CONTAINS SPECIFIC INSTRUCTIONS TO INDICATE THE JUDGE OR COURT COMMISSIONER BEFORE WHOM THE PERSON IS DIRECTED TO APPEAR ONCE ARRESTED.

(B) CAPTION -- ARREST WARRANT.

AN ARREST WARRANT ISSUED UNDER THIS SECTION SHALL BE CLEARLY CAPTIONED:

(1) "ARREST WARRANT/STATE CAPIAS";

(2) "ARREST WARRANT/CONTEMPT";

(3) "ARREST WARRANT/CONTEMPT OF COURT"; OR

(4) "ARREST WARRANT/BODY ATTACHMENT".

(C) COPIES.

AFTER A JUDGE ISSUES AN ARREST WARRANT, THE JUDGE SHALL:

(1) MAINTAIN A COPY FOR THE JUDGE'S FILE; AND

(2) PROVIDE A COPY FOR:

(I) THE CLERK OF THE CIRCUIT COURT;

(II) THE SHERIFF OR OTHER LAW ENFORCEMENT OFFICER WHO WILL BE SERVING THE WARRANT; AND

(III) THE PERSON FOR WHOM THE WARRANT IS ISSUED.

(D) EFFECT OF FAILURE TO USE FORM.

FAILURE TO USE THE FORM DESCRIBED IN THIS SECTION DOES NOT HAVE ANY EFFECT ON AN OTHERWISE LAWFUL ARREST.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section which is new language derived without substantive change from former Art. 27, § 594D-1.

In subsection (a)(2) of this section, the defined term "person" is substituted for the former reference to "individual" to conform to the terminology used throughout this article.

In subsection (a)(2)(ii) of this section, the former reference to last "known" address is deleted as unnecessary in light of the reference in the introductory language of subsection (a)(2) of this section to information "if known" for the person for whom the warrant is issued. Similarly, in

subsection (a)(2)(xi) of this section, the former reference to "known" distinguishing body marks or scars is deleted.

Defined term: "Person" § 1-101

3-815. Detention and shelter care prior to hearing.

(J) PROTECTION OF VICTIM.

IF A CHILD IS ALLEGED TO HAVE COMMITTED A DELINQUENT ACT THAT WOULD BE STALKING UNDER ARTICLE 27, § 124 OF THE CODE OR WOULD BE A FELONY IF COMMITTED BY AN ADULT, THE COURT OR A JUVENILE INTAKE OFFICER SHALL CONSIDER INCLUDING, AS A CONDITION OF RELEASING THE CHILD PENDING AN ADJUDICATORY OR DISPOSITION HEARING, REASONABLE PROTECTIONS FOR THE SAFETY OF THE ALLEGED VICTIM.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this subsection, which is new language derived without substantive change from former Art. 27, § 616 1/2(k), except as it related to adults.

Under the former law, the protections for the safety of the alleged victim applied also to an adult defendant charged with stalking or a felony. In addition, the court or a District Court commissioner was required to consider, "as a condition of release reasonable protections for the safety of the alleged victim". These provisions are revised at § 5-201(a) of the Criminal Procedure Article. *See* Ch. _____, Acts of 2001, which also enacted this revision.

5-106.

(b) Notwithstanding § 9-103(a)(3) of the Correctional Services Article or any other provision of the Code, if a statute provides that a misdemeanor is punishable by imprisonment in the penitentiary[,] OR THAT A PERSON IS SUBJECT TO THIS SUBSECTION:

(1) [the] THE State may institute a prosecution for the [offense] MISDEMEANOR at any time; AND

(2) FOR PURPOSES OF THE MARYLAND CONSTITUTION, THE PERSON:

(I) SHALL BE DEEMED TO HAVE COMMITTED A MISDEMEANOR WHOSE PUNISHMENT IS CONFINEMENT IN THE PENITENTIARY; AND

(II) MAY RESERVE A POINT OR QUESTION FOR IN BANC REVIEW AS PROVIDED UNDER ARTICLE IV, § 22 OF THE MARYLAND CONSTITUTION.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this subsection, which repeals and reenacts, with amendments, CJ § 5-106(b).

Item (2) of this subsection is added to ensure that if a person is made subject to this subsection by cross-reference: (1) the misdemeanor is not subject to a limitations period; and (2) the person charged has a right to an in banc review.

7-409. ADDITIONAL COSTS IN CRIMINAL CASES.

(A) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "CRIME" MEANS AN ACT COMMITTED BY A PERSON IN THE STATE THAT IS:

(I) A CRIME UNDER ARTICLE 27 OF THE CODE;

(II) A CRIME UNDER THE CRIMINAL PROCEDURE ARTICLE;

(III) A VIOLATION OF THE TRANSPORTATION ARTICLE THAT IS PUNISHABLE BY IMPRISONMENT;

(IV) A CRIME AT COMMON LAW; OR

(V) A CRIME UNDER § 3-218, § 3-305(C)(2), § 3-409(A) OR (C), § 3-803(B), § 3-807(I), § 3-808(D), § 3-811(C), § 8-801, § 8-802, § 9-602(E), § 11-702(B)(8), § 11-703(D)(5)(III), § 11-706(B)(8), § 11-708(B)(8)(II), § 11-711(H)(2), § 11-712(C)(6)(II), § 11-714(C)(6), § 11-715(G)(2), § 11-716(H)(2), § 11-723(B)(8), OR § 11-726 OF THE CORRECTIONAL SERVICES ARTICLE.

(3) "OFFENSE" MEANS A VIOLATION OF THE TRANSPORTATION ARTICLE THAT IS NOT PUNISHABLE BY IMPRISONMENT.

(B) COSTS -- CIRCUIT COURT.

IN ADDITION TO ANY OTHER COSTS REQUIRED BY LAW, A CIRCUIT COURT SHALL IMPOSE ON A DEFENDANT CONVICTED OF A CRIME AN ADDITIONAL COST OF $45 IN THE CASE.

(C) SAME -- DISTRICT COURT.

IN ADDITION TO ANY OTHER COSTS REQUIRED BY LAW, THE DISTRICT COURT SHALL IMPOSE ON A DEFENDANT CONVICTED OF A CRIME AN ADDITIONAL COST OF $35 IN THE CASE.

(D) SAME -- ADDITIONAL COURT COST.

IN ADDITION TO ANY OTHER COSTS REQUIRED BY LAW, A COURT SHALL IMPOSE ON A DEFENDANT CONVICTED OF AN OFFENSE AN ADDITIONAL COST OF $3 IN THE CASE, INCLUDING CASES IN WHICH THE DEFENDANT ELECTS TO WAIVE THE RIGHT

TO TRIAL AND PAY THE FINE OR PENALTY DEPOSIT ESTABLISHED BY THE CHIEF JUDGE OF THE DISTRICT COURT BY ADMINISTRATIVE REGULATION.

(E) PAYMENT; DISPOSITION OF FUNDS COLLECTED UNDER SUBSECTIONS (B) AND (C).

(1) ALL MONEY COLLECTED UNDER THIS SECTION SHALL BE PAID TO THE COMPTROLLER OF THE STATE.

(2) THE COMPTROLLER SHALL DEPOSIT $22.50 FROM EACH FEE COLLECTED UNDER SUBSECTION (B) OF THIS SECTION FROM A CIRCUIT COURT AND $12.50 FROM EACH FEE COLLECTED UNDER SUBSECTION (C) OF THIS SECTION FROM THE DISTRICT COURT INTO THE STATE VICTIMS OF CRIME FUND ESTABLISHED UNDER § 11-916 OF THE CRIMINAL PROCEDURE ARTICLE.

(3) THE COMPTROLLER SHALL DEPOSIT $2.50 FROM EACH FEE COLLECTED UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION INTO THE VICTIM AND WITNESS PROTECTION AND RELOCATION FUND ESTABLISHED UNDER § 11-905 OF THE CRIMINAL PROCEDURE ARTICLE.

(4) THE COMPTROLLER SHALL DEPOSIT ALL OTHER MONEYS COLLECTED UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION INTO THE CRIMINAL INJURIES COMPENSATION FUND ESTABLISHED UNDER § 11-819 OF THE CRIMINAL PROCEDURE ARTICLE.

(F) DISPOSITION OF FUNDS COLLECTED UNDER SUBSECTION (D).

(1) FROM THE FIRST $500,000 IN FEES COLLECTED UNDER SUBSECTION (D) OF THIS SECTION IN EACH FISCAL YEAR, THE COMPTROLLER SHALL DEPOSIT ONE-HALF OF EACH FEE INTO THE STATE VICTIMS OF CRIME FUND AND ONE-HALF OF EACH FEE INTO THE CRIMINAL INJURIES COMPENSATION FUND.

(2) FOR FEES COLLECTED UNDER SUBSECTION (D) OF THIS SECTION IN EXCESS OF $500,000 IN EACH FISCAL YEAR, THE COMPTROLLER SHALL DEPOSIT THE ENTIRE FEE INTO THE CRIMINAL INJURIES COMPENSATION FUND.

(G) LIABILITY.

A POLITICAL SUBDIVISION MAY NOT BE HELD LIABLE UNDER ANY CONDITION FOR THE PAYMENT OF SUMS UNDER THIS SECTION.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which formerly was Art. 27, § 830(a) through (e)(1) through (4), (f), and (g).

In subsection (a)(2)(ii) of this section, the reference to "[a] crime under the Criminal Procedure Article" is added to reflect that several criminal provisions formerly in Article 27 have been revised in the Criminal Procedure Article.

In subsection (a)(3) of this section, the former reference to "an act committed by a person in the State" is deleted as implicit in the reference to a "violation of the Transportation Article".

Former Art. 27, § 830(e)(5), which required the Comptroller to pay out moneys from the State Victims of Crime Fund as approved by the Board of Victim Services, is revised as CP § 11-917.

Article - Estates and Trusts

11-109. RIGHT TO ESTATE.

(A) CONVICTION OR ATTAINDER.

A CONVICTION OR ATTAINDER DOES NOT WORK CORRUPTION OF BLOOD OR FORFEITURE OF ESTATE.

(B) SUICIDE.

THE ESTATE OF A PERSON WHO COMMITS SUICIDE SHALL DESCEND OR VEST LIKE THAT OF A PERSON WHO DIES A NATURAL DEATH.

(C) CASUALTY.

A KILLING OF A PERSON BY CASUALTY DOES NOT CAUSE A FORFEITURE OF ESTATE.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section which is new language derived without substantive change from the first, second, and third clauses of former Art. 27, § 635. The balance of Art. 27, § 635 is revised at § 6-228 of the Criminal Procedure Article.

Article - Family Law

Title 4. Spouses.

Subtitle 5. Domestic Violence.

Part I. [Definitions;] DEFINITIONS; GENERAL PROVISIONS.

4-501. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) ABUSE.

(1) "ABUSE" MEANS ANY OF THE FOLLOWING ACTS:

(I) AN ACT THAT CAUSES SERIOUS BODILY HARM;

(II) AN ACT THAT PLACES A PERSON ELIGIBLE FOR RELIEF IN FEAR OF IMMINENT SERIOUS BODILY HARM;

(III) ASSAULT IN ANY DEGREE;

(IV) RAPE OR SEXUAL OFFENSE AS DEFINED BY ARTICLE 27, §§ 462 THROUGH 464C OF THE CODE OR ATTEMPTED RAPE OR SEXUAL OFFENSE IN ANY DEGREE; OR

(V) FALSE IMPRISONMENT.

(2) IF THE PERSON FOR WHOM RELIEF IS SOUGHT IS A CHILD, "ABUSE" MAY ALSO INCLUDE ABUSE OF A CHILD, AS DEFINED IN TITLE 5, SUBTITLE 7 OF THIS ARTICLE. NOTHING IN THIS SUBTITLE SHALL BE CONSTRUED TO PROHIBIT REASONABLE PUNISHMENT, INCLUDING REASONABLE CORPORAL PUNISHMENT, IN LIGHT OF THE AGE AND CONDITION OF THE CHILD, FROM BEING PERFORMED BY A PARENT OR STEPPARENT OF THE CHILD.

(3) IF THE PERSON FOR WHOM RELIEF IS SOUGHT IS A VULNERABLE ADULT, "ABUSE" MAY ALSO INCLUDE ABUSE OF A VULNERABLE ADULT, AS DEFINED IN TITLE 14, SUBTITLE 1 OF THIS ARTICLE.

(C) CHILD CARE PROVIDER.

"CHILD CARE PROVIDER" MEANS A PERSON THAT PROVIDES SUPERVISION AND CARE FOR A MINOR CHILD.

(D) COHABITANT.

"COHABITANT" MEANS A PERSON WHO HAS HAD A SEXUAL RELATIONSHIP WITH THE RESPONDENT AND RESIDED WITH THE RESPONDENT IN THE HOME FOR A PERIOD OF AT LEAST 90 DAYS WITHIN 1 YEAR BEFORE THE FILING OF THE PETITION.

(E) COURT.

"COURT" MEANS THE DISTRICT COURT OR A CIRCUIT COURT IN THIS STATE.

(F) EMERGENCY FAMILY MAINTENANCE.

"EMERGENCY FAMILY MAINTENANCE" MEANS A MONETARY AWARD GIVEN TO OR FOR A PERSON ELIGIBLE FOR RELIEF TO WHOM THE RESPONDENT HAS A DUTY OF SUPPORT UNDER THIS ARTICLE BASED ON:

(1) THE FINANCIAL NEEDS OF THE PERSON ELIGIBLE FOR RELIEF; AND

(2) THE RESOURCES AVAILABLE TO THE PERSON ELIGIBLE FOR RELIEF AND THE RESPONDENT.

(G) HOME.

"HOME" MEANS THE PROPERTY IN THIS STATE THAT:

(1) IS THE PRINCIPAL RESIDENCE OF A PERSON ELIGIBLE FOR RELIEF; AND

(2) IS OWNED, RENTED, OR LEASED BY THE PERSON ELIGIBLE FOR RELIEF OR RESPONDENT OR, IN A PETITION ALLEGING CHILD ABUSE OR ABUSE OF A VULNERABLE ADULT, AN ADULT LIVING IN THE HOME AT THE TIME OF A PROCEEDING UNDER THIS SUBTITLE.

(H) LOCAL DEPARTMENT.

"LOCAL DEPARTMENT" MEANS THE LOCAL DEPARTMENT OF SOCIAL SERVICES THAT HAS JURISDICTION IN THE COUNTY:

(1) WHERE THE HOME IS LOCATED; OR

(2) IF DIFFERENT, WHERE THE ABUSE IS ALLEGED TO HAVE TAKEN PLACE.

(I) PERSON ELIGIBLE FOR RELIEF.

"PERSON ELIGIBLE FOR RELIEF" INCLUDES:

(1) THE CURRENT OR FORMER SPOUSE OF THE RESPONDENT;

(2) A COHABITANT OF THE RESPONDENT;

(3) A PERSON RELATED TO THE RESPONDENT BY BLOOD, MARRIAGE, OR ADOPTION;

(4) A PARENT, STEPPARENT, CHILD, OR STEPCHILD OF THE RESPONDENT OR THE PERSON ELIGIBLE FOR RELIEF WHO RESIDES OR RESIDED WITH THE RESPONDENT OR PERSON ELIGIBLE FOR RELIEF FOR AT LEAST 90 DAYS WITHIN 1 YEAR BEFORE THE FILING OF THE PETITION;

(5) A VULNERABLE ADULT; OR

(6) AN INDIVIDUAL WHO HAS A CHILD IN COMMON WITH THE RESPONDENT.

(J) PETITIONER.

(1) "PETITIONER" MEANS AN INDIVIDUAL WHO FILES A PETITION.

(2) "PETITIONER" INCLUDES:

(I) A PERSON ELIGIBLE FOR RELIEF; OR

(II) THE FOLLOWING PERSONS WHO MAY SEEK RELIEF FROM ABUSE ON BEHALF OF A MINOR OR VULNERABLE ADULT:

1. THE STATE'S ATTORNEY FOR THE COUNTY WHERE THE CHILD OR VULNERABLE ADULT LIVES, OR, IF DIFFERENT, WHERE THE ABUSE IS ALLEGED TO HAVE TAKEN PLACE;

2. THE DEPARTMENT OF SOCIAL SERVICES THAT HAS JURISDICTION IN THE COUNTY WHERE THE CHILD OR VULNERABLE ADULT LIVES, OR, IF DIFFERENT, WHERE THE ABUSE IS ALLEGED TO HAVE TAKEN PLACE;

3. A PERSON RELATED TO THE CHILD OR VULNERABLE ADULT BY BLOOD, MARRIAGE, OR ADOPTION; OR

4. AN ADULT WHO RESIDES IN THE HOME.

(K) RESIDENCE.

"RESIDENCE" INCLUDES THE YARD, GROUNDS, OUTBUILDINGS, AND COMMON AREAS SURROUNDING THE RESIDENCE.

(L) RESPONDENT.

"RESPONDENT" MEANS THE PERSON ALLEGED IN THE PETITION TO HAVE COMMITTED THE ABUSE.

(M) VICTIM.

"VICTIM" INCLUDES A PERSON ELIGIBLE FOR RELIEF.

(N) VULNERABLE ADULT.

"VULNERABLE ADULT" HAS THE MEANING PROVIDED IN § 14-101(Q) OF THIS ARTICLE.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which formerly was FL § 4-501 and Art. 27, § 798(a)(1) and (3).

The only changes are in style.

Former Art. 27, § (a)(2), which defined "abuse", is deleted as unnecessary in light of subsection (b) of this section.

4-502. DUTIES OF LAW ENFORCEMENT OFFICERS.

(A) HELP TO VICTIM.

(1) ANY PERSON WHO ALLEGES TO HAVE BEEN A VICTIM OF ABUSE AND WHO BELIEVES THERE IS A DANGER OF SERIOUS AND IMMEDIATE PERSONAL HARM MAY REQUEST THE HELP OF A LOCAL LAW ENFORCEMENT UNIT.

(2) A LOCAL LAW ENFORCEMENT OFFICER WHO RESPONDS TO THE REQUEST FOR HELP SHALL:

(I) PROTECT THE PERSON FROM HARM WHEN RESPONDING TO THE REQUEST; AND

(II) ACCOMPANY THE PERSON TO THE FAMILY HOME SO THAT THE PERSON MAY REMOVE THE FOLLOWING ITEMS, REGARDLESS OF WHO PAID FOR THE ITEMS:

1. THE PERSONAL CLOTHING OF THE PERSON AND OF ANY CHILD IN THE CARE OF THE PERSON; AND

2. THE PERSONAL EFFECTS, INCLUDING MEDICINE OR MEDICAL DEVICES, OF THE PERSON AND OF ANY CHILD IN THE CARE OF THE PERSON THAT THE PERSON OR CHILD NEEDS IMMEDIATELY.

(B) IMMUNITY.

A LAW ENFORCEMENT OFFICER WHO RESPONDS TO A REQUEST DESCRIBED IN SUBSECTION (A) OF THIS SECTION HAS THE IMMUNITY FROM LIABILITY DESCRIBED UNDER § 5-610 OF THE COURTS ARTICLE.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which is new language derived without substantive change from former Art. 27, § 798(b) and (c).

In subsection (a) of this section, the references to a "person" are substituted for the former references to the "complainant" for consistency.

In subsection (a)(1) of this section, the substitution of the word "unit" for the former reference to "agency" is to conform to other revised articles of the Code.

Defined term: "Victim" § 4-501

4-503. NOTICE OF VICTIM'S RIGHTS TO VICTIM.

(A) IN GENERAL.

A LAW ENFORCEMENT OFFICER WHO RESPONDS TO A REQUEST FOR HELP UNDER § 4-502 OF THIS PART I OF THIS SUBTITLE SHALL GIVE THE VICTIM A WRITTEN NOTICE THAT:

(1) INCLUDES THE TELEPHONE NUMBER OF A LOCAL DOMESTIC VIOLENCE PROGRAM THAT RECEIVES FUNDING FROM THE DEPARTMENT OF HUMAN RESOURCES; AND

(2) STATES THAT:

(I) THE VICTIM MAY REQUEST THAT A DISTRICT COURT COMMISSIONER FILE A CRIMINAL CHARGING DOCUMENT AGAINST THE ALLEGED ABUSER;

(II) IF THE COMMISSIONER DECLINES TO CHARGE THE ALLEGED ABUSER, THE VICTIM MAY REQUEST THAT THE STATE'S ATTORNEY FILE A CRIMINAL CHARGING DOCUMENT AGAINST THE ALLEGED ABUSER;

(III) THE VICTIM MAY FILE IN THE DISTRICT COURT OR A CIRCUIT COURT UNDER THIS SUBTITLE, A PETITION FOR RELIEF FROM ABUSE; AND

(IV) THE VICTIM MAY OBTAIN A COPY OF THE INCIDENT REPORT, AS PROVIDED UNDER § 4-503.1 OF THIS PART I OF THIS SUBTITLE.

(B) CIVIL LIABILITY NOT APPLICABLE.

A LAW ENFORCEMENT OFFICER MAY NOT BE HELD LIABLE IN A CIVIL ACTION THAT ARISES FROM THE OFFICER'S FAILURE TO PROVIDE THE NOTICE REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which is new language derived without substantive change from former Art. 27, § 799.

Defined terms: "Abuse" § 4-501

"Victim" § 4-501

4-503.1. REPORT OF ABUSE TO STATE POLICE AND VICTIM.

(A) IN GENERAL.

IF AN INCIDENT REPORT IS FILED WHEN A LAW ENFORCEMENT OFFICER RESPONDS TO A REQUEST FOR HELP UNDER § 4-502 OF THIS PART I OF THIS SUBTITLE, THE LAW ENFORCEMENT UNIT SHALL PROVIDE A COPY OF THE REPORT:

(1) TO THE DEPARTMENT OF STATE POLICE; AND

(2) ON REQUEST, TO THE VICTIM.

(B) SUBPOENA NOT NECESSARY.

THE VICTIM NEED NOT OBTAIN A SUBPOENA TO RECEIVE A COPY OF THE INCIDENT REPORT.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which is new language derived without substantive change from former Art. 27, § 800.

In subsection (a) of this section, the substitution of the word "unit" for the former reference to "agency", is to conform to other revised articles of the Code.

In subsection (b) of this section, the reference to a victim's "[not needing to] obtain a subpoena to receive a copy of the incident report" is substituted for the former reference to a "victim without a subpoena", for clarity.

Former Art. 27, § 801, which provided that a victim of abuse has the right to seek relief provided by civil protective orders and other remedies provided under §§ 4-501 through 4-507 of the Family Law Article, is deleted as unnecessary in light of this subtitle.

Former Art. 27, § 802, which required that the Department of Human Resources establish and administer a domestic violence program, is deleted as unnecessary in light of this subtitle.

The Criminal Procedure Article Review Committee notes, for consideration by the General Assembly, that the name of this title, "Spouses", is too narrow in light of other topics covered in this title. *See, e.g.*, Subtitle 4, which is entitled "Services to Families with Children".

Defined term: "Victim" § 4-501

SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Family Law

4-503.2. DOMESTIC VIOLENCE UNIT PILOT PROGRAM FUND.

(A) "FUND" DEFINED.

IN THIS SECTION, "FUND" MEANS THE DOMESTIC VIOLENCE UNIT PILOT PROGRAM FUND.

(B) FUND ESTABLISHED.

THERE IS A DOMESTIC VIOLENCE UNIT PILOT PROGRAM FUND.

(C) PURPOSE.

THE PURPOSE OF THE FUND IS TO PROVIDE GRANT MONEY TO THE SHERIFF'S OFFICE OR POLICE DEPARTMENT IN ONE OR MORE COUNTIES FOR THE CREATION OF A SEPARATE DOMESTIC VIOLENCE UNIT DEDICATED TO:

(1) THE SERVICE OF EX PARTE ORDERS AND PROTECTIVE ORDERS ISSUED UNDER THIS SUBTITLE; AND

(2) THE DATA ENTRY AND DATA UPDATING OF THOSE ORDERS.

(D) NATURE AND COMPOSITION OF FUND.

(1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) THE FUND CONSISTS OF MONEYS APPROPRIATED IN THE STATE BUDGET TO THE FUND, ALL EARNINGS FROM INVESTMENT OF MONEYS IN THE

FUND, AND ANY OTHER MONEYS ACCEPTED FOR THE BENEFIT OF THE FUND FROM ANY GOVERNMENTAL OR PRIVATE SOURCE.

(E) APPROPRIATIONS.

THE GOVERNOR MAY APPROPRIATE MONEYS TO THE FUND IN THE STATE BUDGET FOR FISCAL YEAR 2002.

(F) SEPARATE UNIT.

(1) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY.

(2) THE STATE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(3) THE FUND SHALL BE INVESTED AND REINVESTED IN THE SAME MANNER AS OTHER STATE FUNDS.

(4) THE FUND IS SUBJECT TO AN AUDIT BY THE OFFICE OF LEGISLATIVE AUDITS AS PROVIDED IN § 2-1220 OF THE STATE GOVERNMENT ARTICLE.

(G) OFFICE OF CRIME CONTROL AND PREVENTION -- ADMINISTRATION OF FUND.

(1) THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION SHALL ADMINISTER THE FUND.

(2) THE COMPTROLLER SHALL PAY OUT MONEY FROM THE FUND AS DIRECTED BY THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION OR AS APPROVED IN THE STATE BUDGET.

(3) THE ADMINISTRATIVE EXPENSES UNDER THIS SECTION SHALL BE PAID ONLY IN ACCORDANCE WITH THE STATE BUDGET.

(H) SAME -- REPORTS.

ON OR BEFORE OCTOBER 1, 2002, THE OFFICE OF CRIME CONTROL AND PREVENTION SHALL PROVIDE A REPORT TO THE GENERAL ASSEMBLY IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE ON THE IMPACT OF THE FUND ON:

(1) THE SERVICE OF EX PARTE ORDERS AND PROTECTIVE ORDERS ISSUED UNDER THIS SUBTITLE; AND

(2) THE DATA ENTRY AND DATA UPDATING OF THOSE ORDERS.

(I) DISBURSEMENTS.

(1) DISBURSEMENTS FROM THE FUND SHALL SUPPLEMENT AND MAY NOT BE SUBSTITUTED FOR CURRENT LOCAL EXPENDITURES FOR THE SERVICE OF EX PARTE ORDERS AND PROTECTIVE ORDERS ISSUED UNDER THIS SUBTITLE AND FOR THE DATA ENTRY AND DATA UPDATING OF THOSE ORDERS.

(2) IF THE TERMS OF A GRANT ALLOW, A RECIPIENT MAY EXPEND GRANT MONEY BEYOND THE FISCAL YEAR IN WHICH THE GRANT IS RECEIVED.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which is new language derived without substantive change from former Art. 27, § 804.

In subsection (e) of this section, the former references to a deficiency appropriation in the State budget for "fiscal year 2000" and to an appropriation of moneys for "fiscal year 2001" are deleted as obsolete.

SECTION 5. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Health - General

SUBTITLE 13. UNIFORM ACT FOR THE EXTRADITION OF PERSONS OF UNSOUND MIND.

10-1301. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this subsection, which is new language added as the standard introductory language of a definition section.

(B) "EXECUTIVE AUTHORITY".

AS APPLIED TO A REQUEST TO RETURN ANY PERSON WITHIN THE PURVIEW OF THIS SUBTITLE TO OR FROM THE DISTRICT OF COLUMBIA, THE WORDS "EXECUTIVE AUTHORITY", "GOVERNOR", AND "CHIEF MAGISTRATE" RESPECTIVELY INCLUDE THE CHIEF JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA AND OTHER AUTHORITY.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this subsection, which, formerly was the third sentence of former Art. 41, § 2-302.

The reference to the "chief judge of the Superior Court" of the District of Columbia is substituted for the obsolete reference to "a justice of the supreme court" of the District of Columbia. *See* D.C. Code Ann. § 23-704 (1981 Ed., 1999 Supp.).

The only other changes are in style.

(C) "FLEE".

"FLEE" MEANS TO DEPART:

(1) VOLUNTARILY OR INVOLUNTARILY FROM THE JURISDICTION OF THE COURT WHERE THE PROCEEDINGS HEREINAFTER MENTIONED MAY HAVE BEEN INSTITUTED AND ARE STILL PENDING, WITH THE EFFECT OF AVOIDING, IMPEDING, OR DELAYING THE ACTION OF THE COURT IN WHICH THE PROCEEDINGS MAY HAVE BEEN INSTITUTED OR BE PENDING; OR

(2) FROM THE STATE WHERE ONE IS IF ONE IS UNDER DETENTION BY LAW AS A PERSON OF UNSOUND MIND AND SUBJECT TO DETENTION.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this subsection, which is new language derived from the first sentence of former Art. 41, § 2-302.

The definition is stated in the infinitive form to allow minor verb variations of the defined term without taking these variations out of the scope of the definition.

(D) "FLIGHT".

"FLIGHT" MEANS THE ACT OF FLEEING.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this subsection, which is new language added as corollary to subsection (c) of this section. It is based on the first sentence of former Art. 41, § 2-302.

(E) "STATE".

"STATE" INCLUDES A STATE, TERRITORY, DISTRICT, AND INSULAR POSSESSION OR OTHER POSSESSION OF THE UNITED STATES.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this subsection, which, formerly was the second sentence of former Art. 41, § 2-302.

The former phrase "wherever used in this subtitle" is deleted in light of subsection (a) of this section to the same effect.

The only other changes are in style.

10-1302. PERSONS SUBJECT TO SUBTITLE; ACTION ON DEMAND.

(A) SCOPE OF SECTION.

THIS SECTION APPLIES TO A PERSON ALLEGED TO BE OF UNSOUND MIND FOUND IN THIS STATE, WHO HAS FLED FROM ANOTHER STATE, IN WHICH AT THE TIME OF THE FLIGHT THE PERSON:

(1) WAS UNDER DETENTION BY LAW IN A HOSPITAL, ASYLUM, OR OTHER INSTITUTION FOR THE INSANE AS A PERSON OF UNSOUND MIND;

(2) HAD BEEN THERETOFORE DETERMINED BY LEGAL PROCEEDINGS TO BE OF UNSOUND MIND, THE FINDING BEING UNREVERSED AND IN FULL FORCE AND EFFECT, AND THE CONTROL OF THE PERSON HAVING BEEN ACQUIRED BY A COURT OF COMPETENT JURISDICTION OF THE STATE FROM WHICH THE PERSON FLED; OR

(3) WAS SUBJECT TO DETENTION IN THE OTHER STATE, BEING THEN THE PERSON'S LEGAL DOMICILE (PERSONAL SERVICE OF PROCESS HAVING BEEN MADE) BASED ON LEGAL PROCEEDINGS THERE PENDING TO HAVE THE PERSON DECLARED OF UNSOUND MIND.

(B) ACTION ON DEMAND.

A PERSON SUBJECT TO THIS SECTION SHALL, ON DEMAND OF THE EXECUTIVE AUTHORITY OF THE STATE FROM WHICH THE PERSON FLED, BE DELIVERED UP TO BE REMOVED THERETO.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which formerly was Art. 41, § 2-303. It is tabulated for clarity.

The only changes are in style.

Defined terms: "Executive authority" § 10-1301

"Flee" § 10-1301

"Person" § 1-101

"State" § 1-101

10-1303. PROCEDURES.

(A) DUTIES OF GOVERNOR.

(1) THIS SUBSECTION APPLIES WHENEVER THE EXECUTIVE AUTHORITY OF ANY STATE:

(I) DEMANDS OF THE GOVERNOR, A FUGITIVE WITHIN THE PURVIEW OF § 10-1302 OF THIS SUBTITLE; AND

(II) PRODUCES A COPY OF THE COMMITMENT, DECREE, OR OTHER JUDICIAL PROCESS AND PROCEEDINGS, CERTIFIED AS AUTHENTIC BY THE GOVERNOR OR CHIEF MAGISTRATE OF THE STATE WHENCE THE PERSON SO CHARGED HAS FLED, WITH AN AFFIDAVIT MADE BEFORE A PROPER OFFICER SHOWING THE PERSON TO BE A FUGITIVE.

(2) THE GOVERNOR SHALL:

(I) CAUSE A PERSON SUBJECT TO THIS SUBSECTION TO BE APPREHENDED AND SECURED, IF FOUND IN THIS STATE;

(II) CAUSE IMMEDIATE NOTICE OF THE APPREHENSION TO BE GIVEN TO THE EXECUTIVE AUTHORITY MAKING A DEMAND FOR THE PERSON, OR TO THE AGENT OF THE EXECUTIVE AUTHORITY APPOINTED TO RECEIVE THE FUGITIVE; AND

(III) CAUSE THE FUGITIVE TO BE DELIVERED TO THE AGENT WHEN THE AGENT APPEARS.

(B) FAILURE OF AGENT TO APPEAR.

IF AN AGENT DOES NOT APPEAR WITHIN 30 DAYS FROM THE TIME OF THE APPREHENSION, THE FUGITIVE MAY BE DISCHARGED.

(C) DEMANDING STATE TO PAY COSTS.

ALL COSTS AND EXPENSES INCURRED IN THE APPREHENDING, SECURING, MAINTAINING, AND TRANSMITTING THE FUGITIVE TO THE STATE MAKING THE DEMAND FOR THE FUGITIVE SHALL BE PAID BY THE DEMANDING STATE.

(D) AUTHORITY OF AGENT.

ANY AGENT SO APPOINTED WHO RECEIVES THE FUGITIVE INTO CUSTODY SHALL BE EMPOWERED TO TRANSMIT THE FUGITIVE TO THE STATE FROM WHICH THE FUGITIVE HAS FLED.

(E) RECIPROCAL POWER.

ON APPLICATION OF ANY PERSON INTERESTED, THE GOVERNOR MAY DEMAND THE RETURN TO THIS STATE OF ANY FUGITIVE WITHIN THE PURVIEW OF THIS SUBTITLE.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which formerly was Art. 41, § 2-304. It is tabulated for clarity.

In subsections (a)(1)(i) and (2) and (e) of this section, the references to the "Governor" are substituted for the former references to the "executive authority of this State" for brevity.

The only other changes are in style.

Defined terms: "Executive authority" § 10-1301

"Flee" § 10-1301

"Person" § 1-101

"State" § 1-101

10-1304. LIMITATIONS.

ANY PROCEEDINGS UNDER THIS SUBTITLE SHALL BEGIN WITHIN 1 YEAR AFTER THE FLIGHT REFERRED TO IN THIS SUBTITLE.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which formerly was Art. 41, § 2-305.

The only changes are in style.

Defined term: "Flight" § 10-1301

10-1305. EFFECT OF SUBTITLE.

THIS SUBTITLE SHALL BE INTERPRETED AND CONSTRUED TO EFFECTUATE ITS GENERAL PURPOSE TO MAKE UNIFORM THE LAWS OF THOSE STATES THAT ENACT IT.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which formerly was Art. 41, § 2-306.

The only changes are in style.

10-1306. SHORT TITLE.

THIS SUBTITLE IS THE UNIFORM ACT FOR THE EXTRADITION OF PERSONS OF UNSOUND MIND.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which formerly was Art. 41, § 2-301.

The only changes are in style.

Defined term: "Person" § 1-101

Article - Health Occupations

8-509. LAW ENFORCEMENT AGENCY TO NOTIFY BOARD OF COMPLAINTS.

(A) "LAW ENFORCEMENT AGENCY" DEFINED.

IN THIS SECTION, "LAW ENFORCEMENT AGENCY" INCLUDES:

(1) A STATE, COUNTY, OR MUNICIPAL POLICE DEPARTMENT OR AGENCY;

(2) A SHERIFF'S OFFICE;

(3) A STATE'S ATTORNEY'S OFFICE; AND

(4) THE OFFICE OF THE ATTORNEY GENERAL.

(B) IN GENERAL.

A LAW ENFORCEMENT AGENCY THAT RECEIVES A COMPLAINT OF DEATH OR BODILY HARM ALLEGEDLY CAUSED BY A NURSE WHO HOLDS A LICENSE OR CERTIFICATE UNDER THIS TITLE SHALL NOTIFY THE BOARD OF THE COMPLAINT.

REVISOR'S NOTE: Chapter_____, Acts of 2001, which enacted the Criminal Procedure Article, also enacted this section, which is new language derived without substantive change from former Art. 27, § 593C.

In subsection (a) of this section, the former statement that a law enforcement agency "means a State, county, or municipal police department, bureau, or agency" is deleted in light of subsection (a)(1) of this section, which "includes" the same entities.

In subsection (b) of this section, the reference to a nurse who "holds a license or certificate under this title" is substituted for the former reference to a nurse who "is licensed or certified in accordance with Title 8 of the Health Occupations Article" to reflect the recodification of this provision.

Defined terms: "Board" § 8-101

"County" § 1-101

"License" § 8-101

SECTION 6. AND BE IT FURTHER ENACTED, That Section 4 of this Act remains effective through June 30, 2002, and, at the end of June 30, 2002, with no further action required by the General Assembly, it shall be abrogated and of no further force and effect.

SECTION 7. AND BE IT FURTHER ENACTED, That the Revisor's Notes, Special Revisor's Notes, General Revisor's Notes, captions, and catchlines contained in this Act are not law and may not be considered to have been enacted as a part of this Act.

SECTION 8. AND BE IT FURTHER ENACTED, That nothing in this Act affects the term of office of an appointed or elected member of any commission, office, department, agency, or other unit. An individual who is a member of a unit on the effective date of this Act shall remain a member for the balance of the term to which appointed or elected, unless the member sooner dies, resigns, or is removed under provisions of law.

SECTION 9. AND BE IT FURTHER ENACTED, That except as expressly provided to the contrary in this Act, any transaction or employment status affected by or flowing from any change of nomenclature or any statute amended, repealed, or transferred by this Act and validly entered into or existing before the effective date of this Act and every right, duty, or interest flowing from a statute amended, repealed, or transferred by this Act remains valid after the effective date of this Act and may be terminated, completed, consummated or enforced as required or allowed by any statute amended, repealed, or transferred by this Act as though the repeal, amendment, or transfer had not occurred. If a change in nomenclature involves a change in name or designation of any State unit, the successor unit shall be

considered in all respects as having the powers and obligations granted the former unit.

SECTION 10. AND BE IT FURTHER ENACTED, That the continuity of every commission, office, department, agency or other unit is retained. The personnel, records, files, furniture, fixtures, and other properties and all appropriations, credits, assets, liabilities, and obligations of each retained unit are continued as the personnel, records, files, furniture, fixtures, properties, appropriations, credits, assets, liabilities, and obligations of the unit under the laws enacted by this Act.

SECTION 11. AND BE IT FURTHER ENACTED, That, except as expressly provided to the contrary in this Act, any person licensed, registered, certified, or issued a permit or certificate by any commission, office, department, agency, or other unit established or continued by any statute amended, repealed, or transferred by this Act is considered for all purposes to be licensed, registered, certified, or issued a permit or certificate by the appropriate unit continued under this Act for the duration of the term for which the license, registration, certification, or permit was issued, and may renew that authorization in accordance with the appropriate renewal provisions of this Act.

SECTION 12. AND BE IT FURTHER ENACTED, That, subject to the approval of the Executive Director of the Department of Legislative Services, the publishers of the Annotated Code of Maryland shall propose the correction of cross-references that are rendered incorrect by this Act.

SECTION 13. AND BE IT FURTHER ENACTED, That this Act does not rescind, supersede, change, or modify any rule adopted by the Court of Appeals that is or was in effect on the effective date of this Act concerning the practice and procedure in and the administration of the appellate courts and the other courts of this State.

SECTION 14. AND BE IT FURTHER ENACTED, That the creation in this Act of separate definitions for the terms "victim" and "victim's representative" from broad definitions of "victim" in the former law is intended for stylistic purposes only and does not narrow the meaning of the word "victim" as used in Article 47 of the Constitution of Maryland.

SECTION 15. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2001.